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STATE OF NORTH CAROLINA
DEPARTMENT OF CULTURAL RESOURCES

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CITY OF ASHEVILLE

CITY COUNCIL

BOARD MINUTES

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NORTH CAROLINA DIVISION OF ARCHIVES AND HISTORY
GOVERNMENT RECORDS BRANCH – IMAGING UNIT

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NORTH CAROLINA DIVISION OF ARCHIVES AND HISTORY
GOVERNMENT RECORDS BRANCH – IMAGING UNIT

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**NORTH CAROLINA DIVISION OF ARCHIVES AND HISTORY
GOVERNMENT RECORDS BRANCH – IMAGING UNIT**

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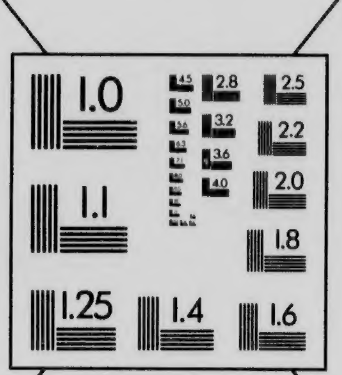

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DIVISION OF ARCHIVES AND HISTORY

ARCHIVES AND RECORDS SECTION

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The records begin with **VOLUME:** 67 **YEAR:** 6-24-97

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CITY OF ASHEVILLE

CITY COUNCIL

BOARD MINUTES

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Tuesday - June 24, 1997 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger (arrived at 5:17 p.m.); Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

MICROFILMED BY N.C. DIV. OF ARCHIVES & HISTORY
JUL 16 1997

INVOCATION

Councilman Skalski gave the invocation.

I. PROCLAMATIONS:

BOND RATING

Mayor Martin was pleased that the City of Asheville's and Buncombe County's bond rating increased to AA. He felt that was a result of good management on the part of the City and County.

II. CONSENT:

Mr. Ralph Bishop asked that Item A be removed from the Consent Agenda to be discussed individually.

Resolutions & Motions:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 10, 1997, AND THE WORKSESSION HELD ON JUNE 17, 1997

This item was removed from the Consent Agenda for further discussion.

B. RESOLUTION NO. 97-93 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH R.E. BURNS AND SONS CO., INC. TO CONSTRUCT A REPLACEMENT FOR THE EXISTING BRIDGE ON GLENDALE AVENUE OVER THE SWANNANOA RIVER IN ASHEVILLE, N.C., AFTER FINAL CONCURRENCE FROM THE N.C. DEPT. OF TRANSPORTATION

Summary: The City, through the Public Works Department, solicited bids for this project. These bids were in response to a readvertisement and rebid of the projects after insufficient bids were initially received at the time of the first bid opening. Two bid proposals were received. The bidders were qualified and are listed below:

	MB Participation	Bid Base
R.E. Burns and Sons (Statesville, N.C.)	9%	$743,825.85
Taylor and Murphy Construction Co. (Asheville, N.C.)	11%	$794,892.85

After review of these bid proposals and the qualification process of the bidders, it was determined that R.E. Burns and Sons, Co., Inc. of

2

Statesville, North Carolina should be selected as the lowest qualified bidder and City staff would seek City Council approval to authorize the City Manager to enter into a contract to construct the replacement bridge in the amount of $743,825.85 upon concurrence by the N. C. Dept. of Transportation.

The Glendale Avenue Bridge is included in the Federal Aid of System Bridge Replacement Programs. The N. C. Dept. of Transportation will reimburse the City of Asheville for 80% of all associated costs. The requested budget amount for the total project, including preliminary assessment, design, right-of-way acquisition, utility relocation, construction, contract administration, and contingencies is estimated to be $1,107,125 of which the N. C. Dept. of Transportation will reimburse the City $885,700. The City of Asheville will expend an estimated $221,425 after final reimbursements from the N. C. Dept. of Transportation. Currently, funds in the amount of $103,000 are budgeted for this project. Therefore, a budget ordinance amendment and appropriation is required in the amount of $1,004,125 for the total project.

The Public Works Department staff recommends City Council adopt a resolution authorizing the City Manager to enter into contract with R.E. Burns and Sons, Co., Inc. to construct a replacement for the existing bridge on Glendale Avenue over Swannanoa River in Asheville, N.C., after final concurrence from the N. C. Dept. of Transportation. Staff further recommends City Council adopt a budget ordinance amendment in the total amount of $1,107,125 for the entire project.

RESOLUTION BOOK NO. 24 - PAGE 96

C. RESOLUTION NO. 97-94 - RESOLUTION AWARDING CONTRACT FOR ASPHALT MATERIALS TO APAC-CAROLINA INC.

Summary: Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were invited to furnish the City's estimated annual requirement of asphalt materials to be purchased as needed for force account re-surfacing and street repair. One bid was received as follows: APAC-Carolina Inc. - $26.00 per ton.

Since only one bid was received, a survey was conducted to identify other governmental agencies cost for asphalt. By comparison, the price bid to the City of Asheville appears to be consistent with current markets. This bid has been reviewed with Mark Combs and his concurrence received in this recommendation.

Subject to Council's approval, it is recommended the City enter into a contract with Asheville Division, APAC-Carolina, Inc., Asheville, North Carolina, for the purchase, on an as needed basis only, approximately 16,550 tons of assorted asphalt materials for a grand total of $430,300.00. The contract to become effective from the date of approval through May 30, 1998 with no guarantee of minimum purchase quantity.

RESOLUTION BOOK NO. 24 - PAGE 99

D. RESOLUTION NO. 97-95 - RESOLUTION AWARDING BIDS TO SOUTHEASTERN SAFETY SUPPLIES INC. FOR VIDEO TRACKING AND DETECTION SYSTEM FOR TRAFFIC ENGINEERING

Summary: Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were invited to furnish a video vehicle tracking and detection system including on-site training and technical support during installation. One bid was received as follows: Southeastern Safety Supplies, Inc. (Columbia, S.C.) in the amount of $35,480.

This piece of equipment will enable the Traffic Engineering Division of the Public Works Department to optimize the existing street system operations and traffic controls in an effort to provide a more efficient flow of traffic. The overall project will include video detection/tracking, loop detection, microwave detection and microloop detection. This system will be compatible with the four Traconex Closed Loop Traffic Signal Systems already located in Asheville.

In addition to evaluating the proposed equipment to determine compliance with bid specifications, an analysis of the sole bidder's price was conducted. From the analysis it was determined that the price bid the City reflects a discount of $1880.00 off the manufacturer's list price and when compared to other municipalities' cost for comparable equipment, our price is considered to be competitive, fair and reasonable.

This bid has been reviewed with James Cheeks, Traffic Engineer, and Mark Combs, Public Works Director, and their concurrence received in this recommendation.

Funds for the entire purchase are to be from the Public Works Department, Traffic Engineering Division appropriations, Account Code 20-430-15-425-00-5741.

Subject to Council's approval, it is recommended that this bid be awarded to the sole bidder, Southeastern Safety Supplies, Inc., Columbia, S. C., in the amount of $35,480 for the purchase of a 'Peek Traffic Inc.' Model VT-900A-2 video vehicle tracking and detection system complete with cameras, interface panels, cables, mounting hardware and 2 days of on-site training and field support.

RESOLUTION BOOK NO. 24 - PAGE 101

E. RESOLUTION NO. 97-96 - RESOLUTION AWARDING CONTRACT TO STEPPE CONSTRUCTION COMPANY INC. FOR BREVARD ROAD ANNEXATION AREA PHASE III SANITARY SEWER SYSTEMS IMPROVEMENTS CONTRACT 1

Summary: The City Council approved 3.2 million dollars for sewer improvements. This project is known as Brevard Road Area Annexation Sanitary Sewer Improvements, Phase III - Contract One. These funds were to be used for priority sewer improvements.

The City Engineering Department and William Lapsley & Associates has developed construction plans for the Brevard Road Area Annexation Sanitary Sewer Improvements, Phase III - Contract One. The engineer's estimate for this project is in the amount of $162,875.

The project was advertised for one month. On Thursday, June 12, 1997, at 2:00 p.m., the Engineering Department received three bids for the project. A tabulation of bids received is as follows:

Steppe Construction Inc.	$141,723.50
Hobson Construction Co.	$145,149.00
Wheeler Construction Co.	$163,509.00

The construction time for this project is identified as 120 calendar days in the contract documents.

Staff recommends that City Council accept a resolution awarding the bid for Brevard Road Area Annexation Sanitary Sewer Improvements, Phase III - Contract One to the responsible low bidder, Steppe Construction Company in the amount of $141,723.50, and authorize the City Manager to execute all necessary agreements and contracts.

RESOLUTION BOOK NO. 24 - PAGE 103

F. RESOLUTION NO. 97-97 - RESOLUTION FINDING THE RIGHT OF WAY KNOWN AS ORCHARD ROAD IS NOT PART OF AN ADOPTED STREET PLAN

Summary: A right-of-way off Azalea Drive, as shown in Plat Book 24, Page 53, is not part of an adopted street plan in accordance with N. C. Gen. Stat. sec. 136-66.2. According to N. C. Gen. Stat. sec. 136-96, a right-of-way not utilized within 15 years of dedication can be abandoned through a recording of a Declaration of Withdrawal.

To proceed with this process, Gary and Gail Hammond of 35 Azalea Drive have requested that the City of Asheville verify if the specific right-of-way is or is not part of the City's adopted street plan. The statute requires the City to adopt a resolution stating the right-of-way to be abandoned is or is not part of a proposed street plan. The unused alley right-of-way off of Azalea Drive, named Orchard Road, is not part of any such plan and is not a City maintained right-of-way; therefore, the City has determined that all necessary requirements of the statute will have been met by adopting the resolution.

The Public Works Department staff finds that the right-of-way known as Orchard Road, from the intersection with the Southwest corner of PIN # 9668-09-16-7043 and Southeast corner of PIN # 9668-09-16-8082, in its entirety, as shown in Plat Book 24, Page 53 is not part of an adopted street plan and recommends the adoption of this resolution.

RESOLUTION BOOK NO. 24 - PAGE 105

G. RESOLUTION NO. 97-98 - RESOLUTION DESIGNATING SIGN KNOWN AS THE T.S. MORRISON GOLDLEAF SIGN LOCATED AT 39 NORTH LEXINGTON AS A LANDMARK SIGN

Summary: Consideration of the T.S. Morrison goldleaf sign located at 39 North Lexington Avenue to be designated as a landmark sign.

The owner of T.S. Morrison's is requesting landmark designation of one 3" x 30" goldleaf T. S. Morrison sign. Installed in 1932, the T. S. Morrison sign is 3 inches by 30 inches goldleaf reverse on glass. Goldleaf or gilding is both elegant and durable. These properties made it among the most popular sign materials in the late 19th and early 20th centuries.

The sign meets criteria A & C for landmark designation for the following reasons:

- T. S. Morrison's has been an Asheville retail store since 1891, the goldleaf sign represents and identifies one of Asheville's oldest stores.

- Goldleaf or gilding is both elegant and durable. These properties made it among the most popular sign materials in the late 19th and early 20th centuries. Reverse on glass goldleaf signs use goldleaf ranging from 12 to 23 karats. The gold is alloyed with copper and silver in varying amounts for differences in color.

At their regularly scheduled May meeting, HRC by a unanimous vote recommended to City Council that the T. S. Morrison goldleaf sign located at 39 North Lexington Avenue be designated a landmark sign.

RESOLUTION BOOK NO. 24 - PAGE 106

H. RESOLUTION NO. 97-99 - RESOLUTION DESIGNATING FOUR SIGNS KNOWN AS THE SLUDER FURNITURE COMPANY GOLD PAINTED DISPLAY WINDOW LOCATED AT 25 BROADWAY AS LANDMARK SIGNS

Summary: Consideration of the Sluder Furniture Company's four signs that are painted on the interior of the display windows at 25 Broadway be designated as landmark signs.

The owner of Sluder Furniture Company is requesting landmark designation of four signs that are painted on the interior of the display windows.

The Sluder signs are similar to the original goldleaf signs that were destroyed in the 1987 Globe fire. The two signs on the front windows are 1.23 square feet each and the two signs on the interior faces are 1.25 square feet each.

The signs meet criteria A for landmark designation for the following reasons:

- The signs represent a retail business that contributes to the character and history of the city. Sluders is the fifth oldest business in downtown Asheville.

- The Sluder signs are similar to the original goldleaf signs that were destroyed in the 1987 Globe fire. Remnants of the plate glass with the original signs were saved and duplicated with paint on the new display windows.

At their regularly scheduled May meeting HRC by a unanimous vote recommended to City Council that the four painted Sluder Furniture Company signs located at 25 Broadway be designated as landmark signs.

RESOLUTION BOOK NO. 24 - PAGE 108

I. RESOLUTION NO. 97-100 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR STREAM RESTORATION AT WEAVER PARK

Summary: The consideration of entering into a municipal agreement with the N. C. Dept. of Transportation for a stream restoration project located in Weaver Park.

The Parks and Recreation Department, the North Carolina Department of Transportation, and the Department of Environment, Health, and Natural Resources have been working on a stream restoration project for Reed Creek located at Weaver Park. This stream restoration project has evolved from DOT's requirement to mitigate environmental impact concerns to Gashes Creek as part of the widening of US 74. This project will include repairing the stream bed at Reed Creek, stream bank stabilization, landscaping, bridge replacement, and walking trail construction. This municipal agreement will allow DOT to meet the requirements placed upon them by the Department of Health, Environment, and Natural Resources and will allow them to proceed with the widening of US 74.

The Parks and Recreation Department and the Legal Division requests approval for the City Manager to enter into a municipal agreement with the N. C. Dept. of Transportation.

RESOLUTION BOOK NO. 24 - PAGE 110

J. RESOLUTION NO. 97-101 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONSERVATION EASEMENT WITH THE N.C. DEPT. OF ENVIRONMENT, HEALTH & NATURAL RESOURCES FOR STREAM RESTORATION AT WEAVER PARK

Summary: The consideration of entering into a conservation easement with the Department of Environment, Health and Natural Resources for a stream restoration project located in Weaver Park.

The Parks and Recreation Department, the N. C. Dept. of Transportation, and the Department of Environment, Health, and Natural Resources have been working on a stream restoration project for Reed Creek located at Weaver Park. This stream restoration project has evolved from DOT's requirement to mitigate environmental impact concerns to Gashes Creek as part of the widening of US 74. This project will include repairing the stream bed at Reed Creek, stream bank stabilization, landscaping, bridge replacement, and walking trail construction. This conservation easement is required in order to allow for the above work to occur and to ensure that the stream restoration project meets the requirements established by the North Carolina Department of Environment, Health and Natural Resources.

The Parks and Recreation Department and the Legal Division requests approval for the City Manager to enter into a conservation easement with the Department of Environment, Health and Natural Resources.

RESOLUTION BOOK NO. 24 - PAGE 111

K. RESOLUTION NO. 97-102 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH WOOLPERT, L.L.P., TO DEVELOP A COMPREHENSIVE MASTER PLAN FOR PARKS & RECREATION

Summary: Over the past several months, the Parks and Recreation Advisory Board and staff have gone through an extensive evaluation process to solicit the services of a consulting firm to do a Comprehensive Master Plan for Parks and Recreation for the next 20 years.

This Plan will provide an evaluation of existing recreational facilities and programs and will also provide projections for future recreation programs and facilities. The Plan will assist the City by developing a comprehensive action plan for future funding and priority needs. The purpose of this Plan is to get a good comprehensive picture of our current recreation services and project what the community wants in the future. The benefit of the Plan will be that citizens will have input on the recreational needs in the future and it will also give City Council an indication on what those needs are so they can plan for those financially.

Proposals were solicited from firms throughout the southeast to provide this service with seven firms submitting proposals. Each of the firms were evaluated based upon a matrix developed by staff to help determine the best qualified consulting firm. Through this extensive evaluation, it was determined that Woolpert, LLP, met all of the qualifications that we required in order to develop a comprehensive plan that was based upon an extensive process of community involvement. The cost for providing this service by Woolpert, LLP, is $78,120. Funds for payment for this service are currently available within the Parks and Recreation's Capital Improvement Project allocation. The Parks and Recreation Advisory Board and staff feel that this comprehensive plan is necessary in order to adequately address the future recreation needs for the City of Asheville.

Parks and Recreation recommends authorizing the City Manager to enter into a contract with Woolpert, LLP, to develop a Comprehensive Master Plan.

RESOLUTION BOOK NO. 24 - PAGE 112

L. RESOLUTION NO. 97-103 - RESOLUTION AUTHORIZING THE CITY MANAGER TO DISPOSE OF CITY-OWNED PERSONAL PROPERTY BY PRIVATE SALE TO ELIADA HOMES INC.

Summary: Several months ago, the Parks and Recreation Department replaced the ballfield lights at Livingston Street Ballfield. The department was approached by Eliada Home regarding the possibility of conveying the used lights to their facility. Under the North Carolina General Statute, Section 160A-279, the City can convey by private sale any real or personal property belonging to the City to any public or private entity which carries out a public purpose. Eliada Home is a non-profit, private entity; therefore, it is possible to convey the lights to them. In exchange, the Parks and Recreation Department will request use of Eliada Home Ballfield for two evenings per week from mid April through late October for use in the adult softball program.

The Parks and Recreation Department recommends approval of the resolution and agreement to convey ballfields lights between the City of Asheville and Eliada Home, Inc.

RESOLUTION BOOK NO. 24 - PAGE 113

M. RESOLUTION NO. 97-104 - RESOLUTION APPROVING THE BUNCOMBE COUNTY SOLID WASTE MANAGEMENT PLAN

Summary: In accordance with N. C. Gen. Stat. sec. 130A-309.09A(b), the City of Asheville must develop a ten-year solid waste management plan or participate in a joint plan with other local governments.

The Buncombe County Solid Waste Division has developed a plan to comply with N. C. Gen. Stat. sec. 130A-309.09A(b). The County Commissioners will address approval of the plan at their June 17 session. The City must either approve the county plan or develop its own by July 1, 1997.

Development of a City plan was considered but rejected due to the fact that solid waste collection and disposal in the City is directly tied to County operations. The City currently transports its waste to the Buncombe County Transfer Station and pays the County for disposal at its landfill. Illegal dumping problems in the City are often handled jointly with County staff.

The Buncombe County plan establishes two goals for the planning period: (1) a 40% waste diversion from its Subtitle D lined landfill, based on FY 88-89 waste disposal figures (the County contends it has already achieved a 20% diversion rate; and (2) a 10% per capita waste reduction based on FY 1995-96 waste generation rates.

The goals are non-binding and can be modified during plan updates and revisions. The plan does not require the City to undertake any specific actions or alter its current programs in any way. With adoption of this plan, the City agrees only to make a good faith effort in assisting the County in achieving its goals.

In the plan, the County expresses its intent to: (1) undertake a full cost accounting of solid waste operations in Buncombe County to increase efficiency and waste awareness; (2) develop means to encourage cooperation among governmental agencies, non profit organizations, and the commercial/industrial sector; (3) promote effective use of available funding; and (4) increase waste education efforts.

The County also intends to develop a task force comprised of representatives from each participating municipality to coordinate implementation of the plan. All other municipalities in Buncombe County have expressed their intention to approve the County plan. By participating in the County plan, the City will show its support for intergovernmental cooperation and ensure itself a voice in future County-wide solid waste planning.

Staff recommends adoption of the resolution approving the Buncombe County Solid Waste Management Plan.

RESOLUTION BOOK NO. 24 - PAGE 104

N. RESOLUTION NO. 97-105 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT THROUGH THE CLEAN WATER MANAGEMENT TRUST FUND TO ASSIST IN THE DEVELOPMENT OF GREENWAY MASTER PLAN AND LAND ACQUISITION

Summary: The Clean Water Management Trust Fund was established by the N.C. General Assembly to provide money to help finance projects that specifically address water pollution problems as well as funding to build a network of riparian buffers and greenways for environmental, educational, and recreational benefits. Currently, $39 million has been allocated in this trust fund for the period ending July 1, 1997. The City of Asheville is interested in applying for a grant to partially fund the greenway master plan and land acquisition along the French Broad and Swannanoa Rivers. The total funding requested for this project has not officially been determined; however, due to the total money available, it is estimated that this grant may be in excess of $1 million.

The Parks and Recreation Department recommends the City Manager be authorized to apply for or enter into an agreement for funding through the Clean Water Management Trust Fund.

RESOLUTION BOOK NO. 24 - PAGE 115

O. MOTION ACCEPTING THE CONSULTANT'S REPORT ON DEVELOPMENT PERMITTING POLICIES, PROCESSES AND PROCEDURES AND FUNCTIONAL ANALYSIS OF THE FINANCE DEPARTMENT

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions on the Resolutions & Motions Consent Agenda and they will not be read.

Councilman Sellers moved for the adoption of the Resolutions & Motions Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCES:

A. ORDINANCE NO. 2379 - BUDGET AMENDMENT TO ESTABLISH AN APPROPRIATION FOR THE GLENDALE AVENUE BRIDGE PROJECT

Summary: This budget amendment, in the amount of $1,107,125, is to establish an appropriation for the Glendale Avenue Bridge Project.

ORDINANCE BOOK NO. 16 - PAGE 236

B. ORDINANCE NO. 2380 - BUDGET AMENDMENT TO ESTABLISH BUDGET FOR GRANT FUNDS RECEIVED FROM THE COMMUNITY FOUNDATION OF WNC FOR THE SUMMERTIME KIDS 1997 PROGRAM

Summary: This budget amendment is to appropriate $1,000 received from the Community Foundation of Western North Carolina for the Summertime Kids 1997 Program.

ORDINANCE BOOK NO. 16 - PAGE 238

C. ORDINANCE NO. 2381 - ORDINANCE ADJUSTING THE BOUNDARIES OF FIRE DISTRICT NO. 3 (BILTMORE)

Summary: The consideration of adjusting the boundaries of Fire District No. 3 (Biltmore) to accommodate renovation/rehabilitation of existing buildings within that fire district.

State law provides for (and in some cases requires) the establishment of "fire districts"—defined areas where construction materials and occupancy types are limited to prevent major fires. Asheville has three such districts. Fire District No. 3 encompasses the old warehouse district in an area roughly bounded by Hendersonville Road, Thompson Street, Decatur Street and the Norfolk Southern right-of-way.

Over the past three years, major renovation and rehabilitation of buildings in Fire District No. 3 have been undertaken to a point where no significant fire protection purpose is served by leaving those structures in Fire District No. 3. This ordinance redefines the boundaries of Fire District No. 3, so that the rehabilitated/renovated buildings are no longer included in that district.

The boundary proposed is generally defined by Sweeten Creek, Thompson Street, Decatur Street and the Norfolk Southern right-of-way, with provision for exclusion of 38 Garfield Street (which is undergoing renovation at this time) from the revised Fire District No. 3.

The Fire Chief recommends adoption of the ordinance that would amend the description of Fire District No. 3 in the Asheville Fire Prevention Code.

ORDINANCE BOOK NO. 16 - PAGE 240

Mayor Martin said that members of Council have been previously furnished with copies of the ordinances on the Ordinance Consent Agenda and they will not be read.

Councilman Sellers moved for the adoption of the Ordinance Consent Agenda. This motion was seconded by Councilman Worley.

On a roll call vote of 6-0, the Ordinance Consent Agenda was adopted on its first reading.

ITEM PULLED OFF THE CONSENT AGENDA FOR FURTHER DISCUSSION

APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 10, 1997, AND THE WORKSESSION HELD ON JUNE 17, 1997

Mr. Ralph Bishop, resident of the City of Asheville, asked why he was not able to get a full and accurate copy of the minutes as required in G.S. 160A-72. Mayor Martin responded that State law does not require the minutes of Council meetings to be verbatim.

Councilman Sellers moved to approve the minutes of the June 10 and June 17, 1997, meetings as submitted. This motion was seconded by Councilman Worley and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER DEMOLITION OF 116 CLINGMAN AVENUE

ORDINANCE NO. 2382 - ORDINANCE DIRECTING THE BUILDING SAFETY DIRECTOR TO DEMOLISH 116 CLINGMAN AVENUE

Mayor Martin opened the public hearing at 5:13 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bob Vickery, Chief Code Enforcement Officer, said that 116 Clingman Avenue is a dilapidated structure located in the West End Clingman neighborhood. The owner Duckett C. Bell has not responded to the Order of the Director Designee of the Building Safety Department to repair or demolish this structure. Housing Code Coordinator Natalie J. Berry found the following conditions, which have been documented by still photographs and videotape: (1) The structure's walls and roof are structurally unsound; (2) The structure has no electricity or potable water service; and (3) The structure is abandoned and is being occupied by vagrants.

Housing Code Coordinator Natalie J. Berry sent a correction order to the property taxpayer of record on May 1, 1995. There was no response. A formal hearing was then scheduled and held on September 11, 1995, and no one responded. Based on the evidence presented at that hearing the Building Safety Department hearing officer issued a "Findings of Fact and Order" to the owner Duckett C. Bell to repair and demolish 116 Clingman Avenue within 30 days on November 30, 1995. As of this date, no action has been taken by the owner of legal record.

N.C. Gen. Stat. sec. 160A-443(5) authorizes the City Council to direct by ordinance the demolition of a dilapidated structure such as 116 Clingman Avenue subsequent to failure of the owner to comply with an order to demolish or repair. N.C. Gen. Stat. sec. 160A-443(6) authorizes placement of a lien on the property to recover the cost of a demolition so ordered by City Council.

The following is an overview of some general information regarding this property: (1) Fair market value of house is $6,900.00; (2) Value to rebuild the house only is $49,996.00; (3) Land value without the house is $4,300.00; (4) Estimated cost to demolish is $10,500.00; and (5) The Affordable Housing Agencies were notified.

Mayor Martin closed the public hearing at 5:13 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Skalski moved for the adoption of Ordinance No. 2382. This motion was seconded by Councilman Worley.

On a roll call vote of 6-0, Ordinance No. 2382 passed on its first and final reading.

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B. PUBLIC HEARING TO CONSIDER DEMOLITION OF 20 GALAX AVENUE

ORDINANCE NO. 2383 - ORDINANCE DIRECTING THE BUILDING SAFETY DIRECTOR TO DEMOLISH 20 GALAX AVENUE

Mayor Martin opened the public hearing at 5:13 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bob Vickery, Chief Code Enforcement Officer, said that 20 Galax Avenue is a dilapidated structure located in a West Asheville neighborhood. The owners James F. Hyatt Jr. And Betty Jean Hyatt have not responded to the Order of the Director Designee of the Building Safety Department to repair or demolish this structure. Housing Code Coordinator Natalie J. Berry found the following conditions, which have been documented by still photographs and videotape: (1) Structure foundation walls are structurally unsound; (2) The structure's roof and walls are structurally unsound; (3) The structure has no electricity or potable water service; and (4) The structure is abandoned and is being occupied by vagrants.

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Code Enforcement Officer David J. Souther sent a correction order to the property taxpayer of record on July 27, 1994. There was no response. A formal hearing was then scheduled and held on April 24, 1996, and the owners appeared and agreed the structure was in bad need of demolition. Based on the evidence presented at that hearing the Building Safety Department hearing officer issued a "Findings of Fact and Order" to the owners James F. Hyatt Jr. And Betty Jean Hyatt to demolish or repair 20 Galax Avenue within 90 days on April 26, 1996. As of this date, no action has been taken by the owner of legal record.

N.C. Gen. Stat. sec. 160A-443(5) authorizes the City Council to direct by ordinance the demolition of a dilapidated structure such as 20 Galax Avenue subsequent to failure of the owner to demolish or repair. N.C. Gen. Stat. sec. 160A-443(6) authorizes placement of a lien on the property to recover the cost of a demolition so ordered by City Council.

The following is an overview of some general information regarding this property: (1) Fair market value of house is $7,100.00; (2) Value to rebuild the house only is $54,872.00; (3) Land value without the house is $5,000.00; (4) Estimated cost to demolish is $9,000.00; and (5) The Affordable Housing Agencies were notified.

Mr. Spivey, owner of a rental house next to 20 Galax Avenue, said that he had a petition containing 21 signatures asking that the City demolish 20 Galax Avenue, since the house was condemned in February of 1992.

At this time, Councilman Cloninger arrived at the meeting.

Mayor Martin closed the public hearing at 5:17 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Field moved for the adoption of Ordinance No. 2383. This motion was seconded by Councilman Sellers.

On a roll call vote of 7-0, Ordinance No. 2383 passed on its first and final reading.

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C. PUBLIC HEARING TO CONSIDER DEMOLITION OF 72 CLINGMAN AVENUE

ORDINANCE NO. 2384 - ORDINANCE DIRECTING THE BUILDING SAFETY DIRECTOR TO DEMOLISH 72 CLINGMAN AVENUE

Mayor Martin opened the public hearing at 5:19 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bob Vickery, Chief Code Enforcement Officer, said that 20 Galax 72 Clingman Avenue is a dilapidated structure located in the West End Clingman neighborhood. The owner Duckett C. Bell has not responded to the Order of the Director Designee of the Building Safety Department to repair or demolish this structure. Housing Code Coordinator Natalie J. Berry found the following conditions, which have been documented by still photographs and videotape: (1) Structure is in danger of collapse; (2) The structure was extensively damaged by fire in 1991; (3) The structure has no electricity or potable water service; and (4) The structure is abandoned and is being occupied by vagrants.

Housing Code Coordinator Natalie J. Berry sent a correction order to the property taxpayer of record on December 9, 1996. There was no response. A formal hearing was then scheduled and held on March 11, 1997, and no one responded. Based on the evidence presented at that hearing the Building Safety Department hearing officer issued a "Findings of Fact and Order" to the owner Duckett C. Bell to repair and demolish 72 Clingman Avenue within 30 days on March 17, 1997. As of this date, no action has been taken by the owner of legal record.

N.C. Gen. Stat. sec. 160A-443(5) authorizes the City Council to direct by ordinance the demolition of a dilapidated structure such as 72 Clingman Avenue subsequent to failure of the owner to demolish or repair. N.C. Gen. Stat. sec. 160A-443(6) authorizes placement of a lien on the property to recover the cost of a demolition so ordered by City Council.

The following is an overview of some general information regarding this property: (1) Fair market value of house is $23,400.00; (2) Value to rebuild the house only is $124,258.00; (3) Land value without the house is $5,200.00; (4) Estimated cost to demolish is $13,500.00; and (5) The Affordable Housing Agencies were notified.

Mayor Martin closed the public hearing at 5:19 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Field moved for the adoption of Ordinance No. 2384. This motion was seconded by Councilman Worley.

On a roll call vote of 7-0, Ordinance No. 2384 passed on its first and final reading.

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D. PUBLIC HEARING TO CONSIDER MODIFICATION REQUESTS FOR WALDEN RIDGE PROFESSIONAL PARK TO BE LOCATED OFF HENDERSONVILLE ROAD: REDUCTION IN THE STREET RIGHT-OF-WAY FROM 50 FEET TO 40 FEET AND REDUCTION IN THE CUL-DE-SAC RIGHT-OF-WAY RADIUS FROM 50 FEET TO 45 FEET

Mayor Martin opened the public hearing at 5:20 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, said that the developers of Walden Ridge subdivision, located on Hendersonville Road, are requesting modifications of the city's subdivision regulations to permit a reduction in the street right-of-way from 50 feet to 40 feet and a reduction in the cul-de-sac right-of-way radius from 50 feet to 45 feet.

A professional office subdivision is proposed for development on Hendersonville Road. The developer has presented a preliminary plat and is requesting modification of the city's standards for street design.

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The Asheville Planning and Zoning Commission is recommending approval of the requested modifications of the city's subdivision regulations to permit a reduction in the street right-of-way width from 50 feet to 40 feet and a reduction in the cul-de-sac right-of-way radius from 50 feet to 45 feet. The Walden Ridge Professional Park Subdivision is located on Hendersonville Road. The subdivision will consist of four lots on approximately 7 acres. The lots will be accessed by a new street which will be approximately 760 feet in length. The developer proposes to dedicate the new street to the city for ownership and maintenance. The city's subdivision regulations require a minimum street right-of way width of 50 feet and a minimum cul-de-sac right-of-way radius of 50 feet. The first 234 feet of the proposed street has previously been granted a modification by the city to permit a reduction in the right-of-way to 40 feet. City Council approval of the requested modifications is necessary in order for the preliminary plat to be accepted as presented.

The Fire Department and the Public Works Department have reviewed the request since their vehicles would be impacted by the reduced cul-de-sac radius. These departments expressed no concern of the standards being revised.

The requested modifications of the city's street design standards have been recommended for approval by the Asheville Planning and Zoning Commission by a 5-2 vote.

Upon inquiry of Councilman Skalski on why two members of the Planning & Zoning Commission voted against this matter, Mr. Green said that their negative vote was on the subdivision as a whole, not on the specific modification requests. City Attorney Oast reminded Council that it would not be appropriate for a member on the Planning & Zoning Commission who voted negatively to comment at this time. A recommendation of the Planning & Zoning Commission is effective whether it's unanimous or not.

Upon inquiry of Councilman Hay, Mr. Green said that the major reason the City would be concerned about the cul-de-sac right-of-way radius is not so much with the right-of-way, but with the pavement radius in order to assure that there is adequate room for emergency and service vehicles. The developers have worked out with the Fire, Public Works and Engineering Departments in order to meet the requirements for turn-around of large trucks. Even though the pavement radius in the cul-de-sac does not meet City standards, they do meet N.C. Dept. of Transportation ("NC DOT") standards.

When Vice-Mayor Field asked why our standards are not contiguous with NC DOT's standards, Mr. Green said the quick answer is that NC DOT standards appear to be more for rural areas and residential developments whereas the City's standards are for urban areas, mixed use, commercial development, etc.

When Vice-Mayor Field asked if she had a conflict of interest since Mr. Pulliam is a client of the office that she is an employee of, City Attorney Oast said that unless she has been directly involved in this project, she cannot be excused from voting. Vice-Mayor Field said that she was not directly involved in the project, therefore, it was Mr. Oast's opinion that she did not have a conflict of interest.

Mayor Martin closed the public hearing at 5:27 p.m.

Councilman Worley moved to approve the reduction in the street right-of-way from 50 feet to 40 feet for Walden Ridge Professional Park. This motion was seconded by Councilman Sellers and carried unanimously.

Councilman Worley moved to approve the reduction in the cul-de-sac right-of-way radius from 50 feet to 45 feet for Walden Ridge Professional Park. This motion was seconded by Councilman Sellers and carried unanimously.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2385 - ORDINANCE AMENDING THE CITY CHARTER AND RELATED LAWS OF THE CITY OF ASHEVILLE TO PROVIDE FOR FOUR-YEAR STAGGERED TERMS FOR THE MAYOR AND MEMBERS OF THE CITY COUNCIL

Mayor Martin said that the public hearing on this matter was held on June 17, 1997.

City Attorney Oast said that amending the City's Charter to modify the form of government is a process consisting of several sequential steps: (1) Adoption of a Resolution of Intent; (2) Publication of Notice; (3) Public Hearing; (4) Council Vote; (5) Vote of the people (not required, but subject to a referendum upon petition if vote not provided for); and (6) Publication of Notice and filing with State offices.

A Resolution of Intent to consider an ordinance changing the terms of Council and the Mayor from two to four years and staggering them, was adopted on June 3, and a public hearing was set for June 17. Notice of the public hearing was published on June 6, 1997, more than 10 days before the public hearing. The public hearing was held on June 17.

He reviewed the details regarding how the terms are to be staggered and the various options available to Council. One option would allow for City Council and the Mayor to have four year staggered terms; the other would allow for City Council other than the Mayor to have four year staggered terms (Mayor remaining at a two year term); and those two options have each been prepared in two versions: one that makes the change effective upon adoption of the ordinance, and one that makes the ordinance (and the change) effective only upon a vote of the people. The method for calling for a vote of the people is set out in the statute, but is not a required procedure.

He explained that in order to insure as far as possible that the changes proposed in the ordinance are effective for the 1997 election, the ordinance should be adopted at this June 24 formal session, if at all. If the Council elects to make the ordinance effective only upon a vote of the people, or if there is a successful petition for a referendum, both of which are provided for but not required by the law, then the proposed change could not be effective before the 1999 election. If Council decides to make its action subject to a vote of the people, it is recommended that adoption of the ordinance be delayed in order to allow for coordination with the Fall elections. A separate resolution calling for a special election will need to be adopted in that event.

Since Council has previously considered and voted on the subject matter of this ordinance, it is possible that the two-thirds vote requirement contained in G.S. 160A-75 would not apply to a vote on the

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proposed ordinance itself. Nevertheless, if the vote for adoption of the ordinance is less than 5-2, it is recommended that a second vote be taken at a later meeting. This could occur on July 8, Council's next scheduled meeting, but it is recommended that it occur before then in order to allow time for completion of publication and filing requirements; a special meeting would have to be called for this purpose.

Finally, though the statute does not require that an ordinance changing the form of municipal government be put to a vote of the people, a referendum petition may be filed by which such a vote would be required. Such a petition must be filed within 30 days of the publication of notice of adoption of the ordinance, and must contain the signatures and addresses of at least 10% or 5,000, whichever is less, of the qualified voters of the City of Asheville.

If Council decides to make the ordinance effective upon a vote of the people, a resolution should be adopted at the same time calling for a special election, which must be held not later than 90 days after the ordinance is adopted. Notwithstanding obvious practical and logistical difficulties, legal notice requirements for special elections preclude a special election being called on this question in time to be effective for the 1997 election. Accordingly, if Council decides to employ this option, consideration should be given to coordinating the special election with the 1997 primary or general election, which the statute, G.S. sec. 163-287, permits, and adoption of the ordinance should be delayed so as to occur within 90 days of the primary or general election.

He said the way the staggered terms would be decided among the Council members would be that the three members that get the highest vote totals in the 1997 election would serve four year terms, with the other three members serving two year terms. The Mayor would begin to serve four year terms with the 1997 election.

Vice-Mayor Field noted that 10% of the registered voters would be 3,500 people.

Upon inquiry of Councilman Hay, City Attorney Oast said that if City Council opted for a public referendum then the change could not go into effect until the 1999 election due to time restraints in calling for a special election.

Councilman Skalski supported the ordinance requiring a vote of the people.

Mayor Martin said that members of Council have previously received a copy of the proposed ordinances and they would not be read.

Vice-Mayor Field moved for the adoption of Ordinance No. 2385 to amend the Charter and Related Laws to provide for four-year staggered terms for the Mayor and the City Council, to begin with the 1997 election, and that the amendment be effective upon adoption of the ordinance, without being subject to approval by a vote of the people. She noted that the ordinance could be subject to a referendum by petition as provided by law. This motion was seconded by Councilman Worley.

Councilman Hay said that only Mr. Bishop has expressed a preference for two years over four year terms. Everyone else he has talked to has favored four year terms and personally he felt it was a good idea as well. He was interested in the referendum in order to give people a chance to express themselves, however, he didn't think it was worth delaying it for two years because he felt it is pretty clear on what the right choice is.

Councilman Worley also supported four-year terms as well. He also felt that at first the referendum was the right way to proceed and his comments have invited people to express their desire about a referendum. Out of all the people he has spoken with, only Mr. Bishop has expressed an interest for a referendum.

Mr. Johnny Lloyd said that he has talked to some people who are opposed to the four-year staggered term for the Mayor and City Council. He suggested another option changing the Mayor's position to four years and keeping City Council at two years.

Councilman Skalski said that he was voting against this ordinance because when he ran for public office, he talked to 800 voters and none of them felt the Council should change their form of government. In effect he felt that a working person could not afford to run for City Council for four-years on a $7,000 salary. He also felt that in changing our form of government most of the people would be left out of the process. He expressed interest in district elections and felt that there are sections of Asheville that have, historically over the years, been un-represented on City Council.

On a roll call vote of 6-1, (with Councilman Skalski voting "no") Ordinance No. 2385 passed on its first and final reading.

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V. NEW BUSINESS:

A. ORDINANCE NO. 2386 - ORDINANCE ADOPTING THE BUDGET AND FIXING THE TAX RATE OF THE CITY OF ASHEVILLE FOR FISCAL YEAR 1997-78

City Manager Westbrook said that the Fiscal 1997/98 Annual Operating Budget is balanced with no increase in the Ad Valorem tax rate of $.57 per $100 of assessed value and all essential City services are maintained or improved.

Audit/Budget Director Bob Wurst said that the Fiscal 1997/98 Annual Operating Budget was presented to City Council on May 15, 1997. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on May 31 and June 1, 1997. The City Council conducted a public hearing on the budget at the June 10, 1997 meeting. The adoption of the Budget Ordinance is scheduled for action at this meeting.

Since the Budget was presented to City Council on May 15, 1997, several changes have been requested by City Council. These changes will be incorporated into the Budget before adoption on June 24, 1997. The changes to date are summarized as follows: (1) Rental for the West Asheville Resource Center is included; (2) Funding to increase City Council compensation is included; (3) Outside Agency funding has been revised in accordance with the Outside Agency Committee recommendations; (4) Certain fees and charges will be revised in accordance with the Fees

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and Charges Committee recommendations; (5) The General Capital Reserve Fund Budget has been revised to include grant funding for Stephens-Lee Center renovations; and (6) Funding totaling $100,000 of City funds and $40,000 of community funds is included in the Capital Improvement Project for Haw Creek park development is included.

A copy of the Budget is available for public inspection in the City Clerk's office. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the Budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption, with the only exception being the Ad Valorem Tax rate, which cannot be changed once adopted.

Ms. Diane Weaver, Chairman of the Smith-McDowell Associates, urged Council to appropriate funding for the Smith-McDowell House. She said the House is an artifact from Asheville's past that shows where we have been and how far we have come. She said the volunteers and staff have labored for many years fighting to keep the museum open and to keep it available for historical presentations and also for education from school children through senior citizens. She understood City Council was concerned about setting a precedence in granting their funding request. They feel that their constituents respect City Council's ability to take each issue and judge it fairly on its particular merit without giving a rubber-stamp approval. She also pointed out that in recent years citizens have been vocal and concerned about perceived rampant development in this area. Possibly helping the community with its historic preservation gives an ability to present a balanced community - balancing the old with the new.

Vice-Mayor Field said that the Smith-McDowell House is a wonderful facility within our community. Last week she suggested that the Smith-McDowell representatives meet with the City's HRC staff to see if they could come up with some kind of assistance for funding. She understands that the request is for on-going operating expenses, and not for any particular project. She thought there were some structural problems that needed to be repaired and that this money would be going towards that, however, she's been told that is not the case.

Mr. Lee Creech, Smith-McDowell Curator and Museum Administrator, said the grant application was for operating expenses and included in that was the on-going maintenance of the facility. They would be more than happy to work with the Historic Resources Commission ("HRC") and the Council to use this money toward those issues.

Vice-Mayor Field wondered if Council might set aside some money in the budget (or make another appropriation as needed in the future) and see if they could come up with some kind of leveraging of the money to allow them to match some money coming from another agency. Maggie O'Connor, HRC Director, has indicated that there were several options available. She didn't feel the Council is closed on this idea, but just that they need to look at more options.

Councilman Worley said the Outside Agency Committee looked at whether this was a one-time grant that was being applied for or would be something that would be continuing year after year. There was a concern if it's operational expenses that it would be a continual request for funding each and every year. He did, however, agree with Vice-Mayor Field about if there is a way Council could set aside some funds and maybe match or leverage them with other grants, or segregate them for a

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specific maintenance project or something of that nature, Council would feel a lot more comfortable with that.

Councilman Skalski said that the City is strapped for money and the budget has gotten tighter every year. City Council is trying to come up with creative ways to finance just about everything because there are literally hundreds of agencies that need money. He did say, however, the door is always open for possible funding for the Smith-McDowell House as the budget evolves over the year.

Councilman Skalski said that last year he presented City Council with a few motions at the beginning of their deliberations on the budget and basically he had the same presentation made last year. Last year he voted against the budget and he feels that it is appropriate to tell Council why he will be voting against it this year as well. Basically his position is that the budget last year and the budget this year does not move towards getting our fund balance closer to the state average of about 24% - we are right around 15% now. He passed out the following memo to Mayor and Members of City Council dated June 10, 1997, and briefly summarized it:

"The budget that we have before us could have many elements and policies attached to it that would greatly enhance the standard of living of the citizens of Asheville - the working families that live in the neighborhoods that elected this city council. We can help them - all of us - you-all must surely recognize the fact that all national and state politics are local. By recognizing that we can help them.

During the past several months while we have been deliberating the issues in and around the $72,000,000 million dollar budget we have before us, I have heard it repeated over and over again by Council members and echoed by staff that it can't be done because Raleigh won't allow it, or, they'll never consider it. Yes they will consider it! We must be proactive. I repeat, all national and state politics are local. And, it's a historic fact, that all policy changes begin at the local level. We must do so in order to help our local families. It's local families that pay the taxes.

1. The budget is approximately $.5 to 1 million short of meeting our fund balance goal of 15 percent of general fund operations. (This goal is far below the state average of 24 percent.) This is unacceptable.

2. How shall we replace the $200 thousand cut in federal grants for the Transit Authority? We, as a group, could have worked much harder with our state legislators about adjusting where our transportation dollars are spent. I was the only one who even asked. It should be City policy to pursue every avenue, we have no choice. Do our citizens want us to sit here and do nothing but raise unfair local taxes ad infinitum? I say no.

3. The "General Fund Contingency" should be at $500 thousand. This money is set aside for unplanned or unexpected expenses. Last year it was $150 thousand. We used up the entire $150 thousand last year. This year we have set aside $300 thousand. This is not prudent management, because we are going to have even more cuts at the federal and state level in the next year. We need more, not less.

4. Citizens' property tax money should not continue to be spent for sidewalks or streets. These are "transportation" dollars that

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should come from the state Department of Transportation and revenue sharing through the existing Powell Bill money. Grandiose four lane highways are too expensive to build and there is no money for maintenance. For example, all the new sidewalk work currently underway on state maintained Biltmore Avenue and partially state maintained Weaver Boulevard was and is being taken from the City treasury. This should come from the state. This policy must be changed. Our working families in Asheville deserve better. Local policy must be enacted and moved toward Raleigh by working more with Raleigh.

5. Our water bills are among the highest in the country and our sewer rates among the highest in the state. We have had no policies to control costs nor guidelines for development. We must start implementing comprehensive planning now. The recently passed UDO eliminated all comprehensive planning. That's one of the reasons I voted against it. We cannot give away the store in the name of progress. The triangle area, Wake County, North Carolina, which is in the top five in the country in bringing in new jobs, now has 400 trailers for school students. Where did all the money go? With all the new taxes being raised with record growth, there should be money for infrastructure to spare. There isn't. Are we on the same path? Yes, we are. We must change this path by implementing comprehensive planning now. Our budget policies should reflect restraint. Speculative investing should be by private business not underwritten by the taxpayers. Private failure should be borne by private investors, not taxpayers. Working families' property taxes should not be used for sewer and water line extensions.

These are just a few examples of important issues for the hard working families of Asheville. This Council was elected by the neighborhoods were all these hard working families live. Shouldn't we begin to right the wrongs of the past 20 years in this City? Shouldn't we start reassessing our priorities? This budget doesn't address our priorities. I can't vote for it."

Councilman Worley noted that the City's fund balance is 18% - well over the fiscal policy reserve.

Vice-Mayor Field said that when she went to Washington, she spent quite a bit of time talking to our legislators about what we could do to get additional funds for transportation. Several of them, along with one of our Senators, have agreed that Asheville should get more money and has put forth a bill to allow us to get 85-cents on the dollar on transit money, not 47-cents on the dollar.

Mayor Martin noted several inaccurate statements to Councilman's Skalski's statement. He said Council has looked at the general fund contingency and it may be Councilman Skalski's opinion that we have $500,000, however, after discussions with staff, Council has determined that what we have is adequate. He said that the City does receive Powell Bill money (which comes directly from gasoline tax) and they try to use it efficiently. He felt Council is being quite prudent in the way we spend this money and they are trying to come up with more money for streets and sidewalks. He noted that while our water bills are high, they are high in part because we have a very expensive water system due to our terrain and we don't have the luxury, as do other communities in the state, of charging more for people who live outside the City. Our sewer rates are controlled by the Metropolitan Sewer District ("MSD") and we don't have the input that we would like to have. However, we have a lot of repair and maintenance to the sewer system. The policies that govern that were set in place ten years ago and while we may differ with MSD, we are not in complete control of that. As far as comprehensive planning - we do plan. That's why we have a Planning and Development Department. The recently passed UDO did not eliminate comprehensive planning, it facilities comprehensive planning.

Councilman Cloninger felt Councilman Skalski had every right to raise motions to the budget, but at the same time he has a responsibility to be accurate in the assertions that he makes. He felt the statement passed out by Councilman Skalski was riddled with inaccuracies. He felt is was a disservice to the City Council, but more importantly to the citizens of the City of Asheville, to further this kind of inaccurate information.

Councilman Skalski moved "to eliminate the $74 thousand "Community Oriented Government" position at City Hall and create in it's place a full time Director for the Coalition of Asheville Neighborhoods at the initial cost of $25 thousand with the neighborhoods providing matching funds. This would enable the 50 or more neighborhoods to participate from the "bottom up" the way government works best." This motion died for a lack of a second.

Councilman Skalski moved to (1) "add a $40 thousand 'Senior Planner' to the Planning Department staff. We have implemented the UDO which changes every zone designation in the city and have only one senior planner; (2) reduce the legal departments allocation by $40 thousand to deal with challenges to the UDO. The government should not be defending poorly written legislation. It should include the citizens in the process, so 'self-defense' will not be necessary; (3) reduce 'City Development' allocation from $246 thousand to at least $70 thousand. We don't need another layer of bureaucracy.; and (4) remove the entire $.5 million/fiscal year for 'RECYCLING' from the general fund and place it entirely in 'tipping fees.' The citizens were surveyed and are willing to pay for program. This will also be an incentive for them to work to make it more efficient." This motion died for a lack of a second.

Councilman Skalski moved "to endorse the Metropolitan Sewerage District (MSD) of Buncombe County, North Carolina's current 'line extension policy' as adopted at their June 15, 1996, board meeting, and, ask that the Asheville Water Authority adopt a similar policy. The resolution adopted by MSD calls for the implementation of .. 'a comprehensive, county-wide land use plan to provide a rational basis for engineering and financial projections,...' City Council endorses this and will work to have the Asheville Water Authority adopt similar guidelines. Comprehensive planning calls for an 'economic/social, balance sheet' which includes the coordination of all infrastructure needs in the area, including roads, sewers, water, and schools. This will help our area grow wisely, by employing impact statements and studies in our planning. Finally, comprehensive planning, conservation districts, accompanied by impact statements and studies should also be included in the new Unified Development ordinance (UDO)." This motion died for lack of a second.

Councilman Skalski moved "to change these 'Outside Agencies' allocations: Most of all the 19 outside agencies service both the county and the city equally, therefore these allocations are a form of 'double' taxation and should be phased out over time. The items listed below are those that we could begin phasing out now: (1) eliminate the $100 thousand for 'The Chamber of Commerce.' It already gets a room tax subsidy for promotion of tourism member companies; (2) leave Buncombe County Drug Commission at $15 thousand, 1995/96 level. No one has shown

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their effectiveness. Let's give them another year to try; (3) the 'Sister Cities' program is tourism oriented and not be funded by city, and the $2 thousand should be eliminated from the budget; and (4) eliminate the $15 thousand for the 'VISION'. The 'in kind' office space the City gives them would remain in place. Do we really need to set up a whole function of government for this?" This motion died for lack of a second.

Councilman Worley was puzzled why Councilman Skalski did not give this information to the rest of City Council on June 10 (since the public hearing was held on that date). He felt that might have given Council time to digest the information being presented. Councilman Skalski said that most of the issues have been in front of City Council all year and the budget is an on-going yearly project. Councilman Worley responded that none of these issues had been raised at all during the budget deliberations.

Vice-Mayor Field said that she has received today a copy of a consultant proposal from the Tourism Development Authority ("TDA"), of which she is the City Council liaison. The TDA has asked that Council provide $10,000 to them to help pay for their consultant. She realized that this request is late in the process and the only thing she could suggest to them, because it was so late, was that perhaps Council could earmark $10,000 of the money the City is giving to the Chamber of Commerce to be for this particular project.

Councilman Worley agreed that it is too late to be brought up at this time. However, if Council would have had time to listen and study the proposal to see exactly what it entailed and whether they wanted to appropriate the $10,000, the choices would be the same today as down the road - out of contingency or out of fund balance. He felt that could be decided in the future after Council decides whether it is appropriate or not.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2386. This motion was seconded by Councilman Worley.

On a roll call vote of 6-1 (with Councilman Skalski voting "no"), Ordinance No. 2386 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE 249

B. RESOLUTION NO. 97-106 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH TENNOCA CONSTRUCTION CO. INC. FOR THE PROJECT KNOWN AS WEST AREA ANNEXATION SEWER IMPROVEMENTS PHASE III - CONTRACT A

Assistant City Manager Doug Spell said that this project consists of approximately 3200 linear feet of gravity sanitary sewer which is being put in as part of the West Area annexation service. The location of this phase of the project is in the vicinity of Captain's Drive. The project was designed in-house by the Engineering Department at an estimate of approximately $191,000 for the project construction. The construction time advertised was 45 days. The following four bids were received on June 24, 1997:

Tennoca Construction Co. (Candler, N.C.)	$177,756
Steppe Construction Co. (Mill Spring, N.C.)	$219,389
Precision Contracting (Asheville, N.C.)	$220,405
Wheeler Construction (Weaverville, N.C.)	$220,696

After evaluating the bids, staff recommends Council award the bid to the apparent low bidder - Tennoca Construction Co., Candler, N.C., in the amount of $176,756. Funds have been budgeted in the Capital Improvements Budget for the sanitary sewer improvements as a part of the West Area Annexation.

Councilman Skalski reminded Council that when the City annexes it comes with a price.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 97-106. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 116

C. RESOLUTION NO. 97-107 - RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE REGIONAL WATER AUTHORITY FOR ASHEVILLE, BUNCOMBE AND HENDERSON AND AWARDING THE BID FOR THE CONSTRUCTION OF WEST AREA ANNEXATION WATER LINE IMPROVEMENTS, WOODSIDE HILLS SECTION - PHASE II PROJECT

Assistant City Manager Doug Spell said that this project scope consists of the replacement of a 2-inch water line with 6-inch water line and fire hydrants to enhance fire protection in this area. The project consists of approximately 4250 linear feet of water line to be installed. The project was designed in-house by the Engineering Department at $232,739. The construction time for the project is 60 days. The following five bids were received on June 12, 1997:

Ronnie Ledford Utilities (Barnardsville, N.C.)	$199,726.50
Cooper Const. Co. (Hendersonville, N.C.)	$209,083.00
Steppe Construction Co. (Mill Spring, N.C.)	$223,767.00
Hobson Const. Co. (Arden, N.C.)	$225,494.00
Buckeye Const. Co. (Canton, N.C.)	$285,981.00

After evaluating the bids, staff recommends Council award the bid to the apparent low bidder - Ronnie Ledford Utilities, Barnardsville, N.C. in the amount of $199,726.50. Sufficient funds for this project are budgeted in the Pipeline Replacement Project account in the Water Capital Projects.

Mr. Spell noted that this project and the recommendation of award was presented to the Regional Water Authority and received favorable approval.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 97-107. This motion was seconded by Councilman Skalski and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 121

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D. ALL AMERICA CITY CELEBRATION

Upon concurrence of City Council, Mr. Irby Brinson, Director of Parks & Recreation, announced the All America City celebration would beheld on Friday, August 15, 1997, in conjunction with Downtown after Five.

VI. OTHER BUSINESS:

A. CITY COUNCIL/STAFF RETREAT

Upon request of City Manager Westbrook, it was the consensus of Council that the City Council/Staff Retreat be held on Friday, August 22, 1997, beginning at 1:00 p.m. and ending at approximately 6:00 p.m. at the North Fork Clubhouse. The City Manager was instructed to work with City Council, through the Mayor, on the agenda for the retreat.

B. DISTRICT ELECTIONS

Councilman Skalski asked if any Council member was interested in discussing district elections as a possible addition to our change in form of government in order to get better representation throughout the City. He pointed out that in Greensboro and Charlotte they do have district elections.

Upon inquiry of Councilman Hay, City Attorney Oast said that there is insufficient time for district elections to be effective for the 1997 election.

Councilman Cloninger agreed with Mayor Martin in thinking that district elections are not in the best interest of Asheville. He said they may work well in larger cities, but not the size of Asheville. He felt that there is enough divisiveness in our community and district elections would only foster it.

Councilman Skalski said that he would propose that the issue be voted on by the public - not enacted by City Council.

Councilman Worley also felt it would be more divisive to the City than solve any problems. He felt that in cities the size of Asheville, district elections would end up pitting one area of the City against another and pitting one member of Council representing one district against another member of Council. He has not detected, in the slightest, any bias whatsoever on the part of any member of this Council in favor of or against any area of the City. He felt each Council member approached their jobs with the best interest of the entire City in mind. He believed that going to district elections, substantially, would weaken that type of approach.

Councilman Skalski moved, if it's physically and legally possible, to put on the November election ballot a proposal for district elections in Asheville. This motion died for a lack of a second.

C. NO MEETING OF CITY COUNCIL

Mayor Martin announced that City Council will not be meeting on Tuesday, July 1, 1997. The next meeting will be a formal meeting beginning at 5:00 p.m. on Tuesday, July 8, 1997, in the Council Chamber on the second floor of the City Hall Building.

D. CLAIMS

The following claims were received by the City of Asheville during the week of June 6-12, 1997: Zeynad Mohammed (Traffic Engineering), Alice Fontanez (Streets), Bell South (Water), Jackie West (Streets), Kathy Burd (Streets), Jane Tuttle (Inspections), Ricky Morgan (Sanitation) and Bell South (Water).

The following claims were received during the week of June 13-19, 1997: Gregg Moore (Water), Cheryl Swann (Water), Melissa Waldrop (Streets), Janice Wilson (Water), Randy Mehaffey (Parks & Recreation) and Sam Carver (Parks & Recreation).

These claims have been referred to Asheville Claims Corporation for investigation.

E. CLOSED SESSION

At 6:35 p.m., Vice-Mayor Field moved to go into closed session in order to (1) consult with an attorney employed or retained by the City in order to preserve the attorney-client privilege between the attorney and the City - statutory authorization is G.S. 143-318.11 (a) (3); (2) to prevent the disclosure of information that is privileged or confidential pursuant to North Carolina law. That law is G.S. 160A-168, the Personnel Privacy Act - statutory authorization is G.S. 143-318.11 (a) (1); and (3) to discuss matters relating to the location or expansion of industries or other businesses within he area served by the City of Asheville - statutory authorization is G.S. 143-318.11 (a) (4). This motion was seconded by Councilman Sellers and carried unanimously.

At 7:30 p.m., Councilman Skalski moved to go come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 7:30 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday - July 8, 1997 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor Barbara Field, Presiding; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Russell Martin

INVOCATION

Councilman Worley gave the invocation.

I. PROCLAMATIONS:

A. ASHEVILLE SISTER CITIES

Mr. George Yates, President of Asheville Sister Cities, read a letter from Jean-Paul Hugot, Mayor of our Sister City in Saumur, France. He then proudly announced that Asheville Sister Cities has been selected by Sister Cities International as having the best program in the United States for 1996 for cities under 100,000 in population and under. He also thanked City Council for their $2,000 grant for the coming year. He emphasized that that type of financial support is what made possible such an active and successful program in 1996.

Councilman Worley said that the Sister Cities program not only fosters friendship and understanding, but can also foster some very viable economic ties as well.

B. RESOLUTION NO. 97-108 - RESOLUTION RENAMING THE MONTFORD AMPHITHEATER IN HONOR OF HAZEL ROBINSON

Several members of the Montford Park Players (in costume) invited City Council to their special anniversary celebration on Friday, July 18, 1997, at 7:30 p.m., at the Montford Amphitheater.

Vice-Mayor Field presented Mr. Ernest Thurston, Secretary of the Montford Park Players (MPP), with a proclamation in honor of their 25th Anniversary.

Vice-Mayor Field then read a resolution renaming the Montford Amphitheater in honor of Hazel Robinson. Ms. Robinson founded the MPP in 1973 and has been the group's president, director, and guiding spirit ever since. She has volunteered nearly 25,000 hours and has directed and inspired over 1,000 local actors and actresses in presenting over 600 performances of plays by Shakespeare, Dickens, and other playwrights before audiences totaling around 30,000.

The Parks and Recreation Advisory Board recommends renaming the Montford Amphitheater in honor of Hazel Robinson.

Councilman Worley moved for the adoption of Resolution No. 97-108. This motion was seconded by Councilman Skalski and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 128

C. PROCLAMATION PROCLAIMING JULY, 1997, AS "RECREATION AND PARKS MONTH"

Vice-Mayor Field read a proclamation proclaiming the month of July, 1997, as "Recreation and Parks Month" in the City of Asheville. She presented the proclamation to Parks & Recreation Director Irby Brinson who praised his staff and briefed the Council on some activities taking place during the month.

D. PRESENTATION OF CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING AWARD

City Manager Westbrook presented Finance Director Bill Schaefer with the Certificate of Achievement for Excellence in Financial Reporting Award. The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management. The City of Asheville is proud to have received this award for the 17th year.

He also presented R. Patricia Leckey, City Accountant, with the Award of Financial Reporting Achievement. Ms. Leckey was designated the individual primarily responsible for preparing the award-winning comprehensive annual financial report.

Mr. Joe Elkins, Ms. Valerie Brown and Ms. Barbara Smith were also recognized for their work in achieving the awards.

E. PRESENTATION OF DISTINGUISHED BUDGET PRESENTATION AWARD

City Manager Westbrook presented Audit/Budget Director Bob Wurst with the Distinguished Budget Presentation Award for the budget prepared for Fiscal Year beginning July 1, 1996. The Award represents a commitment of the governing body and staff to meeting the highest principles of governmental budgeting.

II. CONSENT:

III. PUBLIC HEARINGS:

IV. UNFINISHED BUSINESS:

A. RESOLUTION AUTHORIZING THE SALE OF DISPOSAL PARCEL 5 AT THE CORNER OF COURTLAND AND MONTFORD AVENUE IN THE HEAD OF MONTFORD REDEVELOPMENT PROJECT TO ROBERT EIDUS AND JEANETTE SYPRZAK

Mr. Ed Vess, Field Services Coordinator, said that June 10, 1997, City Council tabled until July 8, 1997, consideration of approval of the sale to Mr. Eidus and Ms. Syprzak after hearing a complaint from Jacqueline Larsen that Mr. Eidus had reneged on an agreement with her regarding the purchase and development of the property. Ms. Larsen requested a meeting with City staff to discuss her complaint and on June 19, 1997, City Attorney Bob Oast and he met with Ms. Larsen and then with Mr. Eidus, Ms. Syprzak and Mr. Randolph Horner, a business associate of Mr. Eidus. They are prepared to make a recommendation to City Council, however, in the meantime they have been in the process of removal of an Underground Storage Tank (UST) on the site.

Work has begun but has not been completed on the removal of a UST on Disposal Parcel 5. Part of the City's commitment in connection with this conveyance was to remove the UST suspected to be on the property, formerly used as a service station. In order to allow time for completion of the removal of the tank, consideration of approval of the authorization of conveyance of the property should be continued for two weeks until July 22, 1997.

The proposed developers Robert Eidus and Jeanette Syprzak have been contacted and concur in the request that the subject be tabled for two weeks.

Community Development staff recommends that consideration of the subject resolution be continued for two weeks.

Ms. Jacqueline Larsen said that she will present Council with a narrative in response to the City's staff report. She said that she would be requesting City Council to reopen the bidding process.

Councilman Skalski moved to table this matter until July 22, 1997. This motion was seconded by Councilman Sellers and carried unanimously.

B. ORDINANCE NO. 2387 - ORDINANCE AMENDING CHAPTER 5 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE TO RESTRICT DOGS IN RIVERSIDE CEMETERY

Mr. Irby Brinson, Parks & Recreation Director, reviewed a compromise the Parks and Recreation Department and concerned dog owners arrived at concerning dogs at Riverside Cemetery.

At the June 10 City Council meeting, the Parks and Recreation Department was asked to meet with concerned dog owners to explore the possibility of developing a compromise concerning dogs at Riverside Cemetery. Through the facilitation of Kevin Wilson, Training and Quality Coordinator for the City of Asheville, two meetings were conducted over the past two weeks to determine the feasibility of a compromise. The consensus of those present at these meetings is as follows:

> Appropriate signage should be posted at the front gate which would outline the following:
>
> a. Dogs must be leashed and remain on paved roads.
> b. Owners must clean up after the dogs.
> c. Dogs are prohibited during funeral services.
> d. Dogs should have canine "good citizen" training.

Violators of the above regulations will be reported to the Park Warden or the Cemetery staff with as much information as possible. Those individuals who can be identified could face possible banishment from the Cemetery. In addition, an Adopt-A-Cemetery Program will be established which will allow for clean-up of the Cemetery area and beautification projects.

Furthermore, this compromise will be assessed after a six-month period of time to collect data and measure the effectiveness to determine if further additions or changes need to be made.

The Parks and Recreation Department recognizes the need for the future development of dog parks which will allow dogs to run free in open spaces without concern for damaged property.

The Parks and Recreation Department recommends approval of the revision to the Code of Ordinances pertaining to Riverside Cemetery and approval of the compromise.

Upon inquiry of Councilman Sellers, Riverside Cemetery Manager David Olson said that he did not send out a formal letter to all the lot owners regarding this issue because there were thousands of them. He did, however, send out a notice to the property owners who had contacted him regarding this issue. Councilman Sellers felt it would have been only be fair for notification to all property owners since he has received a number of phone calls from those who were not notified.

Councilman Sellers then read a letter from Ms. Ledford who asked that all dogs be banned from the cemetery unless they stay in a vehicle. She felt that Riverside Cemetery (1) is not a recreational facility for dogs, joggers and loiterers; (2) should only be used for the original plan for the use of the cemetery burials and visitations by the loved ones; and (3) should not allow men in the Cemetery half-dressed or lying on the graves sunning. She said many of the monuments are leaning and asked that be addressed. She also said that steps are desperately needed in at least two areas.

Councilman Sellers pointed out that, after visiting Riverside Cemetery, the word "Park" was not in any signage anywhere.

Councilman Sellers, referring to a study entitled "An Assessment of Headstone Damage at Riverside Cemetery: Possible Causes and Solutions" prepared by Kathryn R. Gubista, Ph.D. in the Biology Department at UNC-Asheville, said that there is more to a grave than just headstones. He noted that there would be additional work involved for the Cemetery Manager and his staff in order to police the area and notify the Animal Control Officer when violations occur. He said that he would have to vote against the compromise because of the enforcement issue.

When Councilman Worley asked if there were any representatives of the lot owners at the two compromise meetings held, Mr. Brinson said that maybe three or four attended both meetings and of those present, they felt the compromise was "doable". He did reiterate that his direction from City Council was to work out a compromise with the dog owners and they tried to proceed in that manner.

Councilman Sellers noted that in the survey conducted it stated that it may be possible to rid headstones of urine stains caused by the dogs and that the Adopt-A-Cemetery volunteer group is willing to help clean up the urine stains on the headstones. He had a letter from Rufus Whitmire, Whitmire Monuments on Patton Avenue, which read, in part, that "dog urine permanently stains marble memorials. Riverside Cemetery contains a high percentage of marble memorials. Older marble memorials were generally more ornate than today's memorials and therefore are extremely expensive to duplicate or reproduce. Dog urine will also permanently stain granite monuments if allowed to sit and soak in for a period of time."

Councilman Skalski agreed with Councilman Sellers in that it doesn't appear that the City will be able to monitor the Cemetery to the extent it would have to be done, especially since the City has only one animal control officer. He was concerned about enforcement since we already have an ordinance that requires dogs to be on leashes and it's hard to enforce.

Ms. Frances Robinson urged Council to ban dogs from Riverside Cemetery entirely because she didn't think a cemetery is a place for dogs.

An unidentified lady who was part of the compromise committee reminded Council that dogs will have to be kept on the paved road on leashes and will not be running over the graves or urinating on headstones. She felt that the dog owners are sincere about being park watchers to deter crime in the Cemetery. She urged Council to adopt the compromise for at least a six month period.

Ms. Ruby Leonard spoke in support of the compromise.

Ms. Kathryn R. Gubista, author of the study mentioned above by Councilman Sellers, supported her objective study noting that out of a total of 551 headstones she examined, the most damage was fresh bird droppings found on 48% of the headstones. The least damage was dog urine, found on only 1.1% of the headstones. She felt sure that there was new technology for removal of urine stain and urged Council to adopt the compromise.

Councilman Cloninger moved to amend Chapter 5 of the Code of Ordinances to allow dogs in Riverside Cemetery if said dog is leashed at all times and said leash is held by the person responsible for the dog. Dogs subject to this provision shall be kept on the paved roads within the cemetery and not allowed to defecate or urinate on any grave site, headstone or monument. Any fecal matter deposited by a dog shall be removed from the cemetery by the person responsible for the dog. The main cemetery gate may be posted any time a funeral or other service is in progress and no dogs shall be permitted in the cemetery during such times. This provision shall not apply to dogs assisting persons with sight disabilities, or other disabled persons who require the assistance of a dog. This motion was seconded by Councilman Hay.

Councilman Cloninger respected the concern of property owners, but felt the compromise should be tried for six months. He noted that after the six-month period if the compromise is not working, Council can then consider banning dogs entirely from the Cemetery.

Councilman Worley said that his grandparents were buried in Riverside Cemetery. He felt that the compromise was acceptable on a trial basis.

Vice-Mayor Field said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2387. This motion was seconded by Councilman Hay.

On a roll call vote of 4-2 (with Councilmen Skalski and Sellers voting "no"), Ordinance No. 2387 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE 255

Vice-Mayor Field asked for an update on this compromise in six month at which time she also asked staff to address the issue of stray dogs.

C. ORDINANCE NO. 2388 - ORDINANCE AMENDING CHAPTER 3 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE TO RESTRICT DOGS IN RIVERSIDE CEMETERY

See Item "B" under Unfinished Business.

Vice-Mayor Field said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2388 amending Chapter 3 of the Code of Ordinances to include Riverside Cemetery as an area dogs are permitted, subject to the provisions outlined above in the earlier motion (Item B) concerning a similar issue. This motion was seconded by Councilman Worley.

On a roll call vote of 4-2 (with Councilmen Skalski and Sellers voting "no"), Ordinance No. 2388 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE 257

D. RESOLUTION NO. 97-109 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH BUNCOMBE CONSTRUCTION COMPANY INC. FOR CONSTRUCTION OF THE ASHEVILLE TRANSIT CENTER

ORDINANCE NO. 2389 - BUDGET AMENDMENT FOR INSTALLATION OF TWO TRAFFIC SIGNALS

Mr. Carl Ownbey, Urban Planners, aid that the City of Asheville and the Asheville Transit Authority received bids on June 2, 1997, for the proposed transit center to be constructed on Aston Street between Asheland Avenue and Coxe Avenue. After staff reviewed the four submitted construction bids, it was determined that all bids were responsive but higher than the funds available. Therefore, negotiations with the lowest bidder, Buncombe Construction at $706,700, were authorized by City Council.

Taking into consideration the base bid, alternates M-1, E-2, and GC-2, the negotiations outlined changes to several of the amenities and included the addition of landscaping. The results decreased the construction bid to $700,000, which is within the available funding. Funds in the amount of $705,000 are appropriated for this project. Funding for this project has been approved through a Federal Transit Grant with state and local participation.

As indicated at the worksession last month, funding for the traffic signals at the intersection of Asheland and Aston and also at the intersection of Aston and Coxe, which is at each end of this project, was not included. Significant aspects of this portion of the project (reverse flow lanes for the buses, phasing of the signals to accommodate different turning movements, and the use of upgraded computer equipment) was not initially budgeted for in the grant.

Staff requests that the City Council appropriate funds in the amount of $70,000 to install the two traffic signals for this project. Staff has requested funds from NCDOT for these signals but have not received a response to this request.

The Asheville Transit Authority and the Planning staff recommend that the contract for construction of the new transit center be awarded to Buncombe Construction in the amount of $700,000 and that funds be appropriated in the amount of $70,000 for the installation of the two traffic signals.

Upon inquiry of Vice-Mayor Field, Mr. Ownbey said that landscaping is now in the contract price, slightly modified but acceptable.

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When Councilman Cloninger asked why the 30 cubic yards of rock item was being deleted, Mr. Ownbey said that during negotiations the contractor felt that there was no indication that there would have to be rock removal.

Councilman Cloninger felt it was important that we make the transit center as attractive as possible because that building may serve as a catalyst for further redevelopment all the way down Coxe Avenue.

Upon inquiry of Vice-Mayor Field about a bus stop in Pritchard Park, Mr. Ownbey said that the current design is a stop in-bound and out-bound at Pritchard Park.

Vice-Mayor Field asked about a possible conflict of interest since Buncombe Construction is a company her firm does business with, though neither she nor her firm are involved with this project. City Attorney Oast said that, in his opinion, Vice-Mayor Field would not have a direct financial interest and thus, she would be required to vote.

Councilman Cloninger asked if the deletion of a bench in the negotiations would cause inadequate seating. Mr. Ownbey said that there are five sets of double benches, 8-feet long, which will accommodate up to 60 people and eliminating one bench will not cause much problem. The bench on the very end was deleted due to the design of the island having to be reduced and also because of a safety factor in not wanting a congregation of people right on the end of the island. He did note, however, that the contractor would be installing anchors when they poured the concrete and a bench could be installed later if needed.

Upon inquiry of Councilman Cloninger, Mr. Ownbey said that the construction time is 180 days.

Vice-Mayor Field said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 97-109. This motion was seconded by Councilman Skalski and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 129

Vice-Mayor Field said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2389. This motion was seconded by Councilman Sellers.

On a roll call vote of 6-0, Ordinance No. 2389 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE 259

V. NEW BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 24, 1997

Mr. Ralph Bishop, resident of the City of Asheville, objected to the minutes being summarized. He asked what authority does the City Clerk have to summarize the minutes noting that G.S. sec. 160A-72 says full and accurate minutes of the Council proceedings must be kept.

City Attorney Oast said that in a fairly recent opinion by the North Carolina Supreme Court, Maready v. City of Winston-Salem in Forsyth County, the Supreme Court spent some time in addressing the very question Mr. Bishop raised. They cited, with approval, provisions of Roberts Rules of Order. He read an excerpt from Roberts Rules as follows: "the record of proceedings of a deliberative assembly is usually called the minutes, or sometimes particularly in legislative bodies, the journal. In an ordinary society, unless the minutes are to be published, they should contain mainly a record of what was done at the meeting, not what was said by the members." At the request of Mr. Bishop, City Attorney Oast said he would be glad to give a copy of that provision.

Vice-Mayor Field noted that over the past few years, Council's minutes have been more and more complete text of what has gone on as well as what has been said. She felt they are much closer to what Mr. Bishop's definition of "full and accurate" means than what we are required to do.

When Mr. Bishop asked if G.S. sec. 160A-72 was still a valid law in the State of North Carolina or has it been declared unconstitutional, City Attorney Oast responded that in its current form it is still the law in the state.

Councilman Sellers moved for the adoption of the minutes of the regular meeting held on June 24, 1997. This motion was seconded by Councilman Worley and carried unanimously.

VI. OTHER BUSINESS:

A. STEPHENS-LEE FINANCING

Councilman Worley asked if it was possible to expedite the renovation of the Stephens-Lee Community Center (without impairing our financial plan) by combining funds from some of the partially funded projects until the Certificates of Participation are sold in the fall. City Manager Westbrook said that could be a real possibility but he would need to investigate the question and report back to City Council at their meeting next week.

B. CONTRIBUTION TOWARDS PURCHASE OF DOWNTOWN STREET CLOCK

Mr. Mark Combs, Director of Public Works, said that Mr. Charles Cunningham has generously offered to donate $6,000 towards the purchase of a street clock for the City which he would like to have installed in celebration of the bicentennial and hopefully in a place that is pedestrian-oriented in downtown.

The Streetscape Committee has been meeting to review the style and design of the clock, the location of the clock and the financial issues associated with the purchase of the clock. The $6,000 donation is about $2,000 lower than the cheapest clock with the style they are looking at to complement the overall streetscape design for downtown. After meeting again with Mr. Cunningham, he committed up to $8,000 at that point to buy the lowest cost clock, however, he was not receptive to the potential location of the clock at the new transit center. Mr. Cunningham said he would be willing to give a donation to Quality Forward to expedite the acquisition of the clock. Since then the Streetscape Committee has agreed to re-look at some locations, based on the financial issues, for possibly a smaller clock in a more pedestrian area. The Committee also asked him to seek guidance from City Council

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as to whether there should be public fund participation in paying the difference from the donation with streetscape money.

Vice-Mayor Field said that the Downtown Commission has enthusiastically endorsed accepting the gift.

Councilman Cloninger said that it was very generous of Mr. Cunningham to offer this and hoped we could work something out.

When Councilman Cloninger inquired about the clock, Mr. Combs said that the particular model they are looking at (11 feet tall) is approximately $10,500 and the difference would be about $4,500. The Streetscape Committee has asked him to seek guidance from City Council on if it is appropriate policy for them to match Mr. Cunningham's gift with streetscape funds which are available.

Councilman Cloninger wondered if the Streetscape Committee has any feelings about whether allowing that amount to go towards the clock will deter them from meeting other goals they may have for this fiscal year. He felt that if something like this clock is consistent with what they ordinarily do, he would be in favor of taking the funds out of their budget.

Councilman Worley didn't think it was a good policy to look to the streetscape funds for any differential, but that it should be left to the City Council to determine where those funds should come from. He did think it is a wonderful gift Mr. Cunningham has offered and we should do everything we can to accept the gift and do so as a part of the bicentennial celebration.

City Manager Westbrook said probably the only reservation staff had about recommending the difference come out of the streetscape funds would be the appearance of setting a precedent because the next gift the City Council may not like as much as they do Mr. Cunningham's. In order not to give that appearance, an appropriation from the general fund would clearly show it's not a precedent.

Vice-Mayor Field said that Mr. Cunningham had been told, and rightly so, that there is going to be a celebration on November 11 for the chimes and he wanted to be able to have the clock celebration at the same time. It was therefore important that Council make a decision fairly soon so that they can order the clock and have it installed by that time. She noted that the bicentennial season doesn't close until January 27, 1998, so it is possible that there can be a very special celebration for this particular gift if the timeframe doesn't work out.

Mr. Combs said that there is a 90-day construction date that the clock company has to set aside for the building of the clock with a 30 day contingency. He said Public Works staff would construct the pedestal base and the conduit for the electricity and it would take a matter of hours to actually install it when it arrives. He felt that the clock could be ordered before August 15 or earlier to have the celebration on November 11.

Upon inquiry of Councilman Skalski, Mr. Combs said that there is roughly $200,000 in the streetscape fund and about $50,000 is totally unencumbered.

Vice-Mayor Field felt that what the Streetscape Committee is looking for is to find out whether or not the Council wishes to accept the gift and they will work forward from there.

It was the consensus of City Council to accept the generous gift of Mr. Cunningham.

Mr. Combs said that he would come back to Council at their next meeting with a recommendation for funding and the potential source.

Mr. Charles Cunningham said that some of the members of the Committee felt that a larger clock with a larger clock face would be the more logical type of clock to be installed at the corner of Spruce and College Streets. He urged Council to resolve where the additional appropriation of $4,500 needed would come from so the clock could be ordered by August 1. He said that on August 1, Quality Forward should have the money in hand and they can sign the contract for the larger clock. That will give them plenty of time to have the clock installed by November 11. He wanted all money in place by August 1 because he needed some time to get the money out of his foundation which is in the Community Foundation of WNC and they write checks on the 15th and the 1st. He also noted that the clock company requires a 50% down payment when the order for the clock is placed.

When Councilman Cloninger asked if Mr. Cunningham's donation could be used as the down payment for ordering the clock, Mr. Cunningham did not feel it would be safe until all the money was committed.

Councilman Cloninger moved that City Council accept the generous gift from Mr. Cunningham subject to meeting Mr. Cunningham's conditions subject to budgetary approval. This motion was seconded by Councilman Sellers.

Mr. Cunningham said that he and his wife would like the donation to be anonymous.

Ms. Leni Sitnick, Co-Chair of the Bicentennial Committee, said that she would be willing to ask the Bicentennial Committee if there would be a possibility of finding some sponsorship for the additional monies needed, or at least half of those monies. And, if for some reason the timeframe is delayed, there is a plan to celebrate the last day of the bicentennial, which was the first day that the city council sat 200 years ago on January 27, with the possible burying of a time capsule. And perhaps if the clock celebration doesn't occur on November 11, we could coordinate the time clock with the time capsule. She thought Council might want to dress in costume for that day, go down to the site, have the capsule buried and celebrate the standing of the clock.

Vice-Mayor Field thanked Ms. Sitnick for her generous offer to solicit sponsorships said that City Council will find a way to celebrate Mr. Cunningham's gift with as much grandeur as we do any other bicentennial celebration. She also suggested a special bicentennial Christmas gift might be another way to celebrate the clock.

City Manager Westbrook said that Mr. Combs will be meeting with the Streetscape Committee and as a result of that meeting he would bring back an appropriation and a recommendation for source at the next Council meeting.

C. CITY COUNCIL TRIATHLON TEAM

Councilman Hay proudly announced and congratulated the City Council Triathlon Team on winning its division in the RiverLink triathlon. Their outstanding and courageous athletic performance brought them in 9th out of 19 teams, with a very credible time.

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D. COMMENTS BY MR. RALPH BISHOP RELATIVE TO THE MINUTES

Mr. Ralph Bishop, resident of the City of Asheville, questioned how the Supreme Court could circumvent State law (when it says you don't have to keep full and accurate minutes) without declaring State law invalid.

City Attorney Oast said that the North Carolina Supreme Court, which is the legal authority in this state, has approved the keeping of the minutes in the manner that Asheville keeps them, as specified by the highest and most widely recognized parliamentary authority which is Roberts Rules of Order. He would be happy to furnish Mr. Bishop of that opinion, this rule and or any case he wishes if he will come to his office.

Upon inquiry of Mr. Bishop, City Attorney Oast explained that the Supreme Court interprets State laws.

Vice-Mayor Field suggested Mr. Bishop meet with City Attorney Oast and perhaps Mr. Oast can address his concerns.

E. COMMENTS BY MR. BRIAN PETERSON RELATIVE TO THE UDO

Mr. Brian Peterson brought to Council's attention four possible errors in the labeling of the UDO maps.

Mr. Peterson was especially concerned about the zoning in the Brevard Road area not being changed to RS-8 as was his understanding after adoption of the UDO, and as outlined in a petition presented to City Council. After talking with the Planning staff, he said their view was that the list of roads was a recommendation to staff to look at those areas to see if some of those should be changed from RM-8 to RS-8 and was not directing them to change all of Brevard Road in that area from RM-8 to RS-8. He said that in the Planning & Zoning Commission meeting he set out very clearly that they wanted rezoned was both sides of Brevard Road, all the property along Brevard Road from the Laurelwood Condominiums to the Masonic Lodge, and then he listed the side streets coming off of that area. He was concerned that since those changes have not been made, they would need to go through the entire rezoning process which could take several months.

Planning & Development Director Julia Cogburn said that Planning staff is in the process of investigating the possible error concerning the Vance Crescent area, noting that this is the first time the other three possible errors have been brought to their attention. She said that if there is an error in the maps that was not included in the listing of the PIN Nos. that she read into the minutes on May 27, then to correct that would require going through the rezoning process, because the map that was the point of departure was the map that was advertised in the paper. She explained that all of the PIN Nos. that were read into the record at the May 27 meeting were the changes from that original advertised map and anything that wasn't taken care of through one of those two means would have to go through the formal rezoning process. So, if in fact Planning staff made an error, they will correct it as quickly as possible through that process with the explanation that this was something that in the description of the area and the translation of it through to staff, an error was made. Once again, she is in the process of checking on this possible error.

With respect to the other three areas Mr. Peterson mentioned, they would need to be re-checked as well and if the PIN Nos. were read into the record on May 27 and the map is in error - that can be taken care of without a rezoning. She would need to check Mr. Peterson's map (which is a computer representation of what Planning staff has on record right now) with the larger official UDO zoning maps. She said that she would check all of the final Council votes to make absolutely sure all of those changes were made.

Councilmen Hay and Sellers recollected that what City Council wanted to do was what the Brevard Road neighborhood group requested. Ms. Cogburn understood that as well. She felt it could have been an implementation problem or vague information from the neighborhood to staff.

Upon inquiry of Councilman Hay, Ms. Cogburn said that if an error was made it could go to the Planning & Zoning Commission at their August meeting and then it would come to City Council at the end of August.

Councilman Cloninger stated that as something as complicated and complex as the UDO was, there may have been made honest mistakes made and certainly if that is true the City will correct it as expeditiously as possible. He felt that City Council, City staff and the neighborhoods acted in good faith throughout the process.

F. CLAIMS

The following claims were received by the City of Asheville during the week of June 20-26, 1997: Jeffrey Dameron (Streets), Bill Carter (Water) and Deborah Morris (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

G. CLOSED SESSION

At 7:08 p.m., Councilman Sellers moved to go into closed session for the following reasons: (1) to discuss matters relating to the location or expansion of industries of other businesses in the area served by the City Council - the statutory authority is G.S. sec. 143-318.11 (a) (4); (2) to establish in order to instruct the public body's negotiating agents or staff concerning the position to be taken by or on behalf of the public body negotiating the price and other material terms of a proposed contract for the acquisition of real property by purchase, option, exchange or lease - the statutory authority is G.S. sec. 143-318.11 (a) (5); and (3) to consult with an attorney employed by the City Council in order to preserve the attorney-client privilege between the attorney and the Council - the statutory authority is G.S. 143-318.11 (a) (2). This motion was seconded by Councilman Worley and carried unanimously.

At 8:25 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Vice-Mayor Field and carried unanimously.

H. COMPUTERS

There followed a brief discussion with City Manager Westbrook and the Council about getting laptop computers for Council members.

There was consensus that the City Manager should work with staff to obtain the computers. They may be available under the terms of the lease that the City has just negotiated.

VII. ADJOURNMENT:

Vice-Mayor Field adjourned the meeting at 8:40 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday - July 15, 1997 - 3:00 p.m.

Worksession

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Park Avenue Subdivision Speed Study

Summary: The City Traffic Engineer has performed the necessary traffic analyses associated with the following locations and is seeking authorization from the City Council to change these speed limits.

Add to 20 MPH

(1) Parkridge Court (entirety)
(2) Clubhouse Court (entirety)
(3) Creekside Court (entirety)
(4) Thistle Knoll Court (entirety)
(5) Briar Knoll Court (entirety)
(6) Gatehouse Court (entirety)

Add to 25 MPH

(1) Park Avenue (entirety)

These locations were reviewed over a period of time and the appropriate speed analyses were conducted.

1. Parkridge Court, Clubhouse Court, Creekside Court, Thistle Knoll Court, Briar Knoll Court and Gatehouse Court

A Speed Study was conducted along these streets in the Park Avenue Subdivision per the request of the citizens of this area. The existing speed limit is 27 MPH. The residential nature of these roadways as well as their widths indicate that the speed limit should be reduced to 20 MPH. The Asheville Police Department concurs with our recommendations.

2. Park Avenue

A Speed Study was conducted along Park Avenue per the request of the citizens of this area and the City of Asheville Police Department. The existing speed limit is 27 MPH. The Speed Study indicates that the 85th percentile speed is 33 MPH and the pace speed range is 21-35 MPH. The residential nature of this roadway and its width suggest that the speed limit be reduced to 25 MPH. The Asheville Police Department concurs with our recommendation.

The Public Works Department recommends the approval of these additions to the speed limit ordinances.

Civic Center Parking Garage Repairs

Summary: The consideration of the selection of a contractor to perform repairs on the Civic Center Parking Garage structure.

City staff prepared bid specifications and cost estimates for repairs and maintenance for the Civic Center Parking Garage. The scope of work was outlined as follows:

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The proposal includes the items listed below:

- Repair concrete;
- Seal all cracks in concrete;
- Pressure clean and seal all deck surfaces;
- Install vertical and horizontal expansion joints;
- Clean and caulk joint between concrete floor and vertical barrier panels; and
- Repair concrete curbs.

* Bid specifications call for additional work described as painting of parking deck ceilings, surface coatings on columns and walls, and parking lot striping. (See bid results chart below.)

In April 1996, a total of 32 advertisement for bid letters were sent out, including 13 to certified minority businesses registered with the City. Advertisement letters were also sent to the City's Minority Business Office, the Asheville Business Development Center, and other similar business resource organizations. Six bid proposals were received, none from certified minority businesses. The results are listed below:

FIRM NAME	**BASE BID**
Chamberlain Co. Inc.	$ 164,434.00
Salem Contracting & Waterproofing	146,003.00
Construction Adhesives Bonding Inc.	219,358.75
Sigma Construction Co. Inc.	186,971.21
Carolina Preservation & Restoration Co. Inc.	142,317.00
* G.E.M. Constructors Inc.	1,033,161.00

After review of these bid proposals with the Finance Department, who has daily operational management authority for the City's parking structures, it was determined that Carolina Preservation & Restoration Co., Inc., of Asheville, the only bidder with a current City privilege license, would be selected as the lowest responsible bidder. It was then determined that City Staff would seek Council approval to enter into a contract to perform work listed in its proposal for $142,857.00.

Shortly thereafter, City staff determined that other funding options could be available for the parking deck repairs and put the contract processes on hold until March 17, 1997, at which time CPRC was recontacted. CPRC then submitted a revised base bid of $143, 671 for Items 1 - 31 listed in Exhibit B of the contract.

On May 8, 1997, it was determined by the City Attorney's office, who had consulted with the North Carolina Institute of Government, that the bids from 1996 for restoration and repairs to the Civic Center Parking Garage were now "stale" as they were not guaranteed for one year or more, and that North Carolina law required that the City rebid the project.

The project was immediately readvertised for bids. A total of 39 advertisement for bid letters were sent out, including 13 to certified minority businesses registered with the City. Advertisement letters were also sent to the City's Minority Business Office, the Asheville Business Development Center, and other similar business resource organizations. Five bid proposals were received, none from certified minority businesses. The results are listed below:

FIRM NAME	BASE BID
Volunteer Floor Company Inc.	$ 129,727.17
Carolina Preservation & Restoration Co. Inc.	150,013.85
Chamberlain Co. Inc.	167,745.40
Salem Contracting & Waterproofing Inc.	199,113.00
Construction Adhesives Bonding Inc.	260,340.00

Staff recommends Council approval of the lowest responsible bidder, Volunteer Floor Company Inc. of Knoxville, Tennessee, and requests Council direct the City Manager to enter into a contract for $129,727.17 for repair of the Civic Center Parking Garage.

Senior Games Grant

Summary: The consideration of applying for a grant, in the amount of $500, to assist local programs to serve more participants and obtain more visibility for the local Senior Games Program.

Funds are available through the North Carolina Senior Games to provide a year-round health promotion and education program for adults age 55 and older. The City of Asheville wishes to apply for funding to develop a rack card and a speaker's bureau for the Asheville-Buncombe Senior Games.

The Asheville-Buncombe Senior Games are designed to provide athletic and cultural arts activities for adults ages 55 and older. In 1997, 822 people participated in the program. The program included 55 athletic events and 33 artistic events in the categories of Literary, Visual, Heritage, and Performing Arts. Grant funds will be used to implement a rack card and speaker's bureau to promote the Asheville-Buncombe Senior Games. The amount of the grant request is $500.

The Parks and Recreation Department recommends approval of the application for grants funds through the North Carolina Senior Games.

Amboy Road Greenway Grant

Summary: Funds are available through the State of North Carolina, Department of Environment, Health and Natural Resources in the National Recreational Trails Fund Program (NRTFP) from the Federal Highway Administration to provide trails for public use in North Carolina.

The Amboy Road Greenway represents the City of Asheville's next phase of a major greenway system being developed along the French Broad and Swannanoa Rivers. Phase I was completed in 1994 with the completion of French Broad River Park. Phase II was completed in 1996 with the completion of the second half mile loop of trail in the park. French Broad River Park was funded through a partnership between the City, RiverLink, and CP&L.

Phase III, Amboy Road Park, is in the early stage of development and will provide a river front park featuring a boat launch, fishing areas, and support areas for the growing activities in the region. The City of Asheville has been awarded a grant for $20,000 from the North Carolina Fish and Wildlife Resources Commission to assist in the design of the park and has committed another $100,000 for the construction.

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RiverLink has received a grant for $30,000 through the Pigeon River Fund to build boardwalks over the wetlands of the greenway.

Phase IV, Amboy Road Greenway, is part of the overall plan to complete another section of greenway on the French Broad and Swannanoa Rivers. The cost of the project is approximately $65,000. The Parks and Recreation Department is requesting $30,000 in grant funds which would be matched by 50% of the cost by our crew's labor, equipment, and project supervision.

The Parks and Recreation Department recommends the City Manager to apply for and enter into this agreement.

Accept Recommendations of Regional Water Authority to Award Contract for East Asheville/East Buncombe Pipeline Replacement Program

Summary: The consideration of adopting a resolution awarding the contract to the lowest responsible bidder, Cooper Construction Company Inc. for $694,797.00.

The Engineering Department has developed construction plans for the Pipeline Replacement Program Phase II - Contract B, East Asheville/East Buncombe Water Line Project. The engineer's estimate for this project is in the amount $804,541.00.

The project was advertised for one month. On Tuesday, May 27, 1997, the Engineering Department received 4 bids for the project. The construction time for this project is identified as 150 calendar days in the contract documents. Funds in the amount of $788,000.00 are budgeted in the Regional Water Authority's Capital Projects Ordinance No. 92-17 (29 Fund).

This project was presented before the Regional Water Authority of Asheville, Buncombe and Henderson on June 24, 1997, at which time they recommended awarding the bid.

Staff recommendations that City Council accept a resolution awarding the bid for Pipeline Replacement Program Phase II - Contract B, East Asheville/East Buncombe Water Line Project - Contract E-422 to the responsible low bidder, Cooper Construction Company Inc. and authorize the City Manager to execute all necessary agreements and contracts.

Accept Recommendations of Regional Water Authority to amend Capital Project Ordinance to Appropriate Funds for the Woodside Hills Project

Summary: The consideration of a budget amendment amending Capital Project Ordinance 82-25 to provide funding in West Area Annexation for Woodside Hills in the amount of $240,000.

By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by investment earnings, contributions from other funds and appropriated fund balance.

According to the Water Agreement, the Authority is required to fund annexation water improvements. Woodside Hills Subdivision is located off Asbury Road in the recently annexed West Area. The Authority appropriated approximately $850,000 for water system improvements for this area in accordance with the 1988 Plan of Service prepared by Black and Veatch. Subsequent construction contracts and engineering services for these water system improvements totaled approximately $624,000. This resulted in a surplus of approximately $226,000, which has subsequently been transferred to other capital projects.

A part of Black and Veatch's plan of service included the installation of fire hydrants at key locations in Woodside Hills. During the construction contract, existing 2-inch waterlines were discovered at these locations. These 2-inch waterlines will not support a fire hydrant and additional 6-inch waterlines must now be installed to improve fire protection at an estimated cost of $240,000. Approval of this budget amendment will provide the funding required for this additional construction contract and the engineering services associated with it.

Regional Water Authority approved the Woodside Hills Project on June 24, 1997.

Approve amending and restating Capital Project Ordinance 82-25 in order to provide funding in West Area Annexation for Woodside Hills.

At the request of Councilman Skalski, City Manager Westbrook said that he would provide him with a report on the debt of the Water Fund.

Mental Health Managed Care for City Employees

Summary: The consideration to extend an agreement approved in February 1996 to provide mental health managed care to the employee benefits program.

Last year the City decided to put together a HMO look-alike feature for mental health, drug, and alcohol treatment under its employee benefit program. No such programs were commercially available in the community at that time, and a program was put together for the City by Provider's Care Network (PCN (of Asheville) to meet this need.

The success of the program, and the dollar savings to the benefit plan have been exceptional. The proposed agreement will continue that service for two more years.

The cost for this agreement is estimated at $15,450 and sufficient funds are currently budgeted in the 46 fund for fringe benefit costs.

Staff recommends approval of the resolution authorizing the City Manager to execute the proposed agreement with PCN.

Driveway Access Improvements at Airport

Summary: The Asheville Airport is situated on land owned by the City of Asheville and leased to the Airport Authority pursuant to a Lease Agreement dated July 1, 1980. The Authority is undertaking improvements to the driveway and access road at the airport consisting of lengthening the outbound driveway, relocating its intersection with State Road 280 approximately a quarter mile southwest to the signalized intersection with Fanning Bridge Road, and creating a circular drive with in the airport compound. The present location of the exit is on a curve on a high speed fourlane road and left turns are difficult to negotiate. Requests to the NCDOT to signalize the current exit location have been denied, but the State has indicated that it will make appropriate changes to the Fanning Bridge Road signal if the exit is relocated.

Because the intersection will be on State Road 280, the State requires as part of the access permit application that an agreement be entered into whereby construction will be carried out in a certain manner, and the completed driveway will comply and be maintained in accordance with certain standards. The agreement also holds the DOT harmless from damages arising by reason of the construction.

The Lease Agreement provides that the Airport Authority may make capital improvements "for aeronautical purposes and purposes incidental thereto... provided that authority first obtain written approval thereafter by the City."

The Agreement establishing the Airport Authority provides that the Authority may enter into contracts providing for improvements at the Airport, so it appears that the Authority may enter into the Agreement with the DOT. The DOT apparently requires that the property owner also execute the Agreement.

This resolution accomplishes two things: (1) gives the City's written approval to the proposed access improvements as required by the Lease; and (2) authorizes the City Manager to execute the Agreement with DOT.

To the extent that the DOT agreement shifts to or creates any legal responsibility for the City as the owner or the Authority as the lessee/applicant, this responsibility would be the Airport Authority's, as the Lease provides specifically that the Authority is responsible for management, operation, regulation and maintenance of the Airport. I have suggested that the Agreement be modified to indicate that the Authority is the lessee and that the City is the lessor of the property.

Approval of the resolution is recommended.

Agreement with NC DOT re: Sweeten Creek/I-40 Sidewalks and Budget Amendment

Summary: On September, 10, 1996 City Council authorized the City Manger to send a letter to the NC DOT outlining the City's agreement to participate in sidewalks on I-40/Sweeten Creek Roadway Interchange. The NC DOT's preliminary estimate was $37,000 for the sidewalk. The City's portion of the original cost of the sidewalk was 40% or $14,800. The final estimate for the construction of the sidewalk is $38,900, based upon a final design prepared by NC DOT, with the City's portion being $15,560.

The sidewalk would extend from Roberts Road to approximately 200 feet north of I-40. This includes 1,290 square yards of sidewalks. Construction is scheduled to begin fall of 1997.

Staff recommends that City Council authorize the City Manager to sign the Municipal Agreement for improvements at the interchange of Sweeten Creek and I-40. Staff also recommends that City Council appropriate $15,560 for the City's portion of the sidewalk improvements at the same intersection.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PRESENTATION OF DIRECTORY COVER COMMEMORATING ASHEVILLE'S BICENTENNIAL

Mr. Chuck Reiley, Mr. Mike Erich, and Ms. Sharon Post, BellSouth representatives of BellSouth, presented City Council with a framed 1997 Directory cover commemorating Asheville's bicentennial.

LAND PURCHASE ON BROADVIEW DRIVE

Mr. Sherman Fearing, Housing Development Analyst, said that the City needs to appropriate funds to purchase vacant property on Broadview Drive for the development of single-family, owner-occupied homes.

On February 14, 1997, the City of Asheville closed on the sale of 17.282 acres of vacant land adjacent to the Meadows Apartments. The City had planned to develop this tract into a subdivision of single-family, owner-occupied affordable housing units. Since there were access problems, the City decided to sell and look elsewhere for an alternate site. The proceeds of $200,000 will be used to purchase 12.23 acres of unimproved land on Broadview Drive in Oakley.

In May 1997, the City executed an Offer to Purchase and Contract, subject to Council's approval, for the Broadview Drive property. The total price of the contract was $190,000. The property has been appraised at $183,500 and the sellers have agreed to sell at this price. The City proposes to develop the Broadview Drive site into a subdivision of single-family, owner-occupied affordable housing units. This property is zoned RS-8 under the UDO. The above $200,000 will be used for the Broadview Drive property as follows:

a.	Capital Outlay Land Acquisition (to cover property purchase and closing costs)	$188,000
b.	Professional Services	$ 12,000

Community Development staff recommends adoption of the Ordinance.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

LEASE OF GROVE ARCADE BUILDING

City Attorney Bob Oast said that he is requesting consideration of a resolution authorizing the disposition by lease of the Grove Arcade Building to the Grove Arcade Public Market Foundation ("GAPMF"), and of a budget ordinance amendment appropriating money toward the rehabilitation of the structure.

The Grove Arcade Building was constructed at the beginning of this century as a shopping arcade and was actually used as one until taken over by the Federal Government during World War II. The Federal Government used it as an office building for about 50 years, and the building has been vacant since 1995.

Since the building became vacant, the City and other organizations and entities in the City have been exploring ways to preserve, restore and reuse the Building. For at least the last year, the City has been working with Public Interest Projects and the GAPMF, and most recently with GAPMF only, to rehabilitate and use the Arcade as a public market, with a mixture of commercial/office/residential uses on the upper floors.

The first step in this process was for the City to acquire the building. Initially, the City explored the possibility of an outright conveyance to an entity that would operate the Arcade, but this was not legally possible without paying the government for the property. Under the National Monument Act, the City was able to acquire the Arcade essentially at no cost, but had to agree to rehabilitate the structure and to use it in accordance with certain laws and regulations. The City and GAPMF have been working with the General Services Administration to make sure that the proposed use meets all legal requirements.

Since January, the City and GAPMF have been working on the terms of a Lease Agreement and a Preservation and Operation Agreement by which GAPMF would lease the building from the City, and would assume responsibility for all operational aspects of it, and for compliance with federal laws and regulations. The City and GAPMF have agreed on the substantive terms of these instruments.

In order to give effect to the Agreement between the City and GAPMF, Council needs to adopt an authorizing resolution. The law provides that leases for longer than 10 years shall be treated as sales of real property, and further provides that historically or architecturally significant properties may be disposed of to nonprofit corporations by private negotiation and sale. Accordingly the resolution authorizes the disposition of the Arcade to GAPMF, and outlines the general terms of the proposed transaction. A notice of this resolution must be published at least 10 days prior to the date of the transaction. The law further requires that Council adopt a resolution authorizing a lease, and requires for 10 days advance notice of Council's intent to adopt the resolution.

Accordingly, a resolution is attached that authorizes the disposition of the Arcade, which because of the length of the lease term is required to be treated as a sale, and directs the Clerk to publish a notice of (1) the intended disposition, and (2) of Council's intent to give specific authorization for the lease at a regular meeting.

Part of the agreement with GAPMF is that Council will follow up on its commitment in an earlier resolution to appropriate $100,000.00 toward the improvements to the Arcade. An ordinance amending the budget in accordance with the previous resolution is also necessary.

If Council intends to authorize and proceed with the proposed transaction with GAPMF, adoption of the resolution and budget ordinance amendment is recommended.

City Attorney Oast responded to questions from Council as they related to taxes, improvements to streets and sidewalks around the Grove Arcade, the working relationship between the City and the GAPMF, and most of all, parking.

Upon inquiry of Vice-Mayor Field, City Manager Westbrook said that the City has been negotiating exclusively with the GAPMF.

City Manager Westbrook said that in the near future there will be a joint meeting with City Council and the GAPMF to officially authorize the signing of the lease.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

ECONOMIC DEVELOPMENT REQUEST

Mr. John Scaralia, City Business & Development Manager, said that City Council set a public hearing to consider the City's participation in site development improvements requested by J.L. de Ball-Girmes of America, Inc.

J.L. de Ball-Girmes of America, Inc. is looking to locate a supplementary production unit at its existing site on Old Charlotte Highway. Plans call for renovation of 45,000 sq. ft. of the existing 178,000 sq. ft. building in order to begin manufacturing. The company is looking to significantly expand within two years, and plans to accommodate 12 -16 employees by July 1, 1998; up to 50 by January 1, 2000. Wages will average $9 -12.00 per hour.

The firm plans to invest a total of $7 million within two years in the renovation and equipment upgrades for this operation; and $2 million by July 1, 1998. Included will be repairs and upgrades to the roof, HVAC capacity, and plumbing and electrical improvements, as well as major machinery and equipment purchases. Staff has prepared an agreement outlining the terms and conditions of the City's participation.

The agreement consists of the City entering into a contract whereby the City would contribute $51,300 provided the terms of the contract are complied with by J.L. de Ball-Girmes of America Inc. The conditions include: the requirement of the corporation creating a minimum of 12 new jobs by July 1, 1998, with wages at $9-12 per hour; investment of $2,000,000 by July 1, 1998; and expansion to accommodate 50 employees. The guarantee for the City is through a Letter of Credit. The payback period for the City based on this financial assistance will be 4.5 years.

Staff recommends setting a public hearing to consider the City's participation in site development improvements requested by J.L. de Ball-Girmes of America, Inc.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BOOST REPORT

Mr. Irby Brinson, Parks & Recreation Director, said that during the budget work session in May, 1997, with City Council, Council gave approval to continue the study regarding the Parks and Recreation proposal relating to the BOOST Transportation System. Over the past month, staff has met on several occasions with representatives from Buncombe County and the State of North Carolina to investigate this proposal. In the meantime, the Asheville Transit Authority has renewed the Paratransit contract with Laidlaw Transit Service through June 30, 1998. During a meeting with the Transportation Project Consultant through the Division of Public Transportation for the Department of Transportation, discussion centered around a possible study of the entire transportation system throughout the City and the County. This study would include a review the proposal presented by Parks and Recreation as well as a review of the current system being used County-wide. Ninety percent of the funding for this project would be paid for by the State of North Carolina with the remainder being paid by the City and the County. It is anticipated that the City's cost associated with this study would be between $3,000 - $5,000.

The Parks and Recreation Department recommends working with the State of North Carolina and Buncombe County to solicit a consultant to study the transportation system within the City and the County. Staff also recommends City Council consider a budget amendment, in the amount of $5,000, for the City's cost associated with this study.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

STEPHENS-LEE FINANCING

Mr. Irby Brinson, Parks & Recreation Director, said that based upon Council's directive at the July 8, 1997, City Council meeting to expedite the renovation project for the Stephens-Lee Community Center, staff recommends the following steps in order to expedite the letting of contracts for the renovation of the Stephens-Lee Community Center. Current cash is available from the City Hall roof and Municipal Building renovation projects to adequately fund the anticipated contract costs for Stephens-Lee renovations. This contract could be let as early as August and construction could begin as early as September 15. This will allow for this project to begin prior to the other three major projects that are currently anticipated. The certificates of participation will be sold to fund the Municipal Building renovation, the City Hall roof, and the Old Water Maintenance Building. According to the Finance Director, these three projects would make a competitive package for the sale of COP's.

The Parks and Recreation Department recommends City Council approval of a budget amendment to reappropriate a total of $1.4 million from the City Hall roof repairs and the Municipal Building renovations into the Stephens-Lee renovation project.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

FIRE STATION 4/POLICE RESOURCE CENTER IN SKYLAND

Fire Chief John Rukavina said that in January, 1995, the City entered into an agreement with Skyland Fire Department, Inc. for a 99-year lease of property for construction of a new fire station. Subsequent to that agreement, the City retained Barney Woodard, AIA, to design, specify and solicit bids for "Asheville Fire Station 4" (and, later, for additional space for an Asheville Police Department Resource Center). Based on Woodard's estimates at the time, approximately $430,000 was budgeted for this facility, with a potential addition of up to $100,000 for the Police Resource Center.

On June 5, 1997, the bids solicited by Woodard were opened and tabulated. The low bid (not including a construction contingency or professional fees) was $784,000. There are insufficient capital improvement funds available to make up the difference between the amount budgeted and available funds.

Staff would like to negotiate with the architect to redesign the station (with expansion opportunities in the future) to one bay (not two); living quarter space for one company; and minor revisions to the space of the Police Resource Center.

Staff recommends (1) that City Council reject bids for Fire Station 4/Police Community Center due to their being significantly over the architect's estimate and budgeted funds; and (2) that City Council direct the City Manager to cause to be prepared an agreement with Barney Woodard to redesign Fire Station 4/Police Community Center on a reduced scale, and in a manner that would allow for future expansion as needed.

Vice-Mayor Field suggested going out for bids again since the bidding environment may have changed. She was concerned about cutting the station down to two bays given the growth in South Asheville. She also suggested a cheaper alternative than a full metal building.

Upon inquiry of Vice-Mayor Field, City Manager Westbrook said that the price per square foot was $82.00. He felt the budget was the problem, not the bidding process. He explained that $430,000 was budgeted for just the Fire Station 4, then $100,000 was added to include the Police Resource Center. That, in addition to the original figure from the architect being 3-4 years old, has the project under-budgeted by approximately $350,000.

Upon inquiry of Councilman Cloninger, City Attorney Oast said that it was his opinion that the law provides that you can negotiate with the lowest bidder in this particular instance.

Fire Chief Rukavina responded to questions from Council regarding how long one bay would serve the existing community.

Mayor Martin asked that the record show that City Council has received this information, instructed the Fire Chief to negotiate with the contractor for a lower bid, and instructed the City Manager to place this item on the next formal City Council agenda.

TELEVISING CITY COUNCIL MEETINGS

Mr. Robin Westbrook, Community & Public Information Coordinator, asked for Council's consideration of the taping formal City Council meetings to be broadcast on InterMedia Cable channel 10 every other Saturday.

The Asheville City Council asked staff to explore the possibility of televising formal City Council meetings. After discussions held with Hometown TV, Asheville City Schools, and Buncombe County, it was determined that taping the formal City Council meetings every other week to be aired on Saturday would best meet the needs of all interested parties.

Effective Client Promotional Services (ECPS) submitted a bid to tape the meetings every other week for a fee of $600 per meeting. They will provide three employees (2 cameramen and 1 engineer), equipment, and lighting for an average annual cost which should not exceed $15,600. She explained why the Asheville City Schools indicated that they could not provide the same service for the cost. This also eliminates the concern about finding someone to tape during the summer months.

Asheville City Schools has given the City and Buncombe County the use of channel 10 on Saturday mornings at 8:00 a.m. Asheville City Council meetings will be aired one week and Buncombe County Commission meetings will be aired the next week.

The taping of the City Council meetings can begin on a trial basis on August 12, 1997. This session will be used to adjust lighting and test equipment. The first taping to air will take place on August 26, 1997. This session will air on Saturday, August 30.

If City Council wishes to broadcast formal meetings, it is the recommendation of staff the City Council adopt a resolution authorizing the City Manager to contract with ECPS in the amount not to exceed $15,600 for one year to tape formal City Council meetings beginning on August 12, 1997. Therefore, a budget amendment in the amount of $15,000 is necessary.

She said that Buncombe County paid $65,000 upfront for the video equipment and accessories and they are paying $340 per meeting for the taping.

Councilman Cloninger supported televising the Council meetings, however, he suggested starting with the taping with the new Council in December. He felt that some people might think this is an attempt on City Council's part to get publicity unfairly during the election campaign, where other candidates would not have that opportunity.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

DOWNTOWN STREET CLOCK

Ms. Suzanne Molloy, Assistant Public Works Director, said that Mr. Charles Cunningham desires to donate $6,000 toward the purchase of a street clock for the City.

Per instructions from City Council at its July 8, 1997, meeting, a subcommittee of the Streetscape Committee met for the purpose of determining the following:

- The best clock design that will complement the overall streetscape design for downtown;
- The optimal location for such a clock; and
- A definitive cost for equipment and installation.

Based upon these goals, the subcommittee recommends a design consistent with downtown architecture and amenities to be located in the grassy island at the intersection of College, Patton and Spruce Street (across from Max's Deli). The estimated cost of the "Georgetown" clock is $10,500 and installation is estimated at $500. Public Works staff intends to construct the pedestal base and coordinate electrical service to the unit. It will subsequently be maintained by public works.

Since the construction time for the clock is 90 days, and it is the donor's desire to dedicate the clock in conjunction with a planned Bicentennial ceremony, it will be necessary to place an order not later than August 1, 1997, to meet this request.

Staff recommends that City Council appropriate $5,000 for the remaining balance necessary to purchase the clock. Mr. Cunningham's donation will be utilized as the down payment (company must have 50%) to place the order. Community groups will make every effort to acquire private funding for the remaining balance over and above the gift amount.

Ms. Leni Sitnick, Co-Chair of the Bicentennial Committee, said that it has just been confirmed by the Sponsorship Committee for the Bicentennial that they will be able to up with at least half of the difference between Mr. Cunningham's contribution and the additional monies needed through pledges to the bicentennial for beautification.

Vice-Mayor Field said that she thought Quality Forward will also be looking for some matching funds.

Ms. Sitnick then passed out a leaflet containing official bicentennial activities. She also informed City Council of another bicentennial project in the making - one in which the public is being asked to write an anthem for Asheville.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

MSD ADDITIONS TO WEST ASHEVILLE ANNEXATION SANITARY SEWER IMPROVEMENTS AREA - PHASE I

Ms. Cathy Ball, City Engineer, said that there are seven hundred and eighty-one (781) linear feet of existing 8" sewer line adjacent to this project location that belongs to MSD. Due to the condition of the existing sewer line, MSD would like the City to add this section for replacement to the existing contract with Buckeye Construction Company for West Area Annexation Sewer Improvements - Phase I. This additional work is estimated at $46,453.

City staff requested that MSD provide a check in the amount of $46,453 to us for the cost of this construction. A letter from MSD indicates that they would like for us to proceed with adding this work to our existing contract with Buckeye Construction Company but cannot provide the money until it is approved by the MSD Board. The MSD Board will meet on July 16, 1997, and MSD staff is recommending approval. In the event that the funds are not approved by MSD, City staff will withdraw the recommendation to increase this contract to City Council at the July 22, 1997, Council meeting.

The additional work by Buckeye Construction Company will not be performed until the work in the original contract is completed. Therefore, the additional work requested by MSD will not delay the completion of the original scope of the project.

Staff recommends that City Council authorize the City Manager to increase the total contract price for the West Area Annexation Sewer Improvements - Phase I project by $46,453, which will be reimbursed by MSD.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

MSD BILLING COSTS

Assistant City Manager Doug Spell said that for the past year, City staff has been working with representatives of other municipalities and MSD regarding the current per bill amount paid by MSD to local governments for billing and collection of sanitary sewer accounts in their jurisdiction. During this time, he has served on a subcommittee which also included Mike Morgan, Town Manager of the Town of Weaverville and Larry Turner, Deputy Manager for Operations with MSD.

The initial task which we undertook was to survey area municipalities which perform billing services for MSD. He reviewed a copy of the "Direct Billing Cost Summary" which shows the estimated cost per bill ranging from $1.55 to $3.53 for the cities of Montreat, Black Mountain, Weaverville and Asheville. He pointed out that much of the diversity in the range of direct billing costs is based upon the size and complexity of functions performed by the organization, as well as the number of customers served.

For background, the billing charge paid by MSD has remained at an amount of $1.30 per bill since 1990. The concern of local governments performing the billing costs for MSD is our awareness of the increased costs which our municipalities have faced as a result of various increases such as salaries, material costs, operation and maintenance, and postage. In trying to address what a reasonable rate increase would be, staff considered two options. One option would be to hire a consultant to conduct a formal study in order to determine the rates based on specific data. However, the smaller municipalities do not feel that the cost participation in a study on a pro rata basis is beneficial. A second approach which seems reasonable is to base the increased costs on the Consumer Price Index (CPI). Since 1990, the CPI has ranged from 2.5 percent to 3.3 percent each of those years. Based upon this information, the current billing costs would be $1.54 per bill projected from 1990.

In discussing the increase, the information based on the CPI is very close to the lowest billing cost for any of the municipalities participating in the survey. Therefore, staff feels that it is reasonable to request that the increase be in the amount of $0.25 per bill taking the total to $1.55 per bill.

Staff recommends the adoption of a resolution requesting the MSD Board increase the per bill cost by $0.25 based upon survey data from municipalities and the Consumer Price Index for a total amount of $1.55 per bill to assist in the recovery of actual costs.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

AGREEMENT WITH BUNCOMBE COUNTY - FACILITY MAINTENANCE

Assistant City Manager Doug Spell said that over the past several months, City staff has met and coordinated with staff from Buncombe County discussing the area of facility maintenance. This is an area where there is the ability for mutual benefits due to the different staffing and services provided by each respective governmental agency. Buncombe County has a facility maintenance staff that consists of individuals that are licensed and perform construction and maintenance functions in the areas of electrical, plumbing and mechanical systems. In turn, the City of Asheville has necessary equipment to apply sand and salt and perform snow removal and also has other specialized pieces of equipment in our fleet inventory. During the discussions between County staff and City staff it was agreed that this was an area in which cooperation would be mutually beneficial.

The areas which the City would assist the County in pertain to the spreading of sand and salt in the parking lot travel aisles serving the Health Department, Emergency Services access alley, area on east side of Court House, area on north side of County Jail, and Social Services. Snow removal would consist of City staff assisting County staff in the clearing of walk areas around the Health Department and Court House. The other area which the City would be able to provide assistance to the County would be regarding access to various equipment which the City has in our fleet inventory, such as a backhoe or bucket truck based upon availability of equipment and equipment operator. In turn, the County would assist the City in efforts related to evaluation, repair or replacement of various systems serving City facilities with the City paying for all material and equipment costs associated with such projects.

An "Interlocal Agreement and Memorandum of Understanding" was prepared in order to undertake the cooperative efforts in the area of facility maintenance. This agreement was executed on April 21, 1997 for a "pilot project" which would allow the City and the County an initial review of these efforts through June 30, 1997. Following this, on June 17, 1997 City staff met with County Manager Wanda Greene and discussed this initial review. It was agreed that both parties liked the arrangement and it was decided that this area of mutual cooperation should continue. City staff requests City Council endorsement of a "Interlocal Agreement and Memorandum of Understanding" in the area of cooperation for facility maintenance and authorization for the City Manager to execute the Memorandum dated July 22, 1997, extending the agreement for one year until June 30, 1998, with automatic renewal for one year periods for subsequent years subject to termination by written notification of either jurisdiction.

City staff recommends adoption of the resolution authorizing the City Manager to execute a Memorandum extending the Interlocal Agreement and Memorandum of Understanding through June 30, 1998 with automatic renewals for one year for subsequent years.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ADJOURNMENT:

Mayor Martin adjourned the meeting at 4:25 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday - July 22, 1997 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and Deputy City Clerk Phyllis Corns

Absent: City Clerk Magdalen Burleson

INVOCATION

Mayor Martin gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION OF JOHN J. GUNTHER BLUE RIBBON BEST PRACTICES IN COMMUNITY DEVELOPMENT AWARD

City Manager Westbrook presented Community Development Director Marvin Vierra with the first John J. Gunther Blue Ribbon Best Practices in Community Development Award. This award is a testament to what communities can accomplish when they work in partnership with government, private organizations, local agencies - and most important - with citizens.

B. RESOLUTION NO. 97-110 - RESOLUTION OF APPRECIATION TO HERVE H. CABLE, PUMPS & RESERVOIRS SUPERVISOR

City Manager Westbrook read the resolution stating that Herve Cable has been employed by the City of Asheville for 23 years and has requested retirement from his position as Pumps & Reservoirs Supervisor in the Water Production Division of the Water Resources Department. Mayor Martin expressed City Council's appreciation to Herve for his service to the City of Asheville and its citizens.

Councilman Worley moved for the adoption of Resolution No. 97-110. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 131

II. CONSENT:

At the request of Councilman Skalski, Item D. was removed from the Resolutions & Motions Consent Agenda to be discussed individually.

At the request of Mr. Ralph Bishop, Item A. was removed from the Resolutions & Motions Consent Agenda to be discussed individually.

RESOLUTIONS & MOTIONS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 8, 1997, AND THE WORKSESSION HELD ON JULY 15, 1997

This item was removed from the Consent Agenda to be discussed individually.

B. RESOLUTION NO. 97-111 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH PCN FOR MENTAL HEALTH MANAGED CARE UNDER THE CITY'S EMPLOYEE HEALTH BENEFIT PLAN

Summary: The consideration to extend an agreement approved in February 1996 to provide mental health managed care to the employee benefits program.

Last year the City decided to put together a HMO look-alike feature for mental health, drug, and alcohol treatment under its employee benefit program. No such programs were commercially available in the community at that time, and a program was put together for the City by Provider's Care Network (PCN (of Asheville) to meet this need.

The success of the program, and the dollar savings to the benefit plan have been exceptional. The proposed agreement will continue that service for two more years.

The cost for this agreement is estimated at $15,450 and sufficient funds are currently budgeted in the 46 fund for fringe benefit costs.

Staff recommends approval of the resolution authorizing the City Manager to execute the proposed agreement with PCN.

RESOLUTION BOOK NO. 24 - PAGE 132

C. RESOLUTION NO. 97-112 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH VOLUNTEER FLOOR COMPANY INC. TO REPAIR THE CIVIC CENTER PARKING GARAGE STRUCTURE

Summary: The consideration of the selection of a contractor to perform repairs on the Civic Center Parking Garage structure.

City staff prepared bid specifications and cost estimates for repairs and maintenance for the Civic Center Parking Garage. The scope of work was outlined as follows:

The proposal includes the items listed below:

- Repair concrete;
- Seal all cracks in concrete;
- Pressure clean and seal all deck surfaces;
- Install vertical and horizontal expansion joints;
- Clean and caulk joint between concrete floor and vertical barrier panels; and
- Repair concrete curbs.

* Bid specifications call for additional work described as painting of parking deck ceilings, surface coatings on columns and walls, and parking lot striping. (See bid results chart below.)

In April 1996, a total of 32 advertisement for bid letters were sent out, including 13 to certified minority businesses registered with the City. Advertisement letters were also sent to the City's Minority Business Office, the Asheville Business Development Center, and other similar business resource organizations. Six bid proposals were received, none from certified minority businesses. The results are listed below:

Firm Name	Base Bid
Chamberlain Co. Inc.	$ 164,434.00
Salem Contracting & Waterproofing	146,003.00
Construction Adhesives Bonding Inc.	219,358.75
Sigma Construction Co. Inc.	186,971.21
Carolina Preservation & Restoration Co. Inc.	142,317.00
* G.E.M. Constructors Inc.	1,033,161.00

After review of these bid proposals with the Finance Department, who has daily operational management authority for the City's parking structures, it was determined that Carolina Preservation & Restoration Co., Inc., of Asheville, the only bidder with a current City privilege license, would be selected as the lowest responsible bidder. It was then determined that City Staff would seek Council approval to enter into a contract to perform work listed in its proposal for $142,857.00.

Shortly thereafter, City staff determined that other funding options could be available for the parking deck repairs and put the contract processes on hold until March 17, 1997.

The project was immediately readvertised for bids. A total of 39 advertisement for bid letters were sent out, including 13 to certified minority businesses registered with the City. Advertisement letters were also sent to the City's Minority Business Office, the Asheville Business Development Center, and other similar business resource organizations. Five bid proposals were received, none from certified minority businesses. The results are listed below:

FIRM NAME	BASE BID
Volunteer Floor Company Inc.	$ 129,727.17
Carolina Preservation & Restoration Co. Inc.	150,013.85
Chamberlain Co. Inc.	167,745.40
Salem Contracting & Waterproofing Inc.	199,113.00
Construction Adhesives Bonding Inc.	260,340.00

Staff recommends Council approval of the lowest responsible bidder, Volunteer Floor Company Inc. of Knoxville, Tennessee, and requests Council direct the City Manager to enter into a contract for $129,727.17 for repair of the Civic Center Parking Garage.

RESOLUTION BOOK NO. 24 - PAGE 133

D. RESOLUTION AUTHORIZING THE METROPOLITAN SEWERAGE DISTRICT TO INCREASE THE BILLING COSTS PAID TO MUNICIPALITIES FOR SANITARY SEWER CUSTOMERS TO ASSIST IN RECOVERY OF ACTUAL COSTS

This item was removed from the Consent Agenda to be discussed individually.

E. RESOLUTION NO. 97-113 - RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE REGIONAL WATER AUTHORITY TO AWARD THE BID FOR CONSTRUCTION OF PIPELINE REPLACEMENT PROGRAM PHASE II - CONTRACT B, EAST ASHEVILLE/EAST BUNCOMBE WATER LINE PROJECT TO COOPER CONSTRUCTION CO. INC.

Summary: The consideration of adopting a resolution awarding the contract to the lowest responsible bidder, Cooper Construction Company Inc. for $694,797.00.

The Engineering Department has developed construction plans for the Pipeline Replacement Program Phase II - Contract B, East Asheville/East Buncombe Water Line Project. The engineer's estimate for this project is in the amount $804,541.00.

The project was advertised for one month. On Tuesday, May 27, 1997, the Engineering Department received 4 bids for the project. The construction time for this project is identified as 150 calendar days in the contract documents. Funds in the amount of $788,000.00 are budgeted in the Regional Water Authority's Capital Projects Ordinance No. 92-17 (29 Fund).

This project was presented before the Regional Water Authority of Asheville, Buncombe and Henderson on June 24, 1997, at which time they recommended awarding the bid.

Staff recommendations that City Council accept a resolution awarding the bid for Pipeline Replacement Program Phase II - Contract B, East Asheville/East Buncombe Water Line Project - Contract E-422 to the responsible low bidder, Cooper Construction Company Inc. and authorize the City Manager to execute all necessary agreements and contracts.

RESOLUTION BOOK NO. 24 - PAGE 134

F. RESOLUTION NO. 97-114 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. STATE GAMES FOR A GRANT TO DEVELOP AND IMPLEMENT PROMOTIONAL ACTIVITIES TO PROMOTE THE ASHEVILLE-BUNCOMBE SENIOR GAMES

Summary: The consideration of applying for a grant, in the amount of $500, to assist local programs to serve more participants and obtain more visibility for the local Senior Games Program.

Funds are available through the North Carolina Senior Games to provide a year-round health promotion and education program for adults age 55 and older. The City of Asheville wishes to apply for funding to develop a rack card and a speaker's bureau for the Asheville-Buncombe Senior Games.

The Asheville-Buncombe Senior Games are designed to provide athletic and cultural arts activities for adults ages 55 and older. In 1997, 822 people participated in the program. The program included 55 athletic events and 33 artistic events in the categories of Literary, Visual, Heritage, and Performing Arts. Grant funds will be used to implement a rack card and speaker's bureau to promote the Asheville-Buncombe Senior Games. The amount of the grant request is $500.

The Parks and Recreation Department recommends approval of the application for grants funds through the North Carolina Senior Games.

RESOLUTION BOOK NO. 24 - PAGE 135

G. RESOLUTION NO. 97-115 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH N.C. DEPT. OF TRANSPORTATION FOR THE SWEETEN CREEK/I-40 SIDEWALKS PROJECT

Summary: On September, 10, 1996 City Council authorized the City Manger to send a letter to the NC DOT outlining the City's agreement to participate in sidewalks on I-40/Sweeten Creek Roadway Interchange. The NC DOT's preliminary estimate was $37,000 for the sidewalk. The City's portion of the original cost of the sidewalk was 40% or $14,800. The final estimate for the construction of the sidewalk is $38,900, based upon a final design prepared by NC DOT, with the City's portion being $15,560.

The sidewalk would extend from Roberts Road to approximately 200 feet north of I-40. This includes 1,290 square yards of sidewalks. Construction is scheduled to begin fall of 1997.

Staff recommends that City Council authorize the City Manager to sign the Municipal Agreement for improvements at the interchange of Sweeten Creek and I-40.

RESOLUTION BOOK NO. 24 - PAGE 136

H. MOTION AUTHORIZING THE CITY MANAGER TO INCREASE THE TOTAL CONTRACT PRICE FOR THE WEST AREA ANNEXATION SANITARY SEWER IMPROVEMENTS - PHASE I PROJECT

Summary: There are seven hundred and eighty-one (781) linear feet of existing 8" sewer line adjacent to this project location that belongs to MSD. Due to the condition of the existing sewer line, MSD would like the City to add this section for replacement to the existing contract with Buckeye Construction Company for West Area Annexation Sewer Improvements - Phase I. This additional work is estimated at $46,453.

City staff requested that MSD provide a check in the amount of $46,453 to us for the cost of this construction. A letter from MSD indicates that they would like for us to proceed with adding this work to our existing contract with Buckeye Construction Company but cannot provide the money until it is approved by the MSD Board. The MSD Board will meet on July 16, 1997, and MSD staff is recommending approval. In the event that the funds are not approved by MSD, City staff will withdraw the recommendation to increase this contract to City Council at the July 22, 1997, Council meeting.

The additional work by Buckeye Construction Company will not be performed until the work in the original contract is completed. Therefore, the additional work requested by MSD will not delay the completion of the original scope of the project.

Staff recommends that City Council authorize the City Manager to increase the total contract price for the West Area Annexation Sewer Improvements - Phase I project by $46,453, which will be reimbursed by MSD.

I. RESOLUTION NO. 97-116 - RESOLUTION PERMITTING CAPITAL IMPROVEMENTS AT ASHEVILLE REGIONAL AIRPORT AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR RELOCATION OF DRIVEWAY ACCESS ON A STATE ROAD

Summary: The Asheville Airport is situated on land owned by the City of Asheville and leased to the Airport Authority pursuant to a Lease Agreement dated July 1, 1980. The Authority is undertaking improvements to the driveway and access road at the airport consisting of lengthening the outbound driveway, relocating its intersection with State Road 280 approximately a quarter mile southwest to the signalized intersection with Fanning Bridge Road, and creating a circular drive with in the airport compound. The present location of the exit is on a curve on a high speed fourlane road and left turns are difficult to negotiate. Requests to the NCDOT to signalize the current exit location have been denied, but the State has indicated that it will make appropriate changes to the Fanning Bridge Road signal if the exit is relocated.

Because the intersection will be on State Road 280, the State requires as part of the access permit application that an agreement be entered into whereby construction will be carried out in a certain manner, and the completed driveway will comply and be maintained in accordance with certain standards. The agreement also holds the DOT harmless from damages arising by reason of the construction.

The Lease Agreement provides that the Airport Authority may make capital improvements "for aeronautical purposes and purposes incidental thereto... provided that authority first obtain written approval thereafter by the City."

The Agreement establishing the Airport Authority provides that the Authority may enter into contracts providing for improvements at the Airport, so it appears that the Authority may enter into the Agreement with the DOT. The DOT apparently requires that the property owner also execute the Agreement.

This resolution accomplishes two things: (1) gives the City's written approval to the proposed access improvements as required by the Lease; and (2) authorizes the City Manager to execute the Agreement with DOT.

To the extent that the DOT agreement shifts to or creates any legal responsibility for the City as the owner or the Authority as the lessee/applicant, this responsibility would be the Airport Authority's, as the Lease provides specifically that the Authority is responsible for management, operation, regulation and maintenance of the Airport. I have suggested that the Agreement be modified to indicate that the Authority is the lessee and that the City is the lessor of the property.

Approval of the resolution is recommended.

RESOLUTION BOOK NO. 24 - PAGE 137

J. RESOLUTION NO. 97-117 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT, HEALTH & NATURAL RESOURCES FOR A GRANT TO DEVELOP A GREENWAY TO CONNECT THE AMBOY ROAD AND FRENCH BROAD RIVER PARKS

Summary: Funds are available through the State of North Carolina, Department of Environment, Health and Natural Resources in the National Recreational Trails Fund Program (NRTFP) from the Federal Highway Administration to provide trails for public use in North Carolina.

The Amboy Road Greenway represents the City of Asheville's next phase of a major greenway system being developed along the French Broad and Swannanoa Rivers. Phase I was completed in 1994 with the completion of French Broad River Park. Phase II was completed in 1996 with the completion of the second half mile loop of trail in the park. French Broad River Park was funded through a partnership between the City, RiverLink, and CP&L.

Phase III, Amboy Road Park, is in the early stage of development and will provide a river front park featuring a boat launch, fishing areas, and support areas for the growing activities in the region. The City of Asheville has been awarded a grant for $20,000 from the North Carolina Fish and Wildlife Resources Commission to assist in the design of the park and has committed another $100,000 for the construction. RiverLink has received a grant for $30,000 through the Pigeon River Fund to build boardwalks over the wetlands of the greenway.

Phase IV, Amboy Road Greenway, is part of the overall plan to complete another section of greenway on the French Broad and Swannanoa Rivers. The cost of the project is approximately $65,000. The Parks and Recreation Department is requesting $30,000 in grant funds which would be matched by 50% of the cost by our crew's labor, equipment, and project supervision.

The Parks and Recreation Department recommends the City Manager to apply for and enter into this agreement.

RESOLUTION BOOK NO. 24 - PAGE 138

K. RESOLUTION NO. 97-118 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT ND MEMORANDUM OF UNDERSTANDING WITH BUNCOMBE COUNTY PERTAINING TO JOINT COOPERATIVE EFFORTS IN THE AREA OF FACILITY MAINTENANCE

Summary: Over the past several months, City staff has met and coordinated with staff from Buncombe County discussing the area of facility maintenance. This is an area where there is the ability for mutual benefits due to the different staffing and services provided by each respective governmental agency. Buncombe County has a facility maintenance staff that consists of individuals that are licensed and perform construction and maintenance functions in the areas of electrical, plumbing and mechanical systems. In turn, the City of Asheville has necessary equipment to apply sand and salt and perform snow removal and also has other specialized pieces of equipment in our fleet inventory. During the discussions between County staff and City staff it was agreed that this was an area in which cooperation would be mutually beneficial.

The areas which the City would assist the County in pertain to the spreading of sand and salt in the parking lot travel aisles serving the Health Department, Emergency Services access alley, area on east side of Court House, area on north side of County Jail, and Social Services. Snow removal would consist of City staff assisting County staff in the clearing of walk areas around the Health Department and Court House. The other area which the City would be able to provide assistance to the County would be regarding access to various equipment which the City has in our fleet inventory, such as a backhoe or bucket truck based upon availability of equipment and equipment operator. In turn, the County would assist the City in efforts related to evaluation, repair or replacement of various systems serving City facilities with the City paying for all material and equipment costs associated with such projects.

An "Interlocal Agreement and Memorandum of Understanding" was prepared in order to undertake the cooperative efforts in the area of facility maintenance. This agreement was executed on April 21, 1997 for a "pilot project" which would allow the City and the County an initial review of these efforts through June 30, 1997. Following this, on June 17, 1997 City staff met with County Manager Wanda Greene and discussed this initial review. It was agreed that both parties liked the arrangement and it was decided that this area of mutual cooperation should continue. City staff requests City Council endorsement of a "Interlocal Agreement and Memorandum of Understanding" in the area of cooperation for facility maintenance and authorization for the City Manager to execute the Memorandum dated July 22, 1997 extending the agreement for one year until June 30, 1998 with automatic renewal for one year periods for subsequent years subject to termination by written notification of either jurisdiction.

City staff recommends adoption of the resolution authorizing the City Manager to execute a Memorandum extending the Interlocal Agreement and Memorandum of Understanding through June 30, 1998 with automatic renewals for one year for subsequent years.

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L. RESOLUTION NO. 97-119 - RESOLUTION SETTING A PUBLIC HEARING FOR AUGUST 12, 1997, ON ECONOMIC DEVELOPMENT APPROPRIATION

Summary: It is necessary for City Council to set a public hearing to consider the City's participation in site development improvements requested by J.L. de Ball-Girmes of America, Inc.

J.L. de Ball-Girmes of America, Inc. is looking to locate a supplementary production unit at its existing site on Old Charlotte Highway. Plans call for renovation of 45,000 sq. ft. of the existing 178,000 sq. ft. building in order to begin manufacturing. The company is looking to significantly expand within two years, and plans to accommodate 12 -16 employees by July 1, 1998; up to 50 by January 1, 2000. Wages will average $9 -12.00 per hour.

The firm plans to invest a total of $7 million within two years in the renovation and equipment upgrades for this operation; $2 million by July 1, 1998. Included will be repairs and upgrades to the roof, HVAC capacity, and plumbing and electrical improvements, as well as major machinery and equipment purchases. Staff has prepared an agreement outlining the terms and conditions of the City's participation.

The agreement consists of the City entering into a contract whereby the City would contribute $51,300 provided the terms of the contract are complied with by J.L. de Ball-Girmes of America Inc. The conditions include: the requirement of the corporation creating a minimum of 12 new jobs by July 1, 1998, with wages at $9-12 per hour; investment of $2,000,000 by July 1, 1998; and expansion to accommodate 50 employees. The guarantee for the City is through a Letter of Credit. The payback period for the City based on this financial assistance will be 4.5 years.

Staff recommends setting a public hearing to consider the City's participation in site development improvements requested by J.L. de Ball-Girmes of America, Inc.

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M. RESOLUTION NO. 97-120 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE INSTRUMENTS FOR THE PURCHASE OF 12.23 ACRES ON BROADVIEW DRIVE FOR THE PURPOSE OF DEVELOPMENT OF SINGLE-FAMILY, OWNER OCCUPIED HOMES

Summary: The consideration of a resolution authorizing the City Manager to execute instruments for the purchase of 12.23 acres and a budget ordinance to appropriate funds to purchase vacant property on Broadview Drive for the development of single-family, owner-occupied homes.

On February 14, 1997, the City of Asheville closed on the sale of 17.282 acres of vacant land adjacent to the Meadows Apartments. The City had planned to develop this tract into a subdivision of single-family, owner-occupied affordable housing units. Since there were access problems, the City decided to sell and look elsewhere for an alternate site. The proceeds of $200,000 will be used to purchase 12.23 acres of unimproved land on Broadview Drive in Oakley.

In May 1997, the City executed an Offer to Purchase and Contract, subject to Council's approval, for the Broadview Drive property. The total price of the contract was $190,000. The property has been appraised at $183,500 and the sellers have agreed to sell at this price. The City proposes to develop the Broadview Drive site into a subdivision of single-family, owner-occupied affordable housing units. This property is zoned RS-8 under the UDO. The above $200,000 will be used for the Broadview Drive property as follows:

a.	Capital Outlay Land Acquisition (to cover property purchase and closing costs)	$188,000
b.	Professional Services	$ 12,000

Community Development staff recommends adoption of the resolution and budget ordinance amendment.

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Mayor Martin said that members of Council have been previously furnished with copies of the resolutions on the Resolutions & Motions Consent Agenda and they will not be read.

Councilman Sellers moved for the adoption of the Resolutions & Motions Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCES:

At the request of Councilman Skalski, Item D. was removed from the Ordinance Consent Agenda to be discussed individually.

At the request of Councilman Cloninger, Item H. was removed from the Ordinance Consent Agenda due to his conflict of interest. This item will be considered under New Business.

A. ORDINANCE NO. 2390 - ORDINANCE CHANGING THE SPEED LIMITS IN PARK AVENUE SUBDIVISION

Summary: The City Traffic Engineer has performed the necessary traffic analyses associated with the following locations and is seeking authorization from the City Council to change these speed limits.

Add to 20 MPH

(1) Parkridge Court (entirety)
(2) Clubhouse Court (entirety)
(3) Creekside Court (entirety)
(4) Thistle Knoll Court (entirety)
(5) Briar Knoll Court (entirety)
(6) Gatehouse Court (entirety)

Add to 25 MPH

(1) Park Avenue (entirety)

These locations were reviewed over a period of time and the appropriate speed analyses were conducted.

1. Parkridge Court, Clubhouse Court, Creekside Court, Thistle Knoll Court, Briar Knoll Court and Gatehouse Court

A Speed Study was conducted along these streets in the Park Avenue Subdivision per the request of the citizens of this area. The existing speed limit is 27 MPH. The residential nature of these roadways as well as their widths indicate that the speed limit should be reduced to 20 MPH. The Asheville Police Department concurs with our recommendations.

2. Park Avenue

A Speed Study was conducted along Park Avenue per the request of the citizens of this area and the City of Asheville Police Department.

The existing speed limit is 27 MPH. The Speed Study indicates that the 85th percentile speed is 33 MPH and the pace speed range is 21-35 MPH. The residential nature of this roadway and its width suggest that the speed limit be reduced to 25 MPH. The Asheville Police Department concurs with our recommendation.

The Public Works Department recommends the approval of these additions to the speed limit ordinances.

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B. ORDINANCE NO. 2391 - BUDGET AMENDMENT TO PURCHASE 12.23 ACRES OF UNIMPROVED LAND ON BROADVIEW DRIVE IN OAKLEY

Summary: This budget amendment, in the amount of $200,000, is to purchase 12.23 acres of unimproved land on Broadview Drive in Oakley.

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C. ORDINANCE NO. 2392 - BUDGET AMENDMENT FOR THE CITY'S PARTICIPATION IN THE SWEETEN CREEK/I-40 SIDEWALK PROJECT

Summary: This budget amendment, in the amount of $15,560, is the City's portion of the sidewalk improvements at the Sweeten Creek Road/I-40 intersection project.

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D. BUDGET AMENDMENT FOR THE CITY'S SHARE IN A STUDY RELATIVE TO THE BOOST TRANSPORTATION SYSTEM

This item was removed from the Consent Agenda for individual discussion.

E. ORDINANCE NO. 2393 - BUDGET AMENDMENT TO PURCHASE A DOWNTOWN STREET CLOCK

Summary: Mr. Charles Cunningham desires to donate $6,000 toward the purchase of a street clock for the City.

Per instructions from City Council at its July 8, 1997, meeting, a subcommittee of the Streetscape Committee met for the purpose of determining the following:

- The best clock design that will complement the overall streetscape design for downtown;
- The optimal location for such a clock; and
- A definitive cost for equipment and installation.

Based upon these goals, the subcommittee recommends a design consistent with downtown architecture and amenities to be located in the grassy island at the intersection of College, Patton and Spruce Street (across from Max's Deli). The estimated cost of the "Georgetown" clock is $10,500 and installation is estimated at $500. Public Works staff intends to construct the pedestal base and coordinate electrical service to the unit. It will subsequently be maintained by public works.

Since the construction time for the clock is 90 days, and it is the donor's desire to dedicate the clock in conjunction with a planned Bicentennial ceremony, it will be necessary to place an order not later than August 1, 1997, to meet this request.

Staff recommends that City Council appropriate $5,000 for the remaining balance necessary to purchase the clock. Mr. Cunningham's donation will be utilized as the down payment (company must have 50%) to place the order. Community groups will make every effort to acquire private funding for the remaining balance over and above the gift amount.

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F. ORDINANCE NO. 2394 - BUDGET AMENDMENT TO REAPPROPRIATE $1.4 MILLION FROM THE CITY HALL ROOF REPAIRS AND THE MUNICIPAL BUILDING RENOVATIONS INTO THE STEPHENS-LEE RENOVATION PROJECT

Summary: Based upon Council's directive at the July 8, 1997, City Council meeting to expedite the renovation project for the Stephens-Lee Community Center, staff recommends the following steps in order to expedite the letting of contracts for the renovation of the Stephens-Lee Community Center. Current cash is available from the City Hall roof and Municipal Building renovation projects to adequately fund the anticipated contract costs for Stephens-Lee renovations. This contract could be let as early as August and construction could begin as early as September 15. This will allow for this project to begin prior to the other three major projects that are currently anticipated. The certificates of participation will be sold to fund the Municipal Building renovation, the City Hall roof, and the Old Water Maintenance Building. According to the Finance Director, these three projects would make a competitive package for the sale of COP's.

The Parks and Recreation Department recommends City Council approval of a budget amendment to reappropriate a total of $1.4 million from the City Hall roof repairs and the Municipal Building renovations into the Stephens-Lee renovation project.

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G. ORDINANCE NO. 2395 - BUDGET AMENDMENT AMENDING AND RESTATING THE REGIONAL WATER AUTHORITY'S CAPITAL PROJECTS ORDINANCE TO APPROPRIATE FUNDING FOR WOODSIDE HILLS PROJECT

Summary: The consideration of a budget amendment amending Capital Project Ordinance 82-25 to provide funding in West Area Annexation for Woodside Hills in the amount of $240,000.

By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by investment earnings, contributions from other funds and appropriated fund balance.

According to the Water Agreement, the Authority is required to fund annexation water improvements. Woodside Hills Subdivision is located off Asbury Road in the recently annexed West Area. The Authority appropriated approximately $850,000 for water system improvements for this area in accordance with the 1988 Plan of Service prepared by Black and Veatch. Subsequent construction contracts and engineering services for these water system improvements totaled approximately $624,000. This resulted in a surplus of approximately $226,000, which has subsequently been transferred to other capital projects.

A part of Black and Veatch's plan of service included the installation of fire hydrants at key locations in Woodside Hills.

During the construction contract, existing 2-inch waterlines were discovered at these locations. These 2-inch waterlines will not support a fire hydrant and additional 6-inch waterlines must now be installed to improve fire protection at an estimated cost of $240,000. Approval of this budget amendment will provide the funding required for this additional construction contract and the engineering services associated with it.

Regional Water Authority approved the Woodside Hills Project on June 24, 1997.

Approve amending and restating Capital Project Ordinance 82-25 in order to provide funding in West Area Annexation for Woodside Hills.

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H. BUDGET AMENDMENT TO APPROPRIATE FUNDING FOR THE CITY'S CONTRIBUTION TO THE GROVE ARCADE PUBLIC MARKET FOUNDATION FOR THE RESTORATION OF THE GROVE ARCADE BUILDING

This item was removed from the Consent Agenda due to a conflict of interest by Councilman Cloninger. This item will be considered under New Business.

Mayor Martin said that members of Council have been previously furnished with copies of the ordinances on the Ordinance Consent Agenda and they will not be read.

Vice-Mayor Field moved for the adoption of the Ordinance Consent Agenda. This motion was seconded by Councilman Worley.

On a roll call vote of 7-0, the Ordinance Consent Agenda was adopted on its first reading.

Vice-Mayor Field asked that staff notify the Police Chief in Biltmore Forest who lives on Park Avenue that City Council has indeed reduced the speed limit as he has requested.

ITEMS REMOVED FROM THE CONSENT AGENDA TO BE DISCUSSED INDIVIDUALLY

RESOLUTION NO. 97-121 - RESOLUTION AUTHORIZING THE METROPOLITAN SEWERAGE DISTRICT TO INCREASE THE BILLING COSTS PAID TO MUNICIPALITIES FOR SANITARY SEWER CUSTOMERS TO ASSIST IN RECOVERY OF ACTUAL COSTS

Summary: For the past year, City staff has been working with representatives of other municipalities and MSD regarding the current per bill amount paid by MSD to local governments for billing and collection of sanitary sewer accounts in their jurisdiction. During this time, I have served on a subcommittee which also included Mike Morgan, Town Manager of the Town of Weaverville and Larry Turner, Deputy Manager for Operations with MSD.

The initial task which we undertook was to survey area municipalities which perform billing services for MSD. He reviewed a copy of the "Direct Billing Cost Summary" which shows the estimated cost per bill ranging from $1.55 to $3.53 for the cities of Montreat, Black Mountain, Weaverville and Asheville. I would point out that much of the diversity in the range of direct billing costs is based upon the size and complexity of functions performed by the organization, as well as the number of customers served.

For background, the billing charge paid by MSD has remained at an amount of $1.30 per bill since 1990. The concern of local governments performing the billing costs for MSD is our awareness of the increased costs which our municipalities have faced as a result of various increases such as salaries, material costs, operation and maintenance, and postage. In trying to address what a reasonable rate increase would be, staff considered two options. One option would be to hire a consultant to conduct a formal study in order to determine the rates based on specific data. However, the smaller municipalities do not feel that the cost participation in a study on a pro rata basis is beneficial. A second approach which seems reasonable is to base the increased costs on the Consumer Price Index (CPI). Since 1990, the CPI has ranged from 2.5 percent to 3.3 percent each of those years. Based upon this information, the current billing costs would be $1.54 per bill projected from 1990.

In discussing the increase, the information based on the CPI is very close to the lowest billing cost for any of the municipalities participating in the survey. Therefore, staff feels that it is reasonable to request that the increase be in the amount of $0.25 per bill taking the total to $1.55 per bill.

Staff recommends the adoption of a resolution requesting the MSD Board increase the per bill cost by $0.25 based upon survey data from municipalities and the Consumer Price Index for a total amount of $1.55 per bill to assist in the recovery of actual costs.

Councilman Skalski submitted a letter dated May 8, 1990, to Mayor Kenneth M. Michalove from Chairman of the Asheville-Buncombe Water Authority Ralph Morris outlining how the $1.26 (rounded to $1.30) per customer per month reimbursement from MSD was arrived at as the MSD share. He stated that the number of water customers is approximately 42,000 and the number of sewer customers is approximately 28,000.

Councilman Worley noted that the City's actual cost is $3.53 and requesting MSD to go up to $1.55 is still well below our actual cost in preparing those bills.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Councilman Skalski moved to adopt Resolution No. 97-121. This motion was seconded by Vice-Mayor Field and carried unanimously.

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APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 8, 1997, AND THE WORKSESSION HELD ON JULY 15, 1997

Mr. Ralph Bishop said that at the request of Vice-Mayor Field he met with City Attorney Oast. In the information City Attorney Oast gave him, it did not state that City Council could circumvent State law - noting that it did not even cite sec. 160A-72. He said the information related to closed meetings. He said that all he cares about is what happens in open meetings as set forth by State law in G.S. 160A-72.

City Attorney Oast said that he did give Mr. Bishop a copy of Maready vs. City of Winston Salem in Forsyth County which he believed is the legal opinion which is the controlling authority on the Open Meetings Law in North Carolina and the only judicial interpretation of the law that he is aware of. That opinion addresses the issue of keeping full and accurate minutes.

Councilman Worley moved to approve the minutes of the formal meeting held on July 8, 1997, and the worksession held on July 15, 1997. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE NO. 2396 - BUDGET AMENDMENT FOR THE CITY'S SHARE IN A STUDY RELATIVE TO THE BOOST TRANSPORTATION SYSTEM

Summary: During the budget work session in May, 1997, with City Council, Council gave approval to continue the study regarding the Parks and Recreation proposal relating to the BOOST Transportation System. Over the past month, staff has met on several occasions with representatives from Buncombe County and the State of North Carolina to investigate this proposal. In the meantime, the Asheville Transit Authority has renewed the Paratransit contract with Laidlaw Transit Service through June 30, 1998. During a meeting with the Transportation Project Consultant through the Division of Public Transportation for the Department of Transportation, discussion centered around a possible study of the entire transportation system throughout the City and the County. This study would include a review the proposal presented by Parks and Recreation as well as a review of the current system being used County-wide. Ninety percent of the funding for this project would be paid for by the State of North Carolina with the remainder being paid by the City and the County. It is anticipated that the City's cost associated with this study would be between $3,000 - $5,000.

The Parks and Recreation Department recommends working with the State of North Carolina and Buncombe County to solicit a consultant to study the transportation system within the City and the County. Staff also recommends City Council consider a budget amendment, in the amount of $5,000, for the City's cost associated with this study.

Upon inquiry of Councilman Skalski, Parks & Recreation Director Irby Brinson said that State would pay for 90% of the study which would be approximately $45-50,000.

Councilman Skalski then thanked Vice Mayor Field, Gordon Myers and Todd Allen for working to secure money to do a comprehensive transportation study, which will include van-pooling and other options.

Mayor Martin said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Field moved for the adoption of Ordinance No. 2396. This motion was seconded by Councilman Skalski.

On a roll call vote of 7-0, Ordinance No. 2396 was adopted on its first and final reading.

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III. PUBLIC HEARINGS:

IV. UNFINISHED BUSINESS:

A. RESOLUTION AUTHORIZING THE SALE OF DISPOSAL PARCEL 5 AT THE CORNER OF COURTLAND AND MONTFORD AVENUE IN THE HEAD OF MONTFORD REDEVELOPMENT PROJECT TO ROBERT RIDUB AND JEANETTE SYPRZAK

At the request of Mr. Ed Vess, Field Services Coordinator, Councilman Worley moved to tabled this matter until August 12, 1997. This motion was seconded by Councilman Sellers and carried unanimously.

Mayor Martin noted that Ms. Jacqueline Anne Larsen presented City Council with a letter dated July 22, 1997, asking that the bidding process on the Head of Montford Disposal Parcel No. 5 be re-opened. In her letter she wrote that "staff's paraphrasing of Mr. Eides interpretation of his and my agreement are not what I perceived transpired between Mr. Eides and myself regarding his interest in the subject property."

V. NEW BUSINESS:

A. REPORT ON REDESIGN OF FIRE STATION 4/POLICE RESOURCE CENTER IN SKYLAND

Fire Chief Rukavina said that subsequent to City Council's discussion on July 15, 1997, staff met with Barney Woodard, the Station 4/Resource Center architect, who is now researching staff's recommendations and suggestions made at the City Council's worksession of July 15, 1997.

At the City Council's worksession of July 15, 1997, staff and City Council reviewed the status of the new Fire Station 4/Police Resource Center slated for construction in Skyland. During that review, Council members raised questions about negotiating with the low bidder, rebidding the project as originally proposed, and rebidding the project on a smaller scale (staff's recommendation was to rebid on a smaller scale, with provision for expansion in the future).

On July 16, 1997, staff met with Barney Woodard, architect for City proposed building, and shared with him the proposals and questions raised at the July 15 meeting. (Woodard noted, for example, that the building was designed as a block-wall building, rather than steel with block veneer.) Based on that meeting, Barney Woodard will undertake research on those proposals, and is scheduled to meet with staff on July 23, 1997, to present the preliminary results of his research. Based upon this information, staff recommends that the Council defer action on this item until additional information is received and presented at the August 5 Council worksession. The low bidder has agreed to extend their bid until August 6, 1997. A report will be presented to City Council at its August 5, 1997, meeting in connection with final consideration of the resolution authorizing rejection of bids and redesign of the project.

It was the consensus of City Council to have staff work with the architect to assemble the additional information and present that information to Council at their August 5, 1997, worksession.

B. RESOLUTION NO. 97- 122 - RESOLUTION AUTHORIZING THE DISPOSITION OF THE GROVE ARCADE BUILDING TO THE GROVE ARCADE PUBLIC MARKET FOUNDATION

ORDINANCE NO. 2397 - BUDGET AMENDMENT TO APPROPRIATE FUNDING FOR THE CITY'S CONTRIBUTION TO THE GROVE ARCADE PUBLIC MARKET FOUNDATION FOR THE RESTORATION OF THE GROVE ARCADE BUILDING

Councilman Cloninger said that his law firm is acting as legal counsel for the Grove Arcade Public Market Foundation. Therefore, Councilman Worley moved to excuse Councilman Cloninger due to a conflict of interest. This motion was seconded by Councilman Sellers and carried unanimously.

City Attorney Oast asked City Council to consider a resolution authorizing the disposition by lease of the Grove Arcade Building to the Grove Arcade Public Market Foundation, and a budget ordinance amendment appropriating money toward the rehabilitation of the structure.

The Grove Arcade Building was constructed at the beginning of this century as a shopping arcade and was actually used as one until taken over by the Federal Government during World War II. The Federal Government used it as an office building for about 50 years, and the building has been vacant since 1995.

Since the building became vacant, the City and other organizations and entities in the City have been exploring ways to preserve, restore and reuse the Building. For at least the last year, the City has been working with Public Interest Projects and the Grove Arcade Public Market Foundation (GAPMF), and most recently with GAPMF only, to rehabilitate and use the Arcade as a public market, with a mixture of commercial/ office/residential uses on the upper floors.

The first step in this process was for the City to acquire the building. Initially, the City explored the possibility of an outright conveyance to an entity that would operate the Arcade, but this was not legally possible without paying the government for the property. Under the National Monument Act, the City was able to acquire the Arcade essentially at no cost, but had to agree to rehabilitate the structure and to use it in accordance with certain laws and regulations. The City and GAPMF have been working with the General Services Administration to make sure that the proposed use meets all legal requirements.

Since January, the City and GAPMF have been working on the terms of a Lease Agreement and a Preservation and Operation Agreement by which GAPMF would lease the building from the City, and would assume responsibility for all operational aspects of it, and for compliance with federal laws and regulations. The City and GAPMF have agreed on the substantive terms of these instruments. Those terms are outlined in the Exhibit.

In order to give effect to the Agreement between the City and GAPMF, Council needs to adopt an authorizing resolution. The law provides that leases for longer than 10 years shall be treated as sales of real property, and further provides that historically or architecturally significant properties may be disposed of to nonprofit corporations by private negotiation and sale. Accordingly the resolution authorizes the disposition of the Arcade to GAPMF, and outlines the general terms of the proposed transaction. A notice of this Resolution must be published at least 10 days prior to the date of the transaction. The law further requires that Council adopt a resolution authorizing a lease, and requires for 10 days advance notice of Council's intent to adopt the resolution.

Accordingly, a resolution is attached that authorizes the disposition of the Arcade, which because of the length of the lease term is required to be treated as a sale, and directs the Clerk to publish a notice of (1) the intended disposition, and (2) of Council's intent to give specific authorization for the lease at a regular meeting.

Part of the agreement with GAPMF is that Council will follow up on its commitment in an earlier resolution to appropriate $100,000.00 toward the improvements to the Arcade. An ordinance amending the budget in accordance with the previous resolution is also necessary.

If Council intends to authorize and proceed with the proposed transaction with GAPMF, adoption of the resolution and budget ordinance amendment is recommended.

Vice-Mayor Field stated that in Resolution No. 94-114 entitled "Resolution encouraging the appropriate reuse of the Grove Arcade" adopted on June 7, 1994, it states in part that "the Public Market proposed by the Grove Arcade Foundation is an appropriate use for the building ...." She said that she would not vote against the resolution because a lot of work has gone into it and she feels like the whole community really wants it, however, she was not sure that a public market is an appropriate use for that kind of historic building. She said she's mentioned it several times before, but typically public markets go into large somewhat warehouse kind of buildings, not into a historic property with marble floors that can receive smells and stains from some of the kinds of things that people normally think of as happening in a public market. Another concern of hers is that the elevator core is right in the middle of the view-path from one end to the other and that the floors are sloped. As an architect, she wasn't absolutely sure she could agree that a public market is an appropriate use for the building. But on the other hand, she certainly supports the public market and the building being put back into use for this community. Given that, she will vote in favor the resolution.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 97-122. This motion was seconded by Councilman Skalski and carried unanimously.

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Part of the agreement with Grove Arcade Public Market Foundation is that Council will follow up on its commitment in an earlier resolution to appropriate $100,000.00 toward the improvements to the Arcade. This budget amendment will honor that commitment.

Mayor Martin said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Hay moved for the adoption of Ordinance No. 2397. This motion was seconded by Councilman Worley.

On a roll call vote of 6-0, Ordinance No. 2397 was adopted on its first and final reading.

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C. RESOLUTION NO. 97-123 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH EFFECTIVE CLIENT PROMOTIONAL SERVICES TO PROVIDE VIDEO TAPING OF FORMAL CITY COUNCIL MEETINGS

Ms. Robin Westbrook, Community & Public Information Coordinator, asked for Council's consideration of the taping formal City Council meetings to be broadcast on InterMedia Cable channel 10 every other Saturday.

The Asheville City Council asked staff to explore the possibility of televising formal City Council meetings. After discussions held with Hometown TV, Asheville City Schools, and Buncombe County, it was determined that taping the formal City Council meetings every other week to be aired on Saturday would best meet the needs of all interested parties.

Effective Client Promotional Services (ECPS) submitted a bid to tape the meetings every other week for a fee of $600 per meeting. They will provide three employees (2 cameramen and 1 engineer), equipment, and lighting for an average annual cost which should not exceed $15,600. Asheville City Schools has indicated that they could not provide the same service for the cost. This also eliminates the concern about finding someone to tape during the summer months.

Asheville City Schools has given the City and Buncombe County the use of channel 10 on Saturday mornings at 8:00 a.m. Asheville City Council meetings will be aired one week and Buncombe County Commission meetings will be aired the next week.

The taping of the City Council meetings can begin on a trial basis on August 12, 1997. This session will be used to adjust lighting and test equipment. The first taping to air will take place on August 26, 1997. This session will air on Saturday, August 30.

If City Council wishes to broadcast formal meetings, it is the recommendation of staff the City Council adopt a resolution authorizing the City Manager to contract with ECPS in the amount not to exceed $15,600 for one year to tape formal City Council meetings beginning on August 12, 1997.

Upon inquiry of Councilman Skalski, Ms. Westbrook said that she checked with the same places Buncombe County checked with regarding taping of meetings and we found out that the industry standard is $600/hour and what Effective Client Promotional Services came back to us with was $600/meeting.

Upon inquiry of Vice-Mayor Field, Ms. Westbrook said that Asheville High School students tape Buncombe County's meetings but there is intensive staff time that is involved in scheduling the students. The High School is also getting ready to lose all their senior students and will have to retrain. Buncombe County also paid $65,000 upfront for the video equipment and accessories, noting that the video equipment gets outdated very quickly.

Councilman Worley said that this was something he encouraged City Council to do for sometime and it was one of Council's goals established in January. He felt this is a natural extension of our Community Oriented Government by making our Council meetings more accessible for those people who either can't or don't want to give up their Tuesday evenings. He does feel that this is a great service to tape the Council meetings for all of the citizens to see.

Councilman Cloninger agreed with Councilman Worley and strongly supported televising the Council meetings, however, he felt that the taping should begin when the new City Council takes office in December. Therefore, he would be voting against this resolution and the following budget amendment.

Upon inquiry of Councilman Hay, Ms. Westbrook said that we could have an individual tape made of each meeting for the City Clerk's records.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 97-123. This motion was seconded by Councilman Skalski and carried on a 6-1 vote, with Councilman Cloninger voting "no".

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D. ORDINANCE NO. 2398 - BUDGET AMENDMENT TO TAPE FORMAL CITY COUNCIL MEETINGS TO BE AIRED ON CHANNEL 10 ON SATURDAY MORNINGS AT 8:00 A.M. BEGINNING AUGUST 30, 1997

Ms. Robin Westbrook, Community & Public Information Coordinator, said that this budget amendment, in the amount of $15,000, is to appropriate funds necessary to contract with ECPS for one year to tape formal City Council meetings beginning on August 12, 1997.

Mayor Martin said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Skalski moved for the adoption of Ordinance No. 2398. This motion was seconded by Vice-Mayor Field.

On a roll call vote of 6-1 (with Councilman Cloninger voting "no" - see explanation above on Resolution No. 97-123), Ordinance No. 2398 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE 276

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the week of June 27-July 10, 1997: Hilda K. DeBruhl (Streets), Johnny Butler (Water), Asheville Transit (Water), Herbert Hyde (Sanitation), Pat Hair (Water), Anna Zillgitt (Traffic Engineering) and Thomas H. Hopkins (Water).

The following claims were received during the week of July 11-17, 1997: Joseph B. Colvard (Water), Lisa Murphew (Streets), Dorcas Black (Streets) and Alana L. Edmonds (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUIT

The City was served with the following lawsuit on July 14, 1997: Steve Sarant v. City of Asheville - Magistrate Summons and Complaint for Money Owed.

This lawsuit will be handled in-house.

C. CLOSED SESSION

At 5:45 p.m., Councilman Cloninger moved to go into closed session for the following reasons: (1) to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the attorney and the City - statutory authorization is G.S. 143-318.11 (a) (3); and (2) to establish or to instruct the City staff concerning the position to be taken by the City in negotiating the price or other material terms of a proposed contract for the acquisition of real property by purchase, option, exchange or lease - statutory authorization is G.S. 143-318.11 (a) (5). This motion was seconded by Councilman Sellers and carried unanimously.

At 6:40 p.m., Councilman Cloninger moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 6:40 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday, July 29, 1997 - 7:00 p.m.
North Asheville Community Center

Community Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

Mayor Martin said that he hoped the new format by the City was successful at this community meeting. He summarized by saying that from 6:00 p.m. - 7:00 p.m. City staff was available at the North Asheville Community Center to meet with the community on any issue. And then the City Council community meeting began at 7:00 p.m. He stressed that City Council is committed to Community Oriented Government.

Ms. Robin Westbrook, Community and Public Information Officer, gave a brief presentation on how communities will be able to access information from City government on a computer located at the Community Center. She also outlined some items on the Council's commitment to community Oriented Government.

The following topics were raised by residents and addressed by City Council and City staff: what type of white goods will the City pick up and if the City doesn't pick them up, what alternatives do the residents have to dispose of them; the Unified Development Ordinance as it relates to duplexes, quadraplexes and triplexes in single-family and multi-family zones; the zoning designation of an area on Chatham Road; no sidewalks and need for street repair in the Jackson Park/Woolsey neighborhood area; how the CBII zoning designation on Charlotte Street was arrived at; procedure for having sidewalks installed in an area; need for curbs on Barnard Avenue; how sidewalks get ranked; violations of parking in apartment building on Chatham Road; need for more than one person to handle property and evidence at Police Department; need for ballfields in North Asheville area and suggestions for trying to find suitable land; loss of housing in the area; need for affordable housing; recycling; desire for additional greenways and greenway connections in the area; appreciation for City Council meetings being taped for viewing on Channel 10; appreciation for new buses, and new bus stops and amenities; need for air conditioning at North Asheville Community Center; possible designation Charlotte Street as a special district similar to the River District; stop sign request on Mt. Vernon Circle and procedure for obtaining stop signs; appreciation to City for obtaining All America City designation; update on Broadway greenway; information concerning new City traffic calming program; and appreciation for neighborhoods forming community associations.

Mayor Martin adjourned the meeting at 8:10 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday - August 5, 1997 - 3:00 p.m.

Worksession

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

Vice-Mayor Field introduced and welcomed Ms. Margaret O'Shay who was the tour guide and translator on the Sister City trip to San Cristobal, Mexico.

CONSENT:

Hummingbird Park

Summary: The consideration of City property located at the corner of Starnes and Cumberland be named Hummingbird Park as requested by the Parks & Recreation Department Advisory Board.

In July of 1996, property located at the corner of Starnes and Cumberland was transferred to the Parks and Recreation Department to be used as a passive park. Over the past year, Montford residents have been soliciting names for this park area. The general consensus of the Montford residents is to name this piece of property Hummingbird Park. The residents have suggested this is an appropriate name since the hummingbird has become the official symbol of the Montford historic neighborhood and is displayed on banners, T-shirts, and the newsletter.

The Parks and Recreation Department Advisory Board recommends City Council name City property located at the corner of Starnes and Cumberland as Hummingbird Park.

Regional Hazardous Response Team Contract Extension

Summary: The consideration of a sixty (60) day extension of an agreement for hazardous materials emergency response in Western North Carolina.

The N. C. Dept. of Crime Control and Public Safety's Emergency Management Division has asked the City to extend its present agreement with the State of North Carolina for hazardous materials emergency response in Western North Carolina pending submittal of a new two-year agreement for City Council consideration.

Two years ago, the Asheville Fire Department was selected by the state's Emergency Management Division to respond on behalf of the state to hazardous materials emergencies in Western North Carolina. After adoption of a two-year agreement by the state and the City Council, the Asheville Fire Department became the "regional response team" for hazardous materials incidents in Emergency Management Region F--Western North Carolina.

The Emergency Management Division has asked the City of Asheville to consider a new "regional response team" agreement for fiscal years 1998 and 1999. Pending delivery of that proposed agreement, the Emergency Management Division has asked that the City extend the present agreement for sixty days. Therefore, the extension would be for the time period of July 1, 1997, to August 29, 1997.

The Fire Chief recommends authorization of the City Manager to enter into an agreement to extend the present City of Asheville/State of North Carolina "regional response team" agreement for a period of sixty (60) days.

Unattended Fuel Pumps at Dreamland Convenience Store

Summary: The consideration of a request for a permit to dispense motor fuel from unattended fuel pumps as required by Volume V of the NC State Building Code/Asheville Fire Prevention Code.

The North Carolina State Fire Code (adopted in Asheville as the Asheville Fire Prevention Code) authorizes public service stations to dispense vehicle fuel via credit card (with no attendants present) with approval of the Fire Chief and the City Council.

In 1996, the Asheville Fire Department established minimum safety requirements for such unattended fuel delivery. Those requirements include on-site absorbent that firefighters can use in event of a fuel spill , a telephone within 75 feet of the fuel delivery area for "911" notification of a fuel spill and a limit (either by dollar value or gallons) on how much fuel can be dispensed via credit card.

Paul J. Pless of the Dreamland Convenience Store at the Dreamland Drive-in site has requested a permit for unattended fuel dispensing at the Dreamland Convenience Store. He is familiar with the Asheville Fire Department's safety requirements, and has agreed in writing to meet those requirements.

Based on this agreement, the Fire Chief recommends City Council approval of this permit.

Staff recommends adoption of resolution authorizing Dreamland Convenience Store to dispense motor fuel at unattended fuel pumps, subject to Asheville Fire Department safety requirements.

Airport Grant Agreement

Summary: The Airport Authority has asked City Council to approve a grant from the FAA in the amount of $4,196,897.

This grant, in the amount of $4,196,894, consisting of $3,082,947 for Fiscal Year 1997 and $1,113,947 for Fiscal Year 1998, consists of a project to construct extended safety area, Runway 16 (Phase II) and improve airport access road.

Staff recommends adoption of the resolution.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

ECONOMIC DEVELOPMENT - BROADLANDS TECHNOLOGY PARK

City Manager Westbrook said that as part of the 1996-97 budget, the Council adopted two goals. Those goals were to support City-wide economic development and the encouragement of an improved business climate. City staff has been diligently carrying out those efforts. Specifically, staff has been working with Biltmore Farms Inc. and other partners to create some dynamic opportunities for economic development. We have been working with the partnership to develop a technology park within the City of Asheville. This would increase jobs, provide higher paying salaries and wages, and increase business in general within the City of Asheville and Western North Carolina.

This effort began with one of our partners, AdvantageWest, commissioning a study on economic development in this area. The study showed Asheville could become a center that attracts businesses that use high technology as opposed to creating high technology. The City, Biltmore Farms Inc., AdvantageWest, Carolina Power & Light Company, BellSouth, Buncombe County, and the Mission-St. Joseph's Health System are prepared to become partners in helping create the Broadlands Technology Park at Biltmore Park.

City Manager Westbrook then introduced Mr. Jack Cecil, President of Biltmore Farms Inc. who discussed the overall plan and the site at Biltmore Park.

Mr. Dale Carroll from AdvantageWest discussed the flex space building at Broadlands Technology Park, funding from AdvantageWest and the regional aspect and impact of this project.

Ms. Teresa Owen from the Institute at Mars Hill College discussed the Knowledge Center portion of Technology Park. She felt this was a new and exciting idea which will give Asheville the competitive edge in attracting the kind of business we are all looking form.

Mr. David Hester from Carolina Power & Light Company and Mr. Chuck Reiley from BellSouth also spoke about their involvement and commitment with this project.

City Finance Director Bill Schaefer discussed the particular financial aspects of this issue and felt this was a wonderful opportunity for the City.

Councilman Cloninger was impressed with the partners working together and felt this was an excellent opportunity for the City to become a partner as well.

City Manager Westbrook responded to questions from Councilman Hay relative to the payback to the City.

Mayor Martin spoke in support of this project and was pleased that the City is willing to participate in determining the future of development in our City.

Councilman Skalski was concerned about whether the City could afford to participate in this venture and questioned why build structures if we don't have any companies to come into them. He felt that he couldn't vote in favor of this project at this time without further information.

Councilman Worley felt that all too frequently a company is interested in our area but wants to move in immediately. If we don't have a space for them, the company is no longer interested.

Vice-Mayor Field spoke in support of this project and felt it was a win/win situation for all those involved.

Upon inquiry of Councilman Skalski, City Manager Westbrook responded to questions relative to why the Metropolitan Sewerage District isn't providing the sewer lines and why the Regional Water Authority is not involved.

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City Manager Westbrook said that he would be happy to meet with Councilman Skalski and address any other concerns he may have.

The following information was available for City Council as well:

The City of Asheville has established an ongoing effort to team with private businesses, developers and other agencies to implement economic development opportunities of benefit to the City and surrounding areas. In cooperation with the City and other team members, Biltmore Farms, Inc., of Asheville is proposing to develop a regional, high technology business park called the Broadlands Technology Park. This site is a 110-acre parcel of land within Biltmore Park, a master-planned, mixed use development bordered by Long Shoals Road and I-26. Biltmore Farms, Inc., owner of the property, is requesting that the City of Asheville enter into a partnership with several other public and private entities to create this regional technology center and install the necessary water and sewer lines and help in the construction of a high tech/flex space building planned for this new development. Biltmore Farms, Inc. will petition for annexation into the City in order to come under consideration under the economic development policy.

In a March 1996 feasibility study released by AdvantageWest, it was determined that the Asheville/Buncombe area was well-positioned to be able to attract high tech firms if a park were developed which catered to their needs. Since that time, AdvantageWest and Biltmore Farms, Inc. have been working together to build a diverse coalition of public and private entities interested in the development of this type of concept. Due to the major economic impact this project would have on the entire WNC region, the partnership presently includes Carolina Power & Light (CP&L); BellSouth; Buncombe County; Mission-St. Joseph's Health System and as aforementioned, AdvantageWest and Biltmore Farms, Inc. Moreover, A. Max Lennon, President of Mars Hill College, is currently establishing a consortium of academe which includes the University of North Carolina at Asheville, Warren Wilson College, A-B Tech and other Western North Carolina community colleges, as well as state and regional educational leaders to aid in the development of a Knowledge Center at the site. Besides the Knowledge Center (approx. 40,000 sq. ft.), immediate plans also call for the construction of 50,000 sq. ft. high tech/flex space building.

In order to begin construction of the site and proceed with Phase I of the proposed regional technology park, a sanitary sewer extension and a water line extension is needed. Following is an overview of the estimated costs associated with this proposal:

1. The sewer extension will involve an 8" sewer line of approximately 2200' to connect from the location of the proposed facility to the existing Ducker Creek sewer interceptor. Estimated costs for the sanitary sewer lines, manholes, and laterals is $150,000.

2. The water line size should be a minimum of 12" in diameter, and would require the expansion of approximately 3300' of line, installed within the Schenck Parkway right-of-way. The estimated costs for the water line, valves, and hydrants is $160,000.

3. The high tech/flex space building will be approximately 50,000 sq. ft. Plans call for this building to be adjacent to the Knowledge Center. Estimated cost is $2,500,000 and will require the City of Asheville to issue Certificates of Participation (COPs) in sufficient amount to handle the building construction cost. A triumvirate of the City, AdvantageWest and Biltmore Farms will design, build, market and either sell or lease to the ultimate tenant. Biltmore Farms will

subordinate its land, AdvantageWest will provide debt service payments for up to 24 months after which Biltmore Farms will assume all debt payments until the building is either sold or leased. (Biltmore Farms will provide a Letter of Credit guaranteeing any debt payments which may be required.) If feasible, the City will include the financing requirements of the high tech/flex space building in the same COPs issue as the renovation of the Municipal Building, repair of the City Hall roof and renovation of the Grove Arcade. Contracts for construction of the building will comply with North Carolina General Statutes (NCGS) governing Public Contracts (use of the formal bid process, multi-prime contractor requirements, etc.)

Although the information above addresses only Phase I (Pod 3) of the prospective development, it should be noted that once installed, both lines will have the capacity to serve three out of the five proposed pods, consisting of seven (7) building sites, with an estimated total of 370,000 sq. ft. (excluding Knowledge Center) of commercial building space ('96 estimated market value of $23,225,000 for both land and buildings, excluding equipment and other personal property). He then reviewed a summary of the calculation for Public Investment.

It should also be noted that each of the partners cited earlier have offered to provide additional support to complete this portion of the project if certain thresholds, varying by partner, are met. Buncombe County will contribute toward the site improvement costs under its economic development incentive program; CP&L will construct a feeder line; BellSouth will construct a fiber optic line; Mission-St. Joseph's Health Systems will facilitate the development of the Knowledge Center and AdvantageWest will also support the development of the Knowledge Center and market the Center. Biltmore Farms, Inc. will donate four (4) acres, more or less, for the Knowledge Center to be constructed and will grant the roadway, water, sewer, power, and telephone easements and rights-of-way required for the improvements.

Conformance with City Economic Development Policy:

Below is information detailing the conformance of the Biltmore Farms, Inc. request with the City's Economic Development Policy.

CITY POLICY (CITE)	**BILTMORE REQUEST**
1. Apply to private investment taking place inside city or directly adjacent wherein voluntary annexation could occur if requested. (II).	1. Site adjacent to City. Biltmore Farms, Inc. will petition for voluntary annexation.
2. City participation consistent with NCGS and other pertinent laws. (II).	2. No conflicts known.
3. Funding levels for economic development improvements will be established annually. These funds will be granted for the creation or improvement of public infrastructure and site improvements, such as . . . water lines or sewer lines. (III.A.)	3. No funding budgeted. Would need appropriation.

4. City investment in infrastructure will be publicly owned.	4. Sewer lines and water lines will be deeded to and maintained by Metropolitan Sewerage District and Regional Water Authority of Asheville, Buncombe and Henderson, respectively.
5. Project must involve creation of new jobs over and above what is currently available by the requesting company. (III.B.1.)	5. Based on buildable floor space, 500+ jobs can be projected for the first three pods.
6. Demonstrated need for City assistance. Necessary for project to go forward. (III.B.2. and III.C.1.)	6. Property is currently undeveloped. In order to build multi-million dollar regional technology center, public and private entities have formed partnerships to share in investment, as suggested in feasibility study.
7. The location and type of business is consistent with City plans and development policies. (III.B.3.)	7. The property is located outside city limits. Developer will petition for voluntary annexation. Due to its location along I-26 and Long Shoals Road near the Asheville Regional Airport, the site is particularly well-suited for a business park.
8. All projects meeting the criteria will be discussed on a case-by-case basis and are subject to available funds. (III.B.4.)	8. Council discussion.
9. City funds may not be used for predevelopment or engineering and architectural purposes. (III.B.5)	9. City funds will be for construction only. This provision can be stipulated in any agreement.
10. Staff will investigate financial stability of company. (III.C.3.)	10. Biltmore Farms, Inc.
11. Staff will calculate expected return on investment and present project to City Council for preliminary approval. (III.C.4.)	11. See expected return calculations which follow this chart.
12. Special consideration given to companies that pay employees the State of NC average weekly manufacturing rate, plus 10%; minority and/or female owned businesses that are socially responsible and environmentally sensitive. (Not Policy Requirements).	12. Park will attract information intensive industries, paying above-average professional salaries. Firms will be environmentally sensitive. Will not store nor produce environmentally hazardous materials.

Based upon conformance with the City's Economic Development Policy, staff recommends that Council agree in principal to provide Biltmore Farms, Inc. with the requested water and sewer lines and provide funding for the high tech/flex space building.

CALCULATION FOR PUBLIC INVESTMENT

CITY OF ASHEVILLE
ECONOMIC DEVELOPMENT INCENTIVE POLICY
(RESOLUTION #94-211)

Pod 3 (Phase 1)
(Knowledge Center not included)

Real Estate Investment (Land/Buildings):	$ 6,225,000
City Tax Rate:	$ .57/$100 a.v.
Annual Yield:	$ 35,482
Five-year Projected Yield:	$ 177,410
City Investment (90%):	$ 159,669

Pods 1, 2, 3
(Knowledge Center not included)

Real Estate Investment (Land/Buildings):	$23,225,000.
City Tax Rate:	$ .57/$100 a.v.
Annual Yield:	$ 132,382.
Five-year Projected Yield:	$ 661,912.
City Investment (90%):	$ 595,720.

Should City Council agree in principal to provide Biltmore Farms, Inc. with the requested water and sewer lines and provide funding for the high tech/flex space building, City staff will continue working with those involved in the needed improvements to structure an agreement which will contain performance commitments addressing such factors as:

1. A commitment from Biltmore Farms, Inc. to develop the park site within a specified time period.

2. Detailed performance commitments from Biltmore Farms, Inc. including the commitment to petition for annexation.

3. A commitment from all partners to ensure participation in the project.

4. A schedule of disbursements of public funds.

5. Any other provisions Council may wish to add to insure that the public purpose is being served.

It was the consensus of City Council to agree in principal to provide Biltmore Farms, Inc. with the requested water and sewer lines and provide funding for the high tech/flex space building, and to have City staff continue working with those involved in the needed improvements to structure an agreement which will contain performance commitments outlined above.

ANIMAL CONTROL

Contract with Buncombe County Friends for Animals

Police Chief Will Annarino asked for Council's consideration of entering into a contract with Buncombe County Friends for Animals, Inc., (BCFFA) for the administration, regulation, care and enforcement of animal control services within the City.

The Police Department is seeking authorization to enter into a contract with BCFFA for a twenty one (21) month period beginning on the 1st day of October, 1997, with automatic renewal after the first twenty one (21) months, for twelve (12) month intervals, for the administration, regulation, care and enforcement of animal control within the corporate limits of the City.

Buncombe County Friends for Animals, Inc., is a non-profit organization whose mission is to improve the quality and standards of animal welfare. BCFFA currently operates the pet adoption center (Animal Shelter) as well as providing animal control services to the County of Buncombe.

A contract has been negotiated by BCFFA's and City of Asheville's Staff which describes responsibilities and requirements to be met by BCFFA and an agreed upon budget, for the term of the contract, provided by the City of Asheville.

Major features of the contract include:

1. The terms of the contract will be for twenty one (21) months beginning October, 1997, and renewable on a yearly basis thereafter unless either agency desiring not to renew shall provide the other agency with a one year notice.

2. The City shall compensate BCFFA $72,127.53 for services rendered from October 1, 1997, to June 30, 1998, and shall compensate BCFFA $96,170.00 for services rendered by BCFFA from July 1, 1998, to June 30,1999. The source of all funds will be the City's general fund. The City budget for the Animal Control function for FY 1996/97 was $80,558. Future funding will be determined through the City's budget development process.

3. BCFFA is authorized to act on behalf of the City of Asheville in the administration and enforcement of animal control services, to include enforcing any and all provisions of the City's Animal Control Ordinance and other responsibilities spelled out in the contract for administration of services. These include:

    a. Be available to residents of the City on a 40 hour basis , Monday through Friday, five days per week and subject to on-call response, at all other times, to animal bites, animal injuries, dangerous animal complaints or other cases of emergency.

    b. Provide training to all animal control officers prior to their performing their duties.

    c. Ensure that all policies, practices and procedures of BCFFA comply with federal, state and local laws, rules and regulations.

In reviewing the contract staff feels that the benefits which the City and our citizenry will realize from this contract include:

- Programs currently administered by BCFFA, such as
- Pet Adoptions;
- Spay and Neuter programs;
- Rabies clinics; and
- Pet care and pet educational programs.
- BCFFA can work with pet owners to vaccinate pets.

- Some administrative duties such as follow up previously performed by Captain, Sergeant, or patrol officers will be eliminated.
- Certified Professional Animal Control Officers certified through National Animal Control Academy.
- Additional personnel created through County wide consolidation of Animal Control responsibilities

Staff recommends authorizing the City Manager to contract with BCFFA for the administration, regulation and enforcement of animal control services within the City of Asheville.

Mr. Richard Bass, President of Buncombe County Friends for Animals Inc., reviewed with Council the services the BCFFA can provide and have been providing to Buncombe County. He explained the role of BCFFA.

Ms. Barbara Bellows, Director of Animal Control, also spoke in support of this contract and how the BCFFA will be able to help the City in it's animal control.

Animal Control Ordinance Amendment

Police Chief Will Annarino asked for Council's consideration of an ordinance amending Chapter 3 (Animals) of the Code of Ordinance of the City of Asheville.

The Asheville Police Department is seeking authorization to enter into a contract with Buncombe County Friends for Animals, Inc., for the administration, regulation, care and enforcement of animal control services within the City of Asheville. In order to do so, Chapter 3, Section 3-6 (Administration), of the current Animal Control Ordinance must be revised to allow the City Manager to designate a local agency to administer the City's Animal Control Services.

Staff recommends revising Chapter 3, Section 3-6 (Animals) of the Code of Ordinances of the City of Asheville so as to authorize the City Manager to designate a local agency to administer the City's Animal Control Services.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

HILLS OF BEAVERDAM

Ms. Suzanne Molloy, Assistant Director of Public Works, said that staff has negotiated the terms of a contract for upgrade and acceptance of the streets as City-maintained streets located in the Hills of Beaverdam.

The property owners of Hills of Beaverdam have requested for the City to make improvements to the streets located in the Hills of Beaverdam. Since the adoption of Resolution No. 96-216, staff has negotiated with the property owners as to the requirements of acceptance, necessary easements, and costs. All property owners on the following streets: Skyview Drive, Skyview Circle, Sunset Trail, and Crescent Lane have signed all necessary easements to proceed with the project.

The estimated cost of the project is $137,000 for street improvements to Skyview Drive, Skyview Circle, Sunset Trail, Crescent Lane and the addition of several storm drainage improvements within the development. Upon execution of the agreement, all improvements would be in accordance with the contract and plans as prepared by the City of Asheville and William Lapsley G. Lapsley & Associates, P.A. The project is scheduled to begin in September.

Staff recommends the adoption of the resolution authorizing the City Manager to execute an agreement with the property owners of Hills of Beaverdam for street improvements.

Upon inquiry of Councilman Hay, a representative from the Hills of Beaverdam said that they didn't realize the extent of easements needed and was pleased that the project will now be able to proceed.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

FIRE STATION 4/POLICE RESOURCE CENTER

Fire Chief John Rukavina said that at the City Council July 15, 1997 worksession, staff and City Council reviewed the status of bids for the new Fire Station 4/Police Resource Center facility in Skyland, in light of the fact that the lowest bid received exceeded the architect's estimate, as well as budgeted and available funds. During that review, City Council members raised questions and offered suggestions on how to respond to the variance between low bid and available funds.

On July 16, 1997, staff met with Barney Woodard to share the questions raised and suggestions made at the previous day's worksession. Mr. Woodard, in turn, agreed to review his design in light of those questions and suggestions, and to meet with the low bidder, H & M Constructors, to negotiate a reduction, if possible. On July 26, 1997, Mr. Woodard delivered a report and recommendations to staff.

Based on his conversations with a representative of H & M Constructors and his reassessment of the building design, Barney Woodard recommends the following:

(1) The Fire Station 4/Police Resource Center bids currently in hand be rejected, and the building be redesigned and rebid; and

(2) The redesign include a combination of reduction in size of living quarters, deletion of one of two apparatus bays, deletion of a second-floor storage area and/or deletion of certain contract allowances, for total savings that would result in a bid of not more than $600,000.

Staff recommends that the redesign incorporate the following recommendations by Mr. Woodard:

(1) Reduction of living/office quarters by 2006 sq. ft., at an estimated savings of $150,000;

(2) Deletion of certain contract allowances for miscellaneous equipment and identification signs for a cost savings of $34,000; and

(3) As a bid alternate, deletion of one fire apparatus bay.

The Police Chief and Fire Chief concur in this recommendation.

Staff recommends that City Council reject all bids received on June 5, 1997, and adopt a resolution authorizing the City Manager to enter into an agreement with Barney Woodard, AIA, to redesign Fire Station 4/Police Resource Center in a manner consistent with staff's recommendation.

Vice-Mayor Field did not want to eliminate a bay when she felt sure we would need it in the future.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

MEMORANDUM OF UNDERSTANDING WITH HABITAT FOR HUMANITY FOR PROPERTY OFF BROADVIEW DRIVE

Mr. Marvin Vierra, Community Development Director, said that the Memorandum of Understanding identifies responsibilities of the City of Asheville and Habitat for Humanity in the joint development of a Single Family Owner-Occupied subdivision off Broadview Drive.

The Memorandum of Understanding provides for a cooperation agreement between the Asheville Area Habitat for Humanity and the City of Asheville in the joint development of 12.23 acres of land off Broadview Drive into an affordable owner-occupied single family housing subdivision. Under cooperation with Habitat, the City will design the subdivision, construct the infrastructure and landscaping, and build five single-family homes within the subdivision. The City will also be working with the neighborhood in the area. The City will also transfer the ownership of the land to Habitat who will construct the remaining homes and sell them to low and moderate income families for homeownership.

The Community Development staff recommends adoption of the Resolution.

Upon inquiry of Councilman Sellers, Mr. Vierra said that there is a good possibility of a park could be built on that land.

Mr. Vierra said that even though the City doesn't have total support from the neighborhood, as concerns were expressed at the community meeting, the City will continue to work with community to show that these homes will increase their property values.

When Councilman Sellers asked about how many houses the City would be building, Mr. Vierra said that the City hoped to build at least 30 houses, noting that the zoning ordinance would allow a developer to come in and build 96 houses on that same property.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REQUEST TO USE CITY LOGO - ASHEVILLE TILEWORKS & POTTERY

Assistant City Manager Doug Spell asked for consideration of a request from Asheville Tileworks & Pottery to use the City logo on commemorative tiles.

The City of Asheville has received a request from Asheville Tileworks & Pottery to allow them to use the Asheville City logo for a tile they would create and sell locally for both residents and visitors. The tile would have the Asheville City logo printed on it and "Asheville" printed beneath the logo. In the July 23, 1997 letter, Mrs. Anne Alexander indicated that the tile would be completely handmade and hand decorated. She also indicated thatshe felt that the "city would benefit in the reinforcement of pride in our city."

As you may recall, in April 1996 a similar request was received from the Lewis Rathbun Wellness Center whereby they would use City Hall as a subject for their collector's series of ornaments. To staff's knowledge, this was the first time that such a request had been received. Therefore, we indicated that City Council could adopt a resolution authorizing the Lewis Rathbun Wellness Center to use the City logo as a subject matter on ornaments they would produce and sell. The difference with respect to this request is that the prior request was from a non-profit agency. In discussions with the City Attorney, he does not foresee any problem arising from the City granting permission to Asheville Tileworks & Pottery to use the City logo as requested herein.

City staff recommends that a resolution be adopted granting permission for Asheville Tileworks & Pottery to use the Asheville City logo as a subject for handmade and hand decorated commemorative tiles which they would create and sell.

City Attorney Oast said that he is investigating avenues which the City can take to ensure that the use of the City logo does not get out of hand if Council feels a request is not representative of the City. He said that he would have a report for Council at the upcoming retreat or at a meeting within the next few weeks.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BUDGET AMENDMENT RE: STATE SALES TAX

Assistant City Manager Doug Spell said that the Asheville Civic Center owes sales tax on alcohol sales to the State of North Carolina in the amount of $17,111.54 for which funding is not currently available.

Many events at the Asheville Civic Center offer the sale of alcoholic beverages. Sales tax is due to the State of North Carolina on the sale of such beverages. It has been the practice at the Civic Center to collect such sales tax from the alcohol patrons. It is, therefore, the responsibility of the Asheville Civic Center to remit such sales tax to the State of North Carolina on a timely basis. For the period April, 1990 through June, 1997, the sales tax from alcohol sales was collected from the patrons but not remitted to the State. The amount of such taxes due for the period is $17,111.54 and is currently due and payable. Sales tax due beginning July, 1997 will be remitted in a timely manner. The Civic Center is seeking additional funding in order to make the payment to the State of North Carolina for the back sales tax due as such funds are not appropriated in the current year. An appropriation of General Fund fund balance is required to meet the funding request.

Staff recommends the City Council approve the $ 17,112 funding request from the Asheville Civic Center for fiscal year 1997/98. Funding shall be provided from an appropriation of General Fund fund balance.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

DISCUSSION REGARDING TOWER ORDINANCE CONSULTANT

Councilman Cloninger said that even though he was pleased with our current telecommunication tower ordinance, he felt that there are some areas which need to be improved. He noted the following four areas in particular: (1) maximizing the coverage area; (2) minimizing the number of towers; (3) maximizing the use of stealth technology; and (4) looking for opportunities to make money off of the companies looking to provide services in these areas. He felt that the City should hire a consultant to help us with addressing this very complicated issue. He was optimistic that the consultant could be paid through fees with minimal out of pocket expense to the City. He hoped that when we develop a more comprehensive ordinance, it is essential to get input from not only the community but also the telecommunication tower industry. Planning & Development Director Julia Cogburn agreed with Councilman Cloninger.

Vice-Mayor Field said that there is a need for better coverage but Council still needs to respond to the needs of the community and neighborhoods. She felt the ordinance should be something that allows us to move forward in the 21st Century in terms of technology and still protect the views that we have.

Councilman Worley also supported this request and stressed that we needed to get better coverage without hampering the views and detracting from the beauty of our area.

Councilman Hay noted that Asheville took a leadership role with the first good strong ordinance regulating telecommunication towers.

It was the consensus of Council to instruct the Planning & Development Department to proceed with preparing a Request for Proposals for a telecommunication tower consultant.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RESOLUTION NO. 97-124 - RESOLUTION CALLING FOR A SPECIAL MEETING ON FRIDAY, AUGUST 15, 1997, AT 12:00 NOON AT THE GROVE ARCADE BUILDING FOR THE PURPOSE OF EXECUTING AGREEMENTS WITH THE GROVE ARCADE PUBLIC MARKET FOUNDATION FOR THE LEASE OF THE GROVE ARCADE BUILDING TO THE FOUNDATION, AND FOR THE PRESERVATION AND OPERATION OF THE BUILDING BY THE FOUNDATION

City Attorney Oast said that this Resolution sets a special meeting of the City Council for the purpose of executing the lease and operating agreements with the Grove Arcade Public Market Foundation. The Resolution outlines that the purpose of the special meeting is for the execution of agreements with the Grove Arcade Public Market Foundation for the lease of the building, and preservation and operation of the building by the Foundation. The meeting is to be held at 12:00 Noon on August 15, 1997, at the Grove Arcade Building.

Councilman Worley moved to waive the rules and take formal action on this item. This motion was seconded by Councilman Sellers and carried unanimously.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 97-124. This motion was seconded by Councilman Sellers and carried unanimously.

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BOARDS AND COMMISSIONS

As an official duty of the Vice-Mayor to oversee the process of board and commission appointments and for her and the committee members to make recommendations to the entire Council, she recommended that if someone has served one term, is interested in reappointment and has met the attendance requirements, that that person be reappointed to serve a second term.

Subject to the City Clerk verifying the criteria above, the Committee recommended the following: Carole G. Williams and Glenda McDowell be reappointed to the Americans with Disabilities Act Compliance Committee.

Vice-Mayor Field said that because the Minority Business Plan is being revised and in that Plan the make-up of the Minority Business Commission will change, it was the Committee's feeling that City Council should re-appoint the following until the new Plan is adopted: Robbie Williams (YMI Cultural Center representative), Bonnie Habel (A-B Community Relations Council representative) and Ronnie Blythe (A-B Development Center representative) on the Minority Business Commission.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork for appointments as outlined above by Vice-Mayor Field.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Don Tomlinson to the Tourism Development Authority.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Sam Powers as the Chamber of Commerce representative to the City Business and Development Commission, to serve the unexpired term of Jay Garner, term to expire October 1, 2000.

City Council instructed the City Clerk to determine if Toni Huskey was a City resident and if so, to arrange an interview for her for a vacancy on the Firemen's Relief Fund.

City Council instructed the City to Clerk to contact Nelda Holder to see if she was interested in a vacancy on the Asheville Tree Commission.

City Council instructed the City Clerk to arrange interviews for Max Swicegood, Billie Buie, Jan Davis, Jerry Bailey, Arthur Anderson, Lionel Williams, Anne Campbell, Catherine Gallagher and Bill Moore for the Planning & Zoning Commission.

CLOSED SESSION

At 5:07 p.m., Councilman Worley moved to go into closed session for the following reasons (1) to consider the qualifications, competence, performance, character, or fitness of an individual public officer or employee - statutory authority is G.S. 143-318.11 (a) (6); (2) to prevent disclosure of information that is privileged or confidential pursuant to the laws of North Carolina, specifically, the Personnel Privacy Act, G.S. 160A-168 - statutory authority is G.S. 143-318.11 (a) (1); and (3) to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney - statutory authority is G.S. 143-318.11 (a) (5). This motion was seconded by Councilman Sellers and carried unanimously.

At 6:20 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

ADJOURNMENT:

Mayor Martin adjourned the meeting at 6:20 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday - August 12, 1997 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman James J. Skalski

INVOCATION

Councilman Hay gave the invocation.

I. PROCLAMATIONS:

A. SISTER CITY PRESENTATION

Mr. George Yates, President of the Asheville Sister City Program, introduced guests from our Sister City in Vladikavkav, Russia.

Mr. Dennis Hodgson, Immediate Past President of the Asheville Sister City Program, presented the Mayor and City Council with a gift from the Mayor of our Sister City in Saumur, France. The gift was a watercolor of the City Hall Building in Saumur, France.

On behalf of the entire City Council, Mayor Martin welcomed our Sister City visitors and expressed thanks for the beautiful gift.

B. PROCLAMATION PROCLAIMING AUGUST 23-24, 1997, AS "STUMP TOWN COMMUNITY REUNION DAYS"

Mayor Martin proclaimed August 23-24, 1997, as "Stump Town Community Reunion Days" and presented the proclamation to Ms. Phyllis Sherrill, who briefed the Council on some activities taking place on those days.

II. CONSENT:

Mr. Ralph Bishop asked that Items A. & I. be removed from the Consent Agenda for discussion.

Resolutions & Motions:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 22, 1997; THE COMMUNITY MEETING HELD ON JULY 29, 1997; AND THE WORKSESSION HELD ON AUGUST 5, 1997

This item was removed from the Consent Agenda for further discussion.

B. RESOLUTION NO. 97-125 - RESOLUTION NAMING THE PROPERTY AT THE CORNER OF STARNES & CUMBERLAND AVENUES IN THE MONTFORD COMMUNITY "HUMMINGBIRD PARK"

Summary: The consideration of City property located at the corner of Starnes and Cumberland be named Hummingbird Park as requested by the Parks & Recreation Department Advisory Board.

In July of 1996, property located at the corner of Starnes and Cumberland was transferred to the Parks and Recreation Department to be used as a passive park. Over the past year, Montford residents have been soliciting names for this park area. The general consensus of the

Montford residents is to name this piece of property Hummingbird Park. The residents have suggested this is an appropriate name since the hummingbird has become the official symbol of the Montford historic neighborhood and is displayed on banners, T-shirts, and the newsletter.

The Parks and Recreation Department Advisory Board recommends City Council name City property located at the corner of Starnes and Cumberland as Hummingbird Park.

RESOLUTION BOOK NO. 24 - PAGE 150

C. RESOLUTION NO. 97-126 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE HILLS OF BEAVERDAM HOMEOWNERS ASSOCIATION INC. FOR STREET IMPROVEMENTS

Summary: Staff has negotiated the terms of a contract for upgrade and acceptance of the streets as City-maintained streets located in the Hills of Beaverdam.

The property owners of Hills of Beaverdam have requested for the City to make improvements to the streets located in the Hills of Beaverdam. Since the adoption of Resolution No. 96-216, staff has negotiated with the property owners as to the requirements of acceptance, necessary easements, and costs. All property owners on the following streets: Skyview Drive, Skyview Circle, Sunset Trail, and Crescent Lane have signed all necessary easements to proceed with the project.

The estimated cost of the project is $137,000 for street improvements to Skyview Drive, Skyview Circle, Sunset Trail, Crescent Lane and the addition of several storm drainage improvements within the development. Upon execution of the agreement, all improvements would be in accordance with the contract and plans as prepared by the City of Asheville and William Lapsley G. Lapsley & Associates, P.A.

Staff recommends the adoption of the Resolution Authorizing the City Manager to Execute an Agreement with the Property Owners of Hills of Beaverdam for Street Improvements.

RESOLUTION BOOK NO. 24 - PAGE 151

D. RESOLUTION NO. 97-127 - RESOLUTION AUTHORIZING THE USE OF THE CITY LOGO BY ASHEVILLE TILEWORKS & POTTERY

Summary: Consideration of a request from Asheville Tileworks & Pottery to use the City logo on commemorative tiles.

The City of Asheville has received a request from Asheville Tileworks & Pottery to allow them to use the Asheville City logo for a tile they would create and sell locally for both residents and visitors. The tile would have the Asheville City logo printed on it and "Asheville" printed beneath the logo. In the July 23, 1997 letter, Mrs. Anne Alexander indicated that the tile would be completely handmade and hand decorated. She also indicated that she felt that the "city would benefit in the reinforcement of pride in our city."

As you may recall, in April 1996 a similar request was received from the Lewis Rathbun Wellness Center whereby they would use City Hall as a subject for their collector's series of ornaments. To staff's knowledge, this was the first time that such a request had been received. Therefore, we indicated that City Council could adopt a resolution authorizing the Lewis Rathbun Wellness Center to use the City logo as a subject matter on ornaments they would produce and sell. The difference with respect to this request is that the prior request was from a non-profit agency. In discussions with the City Attorney, he does not foresee any problem arising from the City granting permission to Asheville Tileworks & Pottery to use the City logo as requested herein.

City staff recommends that a resolution be adopted granting permission for Asheville Tileworks & Pottery to use the Asheville City logo as a subject for handmade and hand decorated commemorative tiles which they would create and sell.

RESOLUTION BOOK NO. 24 - PAGE 152

E. RESOLUTION NO. 97-128 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT EXTENDING THE TERMS OF THE 1995 AGREEMENT ESTABLISHING THE ASHEVILLE FIRE DEPARTMENT AS THE "REGIONAL RESPONSE TEAM" FOR HAZARDOUS MATERIALS EMERGENCIES IN WESTERN NORTH CAROLINA

Summary: The consideration of a sixty (60) day extension of an agreement for hazardous materials emergency response in Western North Carolina.

The N. C. Dept. of Crime Control and Public Safety's Emergency Management Division has asked the City to extend its present agreement with the State of North Carolina for hazardous materials emergency response in Western North Carolina pending submittal of a new two-year agreement for City Council consideration.

Two years ago, the Asheville Fire Department was selected by the state's Emergency Management Division to respond on behalf of the state to hazardous materials emergencies in Western North Carolina. After adoption of a two-year agreement by the state and the City Council, the Asheville Fire Department became the "regional response team" for hazardous materials incidents in Emergency Management Region F--Western North Carolina.

The Emergency Management Division has asked the City of Asheville to consider a new "regional response team" agreement for fiscal years 1998 and 1999. Pending delivery of that proposed agreement, the Emergency Management Division has asked that the City extend the present agreement for sixty days. Therefore, the extension would be for the time period of July 1, 1997, to August 29, 1997.

The Fire Chief recommends authorization of the City Manager to enter into an agreement to extend the present City of Asheville/State of North Carolina "regional response team" agreement for a period of sixty (60) days.

RESOLUTION BOOK NO. 24 - PAGE 153

F. RESOLUTION NO. 97-129 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BUNCOMBE COUNTY FRIENDS FOR ANIMALS INC. TO PROVIDE ANIMAL CONTROL SERVICES WITHIN THE CITY OF ASHEVILLE

Summary: Consideration of entering into a contract with Buncombe County Friends for Animals, Inc., (BCFFA) for the administration, regulation, care and enforcement of animal control services within the City.

The Police Department is seeking authorization to enter into a contract with BCFFA for a twenty one (21) month period beginning on the 1st day of October, 1997, with automatic renewal after the first twenty one (21) months, for twelve (12) month intervals, for the administration, regulation, care and enforcement of animal control within the corporate limits of the City.

Buncombe County Friends for Animals, Inc., is a non-profit organization whose mission is to improve the quality and standards of animal welfare. BCFFA currently operates the pet adoption center (Animal Shelter) as well as providing animal control services to the County of Buncombe.

A contract has been negotiated by BCFFA's and City of Asheville's Staff which describes responsibilities and requirements to be met by BCFFA and an agreed upon budget, for the term of the contract, provided by the City of Asheville.

Major features of the contract include:

1. The terms of the contract will be for twenty one (21) months beginning October, 1997, and renewable on a yearly basis thereafter unless either agency desiring not to renew shall provide the other agency with a one year notice.

2. The City shall compensate BCFFA $72,127.53 for services rendered from October 1, 1997, to June 30, 1998, and shall compensate BCFFA $96,170.00 for services rendered by BCFFA from July 1, 1998, to June 30,1999. The source of all funds will be the City's general fund. The City budget for the Animal Control function for FY 1996/97 was $80,558. Future funding will be determined through the City's budget development process.

3. BCFFA is authorized to act on behalf of the City of Asheville in the administration and enforcement of animal control services, to include enforcing any and all provisions of the City's Animal Control Ordinance and other responsibilities spelled out in the contract for administration of services. These include:

    a. Be available to residents of the City on a 40 hour basis , Monday through Friday, five days per week and subject to on-call response, at all other times, to animal bites, animal injuries, dangerous animal complaints or other cases of emergency.

    b. Provide training to all animal control officers prior to their performing their duties.

    c. Ensure that all policies, practices and procedures of BCFFA comply with federal, state and local laws, rules and regulations.

In reviewing the contract staff feels that the benefits which the City and our citizenry will realize from this contract include:

- Programs currently administered by BCFFA, such as
- Pet Adoptions;
- Spay and Neuter programs;
- Rabies clinics; and
- Pet care and pet educational programs.
- BCFFA can work with pet owners to vaccinate pets.
- Some administrative duties such as follow up previously performed by Captain, Sergeant, or patrol officers will be eliminated.

- Certified Professional Animal Control Officers certified through National Animal Control Academy.
- Additional personnel created through County wide consolidation of Animal Control responsibilities

Staff recommends authorizing the City Manager to contract with BCFFA for the administration, regulation and enforcement of animal control services within the City of Asheville.

RESOLUTION BOOK NO. 24 - PAGE 154

G. RESOLUTION NO. 97-130 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A FEDERAL AVIATION GRANT AGREEMENT TO CONSTRUCT EXTENDED SAFETY AREA, RUNWAY 16 (PHASE II) AND IMPROVE AIRPORT ACCESS ROAD

Summary: The Airport Authority has asked City Council to approve a grant from the FAA in the amount of $4,196,897.

This grant, in the amount of $4,196,894, consisting of $3,082,947 for Fiscal Year 1997 and $1,113,947 for Fiscal Year 1998, consists of a project to construct extended safety area, Runway 16 (Phase II) and improve airport access road.

Staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 24 - PAGE 155

H. RESOLUTION NO. 97-131 - RESOLUTION AUTHORIZING THE DREAMLAND CONVENIENCE STORE AT 91 SOUTH TUNNEL ROAD TO DISPENSE MOTOR FUEL AT AN UNATTENDED SERVICE STATION FACILITY

Summary: The consideration of a request for a permit to dispense motor fuel from unattended fuel pumps as required by Volume V of the NC State Building Code/Asheville Fire Prevention Code.

The North Carolina State Fire Code (adopted in Asheville as the Asheville Fire Prevention Code) authorizes public service stations to dispense vehicle fuel via credit card (with no attendants present) with approval of the Fire Chief and the City Council.

In 1996, the Asheville Fire Department established minimum safety requirements for such unattended fuel delivery. Those requirements include on-site absorbent that firefighters can use in event of a fuel spill, a telephone within 75 feet of the fuel delivery area for "911" notification of a fuel spill and a limit (either by dollar value or gallons) on how much fuel can be dispensed via credit card.

Paul J. Pless of the Dreamland Convenience Store at the Dreamland Drive-in site has requested a permit for unattended fuel dispensing at the Dreamland Convenience Store. He is familiar with the Asheville Fire Department's safety requirements, and has agreed in writing to meet those requirements.

Based on this agreement, the Fire Chief recommends City Council approval of this permit.

Staff recommends adoption of resolution authorizing Dreamland Convenience Store to dispense motor fuel at unattended fuel pumps, subject to Asheville Fire Department safety requirements.

RESOLUTION BOOK NO. 24 - PAGE 156

I. MOTION AUTHORIZING THE PLANNING & DEVELOPMENT DEPARTMENT TO PREPARE A REQUEST FOR PROPOSALS FOR A TOWER ORDINANCE CONSULTANT

This item was removed from the Consent Agenda for further discussion.

J. MOTION SETTING A PUBLIC HEARING ON AUGUST 26, 1997, TO REZONE A LOT ON LOGAN AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO CB II COMMERCIAL BUSINESS II

K. MOTION SETTING A PUBLIC HEARING ON AUGUST 26, 1997, TO PARTIALLY REZONE 1899 HENDERSONVILLE ROAD FROM HB HIGHWAY BUSINESS TO OB OFFICE BUSINESS

L. MOTION SETTING A PUBLIC HEARING ON AUGUST 26, 1997, TO REZONE 88 LOTS ON BREVARD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO RS-8 RESIDENTIAL SINGLE FAMILY

M. MOTION SETTING A PUBLIC HEARING ON AUGUST 26, 1997, TO REZONE FOUR PROPERTIES ON OR BEHIND EAST CHESTNUT STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY TO OFFICE

N. MOTION SETTING A PUBLIC HEARING ON AUGUST 26, 1997, TO APPLY THE MANUFACTURED HOUSING OVERLAY TO 31 PROPERTIES ZONED RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY IN THE EAST PORTER ROAD AREA

O. MOTION SETTING A PUBLIC HEARING ON AUGUST 26, 1997, TO REZONE PROPERTY ON BOONE STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO INDUSTRIAL DISTRICT

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions on the Resolutions & Motions Consent Agenda and they will not be read.

Councilman Worley moved for the adoption of the Resolutions & Motions Consent Agenda. This motion was seconded by Vice-Mayor Field and carried unanimously.

ORDINANCES:

A. ORDINANCE NO. 2399 - BUDGET AMENDMENT FOR DELINQUENT STATE ALCOHOL SALES TAX AT THE CIVIC CENTER

Summary: The Asheville Civic Center owes sales tax on alcohol sales to the State of North Carolina in the amount of $17,111.54 for which funding is not currently available.

Many events at the Asheville Civic Center offer the sale of alcoholic beverages. Sales tax is due to the State of North Carolina on the sale of such beverages. It has been the practice at the Civic Center to collect such sales tax from the alcohol patrons. It is, therefore, the responsibility of the Asheville Civic Center to remit such sales tax to the State of North Carolina on a timely basis. For the period April, 1990 through June, 1997, the sales tax from alcohol sales was collected from the patrons but not remitted to the State. The amount of such taxes due for the period is $17,111.54 and is currently due and payable. Sales tax due beginning July, 1997 will be remitted in a timely manner. The Civic Center is seeking additional funding in order to make the payment to the State of North Carolina for the back sales tax due as such funds are not appropriated in the current year.

An appropriation of General Fund fund balance is required to meet the funding request.

Staff recommends the City Council approve the $ 17,112 funding request from the Asheville Civic Center for fiscal year 1997/98. Funding shall be provided from an appropriation of General Fund fund balance.

ORDINANCE BOOK NO. 16 - PAGE 278

B. ORDINANCE NO. 2400 - ORDINANCE AMENDING CHAPTER 3 OF THE ANIMAL CONTROL ORDINANCE TO PROVIDE FOR A DIRECTOR OF ANIMAL CONTROL

Summary: Consideration of an ordinance amending Chapter 3 (Animals) of the Code of Ordinance of the City of Asheville.

The Asheville Police Department is seeking authorization to enter into a contract with Buncombe County Friends for Animals, Inc., for the administration, regulation, care and enforcement of animal control services within the City of Asheville. In order to do so, Chapter 3, Section 3-6 (Administration), of the current Animal Control Ordinance must be revised to allow the City Manager to designate a local agency to administer the City's Animal Control Services.

Staff recommends revising Chapter 3, Section 3-6 (Animals) of the Code of Ordinances of the City of Asheville so as to authorize the City Manager to designate a local agency to administer the City's Animal Control Services.

ORDINANCE BOOK NO. 16 - PAGE 280

Mayor Martin said that members of Council have been previously furnished with copies of the ordinances on the Ordinance Consent Agenda and they will not be read.

Councilman Worley moved for the adoption of the Ordinance Consent Agenda. This motion was seconded by Vice-Mayor Field.

On a roll call vote of 6-0, the Ordinance Consent Agenda was adopted on its first reading.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 22, 1997; THE COMMUNITY MEETING HELD ON JULY 29, 1997; AND THE WORKSESSION HELD ON AUGUST 5, 1997

Mr. Ralph Bishop, resident of the City of Asheville, said that 160A-72 of the State law says that the City should keep a full and accurate record of the Council proceedings. He said that 132.6 of the State law says that any citizen is entitled to get a copy of those records upon payment of a fee. He asked why the City Clerk refuses to transcribe the full and accurate record of each Council meeting.

Mayor Martin said that Mr. Bishop's question has been answered a number of times but asked the City Attorney to once again answer Mr. Bishop's concern.

City Attorney Oast said that the General Statute that Mr. Bishop is referring to does require full and accurate minutes to be kept of City Council meetings and the other Statute to which he referred to does require the City Clerk or other appropriate official to furnish records to people if they are willing to pay the appropriate fee. He explained that full and accurate minutes does not mean verbatim minutes. He recently attended a N. C. Association of Municipal Attorney's Conference and he asked his fellow colleagues throughout the state and they all agreed with his interpretation of it stating that was what the Supreme Court affirmed in Maready v. City of Winston-Salem, in Forsyth County. Mr. Bishop can obtain a verbatim transcript of the City Council meeting upon payment of a fee, however, it was his understanding that Mr. Bishop has not paid the fee. He said the tapes are available and they can be transcribed and we will do that for the public if they will pay the appropriate fee.

Mayor Martin said that pursuant to City Council's Rules of Procedures, a written request must be made with the City Clerk with the appropriate fees being paid.

At the request of Mr. Bishop, City Attorney Oast read G.S. 160A-72.

Mr. Bishop then said that what City Attorney Oast is saying is that the Supreme Court re-wrote G.S. 160A-72 to say that full and accurate minutes of the Council meetings shall not be kept.

Mayor Martin said that the Asheville City Council does keep full and accurate Council minutes. He said that the problem is that Mr. Bishop does not agree with the interpretation of the Supreme Court in this instance.

Vice-Mayor Field moved to approve the minutes of the formal meeting held on July 22, 1997; the community meeting held on July 29, 1997; and the worksession held on August 5, 1997. This motion was seconded by Councilman Sellers and carried unanimously.

MOTION AUTHORIZING THE PLANNING & DEVELOPMENT DEPARTMENT TO PREPARE A REQUEST FOR PROPOSALS FOR A TELECOMMUNICATION TOWER ORDINANCE CONSULTANT

Mr. Ralph Bishop asked how much the consultant will cost the taxpayers of Asheville. Councilman Cloninger responded by saying that one of the things we will be asking in our Request for Proposals from the consultants is for them to include in their proposals ideas of how their charges can be paid for from private grants and foundations and also from fees that will be charged to the telecommunication companies. He stated that our goal is that it will not cost the taxpayers any money.

Councilman Cloninger moved to authorize the Planning & Development Department to prepare a Request for Proposals for a telecommunication tower ordinance consultant. This motion was seconded by Councilman Sellers and carried unanimously.

REQUEST REGARDING BROADCASTING OF CITY COUNCIL MEETINGS

Vice-Mayor Field said that since this is the first regular meeting of the City Council which will be televised, she brought up the concern that the viewers do not know what the issues are on the Consent Agenda and wondered if it would be appropriate to read those out prior to the voting.

City Attorney Oast said that it is not required, but it is certainly appropriate to read them if that is the desire of City Council.

Mayor Martin instructed the City Manager to work with the video recorders to see how this could be accomplished without reading all the items on the Consent Agenda.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AUTHORIZE THE MAYOR TO SIGN AN AGREEMENT WITH J.L. de BALL - GIRMES OF AMERICA INC. CONCERNING THE CITY'S PARTICIPATION IN SITE DEVELOPMENT IMPROVEMENTS

RESOLUTION NO. 97-132 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH J.L. de BALL - GIRMES OF AMERICA INC. TO PARTICIPATE IN SITE DEVELOPMENT IMPROVEMENTS

Mayor Martin opened the public hearing at 5:26 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. John Scaralia, City Development Director, said that J.L. de Ball-Girmes of America, Inc. is looking to locate a supplementary production unit at its existing site on Old Charlotte Highway. Plans call for renovation of 45,000 sq. ft. of the existing 178,000 sq. ft. building in order to begin manufacturing. The company is looking to significantly expand within two years, and plans to accommodate 12 -16 employees by July 1, 1998; up to 50 by January 1, 2000. Wages will average $9 -12.00 per hour.

The firm plans to invest a total of $7 million within two years in the renovation and equipment upgrades for this operation; $2 million by July 1, 1998. Included will be repairs and upgrades to the roof, HVAC capacity, and plumbing and electrical improvements, as well as major machinery and equipment purchases. Staff has prepared an agreement outlining the terms and conditions of the City's participation.

The agreement consists of the City entering into a contract whereby the City would contribute $51,300 provided the terms of the contract are complied with by J.L. de Ball-Girmes of America Inc. The conditions include: the requirement of the corporation creating a minimum of 12 new jobs by July 1, 1998, with wages at $9-12 per hour; investment of $2,000,000 by July 1, 1998; and expansion to accommodate 50 employees. The guarantee for the City is through a Letter of Credit. The payback period for the City based on this financial assistance will be 4.5 years.

Staff recommends authorizing the Mayor to sign an agreement with J.L. de Ball-Girmes of America, Inc., concerning the City's participation in site development improvements.

Mayor Martin welcomed J.L. de Ball-Girmes of America Inc. back into the community.

Mayor Martin closed the public hearing at 5:29 p.m.

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Mayor Martin said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Field moved for the adoption of Resolution No. 97-132. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 160

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 97-133 - RESOLUTION AUTHORIZING THE SALE OF DISPOSAL PARCEL 5 AT THE CORNER OF COURTLAND AND MONTFORD AVENUE IN THE HEAD OF MONTFORD REDEVELOPMENT PROJECT TO ROBERT EIDUS AND JEANETTE SYPRZAK

Mr. Ed Vess, Field Services Coordinator, said that on April 22, 1997, the City Council directed the City Clerk to advertise for upset bids on Disposal Parcel 5. The advertisement ran in the Asheville Citizen-Times on April 25, 1997, as provided in G.S. 160A-269. An upset bid was received and the sale was readvertised on May 9, 1997, and May 23, 1997, each time in response to an upset bid. No upset bid was received in response to the advertisement on May 23, 1997. Therefore, the offer to purchase from Robert Eidus and Jeanette Syprzak in the amount of $53,000 was not upset.

On June 10, 1997, City Council tabled until July 8, 1997, consideration of approval of the sale to Mr. Eidus and Ms. Syprzak after hearing a complaint from Jacqueline Larsen that Mr. Eidus had reneged on an agreement with her regarding the purchase and development of the property. Ms. Larsen requested a meeting with City staff to discuss her complaint. On June 19, 1997, Bob Oast and Ed Vess met with Ms. Larsen and then with Mr. Eidus, Ms. Syprzak and Mr. Randolph Horner, a business associate of Mr. Eidus.

Ms. Larsen alleged that Mr. Eidus agreed to sell her his interest in the subject property upon completion of the proposed improvements, and then refused to honor this agreement after it was too late for Ms. Larsen to submit an upset bid. She indicated that she would have submitted an upset bid if she had known that Mr. Eidus would not honor the alleged agreement. Mr. Eidus acknowledged with Ms. Larsen discussing a possible agreement, but indicated that Ms. Larsen was to prepare a written proposal, and that any agreement would be subject to the approval of Mr. Eidus' attorney and business associates. Mr. Eidus said that the written proposal was never submitted.

The bidding process as conducted by the City staff is in compliance with state law. Based on the information available, the City Attorney's opinion is that there does not appear to be an agreement between Ms. Larsen and Mr. Eidus that would constitute a legal impediment to proceeding with the proposed transaction. Mr. Eidus and Ms. Syprzak have submitted a bid which complies with the bid requirements and is $14,000 over the established fair reuse value along with a statement of qualifications and financial responsibility. The upset bid period allowed ample time for Ms. Larsen or any other informed bidder to submit an upset bid. The failed negotiations between Mr. Eidus and Ms. Larsen have no bearing on the validity of the upset bid process nor the acceptability of the bid from Mr. Eidus and Ms. Syprzak. Rejecting the current bid and starting over would not guarantee a higher bid and could result in a lower bid.

Approval of the resolution will authorize the sale of the property to Robert Eidus and Jeanette Syprzak for the amount of $53,000.

Community Development staff recommends adoption of the resolution authorizing the sale of the subject property to Robert Eidus and Jeanette Syprzak in the amount of $53,000.

On July 8, 1997, Ms. Jacqueline Larsen said that she would be presenting Council with a narrative in response to the City's staff report. She said that she would be requesting City Council to reopen the bidding process. On July 22, 1997, Ms. Larsen did present City Council with a letter asking that the bidding process be re-opened.

Upon inquiry of Mayor Martin, City Attorney Oast said that the statute pursuant to which the City is proposed to dispose of this property indicates that the City may accept or reject all offers. If the offer were rejected, the City would not be subject to any legal action as a result of that. However, the City may not receive the same price again if it re-bids, which is $14,000 over the appraised value.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 97-133. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 161

V. NEW BUSINESS:

A. RESOLUTION NO. 97-137 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT LEASING THE GROVE ARCADE BUILDING FROM THE CITY OF ASHEVILLE TO THE GROVE ARCADE PUBLIC MARKET FOUNDATION

Councilman Cloninger said that the law firm of which he is a partner acts as legal counsel for the Grove Arcade Public Market Foundation and asked to be excused from voting. Therefore, Councilman Worley moved to execute Councilman Cloninger from voting on this matter due to a conflict of interest. This motion was seconded by Councilman Sellers and carried unanimously.

City Attorney Bob Oast said that this is the second step in the two-part process to authorize the City to lease the Grove Arcade Building to the GAPMF. That process was described in detail in the Staff Report submitted to you at your July 15 and 22, 1997, meetings.

If authorized, it is anticipated that the lease and other agreements will be executed at the Special Meeting scheduled for Friday, August 15, 1997.

If Council wishes to authorize the transaction with GAPMF, adoption of the attached resolution is recommended.

Upon inquiry of Vice-Mayor Field, City Attorney Oast explained what would happen to the Grove Arcade Building if the Grove Arcade Public Market Foundation would cease to be. The building would remain the City's, as would any improvements made by the Foundation or its sub-tenants. The City would either step into the shoes of the Foundation, or find another entity to take the Foundation's place.

Mayor Martin praised the work that has gone into this transaction. He said that it is expected that the City may ultimately receive as much as $1,500,000 million in sales tax revenues and we will have some return as a City from taxes or payment in lieu of taxes because of the renovation of this building. This project will hopefully employ as many as 400-600 new people in our downtown area. He hoped as this evolves and as it is restored that it will anchor that part of the downtown area and help to create a more vital downtown.

Mayor Martin invited the members of the public to attend the official ceremonies which will take place on Friday, August 15, 1997, at 12:00 Noon at the Grove Arcade Building.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 97-137. This motion was seconded by Councilman Sellers and carried unanimously.

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B. RESOLUTION NO. 97-134 - RESOLUTION REJECTING BIDS FOR CONSTRUCTION OF FIRE STATION 4/POLICE RESOURCE CENTER IN SKYLAND AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A NEW AGREEMENT FOR REDESIGN OF FIRE STATION 4/POLICE RESOURCE CENTER

Fire Chief John Rukavina said that at the City Council July 15, 1997 worksession, staff and City Council reviewed the status of bids for the new Fire Station 4/Police Resource Center facility in Skyland, in light of the fact that the lowest bid received exceeded the architect's estimate, as well as budgeted and available funds. During that review, City Council members raised questions and offered suggestions on how to respond to the variance between low bid and available funds.

On July 16, 1997, staff met with Barney Woodard to share the questions raised and suggestions made at the previous day's worksession. Mr. Woodard, in turn, agreed to review his design in light of those questions and suggestions, and to meet with the low bidder, H & M Constructors, to negotiate a reduction, if possible. On July 26, 1997, Mr. Woodard delivered a report and recommendations to staff.

Based on his conversations with a representative of H & M Constructors and his reassessment of the building design, Barney Woodard recommends the following:

(1) The Fire Station 4/Police Resource Center bids currently in hand be rejected, and the building be redesigned and rebid; and

(2) The redesign include a combination of reduction in size of living quarters, deletion of one of two apparatus bays, deletion of a second-floor storage area and/or deletion of certain contract allowances, for total savings that would result in a bid of not more than $600,000.

Staff recommends that the redesign incorporate the following recommendations by Mr. Woodard:

(1) Reduction of living/office quarters by 2006 sq. ft., at an estimated savings of $150,000;

(2) Deletion of certain contract allowances for miscellaneous equipment and identification signs for a cost savings of $34,000; and

(3) As a bid alternate, deletion of one fire apparatus bay.

The Police Chief and Fire Chief concur in this recommendation.

Staff recommends that City Council reject all bids received on June 5, 1997, and adopt a resolution authorizing the City Manager to enter into an agreement with Barney Woodard, AIA, to redesign Fire Station 4/Police Resource Center in a manner consistent with staff's recommendation.

Vice-Mayor Field thanked the Fire Chief for his efforts because she felt it was important to try and save the project as designed because she knew that south Asheville is growing and it would be to the City's advantage to provide a building long-term that will fulfill the needs and today's dollars will be cheaper than tomorrow's dollars.

Upon inquiry of Councilman Hay, Fire Chief Rukavina said there was a minor change in the Police Resource Center side in that there was some space set aside for a break area and essentially now they will share that in the form of the Fire Department's kitchen facilities and dining area. Regarding the Fire Department side, it was in essence going from quarters from eight people down to four people, which is the typical company strength that is assigned to that station right now.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 97-134. This motion was seconded by Vice-Mayor and carried unanimously.

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C. RESOLUTION NO. 97-135 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH ASHEVILLE AREA HABITAT FOR HUMANITY FOR DEVELOPMENT OF PROPERTY OFF BROADVIEW DRIVE

Community Development Director Marvin Vierra said that the Memorandum of Understanding identifies responsibilities of the City of Asheville and Habitat for Humanity in the joint development of a Single Family Owner-Occupied subdivision off Broadview Drive.

The Memorandum of Understanding provides for a cooperation agreement between the Asheville Area Habitat for Humanity and the City of Asheville in the joint development of 12.23 acres of land off Broadview Drive into an affordable owner-occupied single family housing subdivision. Under cooperation with Habitat, the City will design the subdivision, construct the infrastructure and landscaping, and build five single-family homes within the subdivision. The City will also transfer the ownership of the land to Habitat who will construct the remaining homes and sell them to low and moderate income families for homeownership. They hope to be able to build 30 homes on that property noting that the area is zoned RS-8 which would allow as many as 97 homes to be built. This is the first time the City has been involved in the construction of single-family homes. The homes the City constructs will be in the price range of $75-85,000 and the homes Habitat constructs usually sell for $50-60,000. The Memorandum of Understanding with Habitat requires extensive neighborhood involvement throughout the design and construction of the subdivision. There has already been one neighborhood meeting and hopefully at the next one they will have the engineer present. He said there is enough property for open space, parks and trail development as part of the subdivision.

The Community Development staff recommends adoption of the Resolution.

Councilman Hay, Chairman of the Housing & Community Development Committee, noted that this is really an interesting and exciting project. The City will be using this as a model project for experimenting with building affordable housing in conjunction with the neighborhood. The residents will be participating even to the level of designing the homes.

Vice-Mayor Field, Chairman of the HOME Consortium, said that they have been involved in this project as well and they are very pleased with this project.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 97-135. This motion was seconded by Vice-Mayor Field and carried unanimously.

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VI. OTHER BUSINESS:

A. GROUP DEVELOPMENTS

On May 7, 1991, City Council adopted a procedure whereby the Planning Director reports final recommendations of the Planning and Zoning Commission ("Commission") relative to group developments at the next scheduled regular meeting of the City Council. In accordance with this procedure, the action of the Commission shall be final unless the City Council determines at their meeting to schedule a public hearing on the matter. The following actions were taken by the Commission on August 6, 1997:

Willow Lake Mobile Home Park (formerly Sand Hill Mobile Home Park)

Mr. Carl Ownbey, Urban Planner, said that this proposed development is for an expansion of 25 more lots to the approved 41 lot mobile home park on 12 acres located off Sand Hill Road in West Asheville.

On December 2, 1996, the Planning Department received the site plan for the proposed mobile home park. The proposed project included 41 individual lots to be developed for mobile homes. The site plan was presented to the Technical Review Committee on December 9, 1996, for their comments.

On January 8, 1997, the Commission reviewed the site plan and voted unanimously to approve the project with no conditions. On January 14, 1997, City Council reviewed the site plan and accepted the recommendation of Commission. On June 26, 1997, the revised site plan, now Willow Lake Mobile Home Park, was presented to the Planning staff within the 30 day period and certified that the revised project design was ongoing prior to the adoption of the Unified Development Ordinance. On July 21, 1997, the Technical Review Committee reviewed the revised site plan and made their comments.

On August 6, 1997, the Commission reviewed the revised site plan and voted unanimously to approve the project with the following four conditions: (1) submittal of letters on the availability of water and sewer for the additional home sites; (2) submittal of letter on availability of adequate water flow for fire protection for the additional home sites; (3) submittal of letter on approval of driveway permit; and (4) interior streets and cul-de-sacs be built to City standards.

The Planning staff and the Commission recommend approval of the Willow Lake Mobile Home Park with the four conditions.

Vice-Mayor Field stated that cul-de-sacs don't generate neighborhoods. She asked if there was any possibility for walking or bike paths or some way the people in that community can communicate to each other and to the rest of the neighborhoods around them. Mr. Ownbey said that at the northern side there is an existing mobile home park and on the south areas there is basically I-40. He said there is some open space that may be designed for some paths and trails.

Council accepted the report of the Commission with the above condition, thereby approving the project by taking no action.

Brooks-Howell Village

Mr. Carl Ownbey, Urban Planner, said that the proposed project consists of 11 new residential units (four duplexes and a triplex) and an activities center located on a 1.8 acre portion of the Brooks-Howell property.

Plans for this project were submitted within the 30 day window after the adoption of the Unified Development Ordinance. Therefore, the project is being reviewed as a group development under the previous zoning ordinance (pre-UDO zoning was R-3).

Because the development will provide housing for the elderly, Brooks-Howell is asking that Council allow a reduction in the parking requirements from 24 spaces to 14 spaces.

Council will also be asked to approve an alternative to the buffering requirements along the West property line. The ordinance allowed the buffer to consist of a five foot strip with a six foot fence. Brooks-Howell is working with the adjacent property owner to design a buffer, using primarily vegetation, which meets the intent of the ordinance and is more sensitive to the adjoining property.

At their August 6, 1997, meeting, the Commission voted unanimously to recommend approval of this group development. Additionally, the Commission recommended that Council allow the reduction in parking and approve the alternate buffering plan being developed.

This recommended approval was with three conditions: (1) Receipt of letters of approval for water, sewer and adequate water pressure for fire protection; (2) That the variance for alternate compliance with the City's buffering requirements either be granted by Council or a revised landscape plan must be submitted to staff; and (3) That the required handicap parking space be labeled more clearly on the plans.

Staff recommends City Council set a public hearing to consider the reduction in parking and approval of the alternate buffering plan.

Councilman Worley moved to set a public hearing on August 26, 1997, to consider reduction in parking and approval of the alternate buffering plan for Brooks-Howell Village. This motion was seconded by Councilman Cloninger and carried unanimously.

B. CITY COUNCIL MEETING DATES CHANGED

Councilman Worley moved to cancel the October 21, 1997, City Council worksession due to the N.C. League of Municipalities meeting in Raleigh, N.C. This motion was seconded by Vice-Mayor Field and carried unanimously.

Vice-Mayor Field moved to cancel the September 2, 1997, City Council worksession due to Labor Day holiday. This motion was seconded by Councilman Sellers and carried unanimously. City Attorney Oast said that he would prepare a resolution clarifying the City Council meeting dates in September for action at the next City Council worksession.

C. BICENTENNIAL

Vice-Mayor Field said there seems to be a concern among some Bicentennial Committee volunteers about the financial status of the Bicentennial celebration. She wondered how the City could help, noting, however, that the Committee has not asked the City for monetary help because they have chosen to raise that money in the community and they have done an outstanding effort. She did point out that the City is providing all of the support of the staff and it's facilities for the events.

Mayor Martin said that the City did appropriate $5,000 and the Committee had thought they could raise sufficient money on their own. As of last week they had commitments of $29,500. He understood another $6,000 has been added and potentially another $12,500. He noted, however, that this money is not specifically and only for the Bicentennial celebration but also for beautification efforts in the City. The City wants to make the celebration successful.

Councilman Cloninger was interested in knowing what the Bicentennial Committee has done in the way of trying to raise money.

Councilman Worley said that he would be happy to look at the funding options with the City Manager to see if there are any grants that might be available, what our budget situation is, etc., and report back at the next worksession.

D. BOARD/COMMISSION APPOINTMENTS

At the request of Councilman Hay who will be out of town during the scheduled meeting for the quarterly board/commission appointments, it was the consensus of City Council to postpone action on those appointments until the first formal meeting in September.

E. COMMENTS BY MR. RALPH BISHOP REGARDING CITY COUNCIL MINUTES

Mr. Ralph Bishop, resident of the City of Asheville, stated that G.S. 132.6 states that he can examine the minutes at anytime under the supervision of the Clerk. He asked how he could examine those minutes if they were not transcribed.

Mayor Martin said that Mr. Bishop could pay the appropriate fee to the Clerk and have a portion of the minutes transcribed verbatim. Mr. Bishop said that he paid the City Clerk two or three times upfront and he did not get the transcript verbatim.

City Clerk Burleson said that approximately three years ago Mr. Bishop did pay a fee upfront and she did transcript the portion of the minutes for him. When he read those verbatim minutes, he accused her of deleting words. Mr. Bishop then accompanied her into the Council Chamber to listen to the tape together and he accused her of tampering with the tape.

F. CLAIMS

The following claims were received by the City of Asheville during the week of July 18-24, 1997: Howell Brown (Water), Suzy Liabson (Water), Will Leverette (Water), Burdene Byerly (Water) and Shirley Wells (Streets).

The following claims were received during the week of July 25-31, 1997: Laura Rhymes (Streets), Steve Sarant (Streets), Tyson's Furniture (Streets), April Pendl (Parks & Recreation), Jean Williams (Water) and Ronnie Gentry (Sanitation).

The following claims were received during the week of August 1-7, 1997: James W. Moody (Sanitation), Sheba Bradley (Parks & Recreation), Nappier & Gunnells (Water), Carolyn Klepper (Water), and Gary Meadows (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 6:20 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Friday - August 15, 1997 - 12:00 Noon
Grove Arcade Building

Special Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and Deputy City Clerk Phyllis Corns

Absent: Councilman James J. Skalski

Mayor Martin recognized federal, state, and local officials. He stated that the Grove Arcade Building was constructed in the 1920's as a shopping arcade, and was actually used as one until taken over by the federal government during World War II. The federal government used it as an office building for about 50 years, and moved to the new federal court house in 1995. The Grove Arcade Building has historical, architectural, and cultural significance to the City of Asheville and its citizens, as evidenced by the placement of the Arcade on the National Register of Historic Places. Because of its importance to us, in 1994 the City began working to acquire the Grove Arcade Building from the United States government. The City was successful in that effort. On April 30, 1997, the General Services Administration transferred title of the Grove Arcade to the City of Asheville under the National Monument Act.

During the time the building was vacant, the City and other organizations have been exploring ways to preserve, restore and reuse the building. And, since January, the City and the GROVE Arcade Public Market Foundation have worked diligently on an agreement to rehabilitate and use the Arcade as a public market, with a mixture of commercial/office/residential uses on the upper floors.

Earlier this week, City Council authorized the lease of the Grove Arcade to the Grove Arcade Public Market Foundation - finding that the Foundation is a qualified organization to receive the Arcade and will preserve and use the Arcade in a manner that recognizes its significance while complying with the terms of the conveyance from the United States.

Mayor Martin then presented the Grove Arcade Public Market Foundation Chairman Chuck Reiley with a key to the Arcade along with a check in the amount of $100,000 to be used toward the rehabilitation of the Grove Arcade Building. Mayor Martin then signed a lease agreement and operating agreement to lease the Grove Arcade Building to the Grove Arcade Public Market Foundation.

Foundation Chairman Reiley announced and introduced Mr. Rick Skelton from Skelton Development as the selected developer for the project.

Mayor Martin closed the meeting at 1:15 p.m.

Magdalen Burleson
CITY CLERK

Russ Martin
MAYOR

Tuesday - August 19, 1997 - 3:00 p.m.

Worksession

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field (arrived at 3:15 p.m.); Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman James J. Skalski

CONSENT:

Rhododendron Circle Special Assessments

Summary: The consideration of finding the Rhododendron Circle Special Assessment Project complete, assessing the total costs and calling for a public hearing announcing the completion of the Preliminary Assessment Roll; and accepting Rhododendron Circle as a City Street.

The Public Works Department has assessed the total costs for the Rhododendron Circle project, completed in June 1997 and prepared a preliminary assessment roll.

The property owners residing on Rhododendron Circle (beginning at its intersection with Rhododendron Place and ending at its intersection with Old Haw Creek Road) petitioned the City of Asheville to accept Rhododendron Circle as a City System street. Improvements consisting of spot repairs and patching along, tie-ins to driveways, and total resurfacing were necessary for acceptance of the street. Property owners on Rhododendron Circle should be assessed for fifty percent (50%) of the costs as agreed to in the original petition.

In June 1997, the Rhododendron Circle project was completed. The cost of enhancements to Rhododendron Circle project is $9,365.50 which amount includes the costs of labor, materials, equipment, and the costs of publication of notices and resolution.

A preliminary assessment role for benefited property owners has been prepared. The amount assessed to each benefited property owner is based upon fifty percent (50%) of the enhancement costs at an equal rate per foot of frontage.

The Public Works Department staff recommends the adoption of the Resolution Finding the Rhododendron Circle Project Complete, Assessing the Total Costs and Calling for a Public Hearing Announcing the Completion of the Preliminary Assessment Roll. Staff further recommends acceptance of Rhododendron Circle as a City Street.

Set Public Hearing to Close Old Haywood Road

Summary: The consideration of a resolution setting a public hearing to consider closing a portion of Old Haywood Road, also known as West Haywood Street, between Park Avenue and Roberts Street.

A petition has been received from Duo Investors, Dave Steel Company, Thomas Lee Finger, and Trio Investors requesting that Old Haywood Road, also know as West Haywood Street, between Park Avenue and Roberts Street be permanently closed to public use.

The petition received includes the affidavits of Thomas Lee Finger, A. Jerome Dave (Dave Steel Company), Sherry F. Rice (Duo

Investors), Michael Boyd Rice (Trio Investors). Duo and Trio Investors owns all of the property with frontage on this portion of Old Haywood Road that has been petitioned to be closed.

The permanent closing of the East Haywood Street was approved by City Council in 1987. The remaining portion of the street shown as Old Haywood Road, also known as West Haywood Street, was not closed at this time and has remained vacant.

The Public Works Department staff recommends setting a public hearing to consider permanently closing a portion of Old Haywood Road, also known as West Haywood Street, between Park Avenue and Roberts Street.

Report for Disposal of City-Owned Personal Property

Summary: Consideration of a resolution accepting a report on the sale of City-owned property for the Parks & Recreation Department, the Water Resources Department and the Fleet Management Division.

Resolution No. 85-99 adopted by City Council on June 25, 1985, established procedures for disposing of personal property valued at less than $500. Pursuant to these procedures, the resolution identifies property disposals for the Parks & Recreation Department, the Water Resources Department and the Fleet Management Division during the period of January 1, 1997 through June 30, 1997.

Revenues from these sales totals $2,420.10 and have been deposited as follows: $279.00 in the 20 fund for the Parks & Recreation Department, $405.60 in the 44 fund for Fleet Management Division and $1,735.50 in the 30 fund for the Water Resources Department.

Encroachment Agreement with Norfolk Southern Railway for Pipeline Replacement Program - Phase II, Contract B, East Asheville/East Buncombe Waterline Project

Summary: The consideration of a contract with Norfolk Southern Railway to allow a pipeline under their track as a part of the Pipeline Replacement Program - Phase II, Contract B.

The Engineering Department developed construction plans for the Pipeline Replacement Program Phase II - Contract B, East Asheville/East Buncombe Water Line Project and this right of way is included to complete the construction of the water pipeline. In order to move forward with the project, a resolution needs to be adopted authorizing the City Manager to execute on behalf of the City of Asheville a contract with Norfolk Southern Railway Company, for the City of Asheville to install, maintain, and operate a six inch water pipeline in a sixteen inch casing pipe, under and across the right of way or property and any tracks of Railway, at Milepost T-8 plus 3,275 feet, wholly with the confines of Candler School Road, for the construction of the Pipeline Replacement Program Phase II -Contract B, East Asheville/East Buncombe Water Line project.

Staff recommendations that City Council adopt a resolution authorizing the City Manager to execute a contract with Norfolk Southern Railway Company for the right of way for the Pipeline Replacement Program Phase II - Contract B, East Asheville/East Buncombe Water Line Project.

Consumption of Malt Beverages and/or Unfortified Wine at 1997 Goombay Festival

Summary: N.C. Gen. Stat. sec. 18B-300(c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and unfortified wine on public streets, and on property owned, occupied or controlled by the City. The City Council of the City of Asheville has adopted an ordinance pursuant to that statutory authority. That ordinance, Section 11-11 in the Code of Ordinances, provides that the City Council may adopt a resolution making other provisions at special event or community festival. The 1997 Goombay! Festival Board, YMI Cultural Center and the Parks and Recreation Department recommends that possession and consumption of malt beverages and/or unfortified wine be allowed at the 1997 Goombay! Festival.

The Parks and Recreation Department recommends that City Council adopt a resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the 1997 Goombay! Festival.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

FAST TRACKERS SINGLE-FAMILY RESIDENTIAL PLANS REVIEW PROCESS TEAM

Mr. James Cheeks, Traffic Engineer, said that the Fast-Trackers Process Management Team, comprised of City Staff from Public Works, Building Safety, Water Resources and Planning and Development Departments have completed the assignment of reviewing the Single-Family Residence Plan Review Process.

The Fast-Tracker Team has performed the necessary evaluation and analyses associated with reviewing the Single-Family Residence Plan Review Process. The Building Safety Department determined that there was a need to analyze and review this process due to complaints from customers concerning the length of time it took to receive a permit to build a single-family residence in the City of Asheville. The team reviewed data for over 18 months and targeted the effects of the lack of personnel, seasonal increases in workloads, lack of homeowner experience with plans creation, designers inability to interpret the building codes, qualifications of persons submitting plans and changes in the process.

The team reviewed this data to determine countermeasures to reduce the turnaround time for these permits. He reviewed the countermeasures which were adopted by Building Safety Department. The issue of additional personnel was addressed in the Fiscal Year 1998 Budget. Additionally, staff is focusing on eliminating unnecessary steps which will help to further reduce the turnaround times.

The team will continue to monitor these changes to try to consistently provide the 3-day turnaround. If this process begins to operate at peak efficiency, staff will try to replicate it in other areas.

Mayor Martin thanked the team for the improvements they have made to streamline the plan review process.

REQUEST OF HEALTHSOUTH SPORTS MEDICINE AND REHABILITATION FOR DESIGNATION OF AN "OFFICIAL CITY ORNAMENT"

City Manager Westbrook said that HealthSouth Sports Medicine and Rehabilitation requests City Council designate an "Official City Ornament."

Mr. Lacy Dylewski of HealthSouth Sports Medicine and Rehabilitation submitted a letter requesting that the City Council designate an "Official City Ornament" each year which will be produced and sold as a fund raising program for United Cerebral Palsy. Should Council decide to designate an "Official City Ornament," City Manger Westbrook suggested the Vance Monument in Pack Square be chosen this year.

Mr. Eric Yarrington, Physical Therapist with HealthSouth, said that the HealthSouth Holiday Ornament project is a fund raising program that has a successful ten year history beginning in 1987 in Charleston, South Carolina. He explained that the project would be a 24 karat gold on brass or silverplate, three dimensional ornament designed to depict a local landmark in the community. Produced as an annual series, it becomes a collector's item where the community looks forward to seeing the new design each year. The ornament will be contained in a burgundy velvet case with a certificate number, thereby certifying its authenticity as a collector's item. All profits will go to the United Cerebral Palsy Foundation for public awareness for the disease.

Discussion surrounded if the City could, or should, officially designate City ornaments.

City Attorney Oast said that he is looking into the question of property rights the City has in their logo and he will investigate if any policy might be appropriate on this issue.

Mr. Yarrington said that if the City was not comfortable in actually designating an ornament as the "official" city ornament, he felt an endorsement, other than the official designation, would help their purpose.

Ms. Bonnie Brannon, representative from the Lewis Rathbun Wellness Center. said that last year they received an endorsement from City Council of the City Hall ornament. This year's ornament is Pack Square. She felt the Center was the first group to start with this ornament series and to endorse other "City" ornaments would dilute the effect of their sales.

Upon request of Councilman Cloninger to actually see the ornament they are asking to be endorsed, Mr. Yarrington showed them samples of what they have done in the past and Ms. Brannon showed Council the Pack Square ornament.

Mayor Martin felt endorsing the ornaments for non-profits is a nice way the City can lend a helping hand without having to actually spend money.

Vice-Mayor Field felt that since this the City has started receiving these requests, a policy needed to be formulated. She didn't think that the public really cared if the ornament was an "official" City ornament or not. She felt if they liked it, they would buy it.

Because the City has no control if someone wants to use the image of City Hall, etc., Councilman Cloninger felt City Council could perhaps endorse the image.

Councilman Hay suggested that we endorse the group that first started with the series.

Upon inquiry of Councilman Hay, Councilman Worley said that the Vance Monument is owned by the City of Asheville.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

EXCHANGE OF CITY-OWNED REAL PROPERTY ON KENTUCKY DRIVE FOR HOUSING AUTHORITY OWNED REAL PROPERTY ON BARTLETT STREET

Mr. Ed Vess, Field Services Coordinator, said that this is consideration of an exchange of property which has been negotiated with the Housing Authority of the City of Asheville in order to facilitate several beneficial projects.

The City has entered into a contract for the sale of 3 acres of land on Bartlett Street to the Douglas Company for the construction of 48 units of elderly housing subject to obtaining access to the public right-of-way. The Housing Authority owns the 7.4 acres of land surrounding the City's property on Bartlett Street. The City owns 4.9 acres of land on Kentucky Drive which is not currently being utilized.

The Housing Authority has agreed to exchange its land on Bartlett Street for the City's land on Kentucky Drive. Prior to transfer of the Kentucky Drive property to the Housing Authority the City would develop infrastructure for a subdivision on the site to provide homeownership opportunities to public housing residents. The estimated costs of extending the necessary infrastructure to this site is approximately $125,000. The City's Community Development Division desires to collaborate with the Authority in the development of the site in order to expand affordable housing opportunities. They hope to be able to build affordable houses The City's Parks and Recreation Department desires to utilize the Authority's land on Bartlett Street to develop a passive park for special populations in the Asheville community, along with additional greenway and provision of access to the City's Bartlett Street property.

The City's property on Kentucky Drive is valued by the Buncombe County Tax Office at $49,700.00 and the Authority's property on Bartlett Street is valued at $124,800.

Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Mr. Vess said that they have had one meeting with the neighborhood.

Upon inquiry of Councilman Sellers, Mr. Vess said that even though the City is proposing to build 17 single-family homes on that site, 40 units would be allowed under the current zoning designation.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

MUNICIPAL AGREEMENT WITH N.C. DEPT. OF TRANSPORTATION FOR IMPROVEMENTS AT THE INTERSECTION OF US 70, US 74 & HAW CREEK LANE

City Engineer Cathy Ball said that this resolution will be to authorize the City Manager to sign a municipal agreement with the N.C. Dept. of Transportation ("NC DOT") for improvements at the intersection of US 70 (Tunnel Road), US 74 (South Tunnel Road) and SR 2863 (Haw Creek Lane).

The City Council authorized the City Manger to negotiate with NC DOT outlining the City's agreement to participate in sidewalks on intersection of US 70 and US 74. The NC DOT's preliminary estimate was $16,300 for the sidewalk. The final estimate for the construction of the sidewalks is $16,300, with the City's portion being 40% of estimate which is $6,520.00. Funding for the South Tunnel Road sidewalk was included in the Fiscal 1995-1996 Sidewalk Program. Construction is scheduled to begin January 1998.

An additional 30-inch water line may need to be relocated as a result of this construction, but the design is not complete at this time. The preliminary estimate NC DOT has given on the relocation of the water line is approximately $93,000. When the design is finalized then staff will request Council approve funds necessary to relocate the water line.

Staff recommends that City Council allow the City Manager to sign the Municipal Agreement for improvements at the intersection of US 70 (Tunnel Road), US 74 (South Tunnel Road) and SR 2863 (Haw Creek Lane).

When Vice-Mayor Field asked with the Dept. of Transportation could do if the City didn't have the money for the relocation of the water line, Assistant City Manager Doug Spell said that they could deduct the amount from Powell Bill revenues.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RESOLUTION NO 97-136 - RESOLUTION MODIFYING SCHEDULED CITY COUNCIL MEETINGS FOR SEPTEMBER, 1997

City Attorney Oast said that since the proposed schedule change shifts the formal session/work session rotation for four meetings, and could affect the timing of hearings on land use and other matters, it is recommended that the schedule change be effected by written resolution. This resolution leaves open the possibility of holding a community meeting following the second formal meeting on September 30, which is on the fifth Tuesday of the month, when Council has been having such meetings.

The City Attorney's Office recommends adoption of the resolution at the August 19 work session. Adoption of a motion to waive the rules is also recommended.

Vice-Mayor Field suggested that the meetings in September be as follows: September 2 - no meeting; September 9 - formal session at 5:00 p.m.; September 16 - worksession at 3:00 p.m.; September 23 - formal session at 5:00 p.m.; and September 30 be either a worksession and/or community meeting. With this schedule, the City Council formal sessions would not conflict with the Buncombe County Commissioner's formal sessions.

Councilman Worley moved to waive the rules and take formal action on a resolution to modify scheduled City Council meetings for September 1997 as follows: September 2 - no meeting; September 9 - formal session at 5:00 p.m.; September 16 - worksession at 3:00 p.m.; September 23 - formal session at 5:00 p.m.; and September 30 be either a worksession and/or community meeting. This motion was seconded by Vice-Mayor Field and carried unanimously.

Vice-Mayor Field moved for the adoption of Resolution No. 97-136. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 165

APPEALS FROM PLANNING & ZONING COMMISSION DENIALS

After a brief discussion relative to the Planning & Zoning Commission's denial regarding the "Viewsheds of Superior Quality" map, it was the consensus of City Council to instruct the City Manager to place this item on the next formal City Council agenda to authorize the Mayor to file written notice with the City Clerk's Office appealing the decision of the Planning & Zoning Commission and scheduling a public hearing for the "Viewsheds of Superior Quality" map relative to the telecommunication towers and their visibility from the Blue Ridge Parkway for September 9, 1997.

After a brief discussion relative to the Planning & Zoning Commission's denial regarding the rezoning of eight parcels on the southside of Broad Street, it was the consensus of City Council to instruct the City Manager to place this item on the next formal City Council agenda to authorize the Mayor to file written notice with the City Clerk's Office appealing the decision of the Planning & Zoning Commission and scheduling a public hearing before the City Council regarding the rezoning of eight parcels on the south side of Broad Street from RM-16 Residential Multi-Family High Density to Office for September 9, 1997.

ENGAGEMENT OF UNDERWRITER

Finance Director Bill Schaefer said that City Council has previously provided direction to staff to proceed with the following projects: Renovation of the Municipal Building and Water Maintenance Building; Repair of City Hall roof; Team with The Grove Arcade Public Market Foundation to renovate the Grove Arcade; and Team with Biltmore Farms, Inc. and others to construct a High Tech/Flex Space Building. Currently estimated approximate costs of the projects are: $15 million Municipal and Water Maintenance Buildings; $1.1 million City Hall Roof; $2.25 Grove Arcade; and $2.5 High Tech/Flex Space Building. These projects will be financed through the issue of Certificates of Participation. Additionally, current market conditions indicate that it may be cost effective to refinance a portion of the City's presently outstanding debt. Such refinancing will not only result in lower effective interest rates on the "old" debt; but, also may provide flexibility and potentially lower interest rates on the "new" financings. Combining the refinancing and "new" financings in a single offering will result in a significant reduction in the costs of issuance.

The services of a team of underwriters will be required in order to develop the most efficient and economical financing structure and to successfully market the COP issue. A Request for Proposal (RFP) process was used to select the recommended underwriting team. RFPs were sent to 17 underwriting firms (representing regional and nationwide coverage and including racial and gender minority firms). Ten written proposals were received and evaluated. Four were then selected for further evaluation through oral interviews. Based on those evaluations, staff recommends the engagement of: First Union Capital Markets Corp.; Wheat First Butcher Singer; and A.G. Edwards & Sons, Inc. (First Union Capital

Markets Corp. and Wheat First Butcher Singer "teamed" to submit a joint proposal.)

Staff recommends City Council adopt the resolution which engages underwriters for the issue of Certificates of Participation.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

OTHER ITEMS

Planning & Zoning Commission Candidates

Vice-Mayor Field said that due to the importance of the Planning & Zoning Commission and the numerous outstanding candidates, she asked if the City Council would be interested in either sending the candidates some questions for written responses or perhaps a second interview. In addition, Councilman Skalski was not present for the oral interviews and she felt it might be better for all Council to be voting with the same level of information.

Since the majority of Council was not interested in Vice-Mayor Field's suggestion, she said that she would call the candidates individually.

City Council Mid-Year Retreat Item

City Manager Westbrook was instructed to add "Minimum Housing Code Inspections" as an item for the City Council mid-year retreat on August 22, 1997, at North Fork.

"Viewsheds of Superior Quality" Map

Mr. Mel Thomason asked that City Council delay the public hearing on adoption of "Viewsheds of Superior Quality" Map relative to telecommunication towers and their visibility from the Blue Ridge Parkway. He said that the Blue Ridge Parkway now desires to start the process over again in terms of public participation and he felt the City would be well served to allow that process to happen. Mayor Martin said that this issue will be on the Council's next formal meeting agenda for consideration.

Councilman Hay was opposed to postponing adoption. He felt it would be a good idea to adopt the map and then at such time as necessary, it could be reviewed.

Exchange of City-Owned Property on Kentucky Drive for Housing Authority-Owned Property on Bartlett Street

The property owner at 41 Kentucky spoke against the exchange of City-owned real property on Kentucky Drive for Housing Authority-owned property on Bartlett Street. He felt that it would not be in the best interest of the City to build houses on greenspace. He felt the City might be better served in looking for land on the outskirts of the City for some 17 low income homes. He said that at neighborhood meeting, the majority of residents spoke in opposition to this exchange. Some neighbors felt the development would be detrimental to property values, no more greenspace and the streets in the area were too small to handle any additional traffic.

Rezoning of Property on Broad Street

A property owner at 91 Broad Street spoke in opposition of rezoning the eight parcels on the southside of Broad Street from RM-16 Residential Multi-Family High Density to Office.

CLOSED SESSION

At 4:28 p.m., Councilman Worley moved to go into closed session for the following reasons: (1) to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the attorney and the City - statutory authorization is G.S. 143-318.11 (a) (3); (2) to discuss matters relating to the location or expansion of industries of other businesses in the area served by the City Council - the statutory authority is G.S. sec. 143-318.11 (a) (4); and (3) to establish or to instruct the City staff concerning the position to be taken by the City in negotiating the price or other material terms of a proposed contract for the acquisition of real property by purchase, option, exchange or lease - statutory authorization is G.S. 143-318.11 (a) (5). This motion was seconded by Councilman Sellers and carried unanimously.

At 5:20 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

ADJOURNMENT:

Mayor Martin adjourned the meeting at 5:20 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Friday - August 22, 1997 - 1:00 p.m.
North Fork Reservoir
Mid-Year Retreat

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman James J. Skalski

City Council reviewed their Fiscal Year 1996/97 Strategic Plan.

City Development Director John Scaralia reviewed a revised Economic Development Policy. City Council pointed out some areas where the policy could be strengthened in terms of explanation and wording, and discussed the policy and its impact on the City in general. City Council instructed the City Manager to bring this matter before the Council at a future worksession for discussion before final approval.

Planning & Development Director Julia Cogburn briefed Council on the Map of Consideration (for annexation) and a proposal for the development of a five-year annexation plan. Her comments were made from the standpoint of the City's need to establish reasons for annexation and for having an annexation plan. Budget Director Bob Wurst discussed the financial impact of annexation both on the City and the residents who would be annexed. The major point of his report was the loss of state revenue if the City does not continue to annex and have its population grow when compared to the County and other large municipalities across the state. As a result of the briefing, it was the consensus of City Council to (1) hire a consultant to perform an annexation feasibility study with the possible date to be presented to City Council in March, 1998; (2) that the extraterritorial issue be considered as part of the annexation plan; and (3) that the adoption of the Map of Consideration be considered at a future worksession.

Planning & Development Director Julia Cogburn updated City Council on the nonconforming sign enforcement. She emphasized the amount of work and the volume of signs that had to be reviewed and worked with on an individual basis.

City Attorney Bob Oast reviewed several organizational issues with Council, in addition to the new law which will go into effect on October 1, 1997, relative to closed session. It was the consensus of City Council (1) to eliminate the roll call vote on all ordinance amendments; (2) to delay any changes to the quorum provisions; (3) to instruct the City Attorney to proceed with a Charter change to be consistent with State law relative to the number of times City Council must meet a month; (4) to review information regarding rezonings, land use, etc. at worksessions prior to the scheduled public hearings; and (5) to instruct the City Attorney begin formulating a Rule change to allow routine procedural matters to be acted upon at any meeting properly called.

After City Attorney Oast presented several options on restructuring public comment due to the televised Council meetings, it was the consensus of City Council to not make any changes regarding public comment at this time.

City Manager Westbrook reviewed with City Council the possibility of evolving our current worksession (committee of the whole) to a more specialized standing committee system. Council agreed that a standing committee system has merit and suggested the City Manager have this as a possible topic at the Annual Retreat in January after the new City Council takes office.

Director of Building Safety Terry Summey briefed City Council on the progress and concerns regarding enforcement of the Housing Code. City Council was committed to the enforcement of the Code. It was the consensus of Council to (1) investigate holding water service transfers until a housing inspection is obtained; (2) mandate third party inspectors for all initial inspections; and (3) instruct staff to initiate other changes that would increase the City's ability to inspect its housing stock.

Councilman Worley briefed Council on the Bicentennial Committee's funding. It was the consensus of Council to proceed at the next formal meeting with a budget amendment to match a grant from Carolina Power & Light Company, in the amount of $12,500, for the street festival commemorating the bicentennial.

It was the consensus of City Council, at the request of Vice-Mayor Field, to move quickly on a policy on traffic calming measures and if adopted, to make the policy a part of the Standard Specifications and Details Manual.

Councilman Cloninger felt that the Greenway Committee needed to meet and discuss the $75,000 greenway grant the City has received and how the City will be involved with regard to that grant. He said that after the Committee meets, he will report back to Council.

At the request of Vice-Mayor Field, Planning & Development Director Julia Cogburn explained to Council the status of the affordable housing policy.

Mayor Martin adjourned the meeting at 6:15 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday - August 26, 1997 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Edward C. Hay Jr.

INVOCATION

Councilman Sellers gave the invocation.

I. PROCLAMATIONS:

A. OUTSTANDING RECREATION AND PARK BOARD AWARD

Mayor Martin presented Chairman of the Recreation Board Bill Estes with the Outstanding Recreation and Park Board Award from the North Carolina Recreation and Parks Society. Mr. Estes thanked the Recreation Board members, City Council and City staff for their time, effort, expenditures and interest in parks and recreation in the City of Asheville.

B. PROCLAMATION PROCLAIMING AUGUST 29-31, 1997, AS "GOOMBAY! FESTIVAL DAYS"

Mayor Martin read the proclamation proclaiming Friday, August 29, Saturday, August 30, and Sunday, August 31, 1997, as "Goombay! Festival Days" in the City of Asheville. He presented the proclamation to Mr. Gene Ellison who briefed the Council on the activities that will be taking place on those days.

PUBLIC HEARING RELATIVE TO REZONE PROPERTY ON BOONE STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO INDUSTRIAL DISTRICT

Mayor Martin said that on August 25, 1997, Mr. Barry Eavenson appealed the Planning & Zoning Commission's "negative recommendation" of the 100-foot strip along the vacant lot on Boone Street from RM-8 Residential Multi-Family Medium Density to Industrial District. Since the "affirmative recommendation" of the Commission has been advertised for today, the City Council will need to reschedule this public hearing for September 9, 1997, so that the entire lot can be considered for rezoning.

Vice-Mayor Field moved to reschedule this public hearing for September 9, 1997. This motion was seconded by Councilman Sellers and carried unanimously.

PUBLIC HEARING RELATIVE TO REZONE FOUR PROPERTIES ON OR BEHIND EAST CHESTNUT STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY TO OFFICE

Due to an error in advertising, Councilman Worley moved to reschedule the public hearing until September 9, 1997. This motion was seconded by Councilman Skalski and carried unanimously.

II. CONSENT AGENDA:

At the request of Mr. Ralph Bishop, Item A. was removed from the Consent Agenda for discussion.

At the request of Mr. Mel Thomason, Item K. was removed from the Consent Agenda for discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 12, 1997; THE SPECIAL MEETING HELD ON AUGUST 15, 1997; AND THE WORKSESSION HELD ON AUGUST 19, 1997

This item was removed from the Consent Agenda for discussion.

B. RESOLUTION NO. 97-138 - RESOLUTION EXTENDING THE TERMS OF MEMBERSHIP ON THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE FROM TWO TO THREE YEAR TERMS

Summary: City Council feels it would be in the best interest of the City to amend the terms of the Americans with Disabilities Compliance Committee from two years to three years.

RESOLUTION BOOK NO. 24 - PAGE 166

C. RESOLUTION NO. 97-139 - RESOLUTION FINDING THE RHODODENDRON CIRCLE PROJECT COMPLETE, ASSESSING THE TOTAL COST AND CALLING FOR A PUBLIC HEARING ON SEPTEMBER 9, 1997, ANNOUNCING THE COMPLETION OF THE PRELIMINARY ASSESSMENT ROLL

RESOLUTION BOOK NO. 24 - PAGE 167

D. RESOLUTION NO. 97-140 - RESOLUTION TO SET A PUBLIC HEARING ON SEPTEMBER 23, 1997, TO CLOSE PORTION OF OLD HAYWOOD ROAD

RESOLUTION BOOK NO. 24 - PAGE 169

E. RESOLUTION NO. 97-141 - RESOLUTION ACCEPTING A REPORT ON THE DISPOSAL OF CITY-OWNED PERSONAL PROPERTY

Summary: Consideration of a resolution accepting a report on the sale of City-owned property for the Parks & Recreation Department, the Water Resources Department and the Fleet Management Division.

Resolution No. 85-99 adopted by City Council on June 25, 1985, established procedures for disposing of personal property valued at less than $500. Pursuant to these procedures, the resolution identifies property disposals for the Parks & Recreation Department, the Water Resources Department and the Fleet Management Division during the period of January 1, 1997 through June 30, 1997.

Revenues from these sales totals $2,420.10 and have been deposited as follows: $279.00 in the 20 fund for the Parks & Recreation Department, $405.60 in the 44 fund for Fleet Management Division and $1,735.50 in the 30 fund for the Water Resources Department.

RESOLUTION BOOK NO. 24 - PAGE 170

F. RESOLUTION NO. 97-142 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN ENCROACHMENT AGREEMENT WITH NORFOLK SOUTHERN RAILWAY FOR THE PIPELINE REPLACEMENT PROGRAM - PHASE II, CONTRACT B - EAST ASHEVILLE/EAST BUNCOMBE WATERLINE PROJECT

Summary: The consideration of a contract with Norfolk Southern Railway to allow a pipeline under their track as a part of the Pipeline Replacement Program - Phase II, Contract B.

The Engineering Department developed construction plans for the Pipeline Replacement Program Phase II - Contract B, East Asheville/East Buncombe Water Line Project and this right of way is included to complete the construction of the water pipeline. In order to move forward with the project, a resolution needs to be adopted authorizing the City Manager to execute on behalf of the City of Asheville a contract with Norfolk Southern Railway Company, for the City of Asheville to install, maintain, and operate a six inch water pipeline in a sixteen inch casing pipe, under and across the right of way or property and any tracks of Railway, at Milepost T-8 plus 3,275 feet, wholly with the confines of Candler School Road, for the construction of the Pipeline Replacement Program Phase II -Contract B, East Asheville/East Buncombe Water Line project.

Staff recommendations that City Council adopt a resolution authorizing the City Manager to execute a contract with Norfolk Southern Railway Company for the right of way for the Pipeline Replacement Program Phase II - Contract B, East Asheville/East Buncombe Water Line Project.

RESOLUTION BOOK NO. 24 - PAGE 172

G. RESOLUTION NO. 97-143 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A UTILITY AGREEMENT WITH N.C. DEPT. OF TRANSPORTATION FOR THE IMPROVEMENTS OF US 70 (TUNNEL ROAD), US 74 (SOUTH TUNNEL ROAD) AND SR 2863 (HAW CREEK LANE) NEAR THE ASHEVILLE MALL

Summary: This resolution will be to authorize the City Manager to sign a municipal agreement with the N.C. Dept. of Transportation ("NC DOT") for improvements at the intersection of US 70 (Tunnel Road), US 74 (South Tunnel Road) and SR 2863 (Haw Creek Lane).

The City Council authorized the City Manger to negotiate with NC DOT outlining the City's agreement to participate in sidewalks on intersection of US 70 and US 74. The NC DOT's preliminary estimate was $16,300 for the sidewalk. The final estimate for the construction of the sidewalks is $16,300, with the City's portion being 40% of estimate which is $6,520.00. Funding for the South Tunnel Road sidewalk was included in the Fiscal 1995-1996 Sidewalk Program. Construction is scheduled to begin January 1998.

An additional 30-inch water line may need to be relocated as a result of this construction, but the design is not complete at this time. The preliminary estimate NC DOT has given on the relocation of the water line is approximately $93,000. When the design is finalized then staff will request Council approve funds necessary to relocate the water line.

Staff recommends that City Council allow the City Manager to sign the Municipal Agreement for improvements at the intersection of US 70 (Tunnel Road), US 74 (South Tunnel Road) and SR 2863 (Haw Creek Lane).

RESOLUTION BOOK NO. 24 - PAGE 173

H. RESOLUTION NO. 97-144 - RESOLUTION APPROVING UNDERWRITER FOR THE ISSUANCE OF CERTIFICATES OF PARTICIPATION

Summary: City Council has previously provided direction to staff to proceed with the following projects: Renovation of the Municipal Building and Water Maintenance Building; Repair of City Hall roof; Team with The Grove Arcade Public Market Foundation to renovate the Grove

Arcade; and Team with Biltmore Farms, Inc. and others to construct a High Tech/Flex Space Building. Currently estimated approximate costs of the projects are: $15 million Municipal and Water Maintenance Buildings; $1.1 million City Hall Roof; $2.25 Grove Arcade; and $2.5 High Tech/Flex Space Building. These projects will be financed through the issue of Certificates of Participation. Additionally, current market conditions indicate that it may be cost effective to refinance a portion of the City's presently outstanding debt. Such refinancing will not only result in lower effective interest rates on the "old" debt; but, also may provide flexibility and potentially lower interest rates on the "new" financings. Combining the refinancing and "new" financings in a single offering will result in a significant reduction in the costs of issuance.

The services of a team of underwriters will be required in order to develop the most efficient and economical financing structure and to successfully market the COP issue. A Request for Proposal (RFP) process was used to select the recommended underwriting team. RFPs were sent to 17 underwriting firms (representing regional and nationwide coverage and including racial and gender minority firms). Ten written proposals were received and evaluated. Four were then selected for further evaluation through oral interviews. Based on those evaluations, staff recommends the engagement of: First Union Capital Markets Corp.; Wheat First Butcher Singer; and A.G. Edwards & Sons, Inc. (First Union Capital Markets Corp. and Wheat First Butcher Singer "teamed" to submit a joint proposal.)

Staff recommends City Council adopt the resolution which engages underwriters for the issue of Certificates of Participation.

RESOLUTION BOOK NO. 24 - PAGE 174

I. RESOLUTION NO. 97-145 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1997 GOOMBAY FESTIVAL

Summary: N.C. Gen. Stat. sec. 18B-300(c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and unfortified wine on public streets, and on property owned, occupied or controlled by the City. The City Council of the City of Asheville has adopted an ordinance pursuant to that statutory authority. That ordinance, Section 11-11 in the Code of Ordinances, provides that the City Council may adopt a resolution making other provisions at special event or community festival. The 1997 Goombay! Festival Board, YMI Cultural Center and the Parks and Recreation Department recommends that possession and consumption of malt beverages and/or unfortified wine be allowed at the 1997 Goombay! Festival.

The Parks and Recreation Department recommends that City Council adopt a resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the 1997 Goombay! Festival.

RESOLUTION BOOK NO. 24 - PAGE 175

J. MOTION SETTING A PUBLIC HEARING FOR SEPTEMBER 9, 1997, TO REZONE EIGHT PARCELS ON THE SOUTHSIDE OF BROAD STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY TO OFFICE

K. MOTION SETTING A PUBLIC HEARING FOR SEPTEMBER 9, 1997, TO CONSIDER THE "VIEWSHEDS OF SUPERIOR QUALITY" MAP RELATIVE TO THE TELECOMMUNICATION TOWERS AND THEIR VISIBILITY FROM THE BLUE RIDGE PARKWAY

This item was removed from the Consent Agenda for discussion.

L. MOTION SETTING A PUBLIC HEARING FOR SEPTEMBER 9, 1997, TO PROPERTY ON EMMA ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO CI COMMERCIAL INDUSTRIAL

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions on the Consent Agenda and they will not be read.

Vice-Mayor Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION

APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 12, 1997; THE SPECIAL MEETING HELD ON AUGUST 15, 1997; AND THE WORKSESSION HELD ON AUGUST 19, 1997

Mr. Ralph Bishop, resident of the City of Asheville, spoke to Council about seeking redress relative to City Council's minutes and the meaning of full and accurate minutes.

At the request of Mayor Martin, City Attorney Oast said that it was his opinion on the basis of opinions from the Supreme Court that G.S. 160A-72, which provides for the keeping of full and accurate minutes of the Council proceedings, does not require the keeping of a verbatim record. Roberts Rules of Order states that the minutes shall be a record of what occurred in the meeting, not what was said, and the Supreme Court has specifically endorsed Roberts Rules of Order on that point.

Councilman Worley felt that the problem seems to be that Mr. Bishop takes the statute that says we are required to keep full and accurate minutes (and there is absolutely no question that that is the law) and then translates in his own mind for that to mean verbatim minutes. One of the rules of legal construction is one of strict construction and that is words are construed very strictly when they are interpreted by the courts. If the legislature had intended verbatim minutes, they would have said verbatim minutes. We do keep full and accurate records. Those records contain a full account of everything City Council does and they are accurate. They are not verbatim. He felt that Mr. Bishop believes that the minutes should be verbatim and we've indicated time and time again that our understanding and our construction of the law supported by a Supreme Court case is that they do not have to be verbatim. We are basically at a position where we disagree.

Vice-Mayor Field moved to approve the minutes of the regular meeting held on August 12, 1997; the special meeting held on August 15, 1997; and the worksession held on August 19, 1997. This motion was seconded by Councilman Worley and carried unanimously.

MOTION SETTING A PUBLIC HEARING FOR SEPTEMBER 9, 1997, TO CONSIDER THE "VIEWSHEDS OF SUPERIOR QUALITY" MAP RELATIVE TO THE TELECOMMUNICATION TOWERS AND THEIR VISIBILITY FROM THE BLUE RIDGE PARKWAY

Mr. Mel Thomason asked that this public hearing be postponed in order that interested parties can meet and reach some kind of agreement that will be in the best interest of the City. He hoped City Council would give direction to staff that Council is interested in proceeding in this manner.

Councilman Cloninger said that the purpose of the public hearing which was held by the Planning & Zoning Commission and the public hearing which will be held by the City Council - for interested parties to comment. He felt, along with two representatives he has spoken with from the Blue Ridge Parkway, that a map needed to be adopted as expeditiously as possible.

Upon inquiry of Councilman Worley, Mr. Thomason said that the Blue Ridge Parkway representatives expressed to him that they wished they would have had the opportunity to meet with interested parties before endorsing the map.

Planning & Development Director Julia Cogburn said that her staff has been in touch with the Blue Ridge Parkway and a meeting is being scheduled with interested parties. However, she recommended that City Council proceed with adoption of a map or some modification to the map because our ordinance references a map. If, after adoption of the map, changes are recommended, the map can be amended.

Councilman Cloninger moved to set a public hearing on September 9, 1997, to consider the "Blue Ridge Parkway - Viewsheds of Superior Quality" map regarding telecommunication towers and their visibility from the Blue Ridge Parkway. This motion was seconded by Councilman Sellers and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING A LOT ON LOGAN AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO CB II COMMERCIAL BUSINESS II

City Attorney Oast said that a valid protest petition has been filed. Therefore, any vote in favor of this rezoning will have to pass by a 3/4 majority of the entire Council, and since one member is absent, it would have to be a unanimous vote.

Mayor Martin opened the public hearing at 5:33 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, asked for consideration of an ordinance to rezone one lot on Logan Avenue (PIN No. 9638.11-75-4218) from RM-8 Residential Multi-Family Medium Density to CB II Community Business II.

The subject property is one lot on Logan Avenue. The 2010 Plan indicates low density residential along the rear part of Haywood Road in this area. However, the current character of this immediate area is small commercial with this lot being used for commercial storage. Due to the terrain, the most convenient access to the adjoining commercial property that fronts on Haywood Road is from this lot. The surrounding properties are residential on the north and west and commercial on the south and east.

The Planning staff reviewed the rezoning request and recommended approval of the rezoning of lot 9638.11-75-4218 from RM-8 Residential Multi-Family Medium Density to CB II Community Business II. At their July 2, 1997, the Planning & Zoning Commission voted a tie (3 to 3) on the rezoning request (one commissioner was absent).

On July 17, 1997, Ms. Kathy Plemmons Rathbone appealed the Planning & Zoning Commission's decision to City Council.

Mr. Darrell Rathburn, resident on Logan Avenue, presented City Council with a petition containing 48 signatures opposing the Logan Avenue rezoning. The petition reads "The Logan Ave. & Brownwood Ave. areas were and still are designed and used for residential use. In the last 90 days there have been two (2) motor vehicle accidents at the intersection of Logan Ave. & Brownwood Ave. These accidents are directly related to the improper use of property in this area. In addition there are currently dozen of race car tires being stored in the road. We have called the Police Dept. on several occasions due to this and other problems, such as abandoned vehicles. Please investigate this matter thoroughly before making any decision. Also, please help us with the violations that are currently taking place at Logan Ave. and Brownwood Ave. intersection." In addition to presenting the petition, Mr. Rathburn presented City Council with numerous pictures showing the deplorable condition of the lot that is being requested to be rezoned.

Mr. Craig Justus, attorney representing the parties interested in buying the lot, hoped that City Council would grant a continuation of this public hearing not only due to a valid protest petition being filed, but also it will allow more time within which to meet with the neighborhood, discuss their concerns and try to reach an agreement that would benefit both the neighborhood and the owner of the lot. He said that unfortunately the transition overlay concept cannot be used in a one lot context. He said that his clients were looking at dedicating one part of the property for a park for the neighborhood and didn't intend to build a structure right up on Logan Avenue. He did note that some of the problems on Logan Avenue are attributable to the commercial development on the corner.

Upon inquiry of Vice-Mayor Field, Mr. Justus said that regardless of whether Council rezones this lot or not, his clients will buy the property and use it for the full maximum RM-8 potential and that may not be what the neighborhood ultimately wants.

Ms. Delores Poor, property owner on Logan Avenue, spoke in opposition to the rezoning. She said the area is residential and they are not opposed to houses building built on the lot.

Mr. Bill Allen, property owner on Logan Avenue, spoke against the rezoning. He felt that the street has been neglected by the City and traffic in the area is a real problem. He said that the neighborhood is trying to make their area a nice place to live.

Mr. Larry Hardin, property owner on Logan Avenue, urged council to deny the rezoning request. He felt that to rezone the lot commercial would take away from the improvements the neighborhood is working on.

Mr. David Beebe, property owner on Logan Avenue, spoke against the rezoning stating that access to the area is miserable.

Mr. Ken Lentz, property owner on Logan Avenue, urged Council not to rezone the property because once the property is rezoned, they or further owners can built anything on it allowed in the Commercial Business II.

Mayor Martin instructed the City Manager to investigate the concerns raised regarding traffic, tires on the street which are a hazard and narrows the road width, illegally parked trucks, etc.

Mayor Martin closed the public hearing at 6:05 p.m.

Councilman Sellers moved to continue the public hearing until the entire Council is present. This motion was seconded by Vice-Mayor Field.

Councilman Sellers explained that if it is commercially abutted on both sides and it had an entrance to Haywood Road, it would be a different issue. Postponing this might give the property owner time to see about access to Haywood Road, with possibly a buffer on the back side of Logan Avenue.

When Mayor Martin asked for a vote on continuing the public hearing, Vice-Mayor Field and Councilmen Sellers and Worley voted "yes" and Mayor Martin and Councilmen Cloninger and Skalski voted "no." Therefore, the motion failed.

Councilman Skalski then moved to deny the request to rezone the lot on Logan Avenue from RM-8 to CB II. This motion was seconded by Councilman Worley and carried on a 5-1 vote, with Councilman Sellers voting "no."

B. PUBLIC HEARING TO APPLY THE MANUFACTURED HOUSING OVERLAY TO 31 PROPERTIES ZONED RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY IN THE EAST PORTER ROAD AREA

ORDINANCE NO. 2401 - ORDINANCE TO APPLY THE MANUFACTURED HOUSING OVERLAY TO 31 PROPERTIES ZONED RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY IN THE EAST PORTER ROAD AREA

Mayor Martin opened the public hearing at 6:07 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, asked for consideration of an ordinance which seeks to apply the Manufactured Housing Overlay to 31 (thirty-one) properties in the East Porter Road Area.

The proposed rezoning seeks to apply the Manufactured Housing Overlay to 31 properties in the East Porter Road Area of East Asheville. The properties cover approximately 38 acres and consist of: PIN Nos. 9657.12-96-0622, 0367, 1527, 1670, 2624, 2687, 4783, 6582, 4530, 3338, 5302, 2274, 1198, 0077, 4011, 6130; 9657.12-86-5327, 8590, 8247, 8090; 9657.12-85-5924, 6935, 7000, 8903, 9825; 9657.12-95-4707, 1748, 0716, 7787, 6862; and 9657.16-94-3795. The underlying zoning on all the properties involved is RS-8. The 2010 plan appears to indicate this area as low density residential. The area currently contains a mix of site built and manufactured homes. This area was one of the areas previously identified by the Manufactured Housing Overlay Committee (of the UDO process) as a potential area for the application of the manufactured housing overlay zone. The failure to apply the overlay during the UDO mapping process was due to an oversight on the part of the Planning and Development Department Staff. Staff is, therefore, initiating this rezoning in order to correct this omission.

The Planning and Development Staff initiated and recommended this zoning overlay to the Planning and Zoning Commission at their meeting on August 6, 1997. The Commission unanimously voted to recommend approval of this rezoning to the Asheville City Council.

Vice-Mayor Field noted that manufactured housing does not increase the City's tax base - that is the County's tax base. She personally felt that manufactured housing is much more dangerous in terms of fires, than stick-built homes and felt that there should be a sprinkler requirement for manufactured homes. But, on the other hand, manufactured homes are affordable.

Mayor Martin closed the public hearing at 6:15 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2401. This motion was seconded by Councilman Sellers.

On a roll call vote of 6-0, Ordinance No. 2401 passed on its first and final reading.

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.C. PUBLIC HEARING RELATIVE TO REZONE 88 LOTS ON BREVARD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM RESIDENTIAL TO RS-8 RESIDENTIAL SINGLE FAMILY

ORDINANCE NO. 2402 - ORDINANCE TO REZONE 88 LOTS ON BREVARD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM RESIDENTIAL TO RS-8 RESIDENTIAL SINGLE FAMILY

Mayor Martin opened the public hearing at 6:16 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, asked for Council's consideration of ordinance to rezone 88 lots on Brevard Road from RM-8 Residential Multi-Family Medium Density to RS-8 Residential Single Family.

The subject properties are 88 lots that front directly on Brevard Road from the Masonic Lodge south to I-240 except for the Lauralwood Condominiums which will remain RM-8. The 2010 Plan indicates low density residential along Brevard Road in this area. This request is to correct a mapping error that was overlooked during the UDO hearings and clearly intended by the Planning and Zoning Commission and City Council to be RS-8.

The Planning staff reviewed the rezoning request and recommended approval to rezone the 88 lots from RM-8 Residential Multi-Family Medium Density to RS-8 Residential Single Family. At the August 6, 1997, Planning & Zoning Commission meeting, the Commissioners voted unanimously to approve the rezoning request.

At the request of Ms. Pauline Parker, Mr. Ownbey explained how this rezoning will affect her property.

Mayor Martin closed the public hearing at 6:21 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2402. This motion was seconded by Councilman Skalski.

On a roll call vote of 6-0, Ordinance No. 2402 passed on its first and final reading.

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D. PUBLIC HEARING RELATIVE TO PARTIALLY REZONING 1899 HENDERSONVILLE ROAD FROM HB HIGHWAY BUSINESS TO OB OFFICE BUSINESS

ORDINANCE NO. 2403 - ORDINANCE TO PARTIALLY REZONING 1899 HENDERSONVILLE ROAD FROM HB HIGHWAY BUSINESS TO OB OFFICE BUSINESS

When Vice-Mayor Field asked if she had a conflict of interest since the petitioner is a client of the architectural firm in which she is employed, City Attorney Oast asked if her firm participated in this rezoning request. When Vice-Mayor Field replied that she was not aware of it, then City Attorney Oast said he saw no reason for her to be excused from voting.

Mayor Martin opened the public hearing at 6:21 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Erin McLoughlin, Urban Planner, said that the petitioner requests that a portion of parcel 9655.13-14-3658 be rezoned from HB Highway Business to OB Office Business.

The petitioner requests that 0.16 acres be rezoned from HB to OB. HB is established to address the needs of commercial development. OB is established for medium scale offices and a limited range of business uses and may serve as a transition area between commercial and residential uses. This request is a minor adjustment of zoning lines and would not impact the surrounding area or infrastructure.

Staff has received no comments in opposition to this rezoning request.

The City Planning and Development staff recommends approval of the rezoning request. At their August 6, 1997, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning request.

Mayor Martin closed the public hearing at 6:24 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2403. This motion was seconded by Councilman Cloninger.

On a roll call vote of 6-0, Ordinance No. 2403 passed on its first and final reading.

E. PUBLIC HEARING RELATIVE TO BROOKS-HOWELL VILLAGE GROUP DEVELOPMENT

Mayor Martin opened the public hearing at 6:25 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Mike Matteson, Urban Planners, said that the proposed project consists of 11 new residential units (four duplexes and a triplex) and an activities center located on a 1.8 acre portion of the Brooks-Howell property.

Plans for this project were submitted within the 30 day window after the adoption of the UDO. Therefore, the project is being reviewed as a Group Development under the previous zoning ordinance (pre-UDO zoning was R-3).

Because the development will provide housing for the elderly, Brooks-Howell is asking that Council allow a reduction in the parking requirements from 24 spaces to 14 spaces.

Council will also be asked to approve an alternative to the buffering requirements along the west property line. The ordinance allowed the buffer to consist of a 5-foot strip with a 6-foot fence. Brooks-Howell is working with the adjacent property owner to design a buffer, using primarily vegetation, which meets the intent of the ordinance and is more sensitive the adjoining property.

At their August 6, 1997, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of this group development. Additionally, the Commission recommended that City Council allow the reduction in parking and approve the alternate buffering plan being developed.

This recommended approval was with three conditions: (1) Receipt of letters of approval for water, sewer and adequate water pressure for fire protection; (2) That the variance for alternate compliance with the City's buffering requirements either be granted by Council or a revised landscape plan must be submitted to staff; and (3) That the required handicap parking space be labeled more clearly on the plans.

Carleton Collins, architect for the project, said that the drawings submitted adhered to the ordinance in terms of what the composition of the buffer should be. He said that the adjacent property owner asked if there was any leeway regarding the buffering and after consultation with the Planning staff it was indicated that there may be some flexibility to allow that buffer to be somewhat less. He said that they will be meeting with the adjacent property owner over the next couple of weeks to determine exactly what the buffer will be and saw no problem with bringing the plan back to City Council on September 23, 1997.

Ms. Betty Lawrence, the adjacent property owner at 142 Hillside Street, felt that an alternate buffering plan could be worked out. She asked if Council could do anything about the requirement to increase the width of their driveway on Hillside Street from approximately 9 feet to 20 feet (to allow two fire trucks to pass each other). She was told it was a Fire Code requirement and was concerned that a rock wall would have to be torn down.

Mr. Collins said that their original drawings indicated the existing driveway width at the entrance to Hillside remain what it is currently. The Fire Department has requested it be widened, primarily because of fire access issues. It was their intention, if they eliminated a portion of the wall, to rebuild a similar corner - just further away to accommodate that request.

Vice-Mayor Field questioned why a 20-foot driveway was required.

City Attorney Oast said that it as his understanding that this is a Fire or Building Code requirement and Council doesn't have the authority to amend those provisions at this time. He said that would have to be an amendment to the appropriate ordinances.

Vice-Mayor Field was under the impression that our technical requirements were not carved in stone and that there was some flexibility. She said City Council needs to have the opportunity and ability to have some narrower driveways.

It was the consensus of Council to direct staff to look into the possibility of more flexibility in our technical requirements, especially relating to driveway widths.

Mayor Martin closed the public hearing at 6:35 p.m.

Councilman Skalski moved to continue the approval of an alternate buffering plan until September 23, 1997. This motion was seconded by Councilman Cloninger and carried unanimously.

Vice-Mayor Field moved to approve the reduction in parking at the Brooks-Howell Village from 24 to 14 spaces. This motion was seconded by Councilman Worley and carried unanimously.

Councilman Worley moved to approve the Brooks-Howell Village group development, subject to final approval of the buffering plan. This motion was seconded by Councilman Sellers and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. REQUEST FROM HEALTHSOUTH SPORTS MEDICINE & REHABILITATION FOR ENDORSEMENT OF AN "OFFICIAL CITY ORNAMENT" TO BE PRODUCED AND SOLD AS A FUND RAISING PROGRAM FOR UNITED CEREBRAL PALSY

Mayor Martin said that he received a letter dated August 21, 1997, from Lacy Dylewski, PT, Administrator of HealthSouth Sports Medicine & Rehabilitation, stating that they would like to withdraw their request for endorsement of the Holiday Ornament Program from the City of Asheville.

B. RESOLUTION NO. 97-146 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE ANNOUNCING CITY COUNCIL'S INTENT TO AUTHORIZE EXCHANGE OF CITY-OWNED REAL PROPERTY ON KENTUCKY DRIVE FOR HOUSING AUTHORITY-OWNED REAL PROPERTY ON BARTLETT STREET

Mr. Ed Vess, Field Services Coordinator, said that this is consideration of an exchange of property which has been negotiated with the Housing Authority of the City of Asheville in order to facilitate several beneficial projects.

The City has entered into a contract for the sale of 3 acres of land on Bartlett Street to the Douglas Company for the construction of 48 units of elderly housing subject to obtaining access to the public right-of-way. The Housing Authority owns the 7.4 acres of land surrounding the City's property on Bartlett Street. The City owns 4.9 acres of land on Kentucky Drive which is not currently being utilized.

The Housing Authority has agreed to exchange its land on Bartlett Street for the City's land on Kentucky Drive. Prior to transfer of the Kentucky Drive property to the Housing Authority the City would develop infrastructure for a subdivision on the site to provide homeownership opportunities to public housing residents. The estimated costs of extending the necessary infrastructure to this site is approximately $125,000. The City's Community Development Division desires to collaborate with the Authority in the development of the site in order to expand affordable housing opportunities. They hope to be able to build affordable houses The City's Parks and Recreation Department desires to utilize the Authority's land on Bartlett Street to develop a passive park for special populations in the Asheville community, along with additional greenway and provision of access to the City's Bartlett Street property.

The City's property on Kentucky Drive is valued by the Buncombe County Tax Office at $49,700.00 and the Authority's property on Bartlett Street is valued at $124,800.

Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Mr. Vess stated that the average cost of houses in the neighborhood, based on the County's tax records, is $36,492. He explained there are 13 homes around the Rankin School site and their values range from $17,900 to $67,800. Six homes are valued at less than $30,000; four homes are valued at between $30-40,000; and three homes are valued at between $55-70,000. He said that the homes they are proposing to build on the Rankin School site should range in the $75-85,000 range. He felt that if there was an impact on the value of other properties, it would be a positive impact.

Upon inquiry of Vice-Mayor Field, Mr. Vess said that even though there will be more traffic on the street, it is a two lane road and should accommodate the additional traffic.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 97-146. This motion was seconded by Vice-Mayor Field and carried unanimously.

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VI. OTHER BUSINESS:

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A. ORDINANCE NO. 2404 - BUDGET AMENDMENT TO ESTABLISH AN APPROPRIATION FOR THE BICENTENNIAL CELEBRATION

At the request of Councilman Worley after discussion at the City Council mid-year retreat, Mr. Irby Brinson, Director of Parks & Recreation said that this is consideration of a budget amendment to establish an appropriation for the Bicentennial Celebration totaling $111,575 and a supplemental appropriation from the City of $12,500.

The City Council has approved appropriations of $6,540 for Fiscal 1996/97 and $6,900 for Fiscal 1997/98 in support of the Bicentennial Celebration. This Budget action sets up budgets for the Celebration functions totaling $111,575. Because sponsorship revenues are not meeting expectations, it will be necessary for the City to commit $12,500 of City funds to match a $12,500 grant from Carolina Power & Light. This should ensure that the activities are adequately funded. If revenues from sponsorships and/or sales of souvenirs and other revenues are adequate, the City's contribution may not be required.

The staff recommends that funding for the Bicentennial be approved totaling $111,575 and that the General Fund Operating Budget be amended to appropriate $12,500 from Fund Balance for the Bicentennial Celebration.

Upon inquiry of Mayor Martin, Mr. Brinson said that souvenirs can be purchased from the Parks & Recreation Department.

Mayor Martin said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2404. This motion was seconded by Vice-Mayor Field.

On a roll call vote of 6-0, Ordinance No. 2404 was adopted on its first reading.

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B. COMMENTS BY MR. RALPH BISHOP

Mr. Ralph Bishop, resident of the City of Asheville, asked the Mayor to instruct the Police Department personnel to quit "threatening" him regarding disruption of City Council meetings. He emphasized to City Council that he does not come to the meetings seeking redress with the intent to disrupt any meeting.

Mayor Martin said that Mr. Bishop is always welcome to address City Council, but the only objection they have is when he disrupts the Council's proceedings. Mayor Martin said that personnel is only asking him not to disrupt the meetings and the comments are not meant to be threatening.

C. CLAIMS

The following claims were received by the City of Asheville during the week of August 8-21, 1997: BellSouth (Water), Roxanne Wilson (Streets), Robert C. Morgan (Traffic Engineering), Doris Lynch (Parks & Recreation), Margaret B. Mauldin (Inspections), Mae Plemmons (Water), David Freck (Sanitation) and Nellie Parham (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 7:06 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday - September 9, 1997 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Skalski gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION OF ALL AMERICA CITY COMMUNITY GRANT FROM THE ALLSTATE FOUNDATION

Mayor Martin introduced Ms. Joyce Boyette, representative from a local Allstate agency here in Asheville, who presented the City of Asheville with a check from the Allstate Foundation in the amount of $10,000 for the All America City community grant.

Mayor Martin said that the City of Asheville is pleased to accept this $10,000 Community Grant from the Allstate Foundation for being one of the 10 All-America Cities chosen this year. Being a part of the delegation from Asheville that traveled to Kansas City, he saw first hand the dedication and support that Allstate has shown for the All-America City Program. It has certainly been a wonderful experience for Asheville and he knows that he speaks for the other 10 cities chosen when he says "thank you" for your continued interest in communities and civic renewal.

This check will be passed along by the City to the three projects featured in our application: HandMade In America, Asheville-Buncombe VISION, and the Minnie Jones Health Clinic, representing the Healthcare Industry. It is fitting to reward these organizations that are doing so much for our community.

B. PROCLAMATION PROCLAIMING THE WEEK OF SEPTEMBER 21-27, 1997, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Mayor Martin read the proclamation proclaiming Friday, September 21-27, 1997, as "Minority Enterprise Development Week" in the City of Asheville. He presented the proclamation to Ms. Catherine Deaverux, First Vice-President of the Minority Business Alliance, who briefed the Council on the activities that will be taking place during that week.

II. CONSENT AGENDA:

Mr. Ralph Bishop asked that Item A. be removed from the Consent Agenda for discussion.

Mr. H.K. Edgerton asked that Item C. be removed from the Consent Agenda for discussion.

A. APPROVAL OF THE MINUTES OF THE MID-YEAR RETREAT MEETING HELD ON AUGUST 22, 1997, AND THE FORMAL MEETING HELD ON AUGUST 26, 1997

This item was removed from the Consent Agenda for discussion.

B. RESOLUTION NO. 97-147 - RESOLUTION REGULATING CONSUMPTION AND POSSESSION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT MARTIN LUTHER KING JR. PARK FOR THE GREAT SMOKIES CRAFT BREWERS INVITATIONAL

Summary: The consideration of a resolution authorizing the possession of open containers of malt beverages and/or unfortified wine and the consumption of malt beverages and/or unfortified wine be allowed at the Great Smokies Craft Brewers Invitational at the Martin Luther King Jr. Park on September 20, 1997.

The Great Smokies Craft Brewers Invitational is a unique celebration of the art of brewing beer in the spirit of Oktoberfest with a smokey mountain twist. The Asheville Downtown Association in conjunction with Barley's Tap Room, the Radisson Hotel, Asheville Parks and Recreation and other local businesses have developed this festival to highlight the quality beers of the region. Over 30 brewers have been invited to present their high quality beers in a festival atmosphere at the Martin Luther King, Jr. Park on September 20, 1997. Local entertainment and food will be available from 1:00 p.m. - 6:00 p.m. Proceeds from the event will benefit the Asheville Urban Trail project. The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during this event on City property.

The Asheville Parks and Recreation Department staff recommends approval of this request.

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C. RESOLUTION AUTHORIZING EXCHANGE OF CITY-OWNED REAL PROPERTY ON KENTUCKY DRIVE FOR HOUSING AUTHORITY-OWNED REAL PROPERTY ON BARTLETT STREET

This item was removed from the Consent Agenda for discussion.

D. RESOLUTION NO. 97-145A - RESOLUTION RATIFYING MODIFICATION OF THE RESOLUTION REGULATING CONSUMPTION AND POSSESSION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1997 GOOMBAY FESTIVAL

Summary: The consideration of allowing alcoholic beverages at the 1997 Goombay! Festival within the area known as "City/County Plaza."

The N.C. Gen. Stat. sec. 18B-300(c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and unfortified wine on public streets, and on property owned, occupied or controlled by the City. The City Council of the City of Asheville has adopted an ordinance pursuant to that statutory authority. That ordinance, Section 11-11 in the Code of Ordinances, provides that the City Council may adopt a resolution making other provisions at a special event or community festival. The 1997 Goombay! Festival Board, YMI Cultural Center and the Parks and Recreation Department recommends that possession and consumption of malt beverages and/or unfortified wine be allowed at the 1997 Goombay! Festival.

On August 26, 1997, Council passed such a resolution for the Goombay Festival. However, at the time of the Council action, staff did not know of the desire of the YMI Cultural Center or the 1997 Goombay Festival Board to use City/County Plaza on Friday evening as part of the festival area.

Staff recommends that City Council adopt an addendum to the resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the 1997 Goombay! Festival to include the area of City/County Plaza.

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E. MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 23, 1997, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE WITH REGARD TO CHANGEABLE COPY SIGNS, CHURCH SIGNS AND SIGNS IN THE RIGHT-OF-WAY

F. MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 23, 1997, TO REZONE 11.68 ACRES OF PROPERTY OFF HENDERSONVILLE ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY TO INSTITUTIONAL

G. MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 23, 1997, TO ZONE A PARCEL OF LAND WHICH WAS PREVIOUSLY IN THE TOWN OF BILTMORE FOREST ON HENDERSONVILLE ROAD TO INSTITUTIONAL

H. MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 23, 1997, TO ADD A MANUFACTURED HOUSING OVERLAY TO PROPERTY ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY LOCATED AT THE END OF FOREST RIDGE DRIVE (OLD BEAR CREEK ROAD)

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions on the Consent Agenda and they will not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Field and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION

APPROVAL OF THE MINUTES OF THE MID-YEAR RETREAT MEETING HELD ON AUGUST 22, 1997, AND THE FORMAL MEETING HELD ON AUGUST 26, 1997

Mr. Ralph Bishop, resident of the City of Asheville, spoke to Council about seeking redress relative to City Council's minutes and the meaning of full and accurate minutes.

Councilman Cloninger moved to approve the minutes of the mid-year retreat meeting held on August 22, 1997, and the formal meeting held on August 26, 1997. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION NO. 97-148 - RESOLUTION AUTHORIZING EXCHANGE OF CITY-OWNED REAL PROPERTY ON KENTUCKY DRIVE FOR HOUSING AUTHORITY-OWNED REAL PROPERTY ON BARTLETT STREET

Summary: The consideration of authorizing the Mayor to execute necessary documents to effect an exchange of property with the Housing Authority of the City of Asheville in order to facilitate several beneficial projects.

The City Council directed the City Clerk to publish a notice regarding its intent to exchange 4.9 acres of land on Kentucky Drive which the City owns for 7.4 acres of land on Bartlett Street which the Housing Authority owns. The notice was published on August 29, 1997. No public comments have been received.

The exchange will facilitate the following: (1) The construction of 48 units of affordable elderly housing via the sale of the Murray Hill site to the Douglas Company; (2) The construction of 17 units of affordable single family owner-occupied housing via collaboration with the Housing Authority to build a subdivision on the Kentucky Drive site; and (3) The construction of a passive park by Parks and Recreation Department on the Bartlett Street site.

The City's property on Kentucky Drive is valued by the Buncombe County Tax Office at $49,700 and the Authority's property on Bartlett Street is valued at $124,800.

Approval of the resolution will authorize the Mayor to execute the necessary documents to effect the exchange of the properties as provided in N. C. G. S. 160A-271.

Community Development staff recommends adoption of the resolution.

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Mr. H.K. Edgerton hoped that the housing strategy for the City will include minority developers and all non-profits in the City.

Councilman Hay felt sure that the housing study will be responsive to the comments Mr. Edgerton voiced.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved to approve Resolution No. 97-148. This motion was seconded by Vice-Mayor Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 182

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING FIVE PROPERTIES ON OR BEHIND EAST CHESTNUT STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY TO OFFICE

Mr. Mike Matteson, Urban Planner, said that the petition to rezone was received from four property owners, two of which have asked their properties be removed from consideration. In light of this request, staff is recommending this matter be continued until September 23, 1997.

Councilman Hay moved to continue this matter until September 23, 1997, without further advertisement, in contemplation of the possibility that the petition be withdrawn. This motion was seconded by Vice-Mayor Field and carried unanimously.

B. PUBLIC HEARING RELATIVE TO REZONING PROPERTY ON BOONE STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO INDUSTRIAL DISTRICT

ORDINANCE NO. 2405 - ORDINANCE TO REZONE PROPERTY ON BOONE STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO INDUSTRIAL DISTRICT

Mayor Martin opened the public hearing at 5:25 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, asked for consideration of an ordinance to rezone property on Boone Street from RM-8 Residential Multi-Family Medium Density to Industrial.

The subject property is located off Emma Road on Boone Street and is owned by Appalachian Stove. The 2010 Plan indicates this area to be low density residential; however, the adjacent property is currently zoned industrial and also owned by Appalachian Stove. Access to this property would only be from within the existing industrial development due to the inadequate standards of Boone Street to handle industrial traffic and the noticeable terrain difference between the east and west areas of this lot. After Planning staff reviewed the rezoning request, they recommended approval of PIN No. 9639.19-62-4295, except for a 100 foot strip along Boone Street which should remain RM-8 to deny industrial access to Boone Street from this lot and provide for an opportunity for residential development.

At the August 6, 1997, Planning & Zoning Commission meeting, the Commissioners voted 6-1 to approve the rezoning request, except the 100-foot strip along Boone Street.

On August 25, 1997, the petitioner appealed to City Council that the entire lot, including the 100-foot strip along Boone Street, be rezoned to Industrial.

Mr. Barry Eavenson, President of Appalachian Stove and Fabricators Inc., explained that his company has been a part of the community for many years and they now need to expand. He noted that this lot was zoned industrial prior to Unified Development Ordinance zoning changes. He said that he would be willing to compromise with a 30-foot strip along Boone Street remaining RM-8 realizing that the 30-foot strip could not be used for residential purposes.

Vice-Mayor Field pointed out that if the buffer was reduced from a 100-foot strip to a 30-foot strip, we would be losing over an acre of land that could be used for low density housing.

Councilman Sellers felt that the area is industrial in nature and a 30-foot buffer strip would address the concerns of traffic on Boone Street, while still allowing Appalachian Stove to expand.

When Mr. Ralph Bishop asked that the ordinance be read pursuant to Rule 23 of the City Council Rules & Procedures, City Attorney Oast noted that the Rule states that "requests by members of the public for an ordinance or resolution to be read in its entirety in a council meeting shall only be complied with upon a vote of the majority of the council." City Attorney Oast said that a copy of the ordinance can be provided to him at no charge.

Mayor Martin closed the public hearing at 5:40 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2405, to rezone PIN No. 9639.19-62-4295 to Industrial, except for a 30-foot strip along Boone Street which shall remain zoned RM-8. This motion was seconded by Councilman Cloninger and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 289

C. PUBLIC HEARING RELATIVE TO REZONING PROPERTY ON EMMA ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO CI COMMERCIAL INDUSTRIAL

Mr. Barry Eavenson, President of Appalachian Stove and Fabricators, Inc., asked that this public hearing be continued until October 14, 1997, in order to allow City Council time within which to visit the property being requested to be rezoned.

Councilman Sellers moved to continue the public hearing until October 14, 1997, without further advertisement. This motion was seconded by Councilman Worley and carried unanimously.

D. PUBLIC HEARING RELATIVE TO REZONING EIGHT PARCELS ON THE SOUTH SIDE OF BROAD STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY TO OFFICE

Councilman Worley said that he understands that there is a desire and willingness to continue this public hearing. However, due to the number of people at this meeting, he suggested the public hearing be opened, comments taken, and then continue the public hearing.

At the request of Councilman Cloninger, Councilman Sellers moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

Mayor Martin opened the public hearing at 5:46 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

City Attorney Oast said that a valid protest petition has been received, thus invoking the 3/4's vote requirement. Since Councilman Cloninger has been excused from voting, there would need to be a unanimous vote by City Council to adopt the ordinance.

Mr. Mike Matteson, Urban Planner, said that this is consideration of rezoning eight properties on the south side of Broad Street (between Madison Avenue and Charlotte Street) from RM-16 to Office.

When Council adopted the Unified Development Ordinance and the official zoning maps, it appears that their intention was to zone at least two of these properties as "Office". That intention, however, was not translated by staff onto the official zoning maps. Rather, these properties were designated as being zoned RM-16. Staff is presenting this rezoning as a way to correct this mapping error and has included the additional properties so as to create a more desirable zoning pattern in the area.

The RM-16 zoning district is a high-density multi-family district allowing up to 16 units per acre. The Office district allows a mixture of small scale office uses and residential uses at a density of up to 8 units per acre.

At their August 6, 1997, meeting, the Planning and Zoning Commission voted 4-3 to recommend denial of the rezoning. City Council then appealed the Planning & Zoning Commission's recommendation.

The following persons spoke against the rezoning for several reasons, some being: the neighborhood wants to keep the area residential; the increase in traffic will threaten the safety of the children in the area; a low income housing neighborhood will be destroyed; the office district will start of precedent of encroachment in the residential community; residents in the area like the convenience of living close to downtown and do not want to feel like they are being chased from their homes; Broad Street is too narrow at one end; there will be an increase in crime; residents want to keep affordable housing in their neighborhood; residents in the neighborhood are renovating their homes; and homeowners will be able to obtain federal tax credits because they are in a national historic district:

Ms. Angela Scotchie, 91 Broad Street
Mr. H.K. Edgerton
Ms. Janet Hart, 60 Baird Street
Ms. Jean Warner, 87 North Liberty Street
Mr. Arthur Davis, 12 Madison Avenue
Mr. Vincent Ramsuer, 111 Broad Street
Ms. Coleen Watkins, 87 Madison Avenue
Mr. Paul Conrad, 91 Broad Street
Mr. Winthrop Holcombe, 45 Madison Avenue
Ms. Roberta Greenspan, 48 Madison Avenue
Ms. Nelda Holder
Mr. Andy Scotchie, 303 Country Club Road
A resident from 19 Washington Road

Mr. Craig Justus, attorney representing Dennie Martin, owner of two lots in the area proposed to be rezoned, noted that throughout the whole Unified Development Ordinance process, Planning staff, the Planning & Zoning Commission and City Council expressed a willingness to rezone this area to office, and it is only because of a mapping error that this matter has been brought back up. He did, however, ask that this issue be tabled to give them an opportunity to meet with the community and see if a solution or at least a compromise can be achieved.

Mr. Ralph Bishop again asked that the ordinance be read pursuant to Rule 23 of the City Council Rules & Procedures. City Attorney Oast again noted that the Rule states that "requests by members of the public for an ordinance or resolution to be read in its entirety in a council meeting shall only be complied with upon a vote of the majority of the council." City Attorney Oast said that a copy of the ordinance can be provided to him at no charge.

Mr. Dennie Martin said that over 15 years ago his company made an investment in a risky neighborhood and they have now built their third facility in that area. He felt that the neighborhood is being revitalized because of some positive environment changes made by people who took chances and made investments in their area. They have made a substantial commitment to the community and feel they have been a positive influence. He said that his goal would be to arrive at a compromise that works for everyone.

Councilman Hay said that from the number and phone calls and letters he's received, he felt there is an opportunity to find some common ground and he would like to explore that before making a final decision.

Councilman Worley moved to continue the public hearing until October 14, 1997, without further advertisement. This motion was seconded by Councilman Sellers and carried unanimously.

E. PUBLIC HEARING RELATIVE TO ADOPTING THE "BLUE RIDGE PARKWAY, VIEWSHEDS OF SUPERIOR QUALITY" MAP REGARDING TELECOMMUNICATION TOWERS AND THEIR VISIBILITY FROM THE BLUE RIDGE PARKWAY

RESOLUTION NO. 97-149 - RESOLUTION ADOPTING A MAP ENTITLED "BLUE RIDGE PARKWAY, VIEWSHEDS OF SUPERIOR QUALITY"

Mayor Martin opened the public hearing at 6:33 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Julia Cogburn, Planning & Development Director, said that this is consideration of a resolution adopting a map entitled "Blue Ridge Parkway, Viewsheds of Superior Quality" as set forth in Section 7-16-2.D.3. of Chapter 7 of the Code of Ordinances of the City of Asheville, North Carolina.

In April of this year, City Council passed an ordinance amendment to provide for regulations established to protect the Blue Ridge Parkway's scenic quality. Included in these regulations was a provision that no telecommunications towers be erected in areas determined by The Asheville City Council to be "Blue Ridge Parkway, Viewsheds of Superior Quality." The ordinance references a map which will be adopted by Council to show the location of the "Viewsheds of Superior Quality." The United States Department of Interior Blue Ridge Parkway Offices have provided advice to the Planning and Development Department in the production of a map indicating proposed "Viewsheds of Superior Quality." The map is presented for City Council's review and adoption.

The Planning and Development staff recommends approval of the proposed map. At the August 6, 1997, meeting of the Planning and Zoning

Commission, the Commissioners voted 4-3 to recommended that the proposed map not be adopted.

Ms. Cogburn briefed Council on the comments she has received.

Discussion surrounded how much of the area within the City limits is residential property.

Mr. John VanDyke, Legislative Chair of the Asheville Board of REALTORS, Inc., read a letter dated September 9, 1997, in which they ask that this matter be tabled to allow the Blue Ridge Parkway staff, the City Planning staff, those affected property owners and other interested parties to meet and discuss other alternatives to this overlay. The letter reads in part:

"It is our understanding that the proposed overlay map is designed to restrict telecommunication towers only. There are some serious concerns that, if this map is approved, additional restrictions on property owners may or can be forthcoming. Our points of understanding and concerns are as follows: (1) An ordinance is in place on telecommunications towers which 'does not allow towers in residential districts'; (2) All of the overlay map areas of Haw Creek are zoned residential and, therefore, telecommunications towers cannot locate there. Why is it necessary to have another form of regulation over private property owners by approving this map overlay? Are you not really setting the wheels in place that could lead to limiting other developments or land uses in the overlay area? (3) The proposed Hendersonville Road map overlay appears to affect commercial and residential areas, and therefore, concerns our organization, as again, the restriction of telecommunications towers could be expanded to other buildings, whether condos, offices, commercial, etc.; (4) It is our understanding your planning commission recommended denial of the map overlays for some of the following reasons; (a) Only two or three people from the Blue Ridge Parkway staff solely picked the map area; (2) There is a concern the Department of Interior will dictate to the City what is 'suitable and unsuitable' and the City will have to pay for the cost of enforcement; (c) The question is asked: Should the federal government buy scenic easements from those property owners affected?; (d) And, finally, 'today it is telecommunications towers, tomorrow will it be buildings?'; and (5) It is also our understanding you are holding this public hearing to appeal the Planning Commission's position."

Mr. Steve Gravenstein, property owner in Haw Creek, spoke in support of Council moving forward with adoption of this map which is necessary to preserve the scenic beauty of our area.

Ms. Barber Melton, Vice-President of the Haw Creek Homeowners Association, urged Council to adopt the viewshed map.

Mr. Karl Koon, member of the Planning & Zoning Commission, reported to Council the reasons why he voted against adoption of the map.

Mayor Martin, along with Councilman Cloninger, spoke in support of adoption of the map noting that we cannot afford to run the risk of having our viewing area littered with telecommunication towers. Both agreed that the map can be amended but in the meantime, we need to protect what we have.

Upon inquiry of Mr. Koon, Councilman Cloninger explained the difference between a telecommunication tower and the use of stealth technology with antennas.

Vice-Mayor Field totally supports protecting the viewshed, however, she had not had an opportunity to actually drive the area with the map to see what viewsheds the Blue Ridge Parkway is asking City Council protect. She said that she would like to see a process put in place for more of a community process in the identification of those areas.

Councilman Worley agreed with Vice-Mayor Field in that he agrees with the concept, but would like the opportunity to view the areas first-hand.

Mr. Mel Thomason urged City Council to postpone adoption of the map and let the interested parties meet to discuss other alternatives.

Mayor Martin closed the public hearing at 7:07 p.m.

Mayor Martin said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 97-149. This motion was seconded by Vice-Mayor Field and carried unanimously.

Councilman Worley requested a method within which to review this and do whatever fine-tuning is necessary.

Vice-Mayor Field moved to request staff to proceed with setting up a meeting with all the parties involved as soon as possible and report back to Council on what can be done for more community involvement and education (both for Council and the community). This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 183

F. PUBLIC HEARING RELATIVE TO ANNOUNCING THE COMPLETION OF THE PRELIMINARY ASSESSMENT ROLL ON THE RHODODENDRON CIRCLE SPECIAL ASSESSMENT PROJECT

RESOLUTION NO. 97-150 - RESOLUTION CONFIRMING THE PRELIMINARY ASSESSMENTS MADE IN THE RHODODENDRON CIRCLE SPECIAL ASSESSMENT PROJECT

Mayor Martin opened the public hearing at 7:11 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Suzanne Molloy, Assistant Director of Public Works, said that this is consideration of confirming the Preliminary Assessments made in the Rhododendron Circle Special Assessment Project.

The Public Works Department has assessed the total costs for the Rhododendron Circle project, completed in June 1997 and prepared a preliminary assessment roll.

The property owners residing on Rhododendron Circle (beginning at its intersection with Rhododendron Place and ending at its intersection with Old Haw Creek Road) petitioned the City of Asheville to accept Rhododendron Circle as a City System street. Improvements consisting of spot repairs and patching along, tie-ins to driveways, and total resurfacing were necessary for acceptance of the street. Property owners on Rhododendron Circle should be assessed for fifty percent (50%) of the costs as agreed to in the original petition.

In June 1997, the Rhododendron Circle project was completed. The cost of enhancements to Rhododendron Circle project is $9,365.50 which amount includes the costs of labor, materials, equipment, and the costs of publication of notices and resolution.

A preliminary assessment role for benefited property owners has been prepared. The amount assessed to each benefited property owner is based upon fifty percent (50%) of the enhancement costs at an equal rate per foot of frontage.

The Public Works Department staff recommends the adoption of the resolution confirming the preliminary assessments made in the Rhododendron Circle Project. Staff further recommends acceptance of Rhododendron Circle as a City Street.

Mayor Martin closed the public hearing at 7:14 p.m.

Mayor Martin said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 97-150. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 184

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. **RESOLUTION NO. 97-151 - RESOLUTION REAPPOINTING MEMBERS TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE**

Vice-Mayor Field said that the terms of Carol Williams and Glenda McDowell expired on August 22, 1997. This resolution will reappoint Ms. Williams and Ms. McDowell to each serve a three year term, terms to expire August 22, 2000, or until their successors have been appointed.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Skalski moved for the adoption of Resolution No. 97-151. This motion was seconded by Councilman Sellers and carried unanimously.

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B. **RESOLUTION NO. 97-152 - RESOLUTION APPOINTING SAM POWERS AS THE CHAMBER OF COMMERCE REPRESENTATIVE ON THE CITY BUSINESS AND DEVELOPMENT COMMISSION**

Vice-Mayor Field said that Ord. 2309 established the City Business and Development Commission. Said ordinance authorized various agencies to appoint members to the Commission.

Mr. Jay Garner, the Chamber of Commerce representative, has resigned, and the Chamber of Commerce has requested that Mr. Sam Powers, Economic Developer for the Chamber of Commerce be appointed to replace Mr. Garner as the Chamber of Commerce representative.

Mr. Powers will serve the unexpired term of Mr. Garner, said term to expire on October 1, 2000, or until his successor is appointed.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 97-152. This motion was seconded by Councilman Skalski and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 187

C. **RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND BOARD OF TRUSTEES**

Vice-Mayor Field said that a representative from Wachovia Bank, which holds the funds for this Board, will be submitting a name for consideration. Therefore, Vice-Mayor Field moved to table this matter until a recommendation is received. This motion was seconded by Councilman Skalski and carried unanimously.

D. **RESOLUTION NO. 97-153 - RESOLUTION REAPPOINTING MEMBERS TO THE MINORITY BUSINESS COMMISSION**

Vice-Mayor Field said that the terms of Robbie Williams, Bonnie Habel and Ronald Blythe expired on August 1, 1997. Since the City and Council have been working on a draft City-County Minority Business Plan, City Council felt it was in their best interest to reappoint these members until the new Plan is adopted.

This action will reappoint Ms. Williams (as representative of the YMI Cultural Center), Ms. Habel (as representative of the Asheville-Buncombe Community Relations Council), and Mr. Blythe (as representative of the Asheville Business Development Center), to each serve an additional two year terms, terms to expire August 1, 1999, or until their successors have been appointed.

Mr. H.K. Edgerton read a statement which informed City Council that the NAACP is appalled that the Council continues to deny the NAACP a seat on the Minority Business Commission as well as the Downtown Development Commission. He urged City Council pay attention to the poor attendance of the members currently on the Commission.

Mayor Martin explained that City Council did not feel it was necessary to make changes to the Commission membership since the Plan is in the process of being amended.

Vice-Mayor Field explained that the Minority Business Commission is made up of business organizations and the NAACP is seen as a civil rights organization. With regard to the City Business & Development Commission, that Commission have appointments from African American business organizations.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 97-153. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 188

E. RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE TREE COMMISSION

Vice-Mayor Field moved that these appointments be considered again during the next quarterly appointment process. This motion was seconded by Councilman Sellers and carried unanimously.

F. RESOLUTION NO. 97-154 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION

Mayor Martin said that the terms of Robert Swicegood and Rod Hudgins expired on August 14, 1997.

Each Council member voiced praise about all candidates for the Planning & Zoning Commission. It was the consensus of Council to nominate all candidates interviewed (Mac Swicegood, Arthur Anderson, Billie Buie, Lionel Williams, Anne Campbell, Jerry Bailey and Jan Davis) and to include Luke Carpenter in the nominations at the request of Councilman Skalski.

It was the consensus of Council that the two people who received four votes would be the two members on the Commission. Each Council member then voiced their support of their two choices.

Councilman Cloninger nominated Lionel Williams and Billie Buie.

Vice-Mayor Field nominated Billie Buie and Jan Davis.

Councilman Hay nominated Billie Buie and Jan Davis.

Councilman Sellers nominated Mac Swicegood and Jan Davis.

Councilman Skalski nominated Luke Carpenter and Jerry Bailey.

Councilman Worley nominated Mac Swicegood and Lionel Williams.

Mayor Martin nominated Mac Swicegood and Lionel Williams.

Since Mac Swicegood, Billie Buie, Lionel Williams and Jan Davis each received three votes, City Council again chose two of those four candidates.

Councilman Cloninger nominated Lionel Williams and Billie Buie.

Vice-Mayor Field nominated Billie Buie and Jan Davis.

Councilman Hay nominated Billie Buie and Jan Davis.

Councilman Sellers nominated Mac Swicegood and Jan Davis.

Councilman Skalski nominated Jan Davis and Billie Buie.

Councilman Worley nominated Jan Davis and Lionel Williams.

Mayor Martin nominated Mac Swicegood and Lionel Williams.

Jan Davis received 5 votes, Billie Buie received 4 votes, Lionel Williams received 3 votes and Mac Swicegood received 2 votes. Therefore, Councilman Hay moved to appoint Jan Davis and Billie Buie, to the Planning & Zoning Commission. Mr. Davis and Ms. Buie will each serve a three year term, terms to expire August 14, 2000, or until their successors have been appointed. This motion was seconded by Councilman Skalski and carried unanimously.

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G. RESOLUTION NO. 97-155 - RESOLUTION APPOINTING A MEMBER TO THE TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Field said that the term of John Winkenwerder expires on August 30, 1997. This resolution will appoint Don Tomlinson, Quality Inn - Biltmore, (as owner or operator of a hotel, motel or other taxable tourist accommodation) to serve a three year term, term to expire August 30, 2000, or until his successor is appointed.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Field moved for the adoption of Resolution No. 97-155. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 190

VI. OTHER BUSINESS:

A. COMMENTS FROM RALPH BISHOP

Mr. Ralph Bishop spoke to Council relative to full and accurate minutes.

B. CLAIMS

The following claims were received by the City of Asheville during the week of August 22-28, 1997: Fairway Villas (Water), Don G. Bryant (Traffic Engineering), PYPLLC (Streets), Louis J. Mongiovi (Water), Jimmie Deane Parris (Streets), Jody Lyda (Sanitation), W.G. Dixon (Water), James Thrasher (Streets) and James Keefer (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

C. CLOSED SESSION

At 8:00 p.m., Councilman Worley moved go into closed session for the following reasons: (1) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City - G.S. 143-318.11 (a) (4); and (2) to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the attorney and the City. The parties in the lawsuit about which the City expects to received advise are CC&J Enterprises Inc. and the City of Asheville - G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Sellers and carried unanimously.

At 8:35 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilman Cloninger and carried unanimously.

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VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 8:35 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday - September 16, 1997 - 3:00 p.m.

Worksession

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski (arrived in meeting at 3:15 p.m.); and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; Assistant City Manager S. Douglas Spell; and City Clerk Magdalen Burleson

Absent: City Manager James L. Westbrook

CONSENT AGENDA:

Submittal of Homeownership Zone Application to HUD

Summary: The consideration of a resolution to approve submittal of funding applications to U. S. Department of Housing and Urban Development to expand homeownership opportunities in the target area.

Public Auction

Summary: Consideration of a resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction.

Municipal Records Retention & Disposition Schedule

Summary: The consideration of approving the N. C. Dept. of Cultural Resource's updated Municipal Records Retention and Disposition Schedule issued August 15, 1997.

Purchase of 285 Linear Feet of 8-inch Sewer Line from Beaver Creek Partnership to service Carter Cove Community

Summary: The consideration of authorizing the expenditure of funds in the amount of $12,000 to Beaver Creek Partnership for 285 linear feet of 8-inch private sanitary sewer line to connect an existing Metropolitan Sewage District sewer line to a proposed 8-inch sanitary sewer line to service the Carter Cove community.

Transfer of Wind Song Subdivision Pumping Station Property to City of Asheville

Summary: The consideration of approval of the transfer of property to the City of Asheville for the Wind Song Subdivision pumping station property.

Acceptance of Regional Water Authority's Recommendation to award contract re: Bee Tree Dam Modification Project

Summary: The consideration of awarding an Engineering Services Contract to Applied Geosciences and Engineering, Inc.

Acceptance of Regional Water Authority's Recommendation to award contract re: Gap Creek/Cane Creek 12-inch Waterline Contract

Summary: The consideration of awarding a construction contract to Cooper Construction Company for the Gap Creek/Cane Creek 12-inch Waterline Contract.

65 Starnes Avenue Grocery Sign Request for Designation of Landmark Sign

Summary: The consideration of a request from the owner of the Asheville Store for landmark designation of the Starnes Avenue Grocery Sign, located at 65 Starnes Avenue.

Resolution regulating Consumption and Possession of Malt Beverages and/or Unfortified Wine at the Greek Festival

Summary: The consideration of a resolution allowing alcoholic beverages at Asheville's 11th Annual Greek Festival on October 3-5, 1997.

Authorize City Clerk to Advertise Sale of Disposal Parcel 10.1 on Carroll Avenue

Summary: The consideration of authorizing the Mayor to execute necessary documents to effect an exchange of property with the Housing Authority of the City of Asheville in order to facilitate several beneficial projects.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

GREENWAY MASTER PLAN

Ms. Erin McLoughlin, Urban Planner, said that the Trust for Public Land has received a grant from the Janeirve Foundation to prepare a greenway master plan for the City of Asheville.

The Trust for Public Land applied for and received a Janeirve grant to continue their work on greenways in Asheville. They received a total of $75,000 of which $25,000 is for their continued work on the Broadway Greenway and $50,000 is for a greenway master plan. The Janeirve Foundation stipulated that the master plan monies ($50,000) would need to be matched dollar for dollar. The Planning and Development Department had $30,000 in this year's budget for greenway planning. This money will be used to match $30,000 from the grant. A budget amendment in the amount of $20,280 is necessary for reimbursable expenses that will be incurred during the master plan process. The budget amendment will transfer $20,280 from the General Capital Fund Contingency for this purpose leaving a balance of $70,720 in Contingency.

The City will be responsible only for those expenses actually incurred. Any monies not used in the master plan process will be used to leverage other funds for future greenway work.

The Planning and Development Department recommends (1) that the City Manager be authorized to sign the Conservation Services Agreement with The Trust for Public Land; and 2) that City Council adopt a budget amendment in the amount of $20,280 so that The Trust for Public Land can begin work in September on a master greenway plan for the City.

A representative from The Trust for Public Land responded to questions from Council relative to the Master Plan and stated that the Plan would completed around June of 1998.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

DESIGNATION OF PORTION OF LAND CROSSING WATERSHED PROPERTY AS NORTH CAROLINA "MOUNTAIN-TO-SEA" TRAIL

City Attorney Oast said that this is the consideration of a resolution authorizing the designation of an existing trail through the North Fork Watershed Property as a segment of the North Carolina Mountains-to-Sea Trail.

The Carolina Mountain Club has approached the City to request the City's consent to an application for the inclusion of an existing trail through the North Fork Watershed as a segment of the "Mountains-to-Sea" Trail. The application is made to the N. C. Dept. of Environment, Health and Natural Resources. The Club initially communicated to the City that the City's action was not needed until late in the Fall, but later discussions indicated that the City's consent was needed earlier. An appropriate investigation was conducted and there was no apparent problem with consenting to the application. The investigation and results are detailed in a Memorandum and letter, dated August 25, 1997.

Mr. Dwayne Stutzman, Regional Trails Specialist with the N.C. Dept. of Environment, Health & Natural Resources, passed out some information in the history of the Trail.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ADDITIONS TO THE FEES & CHARGES MANUAL

Audit/Budget Director Bob Wurst said that this is consideration of adding three fees to the Fees and Charges Manual to be effective September 23, 1997.

During the budget process, three items related to fees and charges were omitted from the information presented to City Council. Staff requests City Council consideration of these items so as to become effective September 23, 1997.

The Engineering Department of the City of Asheville is requesting that the Asheville Standards Specifications and Details Manual be sold in Manual form for $25 per copy and the standard details be sold in a 10-Disk set for $100, plus shipping charges if applicable.

The Engineering Department is also requesting that a maximum for street cut permit fees be set at $2,500. Staff has evaluated the fee schedule for street cuts and feels that a maximum fee is appropriate for the large job size. This amount was reached based on a review of data from previous projects with large street cuts.

The Administration Department has included a copy fee policy that would be applicable to all City departments and addresses the different types of documents available for duplication.

Staff recommends that the City Council adopt the new fees effective September 23, 1997.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RENOVATION OF CITY DEVELOPMENT BUILDING FACADE

Mr. Lyle Willis, Contract Administrator, said that this is consideration of the selection of a contractor to perform repairs of the facade of the City Development Building (Martin Building).

Over the course of the last few years, it has been determined that the facade of the City Development Building (Martin Building) is in need of repair. There is evidence of stucco and structural fastener deterioration and several large pieces of stucco have completely fallen off the building. A consulting architectural firm, Camille Alberice Architects PA of Asheville, was hired to determine the extent of repairs needed, and bid specifications and plans were drawn up accordingly. The scope of work was outlined as follows: Repair the front and back sides of the parapet wall, sidewalk, drywall ceiling, and structural fasteners (Roof work was not included.).

On July 7, 1997, advertisement for bid letters were sent out requesting proposals for the above-described work. No bid proposals were received by the advertised bid date of July 18, 1997. The contractors were then contacted again, at which time they responded that the project was very specialized and they were therefore reluctant to bid. At that time there was a single contractor who expressed a willingness to research the project further and submit a proposal. On August 21, 1997, staff received a written proposal and, after review of these bid proposals, it was determined that Carolina Cornerstone Construction Inc. of Asheville would be selected as the successful bidder. It was then determined that City staff would seek Council approval to enter into a contract to perform work listed in its proposal for $35,865.

Staff recommends Council approval of the lowest responsible bidder, Carolina Cornerstone Construction. Inc., and requests Council to direct the City Manager to enter into contract for $35,865 for repairs of the facade of the City Development Building (Martin Building).

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REQUEST RESCINDING CONVEYANCE OF SURPLUS BUSES TO ASHEVILLE SISTER CITIES PURSUANT TO THEIR REQUEST

Mr. Carl Ownbey, Urban Planner, said that this is consideration to rescind Resolution 96-172 where the City of Asheville conveyed two of Asheville Transit Authority's surplus buses to the Asheville Sister Cities Program in September of 1996 to be sent to San Cristobal, Mexico, for their public use.

Through the Asheville Sister Cities Program, the City of Asheville had received a request from its Sister City of San Cristobal, Mexico, for surplus buses to be used for their school program. Since the Asheville Transit Authority had just recently replaced its entire fleet of transit buses, there were several buses available to be conveyed to the Sister Cities Program. In a 1996 resolution, the City Council conveyed two of the surplus buses to the Sister Cities Program and authorized the surplus buses to be conveyed for public use by the Town of San Cristobal.

Since the time of conveyance of the two buses, the Sister Cities Program has tried to accomplish the task of shipping the buses to Mexico; however, with limited resources to ship the buses to Mexico, the Sister Cities Program is now declining the offer of the two buses and is requesting that the City of Asheville take the buses back.

The City Planning Staff and the Asheville Transit Authority recommend that the City Council take the two surplus buses back from the

Sister Cities Program and place them in the next public auction (which is scheduled for October, 1997).

Vice-Mayor Field explained that the problem was that they could not cross the border with a vehicle licensed to someone different other than the driver of the vehicle and no one driving the vehicles were willing to take on the ownership.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

FURTHER DISCUSSION OF SIGN ORDINANCE

Councilman Cloninger said that he was encouraged by the report Council received from the Planning Department at the mid-year retreat about the progress being made in enforcing the sign ordinance. But, he believed the City can, and should, do more regarding signs. He said "before I explain what I do propose, I would like to first make clear what I do not propose. I do not propose that we made any changes in the current sign ordinance pertaining to on-premises signs - the signs that business owners use on the site of their business to let the public know that they are there. The current ordinance regarding on-site signs is a good one, and we should simply seek to enforce it, and to appoint people to the Board of Adjustment who are willing to enforce it.

"I do propose that we change our ordinance as it pertains to billboards. The benefits of billboards are outweighed by the harm they do to our number one asset - the natural beauty of our area. Furthermore, there are many alternatives to billboards, such as radio, television and the print media. Billboards make us less attractive to tourists and potential new businesses looking to move into the area. They send a message that we don't appreciate the unique natural environment we live in here in the mountains - that we are content to look like just another city.

"We need to send a different message - a message that we understand how fortunate we are to live here, that we greatly value our quality of life and that we want to be good stewards of the natural beauty of this area. One way we can send that message is by eliminating billboards over time.

"Here are my specific proposals for amending the sign ordinance as to billboards: (1) Prohibit any new billboards; (2) Require the removal of all existing billboards within 7 years. (The courts have actually held that cities can require removal in less than 7 years, but I would propose that the billboard companies be given a full 7 years of additional income before having to take them down); (3) As an alternative to #2, that we readopt the language of the 1990 ordinance regarding existing billboards and start a new amortization period as to that readopted language. Under this alternative, no new billboards could be erected and all existing billboards would have to be in compliance with the 1990 ordinance by the end of a new amortization period; this would effectively undo the grandfathering of signs done by the previous City Council in 1995. I prefer the proposals in #1 and #2 above rather than this alternative; and (4) That any change in the language of the ordinance pertaining to billboards not impair the ability of the City to enforce the current sign ordinance during the new amortization period.

"We do not have the authority to regulate billboards along interstates.

"I am not asking City Council members to take a vote today on which, if any, of these proposals. However, I am asking that we today instruct the Planning staff to present to the Planning & Zoning Commission proposed ordinance language similar to these proposals for the Commission to consider at their next scheduled meeting."

City Attorney Oast confirmed that the law does restrict the ability of local governments to regulate signs along some federal highways.

Councilmen Skalski and Sellers both endorsed the idea of moving this forward to the Planning & Zoning Commission.

Planning & Director Julia Cogburn explained that her interpretation of a billboard is outdoor advertising. Councilman Cloninger then stated that this proposal is exclusively for billboards.

It was the consensus of Council to instruct the Planning staff to prepare information for City Council's review at their next meeting. City Council can then review the information and forward it to the Planning & Zoning Commission for their review at their October meeting. Said information should contain draft ordinances to achieve Councilman Cloninger's request, information on how the changes will affect existing billboards, how many billboards will be affected, etc.

REQUEST FOR PLAN REVIEW EXEMPTION

Mr. Terry Summey, Director of Building Safety, said that this is consideration to request The Building Code Council for the authority to review plans at the local level and be exempted from the requirements for certain plans to be reviewed by the Department of Insurance ("DOI").

The North Carolina State Building Code, Volume 1-A, requires plans for certain facilities to be submitted and reviewed by the DOI engineering staff. This review generally takes several weeks, or months, to complete and may delay the issuing of the building permit by the local jurisdiction. If the local jurisdiction has appropriately certified plan review personnel on staff, this requirement may be waived by written request to DOI.

An inspection department may apply to the Building Code Council to review plans and specifications on buildings listed in Table 602. Such authority shall be granted provided:

1. The inspection department shall submit a written request for approval.
2. The inspection department shall state it is adequately staffed and the staff possess Standard Level III Certificates in all areas from the North Carolina Code Qualifications Board.
3. The approval shall be for up to 12 months.
4. The inspection department shall submit an annual written request for approval for the subsequent year by May 1 to be approved at the June meeting for the following year.

The City of Asheville Building Safety Department and the Fire Department's Life Safety Division currently have the following Level III Certifications on staff: Building - 9 Certificates; Electrical - 7 Certificates; Mechanical - 3 Certificates; Plumbing - 8 Certificates; and Prevention - 7 Certificates.

Although the City of Asheville may be approved for local plan review, the below listed buildings will require review by the State Engineering Division, per Volume 1A-section 602.2.2.

1. High Rise (buildings in which the highest occupied floor is more than 75 feet above the highest firefighting vehicle apparatus access area)
2. Group A-1- Large Assembly
3. Group H- Hazardous over 100 people
4. Covered Malls
5. All buildings owned by a city, or county having a total gross area exceeding 10,000 sq. ft. and
6. All buildings owned by the State shall be submitted to the State Property and Insurance Fund Division.

Other jurisdictions which are currently approved for local plan review include: Mecklenburg County and the City of Raleigh.

The Director of Building Safety and the Fire Chief recommend that City Council approve the request to The Building Code Council for the authority to review plans at the local level and be exempted from the requirements for certain plans to be reviewed by DOI.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REVISED CITY'S ECONOMIC DEVELOPMENT POLICY

Mr. John Scaralia, City Development Director, reviewed the revised City's Economic Development Policy which includes establishing grants for eligible firms.

As competition between municipalities for a limited number of business relocations and investments becomes more acute, communities are finding the need to become more proactive in positioning themselves as cost-effective destinations with strong pro-business climates. It follows that in order to expand economic development options and create more employment opportunities for the residents of Asheville, a program should be established which encourages business to locate and expand within the City.

The Economic Development Incentives Policy provides a new way to stimulate business investment within the City by establishing grants for eligible firms based on the amount of investment in the community, the number of quality jobs created, and their ability to meet certain financial and operational criteria.

On March 8, 1996, in response to a lawsuit which argued that business incentives provided by governments to companies are unconstitutional (*Maready vs. City of Winston-Salem)*, the N.C. Supreme Court held "that N.C.G.S. [section] 158-7.1, which permits the expenditure of public moneys for economic development incentive programs, does not violate the public purpose clause of the N.C. Constitution." As a result, municipalities across the state have begun to develop and broaden their incentive policies in order to compete for expanding and relocating businesses.

This proposed revision is based on providing grants to companies seeking to locate and expand within the City, and follows the general format which other N.C. municipalities have adopted. It augments the original guidelines as set forth in Resolution #94-211, adopted by the

City Council on October 1, 1994, and establishes new parameters to help increase the diversity of the tax base, offer quality employment opportunities for its citizens, and promote private business and industrial growth within the City of Asheville.

Staff is recommending that City Council review the draft proposal and consider adoption of the new policy.

City Attorney Oast said that it is important to point out that this is a grant that is based in part on the amount of tax that the City would receive, as the statute permits - not a tax rebate or a tax abatement program.

Councilman Worley stressed that not every company that makes an application will receive a grant. This is discretionary and every application will be researched by staff and reviewed by City Council.

Councilman Skalski pointed out that the City of Portland, Oregon, has a policy statement in their incentive package dealing with job training, which he felt was very important in a good policy. He showed Council a graph which showed that approximately 80% of all new jobs created in the United States come from companies with four or less employees. That statistic relates to the amount of grant money that should be allocated to the different sized companies and he felt that more emphasis should be placed on that. He would work with Mr. Scaralia on this issue. With respect to tax structure and how it relates to jobs, he said the higher your taxes are per capita, the harder it is to attact new businesses into an area. He then questioned Asheville's policies on annexation and showed Council a chart based on the 1994-95 revenues and expenditures taken from "Fiscal Summary of North Carolina Municipalities for the fiscal year ended June 30, 1995." He explained that the chart showed that any city over 50,000 in population has a dramatic increase in taxes and when you annex more land into the City, your taxes go up. He felt Council should look at those items when they are looking at economic plans. He stated he had several other suggestions for possible inclusion in Asheville's package and offered to work with Mr. Scaralia on fine-tuning our policy.

Councilman Cloninger was pleased to see that the incentive policy would also help existing businesses.

Vice-Mayor Field was pleased that we are tailoring our policy to the needs of our community.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

HAW CREEK AREA GREENWAY

City Attorney Oast said that this is consideration of a resolution authorizing the City, through the City Manager, to enter into a Memorandum of Understanding and other agreements on behalf of the City for negotiation of easements with certain property owners along the projected route of a proposed Haw Creek greenway.

The Haw Creek Homeowners Association has been working with the owners of the Haw Creek Mews Apartments and the Ice Service Stores to acquire easements along Haw Creek across their properties. These are relatively large tracts of land, and, because of their location at the intersection of Haw Creek on Beverly Road, acquisition of easements across them is crucial to the success of this neighborhood-initiated Greenway project, and to getting the project off to a good start.

The projected sequence of events and documents, as with the recent greenway project which crossed a portion of UNC-A property, is to enter into a Memorandum of Understanding first, and then to negotiate construction easements and permanent easements as the plans for the greenway develop and construction is undertaken and completed. The Memorandum commits the parties to this process, subject to working out details. No money is committed by the City and no property interest is acquired by the City at this point.

The resolution authorizes the City, Mayor or City Manager, to obtain appropriate agreements for the acquisition of property interests for the Haw Creek Greenway, but contemplates that these agreements will be negotiated by the Haw Creek Homeowners Association. For the present, this resolution will only apply to the two owners named above, but authorizes negotiations with other owners as well. No commitment of funding for construction or maintenance of a greenway is authorized at this time.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

PUBLIC WORKS FEES FOR SPECIAL EVENTS

Traffic Engineer James Cheeks said that this is consideration of the fees charged by the Public Works Department for non-sponsored events.

The City currently has a policy for providing City resources such as staff time (overtime), barricades, signs, sanitation services, street cleaning, tip fees, police security and traffic control at no charge to a sponsor(s) if an event is designated as a City co-sponsored event.

The Public Works Department is typically involved in street barricades, banners, signage, sanitation (trash pickup), street sweeping and general labor. He outlined the budgeted costs by the Public Works Department for City co-sponsored events.

Conversely, events that are not co-sponsored by the City are charged based upon an estimate of costs for the aforementioned resources which must be paid in advance. Also, many such events require Public Works, Parks and Recreation and Police staff to work after hours at overtime pay rates. Such events can have a significant impact to operating budgets. He outlined the actual cost assessments for recent non-sponsored events.

For fiscal planning purposes it is important for departments which are supporting co-sponsored events to budget the appropriate funds for necessary services under the current fee system. Non-sponsored customers requesting special event services are assessed estimated actual costs for labor, equipment and supplies, which may give some groups and organizations the perception that there is an inconsistent administration of this program. Secondly, the City may not always possess the appropriate number of barricades for a particular event (due to use in normal operations), which necessitates the rental or purchase of additional barricades (the costs of which are passed on to the sponsor).

He reviewed the information from a telephone survey conducted by staff of North Carolina's seven largest cities. In summary, the information collected provides no definitive or consistent policies among them with the exception of MUTCD standard traffic control plans. Based upon this data, the unique characteristics of each City were in all likelihood considered in developing each policy.

Aside from wear and tear on vehicles and equipment, the use (or loss) of supplies related to special events is primarily due to the damage or theft of traffic control barricades and cones. Thus, in order to maintain the appropriate level of barricades necessary for routine/non-routine public works projects, special construction activities and special events needs, it is necessary to purchase them on a regular basis.

An alternative to the rental and placement of barricades by City staff would be for event sponsors to rent such from private suppliers and placement and removal in accordance with the approved traffic plan.

It is important to strike a balance between the needs of the community and the general public, individuals and businesses potentially affected by special use (and restrictions) of rights-of-ways, through staff accommodation and a sensible policy for the administration of such events.

Based on a balance of needs, following are recommendations as related to Public Works services:

1) City co-sponsored event (as budgeted in approved annual budget):
   No Cost

2) Non-sponsored events utilizing City resources:

   a) Labor: Full cost recovery (to include overtime if necessary) Customer may contact DPW prior to event for estimate of costs.
   b) Barricades (to include rental rates for Special Construction Activities):
      - Type III: $25 each per day
      - Type II: $10 each per day
      - Cones: $5 each per day
      - Detour signs: $5 each per day
      - Meter bags: $5 each per day
   c) Vehicles: (based on fuel, operations, maintenance, and wear and tear)
      - Pickup truck: $12 per hour
      - Aerial bucket truck: $20 per hour
      - Forklift: $15 per hour
      - Sanitation truck: $40 per hour
      - Tipping fee (solid waste): $31 per ton
      - Street Sweeper: $40 per hour
      - Street Flusher: $40 per hour
   d) Banners/decoration installations:
      - $100 deposit
      - $5 per banner (no size limit)

There are currently concessions made for use of City/County Plaza for smaller events (waiver of barricade fees) in an effort to accommodate smaller events.

It is staff's opinion that the above rate schedule represents a fair and equitable compromise between the event sponsor's use of public space and the City's support services.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CONTRACT FOR ENGINEERING SERVICES FOR BROADVIEW DRIVE SUBDIVISION

Mr. Marvin Vierra, Community Development Director, said that the City of Asheville is seeking engineering and site design services for the development of a single family, owner occupied housing subdivision affordable to low and moderate income families.

The Community Development Division issued a Request For Proposals for Engineering Services to design the Broadview Drive single family affordable housing subdivision on August 1, 1997. Eight proposals were received. An RFP Committee of City and Habitat staff reviewed the proposals and selected two firms for interviews. The Committee interviewed two firms and selected Mattern & Craig Inc. based on experience and qualifications. A contract price was then negotiated by staff. The contract includes requirements to design the infrastructure for this affordable housing single family homeownership subdivision including layout of the lots and open space and park area. The engineer is to complete design and have final submittal to the City no later than February 15, 1998. The consultant will prepare bid specifications and assist with awarding the construction contract and inspect the construction of the project. The contract calls for completion of construction by September 1, 1998, and involvement of community residents throughout the design and construction. Cost of the consultant services is $37,300.

Community Development staff recommends approval of the Resolution.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

COMMUNITY MEETING

It was the consensus of City Council to hold a community meeting on September 30, 1997, at 7:00 p.m. The Crowfields community center was discussed as a possible meeting place.

ADJOURNMENT:

Mayor Martin adjourned the meeting at 4:35 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday - September 23, 1997 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Worley gave the invocation.

INTRODUCTION OF GUESTS

Mayor Martin welcomed Ms. Kathy Kline and her 6th grade students from Carolina Day School.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE MONTH OF SEPTEMBER 1997 AS "SUBSTANCE ABUSE AWARENESS MONTH"

Mayor Martin read the proclamation proclaiming September, 1997, as "Substance Abuse Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Matthew Bacoate who briefed the Council on the activities that will be taking place during the month.

B. PROCLAMATION PROCLAIMING THE MONTH OF OCTOBER AS "ASHEVILLE SISTER CITIES MONTH"

Mayor Martin read the proclamation proclaiming the month of October, 1997, as "Asheville Sister Cities Month" in the City of Asheville. He presented the proclamation to Mr. George Yates who briefed the Council on the activities that will be taking place during the month.

C. PROCLAMATION PROCLAIMING THE MONTH OF OCTOBER AS "DOWN SYNDROME MONTH"

Mayor Martin read the proclamation proclaiming the month of October, 1997, as "Down Syndrome Month" in the City of Asheville. He presented the proclamation to Harry Weiss and his daughter Zoie, Cheryl Posey and her daughter Carolina, and Jeff Mosley and his daughter Beth. Mr. Weiss briefed the Council on the activities that will be taking place during the month.

D. PROCLAMATION PROCLAIMING OCTOBER 5-11, 1997, AS "MENTAL ILLNESS AWARENESS WEEK"

Mayor Martin read the proclamation proclaiming October 5-11, 1997, as "Mental Illness Awareness Week" in the City of Asheville. He presented the proclamation to Mrs. Betty Lane who briefed the Council on the activities that will be taking place during that week.

II. CONSENT AGENDA:

At the request of Councilman Skalski and Mr. Ralph Bishop, Item A. was removed from the Consent Agenda to be discussed individually.

At the request of Mr. Ralph Bishop, Item L. was removed from the Consent Agenda to be discussed individually.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 9, 1997, AND THE WORKSESSION HELD ON SEPTEMBER 16, 1997

This item was removed from the Consent Agenda to be discussed individually.

B. RESOLUTION NO. 97-156 - RESOLUTION AUTHORIZING SUBMITTAL OF FUNDING APPLICATIONS TO THE U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT THROUGH THE HOMEOWNERSHIP ZONE AND SECTION 108 LOAN GUARANTEE PROGRAMS

Summary: The consideration of a resolution to approve submittal of funding applications to U. S. Department of Housing and Urban Development (HUD) to expand homeownership opportunities in the target area.

City Council will consider approving the submittal of an application to HUD for funding through the HUD Homeownership Zone and Section 108 Loan Guarantee Programs to increase homeownership opportunities in the target area designated as a homeownership zone. The target area will include the West End/Clingman Avenue neighborhood under Phase I and be expanded to surrounding neighborhoods such as West Asheville's WACT 10 area for the second phase. The goal will be to create at least 300 new single family homeownership opportunities as a result of the project.

Pisgah Legal Services is responsible for preparing the Homeownership Zone funding application and coordination with the private sector to leverage additional funding.

Deadline for submittal of the application is September 30, 1997. The Housing and Community Development Committee discussed the project on August 12, 1997, and September 9, 1997, and is supportive with the funding application.

RESOLUTION BOOK NO. 24 - PAGE 191

C. RESOLUTION NO. 97-157 - RESOLUTION AUTHORIZING THE PURCHASING DIRECTOR TO SELL SURPLUS MOTOR VEHICLES, TRANSIT COACHES, OFF-ROAD EQUIPMENT AND OTHER SURPLUS PROPERTY AT PUBLIC AUCTION

Summary: Consideration of a resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction.

The resolution authorizes the City's Purchasing Division to hold a public auction to dispose of motor vehicles, transit coaches, off-road equipment, and other miscellaneous property declared as surplus by various City departments. The auction is to be held Saturday, October 11, 1997, at 10:00 a.m. in the Public Works Complex, 161 S. Charlotte Street.

RESOLUTION BOOK NO. 24 - PAGE 192

D. RESOLUTION NO. 97-158 - RESOLUTION APPROVING THE MUNICIPAL RECORDS RETENTION AND DISPOSITION SCHEDULE ISSUED AUGUST 15, 1997

Summary: The consideration of approving the N. C. Dept. of Cultural Resource's updated Municipal Records Retention and Disposition Schedule issued August 15, 1997.

N.C. Gen. Stat. sec. 121-5 mandates that records defined under Chapter 132 may be disposed of only in accordance with an official records retention schedule. The N.C. Dept. of Cultural Resources, Division of Archives and History, has updated the 1984 Municipal Records Retention and Disposition Schedule.

This updated Schedule provides that records listed may be destroyed after the specified retention periods without further approval from the City or the N.C. Dept. of Cultural Resources, provided, the governing body has authorized the records listed for destruction to be destroyed through its blanket approval of the Retention and Disposition Schedule.

RESOLUTION BOOK NO. 24 - PAGE 193

E. RESOLUTION NO. 97-195 - RESOLUTION ENTERING INTO A CONTRACT WITH CAROLINA CORNERSTONE CONSTRUCTION INC. TO REPAIR THE FACADE OF THE CITY DEVELOPMENT BUILIDNG (MARTIN BUILDING)

Summary: The consideration of the selection of a contractor to perform repairs of the facade of the City Development Building (Martin Building).

Over the course of the last few years, it has been determined that the facade of the City Development Building (Martin Building) is in need of repair. There is evidence of stucco and structural fastener deterioration and several large pieces of stucco have completely fallen off the building. A consulting architectural firm, Camille Alberice Architects PA of Asheville, was hired to determine the extent of repairs needed, and bid specifications and plans were drawn up accordingly. The scope of work was outlined as follows: Repair the front and back sides of the parapet wall, sidewalk, drywall ceiling, and structural fasteners. (Roof work was not included.)

On July 7, 1997, advertisement for bid letters were sent out requesting proposals for the above-described work. No bid proposals were received by the advertised bid date of July 18, 1997. The contractors were then contacted again, at which time they responded that the project was very specialized and they were therefore reluctant to bid. At that time there was a single contractor who expressed a willingness to research the project further and submit a proposal. On August 21, 1997, staff received a written proposal and, after review of these bid proposals, it was determined that Carolina Cornerstone Construction Inc. of Asheville would be selected as the successful bidder. It was then determined that City Staff would seek Council approval to enter into a contract to perform work listed in its proposal for $35,865.

Staff recommends Council approval of the lowest responsible bidder, Carolina Cornerstone Construction. Inc., and requests Council to direct the City Manager to enter into contract for $35,865 for repairs of the facade of the City Development Building (Martin Building).

RESOLUTION BOOK NO. 24 - PAGE 195

F. RESOLUTION NO. 97-160 - RESOLUTION RATIFYING THE DESIGNATION OF AN EXISTING TRAIL THROUGH THE NORTH FORK WATERSHED PROPERTY AS A SEGMENT OF THE NORTH CAROLINA MOUNTAIN-TO-SEA TRAIL

Summary: The consideration of a resolution authorizing the designation of an existing trail through the North Fork Watershed Property as a segment of the North Carolina Mountains-to-Sea Trail.

The Carolina Mountain Club has approached the City to request the City's consent to an application for the inclusion of an existing trail through the North Fork Watershed as a segment of the "Mountains-to-Sea" Trail. The application is made to the North Carolina Department of Environment, Health and Natural Resources. The Club initially communicated to the City that the City's action was not needed until late in the Fall, but later discussions indicated that the City's consent was needed earlier. An appropriate investigation was conducted and there was no apparent problem with consenting to the application. The investigation and results are detailed in a Memorandum and letter, dated August 25, 1997.

RESOLUTION BOOK NO. 24 - PAGE 196

G. RESOLUTION NO. 97-161 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN FOR THE PURCHASE OF 285 LINEAR FEET OF 8-INCH SEWER LINE FROM BEAVER CREEK PARTNERSHIP TO SERVICE THE CARTER COVE COMMUNITY

Summary: The consideration of authorizing the expenditure of funds in the amount of $12,000 to Beaver Creek Partnership for 285 linear feet of 8-inch private sanitary sewer line to connect an existing Metropolitan Sewage District (MSD) sewer line to a proposed 8-inch sanitary sewer line to service the Carter Cove community.

In 1994 Beaver Creek Partnership installed 285 linear feet of 8-inch sanitary sewer line to service a proposed subdivision called Beaver Creek Subdivision. City staff has copies of the receipts for the installation of the sewer line in the amount of approximately $40,000. Following the installation of the sewer line Beaver Creek Partnership did not turn the line over to MSD for ownership, operation and maintenance. Therefore, this sewer line is still privately owned.

By purchasing this sanitary sewer line the City will not be required to acquire a separate easement and install an 8-inch sewer line paralleling the existing sewer line. The purchase of this line will result in a net savings of at least $28,000. Should Council approve this purchase, the sanitary sewer line would be transferred to MSD for ownership, operation and maintenance.

Staff recommends that City Council authorize the City Manager to expend funds in the amount of $12,000 to Beaver Creek partnership for 285 linear feet of 8-inch sanitary sewer line at the intersection of Beaver Dam Road and Carter Cove.

RESOLUTION BOOK NO. 24 - PAGE 197

H. RESOLUTION NO. 97-162 - RESOLUTION RESCINDING RESOLUTION NO. 96-172 WHICH AUTHORIZED THE CONVEYANCE OF SURPLUS BUSES TO ASHEVILLE SISTER CITIES INC.

Summary: The consideration to rescind Resolution 96-172 where the City of Asheville conveyed two of Asheville Transit Authority's surplus buses to the Asheville Sister Cities Program in September of 1996 to be sent to San Cristobal, Mexico, for their public use.

Through the Asheville Sister Cities Program, the City of Asheville had received a request from its sister city of San Cristobal, Mexico for surplus buses to be used for their school program. Since the Asheville Transit Authority had just recently replaced its entire fleet of transit buses, there were several buses available to be conveyed to the Sister Cities Program. In a 1996 resolution, the City Council conveyed two of the surplus buses to the Sister Cities Program and authorized the surplus buses to be conveyed for public use by the Town of San Cristobal.

Since the time of conveyance of the two buses, the Sister Cities Program has tried to accomplish the task of shipping the buses to Mexico; however, with limited resources to ship the buses to Mexico, the Sister Cities Program is now declining the offer of the two buses and is requesting that the City of Asheville take the buses back.

The City Planning Staff and the Asheville Transit Authority recommend that the City Council take the two surplus buses back from the Sister Cities Program and place them in the next public auction (which is scheduled for October, 1997).

RESOLUTION BOOK NO. 24 - PAGE 198

I. RESOLUTION NO. 97-163 - RESOUTION APPROVING THE TRANSFER OF THE WIND SONG SUBDIVISION PUMPING STATION PROPERTY TO THE CITY OF ASHEVILLE

Summary: The consideration of approval of the transfer of property to the City of Asheville for the Wind Song Subdivision pumping station property.

The water pumping station serving the Wind Song Subdivision was constructed in 1987. Since that time the City of Asheville has owned this facility and the Water Resources Department has been operating and maintaining it. It was recently discovered that the property where the pump station is located was never deeded to the City of Asheville. A deed for this property has now been prepared and the property is being offered to the City of Asheville by the Wind Song Estates Homeowner's Association.

It is relatively common for such property transfers to occur. Staff recommends that the City of Asheville accept the property that is being offered.

RESOLUTION BOOK NO. 24 - PAGE 199

J. RESOLUTION NO. 97-164 - RESOLUTION ACCEPTING THE REGIONAL WATER AUTHORITY'S RECOMMENDATION TO AWARD AN ENGINEERING SERVICES CONTRACT TO APPLIED GEOSCIENCES AND ENGINEERING INC. FOR THE BEE TREE DAM MODIFICATION PROJECT

Summary: The consideration of awarding an Engineering Services Contract to Applied Geosciences and Engineering, Inc., (AG&E)

Proposals for Engineering Services for the Authority's Bee Tree Dam Modification project have been received by the Authority. This project includes multiple components but by far the most significant is the expansion of the Bee Tree Lake's spillway. These proposals were solicited and reviewed in accordance with the policy of the Authority and the City of Asheville. The firm of AG&E was selected for this project and a contract has been negotiated in the amount of $ 229,673.00. In response to the City's Risk Management Office, the Authority also agreed to pay the premium of $ 30,295.00 for additional Professional Liability Coverage in the amount of $ 5,000,000.00.

The Regional Water Authority approved award of this contract to AG&E on Tuesday, August 19, 1997. Staff recommends that City Council concur with the Authority's action by approval of this contract.

RESOLUTION BOOK NO. 24 - PAGE 200

K. RESOLUTION NO. 97-165 - RESOLUTION ACCPETING THE REGIONAL WATER AUTHORITY'S RECOMMENDATION TO AWARD A CONTRACT TO COOPER CONSTRUCTION COMPANY FOR THE GAP CREEK/CANE CREEK 12-INCH WATERLINE CONTRACT

Summary: The consideration of awarding a construction contract to Cooper Construction Company for the Gap Creek / Cane Creek 12-inch Waterline Contract.

Sealed bids were received for the Authority's Gap Creek / Cane Creek Road 12-inch Waterline on Thursday, July 10, 1997. These bids were received in accordance with NC General Statute 143-129 and in accordance with the City of Asheville's Minority Business Plan. A total of six bids were received, listed below in descending order:

COMPANY	**BID**
Cooper Construction Company	$ 448,987.00
Steppe Construction Company	$ 520,744.00
Hobson Construction Company	$ 524,947.00
Wheeler Construction Company	$ 639,101.00
Buckeye Construction Company	$ 649,135.00
First South Utilities	$ 667,613.00

The Regional Water Authority approved award of this contract to Cooper Construction Company on August, 19, 1997 and staff recommends City Council's concurrence with the Authority's action.

RESOLUTION BOOK NO. 24 - PAGE 201

L. RESOLUTION DESIGNATING SIGN KNOWN AS STARNES AVENUE GROCERY SIGN LOCATED AT 65 STARNES AVENUE AS A LANDMARK SIGN

This item was removed from the Consent Agenda to be discussed individually.

M. RESOLUTION NO. 97-166 - RESOLUTION REGULATING CONSUMPTION AND POSSESSION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1997 GREEK FESTIVAL

Summary: The consideration of a resolution allowing alcoholic beverages at Asheville's 11th Annual Greek Festival on October 3-5, 1997.

N. C. Gen. Stat. sec. 18B-300(c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and unfortified wine on public streets, and on property owned, occupied or controlled by the City. The City Council of the City of Asheville has adopted an ordinance pursuant to that statutory authority. That ordinance, Section 11-11 in the Code of Ordinances, provides that the City Council may adopt a resolution making other provisions at special event or community festival. Asheville's 11th Annual Greek Festival Board, Holy Trinity Greek Orthodox Church and the Parks and Recreation Department recommends that possession and consumption of malt beverages and/or unfortified wine be allowed at Asheville's 11th Annual Greek Festival.

The Parks and Recreation Department recommends that City Council adopt a resolution allowing the possession and consumption of malt beverages and/or unfortified wine at Asheville's 11th Annual Greek Festival.

RESOLUTION BOOK NO. 24 - PAGE 202

N. RESOLUTION NO. 97-167 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSERVATION SERVICES AGREEMENT WITH THE TRUST FOR PUBLIC LAND FOR THE GREENWAY MASTER PLAN

Summary: The Trust for Public Land has received a grant from the Janeirve Foundation to prepare a greenway master plan for the City of Asheville.

The Trust for Public Land applied for and received a Janeirve grant to continue their work on greenways in Asheville. They received a total of $75,000 of which $25,000 is for their continued work on the Broadway Greenway and $50,000 is for a greenway master plan. The Janeirve Foundation stipulated that the master plan monies ($50,000) would need to be matched dollar for dollar. The Planning and Development Department had $30,000 in this year's budget for greenway planning. This money will be used to match $30,000 from the grant. A budget amendment in the amount of $20,280 is necessary for reimbursable expenses that will be incurred during the master plan process. The budget amendment will transfer $20,280 from the General Capital Fund Contingency for this purpose leaving a balance of $70,720 in Contingency.

The City will be responsible only for those expenses actually incurred. Any monies not used in the master plan process will be used to leverage other funds for future greenway work.

The Planning and Development Department recommends (1) that the City Manager be authorized to sign the Conservation Services Agreement with The Trust for Public Land; and 2) that City Council adopt a budget amendment in the amount of $20,280 so that The Trust for Public Land can begin work in September on a master greenway plan for the City.

Councilman Hay stated that he was very excited about the greenway master plan which was made possible by a grant from the Janeirve Foundation. He felt this was a small step toward historic ends.

RESOLUTION BOOK NO. 24 - PAGE 205

O. ORDINANCE NO. 2406 - BUDGET AMENDMENT RELATIVE TO THE GREENWAY MASTER PLAN

See Item P. above.

ORDINANCE BOOK NO. 16 - PAGE 291

P. RESOLUTION NO. 97-168 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS FOR THE ACQUISITION OF PROPERTY INTERESTS FOR THE HAW CREEK GREENWAY

Summary: The consideration of a resolution authorizing the City, through the City Manager, to enter into a Memorandum of Understanding and other agreements on behalf of the City for negotiation of easements for certain property owners along the projected route of a proposed Haw Creek greenway.

The Haw Creek Homeowners Association has been working with the owners of the Haw Creek Mews Apartments and the Ice Service Stores to acquire easements along Haw Creek across their properties. These are relatively large tracts of land, and, because of their location at the intersection of Haw Creek on Beverly Road, acquisition of easements across them is crucial to the success of this neighborhood-initiated Greenway project, and to getting the project off to a good start.

The projected sequence of events and documents, as with the recent greenway project which crossed a portion of UNC-A property, is to enter into a Memorandum of Understanding first, and then to negotiate construction easements and permanent easements as the plans for the greenway develop and construction is undertaken and completed. The Memorandum commits the parties to this process, subject to working out details. No money is committed by the City and no property interest is acquired by the City at this point.

The resolution authorizes the City, Mayor or City Manager, to obtain appropriate agreements for the acquisition of property interests for the Haw Creek Greenway, but contemplates that these agreements will be negotiated by the Haw Creek Homeowners Association. For the present, this Resolution will only apply to the two owners named above, but authorizes negotiations with other owners as well. No commitment of funding for construction or maintenance of a greenway is authorized at this time.

Councilman Worley was pleased on the progress of the greenways in Asheville.

RESOLUTION BOOK NO. 24 - PAGE 206

Q. RESOLUTION NO. 97-169 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING DISPOSAL PARCEL 10.1 ON CARROLL AVENUE IN THE EAST END/VALLEY STREET COMMUNITY

Summary: The consideration of authorizing the Mayor to execute necessary documents to effect an exchange of property with the Housing Authority of the City of Asheville in order to facilitate several beneficial projects.

The City Council directed the City Clerk to publish a notice regarding its intent to exchange 4.9 acres of land on Kentucky Drive which the City owns for 7.4 acres of land on Bartlett Street which the Housing Authority owns. The notice was published on August 29, 1997. No public comments have been received.

The exchange will facilitate the following:

- The construction of 48 units of affordable elderly housing via the sale of the Murray Hill site to the Douglas Company;
- The construction of 17 units of affordable single family owner-occupied housing via collaboration with the Housing Authority to build a subdivision on the Kentucky Drive site; and

- The construction of a passive park by Parks and Recreation Department on the Bartlett Street site.

The City's property on Kentucky Drive is valued by the Buncombe County Tax Office at $49,700 and the Authority's property on Bartlett Street is valued at $124,800.

Approval of the resolution will authorize the Mayor to execute the necessary documents to effect the exchange of the properties as provided in N. C. G. S. 160A-271.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 24 - PAGE 207

R. RESOLUTION NO. 97-170 - RESOLUTION AUTHORIZING EXECUTION OF A CONTRACT WITH MATTERN AND CRAIG CONSULTING ENGINEERS TO PROVIDE ENGINEERING AND SITE DESIGN SERVICES FOR THE BROADVIEW DRIVE SUBDIVISION

Summary: The City of Asheville is seeking engineering and site design services for the development of a single family, owner occupied housing subdivision affordable to low and moderate income families.

The Community Development Division issued a Request For Proposals for Engineering Services to design the Broadview Drive single family affordable housing subdivision on August 1, 1997. Eight proposals were received. An RFP Committee of City and Habitat staff reviewed the proposals and selected two firms for interviews. The Committee interviewed two firms and selected Mattern & Craig, Inc. based on experience and qualifications. A contract price was then negotiated by staff. The contract includes requirements to design the infrastructure for this affordable housing single family homeownership subdivision including layout of the lots and open space and park area. The engineer is to complete design and have final submittal to the City no later than February 15, 1998. The consultant will prepare bid specifications and assist with awarding the construction contract and inspect the construction of the project. The contract calls for completion of construction by September 1, 1998 and involvement of community residents throughout the design and construction. Cost of the consultant services is $37,300.

RESOLUTION BOOK NO. 24 - PAGE 208

S. RESOLUTION NO. 97-171 - RESOLUTION ADOPTIG FEES AND CHARGES FOR PUBLIC WORKS SERVICES FOR THE CITY'S SPECIAL EVENTS PACKAGE

Summary: The consideration of the fees charged by the Public Works Department for non-sponsored events.

The City currently has a policy for providing City resources such as staff time (overtime), barricades, signs, sanitation services, street cleaning, tip fees, police security and traffic control at no charge to a sponsor(s) if an event is designated as a City co-sponsored event.

The Public Works Department is typically involved in street barricades, banners, signage, sanitation (trash pickup), street sweeping and general labor.

Conversely, events that are not co-sponsored by the City are charged based upon an estimate of costs for the aforementioned resources which must be paid in advance. Also, many such events require Public Works, Parks and Recreation and Police staff to work after hours at overtime pay rates. Such events can have a significant impact to operating budgets.

For fiscal planning purposes it is important for departments which are supporting co-sponsored events to budget the appropriate funds for necessary services under the current fee system. Non-sponsored customers requesting special event services are assessed estimated actual costs for labor, equipment and supplies, which may give some groups and organizations the perception that there is an inconsistent administration of this program. Secondly, the City may not always possess the appropriate number of barricades for a particular event (due to use in normal operations), which necessitates the rental or purchase of additional barricades (the costs of which are passed on to the sponsor).

The information collected provides no definitive or consistent policies among them with the exception of MUTCD standard traffic control plans. Based upon this data, the unique characteristics of each City were in all likelihood considered in developing each policy.

Aside from wear and tear on vehicles and equipment, the use (or loss) of supplies related to special events is primarily due to the damage or theft of traffic control barricades and cones. Thus, in order to maintain the appropriate level of barricades necessary for routine/non-routine public works projects, special construction activities _and_ special events needs, it is necessary to purchase them on a regular basis.

An alternative to the rental and placement of barricades by City staff would be for event sponsors to rent such from private suppliers and placement and removal in accordance with the approved traffic plan.

It is important to strike a balance between the needs of the community and the general public, individuals and businesses potentially affected by special use (and restrictions) of rights-of-ways, through staff accommodation and a sensible policy for the administration of such events.

Based on a balance of needs, following are recommendations as related to Public Works services:

1) City co-sponsored event (as budgeted in approved annual budget):
   No Cost

2) Non-sponsored events utilizing City resources:

   a) Labor: Full cost recovery (to include overtime if necessary) Customer may contact DPW prior to event for estimate of costs.
   b) Barricades (to include rental rates for Special Construction Activities):

· Type III:	$25 each per day
· Type II:	$10 each per day
· Cones:	$5 each per day
· Detour signs:	$5 each per day
· Meter bags:	$5 each per day

c) Vehicles: (based on fuel, operations, maintenance, and wear and tear)
  - Pickup truck: $12 per hour
  - Aerial bucket truck: $20 per hour
  - Forklift: $15 per hour
  - Sanitation truck: $40 per hour
  - Tipping fee (solid waste): $31 per ton
  - Street Sweeper: $40 per hour
  - Street Flusher: $40 per hour

d) Banners/decoration installations:
  - $100 deposit
  - $5 per banner (no size limit)

There are currently concessions made for use of City/County Plaza for smaller events (waiver of barricade fees) in an effort to accommodate smaller events.

It is staff's opinion that the above rate schedule represents a fair and equitable compromise between the event sponsor's use of public space and the City's support services.

RESOLUTION BOOK NO. 24 - PAGE 209

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions on the Consent Agenda and they will not be read.

Vice-Mayor Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

Vice-Mayor Field moved that for future meetings, the approval of the minutes be an item under "Other Business". This motion was seconded by Councilman Worley and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 9, 1997, AND THE WORKSESSION HELD ON SEPTEMBER 16, 1997

Councilman Skalski asked that the minutes of the September 16, 1997, worksession be amended to include the additional sentences on page 8 in fourth full paragraph, relative to the revised City's Economic Development Policy. "He showed Council a graph which showed that approximately 80% of all new jobs created in the United States come from companies with four or less employees. That statistic relates to the amount of grant money that should be allocated to the different sized companies and he felt that more emphasis should be placed on that. He would work with Mr. Scaralia on this issue. With respect to tax structure and how it relates to jobs, he said the higher your taxes are per capita, the harder it is to attract new businesses into an area. He then questioned Asheville's policies on annexation and showed Council a chart based on the 1994-95 revenues and expenditures taken from "Fiscal Summary of North Carolina Municipalities for the fiscal year ended June 30, 1995." He explained that the chart showed that any city over 50,000 in population has a dramatic increase in taxes and when you annex more land into the City, your taxes go up. He felt Council should look at those items when they are looking at economic plans."

Mr. Ralph Bishop, resident of the City of Asheville, voiced opposition to the adoption of the minutes since he felt that "full and accurate" minutes should be verbatim.

Councilman Sellers moved to approve the minutes of the regular meeting held on September 9, 1997, and the minutes as amended by Councilman Skalski of the worksession held on September 16, 1997. This motion was seconded by Vice-Mayor Field and carried unanimously.

RESOLUTION NO. 97-172 - RESOLUTION DESIGNATING SIGN KNOWN AS STARNES AVENUE GROCERY SIGN LOCATED AT 65 STARNES AVENUE AS A LANDMARK SIGN

Summary: The consideration of a request from the owner of the Asheville Store for landmark designation of the Starnes Avenue Grocery Sign, located at 65 Starnes Avenue.

The large metal parapet signs located atop the store were installed fifty years ago, when Montford was a much larger community and corner groceries thrived. The sign was intended to reach the larger community in an attempt to draw-in customers.

The sign meets criteria A for landmark designation for the following reasons.

A. The Starnes Avenue Grocery sign is an icon for the Montford Community and is a part of the community's collective memory. Neighborhood corner grocers once the norm are now the exceptions. The sign stands along the rooftop and conveys a message to the reader, it is mixed with names, products, and images of Coca Cola.

B. "Historic signs once allowed buyers and sellers to communicate quickly, using images that were the medium of daily life. Surviving historic signs have not lost their ability to speak. But their message has changed. By communicating names, addresses, prices, products, images and other fragments of daily life, they also bring the past to life."

At their regularly scheduled June meeting, the Historic Resources Commission, by a unanimous vote, recommended to City Council that the Starnes Avenue Grocery signs be designated a landmark sign.

Mr. Ralph Bishop felt that the whole building located at 65 Starnes Avenue should be torn down. And when he inquired who made the landmark sign request, Ms. Maggie O'Connor, HRC Director, said that Diane Young, the owner of 65 Starnes Avenue, made the request.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Sellers moved for the adoption of Resolution No. 97-172. This motion was seconded by Vice-Mayor Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 211

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING FIVE PROPERTIES ON OR BEHIND EAST CHESTNUT STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY TO OFFICE

Mayor Martin said that this public hearing was continued from September 9, 1997, until today in contemplation of the possibility that the petition be withdrawn. Mayor Martin then announced that the petitioners have withdrawn their request.

B. PUBLIC HEARING RELATIVE TO CLOSING A PORTION OF OLD HAYWOOD ROAD

Mayor Martin opened the public hearing at 5:27 p.m.

Councilman Cloninger requested to be excused from voting since one of the petitioners is a long-standing client of the law firm he works for. Councilman Worley moved to excuse Councilman Cloninger from voting. This motion was seconded by Councilman Sellers and carried unanimously.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Suzanne Molloy, Assistant Director of Public Works, said that a petition which includes the affidavits of Thomas Lee Finger, A. Jerome Dave (Dave Steel Company), Sherry F. Rice (Duo Investors), Michael Boyd Rice (Trio Investors) has been received requesting that Old Haywood Road, also know as West Haywood Street, between Park Avenue and Roberts Street be permanently closed to public use. Duo and Trio Investors own all of the property with frontage on this portion of Old Haywood Road that has been petitioned to be closed.

By use of a maps, she showed Council the portion to be closed. She explained that the road used to go all the way to Clingman Avenue and in 1987 City Council permanently closed the portion of the street known as East Haywood Street. The remaining portion of the street shown as Old Haywood Road, also known as West Haywood Street, was not closed at that time and has remained vacant. The adjoining property owners have actually been using a portion of Old Haywood Road for the past 15 years to store their material on it, under the impression that the entire road was closed in 1987. All but one property owner adjoining this portion signed the petition to close and the property owner was notified by certified mail of this public hearing. The Fire Department has no problem with the closing and all utility companies have been notified. The City of Asheville will need to retain a 20-foot easement for the Metropolitan Sewerage District and a 20-foot easement for the City of Asheville for the full length and width of Old Haywood Road, from Roberts Street to Park Avenue.

The West End/Clingman Avenue neighborhood ("WECAN") has asked that the City not close the portion of this right-of-way due to the fact that there is no plan for the River District and the City should be looking at keeping land so if the City ever decides to put in a greenway or a link between the River and downtown this could be potentially used.

Ms. Molloy said that since the individual has been using a portion of this property for 15 years, as opposed to using the whole portion of the road, he may actually have the right to come back for a withdrawal of dedication on one portion of the road if legally he has the right to withdraw that right-of-way.

Public Works Department staff recommends permanently closing a portion of Old Haywood Road, also known as West Haywood Street, between Park Avenue and Roberts Street.

Upon inquiry of Mayor Martin about the possible use of this as a greenway, Ms. Molloy pointed out, from a Public Works viewpoint, that there is State right-of-way on the right hand side and you can typically get encroachments for greenways. However, that is a dead-end tract and if a greenway were to go through, you would have to re-open the other end of the road and buy property on the other side of the bridge to carry it on through.

Mr. Michael Rice, petitioner, stated that they were under the impression that the road was entirely closed back in 1987 and then they started using the concrete area to store their inventory. After they sold their company, the purchasing company stayed in the facility and as of last year they decided to move out. At that time he did some research on the property and found out that that portion of Old Haywood Road was not closed. All that is there now is part of a street less than 300 feet long going nowhere. They have been maintaining that portion over the past 15 years. He said that closing it will match it up to the rest of the street that has been closed and the City can start collecting taxes on it.

Upon inquiry of Councilman Hay about the urgency to close, Mr. Rice said that the people that are leasing the facility now are uneasy about this because they are storing inventory on the property.

Ms. Geraldine Melendez, homeowner in the West End/Clingman Avenue neighborhood, urged City Council to delay action on this until the neighborhood can explore other opportunities. They are rebuilding their neighborhood and don't want everything to be industrialized. They would like time to discuss this with the property owners, the neighborhood association, and the Planning Department to establish what the long-term plan is for the neighborhood and if that would coincide with the major master plan they want to see their neighborhood turn into. They asked that this matter be postponed for at least a year.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities, said that they are working with the City and the neighborhood association to implement the 2010 Plan for the West End/Clingman Avenue. It is the specific goal of the Plan to foster continued residential uses in the areas above the area between Clingman Avenue and the River. The Plan also calls for a change in land use over time from Heavy Industrial to either commercial industrial or commercial services. The WECAN voted unanimously to ask for a delay. They stated that a more detailed master plan is needed for this neighborhood. The greenway connections between downtown and the River are called for in the Plan and also in RiverLink's plans, but the specific route is not specified. By use of some handouts, he showed Council three possible routes, one of which utilizes this portion of road. He urged City Council to delay so they can work with the Planning Department, RiverLink, the WECAN and the other non-profits involved in the homeownership zone for an intensive master planning effort between now and next summer.

Rev. Pat Jenkins, Pastor of Haywood Street United Methodist Church, urged Council to delay action.

Ms. Sherry Rice, petitioner, stated that they are not planning any changes to the property.

Ms. Lu Heetderks, neighborhood resident, said that once this land is given to private use, the citizens can't get it back as easily. She urged Council to wait until the planning is completed for the riverfront and WECAN area.

Mayor Martin closed the public hearing at 5:50 p.m.

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Vice-Mayor Field said that since the greenway master planning process is scheduled to be completed in June, she suggested delaying action on this matter until the end of June. She saw no reason not to close this portion if the City didn't need it for a greenway.

Vice-Mayor Field asked if there would be a problem with the owner using the property as they have used it for the past 15 years if Council delayed this matter. City Attorney Oast said that he would investigate as to whether or not it would be possible to enter into some sort of interim arrangement that would permit that use during the time City Council was waiting to decide, if that is what Council chooses.

Vice-Mayor Field then moved to (1) table this matter pending receipt of further information relative to the advisability of including this within the greenway master plan but to come back to City Council no later than the end of June, 1998 for action, and (2) instruct the City Attorney to come up with some kind of agreement with the property owner so that they can continue to use the property until such time City Council makes a decision on this issue. This motion was seconded by Councilman Skalski.

City Attorney Oast said that when the matter is brought back to City Council the individuals who spoke tonight will receive notification.

C. **PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE WITH REGARD TO CHANGEABLE COPY SIGNS, CHURCH SIGNS AND SIGNS IN THE RIGHT-OF-WAY**

ORDINANCE NO. 2407 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE WITH REGARD TO CHANGEABLE COPY SIGNS, CHURCH SIGNS AND SIGNS IN THE RIGHT-OF-WAY

Mayor Martin opened the public hearing at 5:56 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Julia Cogburn, Planning & Development Director, said that the Planning and Zoning Commission has recommended an ordinance amendment to Chapter 7, the Unified Development Ordinance, with regard to changeable copy signs, church signs and signs in the right-of-way.

She gave a brief description of each of the proposed changes:

1) Changeable copy signs - the wording amendment changes the definition of changeable copy signs to allow for automatic changeable copy signs in addition to manual changeable copy signs. Automatic changeable copy signs are those changed by computer rather than by physically changing the letters on a sign. Other cities have made similar definition changes noting as we have the change in technology and the fact that automatic changeable copy signs often have a better appearance and are easier to maintain than the manual changeable copy signs.

2) Right-of-way signs - this wording amendment extends the permitted right-of-way signage to allow for signs which designate the right-of-way as being maintained by a certain group and/or in recognition of a certain person. This wording amendment came about after a request for a permit from an organization wishing to erect just such a sign. An allowed sign would have to be approved by the governing

body having jurisdiction over the right-of-way and could be no greater than six (6) square feet per face or taller than four (4) feet high.

3) Signs for churches in residential districts - this wording amendment increases the size of allowable signage for churches, schools and other institutions in residential districts by only six (6) feet over the currently permitted signage, however, the amendment allows for greater flexibility in using the signage allowed.

The Planning and Development Staff recommends approval of the wording amendment. At the meeting of the Planning and Zoning Commission on September 3, 1997, the Commission voted 5-0 to recommend the wording amendment to the Asheville City Council.

Upon inquiry of Mr. Ralph Bishop about ordinances being read on three separate days, City Attorney Oast said that on June 28, 1993, the N. C. Gen. Assembly ratified changes in Asheville's City Charter. One change included in that legislation is the repeal of the Charter requirement that ordinances be read on three separate days. The general law to which the City is subject requires a second reading where an ordinances does not receive 2/3's vote. At Mr. Bishop's request, City Attorney Oast said that he would furnish Mr. Bishop with a copy of that Session Law.

Mayor Martin closed the public hearing at 6:03 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2407. This motion was seconded by Vice-Mayor Field and carried unanimously.

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D. PUBLIC HEARING TO REZONE 1741 HENDERSONVILLE ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY TO INDUSTRIAL

ORDINANCE NO. 2408 - ORDINANCE TO REZONE 1741 HENDERSONVILLE ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY TO INDUSTRIAL

Mayor Martin opened the public hearing at 6:04 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Councilman Cloninger asked to be excused from voting since the petitioner, Mr. Carroll Hughes, is a client of the law firm for which he works. Councilman Worley moved to excuse Councilman Cloninger from voting. This motion was seconded by Councilman Sellers and carried unanimously.

Vice-Mayor Field asked to be excused from voting since the petitioner is her employer. Councilman Sellers moved to excuse Vice-Mayor Field from voting. This motion was seconded by Councilman Worley and carried unanimously.

Ms. Erin McLoughlin, Urban Planner, said that this is consideration of an ordinance to rezone 11.68 acres off Hendersonville Road (PIN No. 9655-05-29-2688) from RM 16 to HB.

The subject property is located east of Hendersonville Road, behind the Hollywood Cinemas. The current RM16 zoning is a multi-family high density residential district which permits a full range of high density multi-family housing types along with limited institutional, public and commercial uses appropriate within high density residential areas. The Highway Business district is established to address the needs of commercial development along major thoroughfares. After reviewing the request, which included a review of the 2010 plan, current land use, current zoning patterns and infrastructure, staff feels that Institutional zoning may be most appropriate for this area. The Institutional district was established to reserve land for the development of educational facilities, major medical facilities and other complementary and supporting uses such as health related developments, office developments, and public services. Development standards for uses in this district are established to minimize conflict with adjacent land uses.

Staff has received no comments in opposition to this rezoning.

The City Planning and Development staff recommends denial of the HB rezoning request. Staff recommends the Institutional district as an appropriate district for this area.

At their September 3, 1997, meeting, the Planning and Zoning Commission voted 5-0 to recommend approval of the Institutional district for this parcel.

Mr. Tracy McFarland, resident of Crowfields, spoke in favor of the rezoning this land to Institutional.

Mayor Martin closed the public hearing at 6:09 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 240. This motion was seconded by Councilman Sellers and carried unanimously.

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E. PUBLIC HEARING TO ZONE A PARCEL OF LAND OFF HENDERSONVILLE ROAD (WHICH WAS PREVIOUSLY IN THE TOWN OF BILTMORE FOREST) TO INSTITUTIONAL

ORDINANCE NO. 2409 - ORDINANCE TO ZONE A PARCEL OF LAND OFF HENDERSONVILLE ROAD (WHICH WAS PREVIOUSLY IN THE TOWN OF BILTMORE FOREST) TO INSTITUTIONAL

Mayor Martin opened the public hearing at 6:10 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Erin McLoughlin, Urban Planner, said that this is consideration of an ordinance to zone a parcel of land which was previously in the Town of Biltmore Forest (PIN No. 9647-11-66-4454) to Institutional.

The subject property is located west of Hendersonville Road and south of I-40. It is 10.16 acres in size. Currently this parcel is vacant and relatively flat. The parcel is bordered by Institutional zoning to the east, the Town of Biltmore Forest to the west and south, and I-40 to the north.

Staff has received no comments in regard to this zoning.

The City Planning and Development staff recommends Institutional as the appropriate zoning for this parcel.

At their September 3, 1997, meeting, the Planning and Zoning Commission voted 5-0 to recommend Institutional zoning for this parcel.

Mayor Martin closed the public hearing at 6:12 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Field moved for the adoption of Ordinance No. 2409. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 297

F. PUBLIC HEARING TO ADD A MANUFACTURED HOUSING OVERLAY TO PROPERTY ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY LOCATED AT THE END OF FOREST RIDGE DRIVE (OLD BEAR CREEK ROAD)

ORDINANCE NO. 2410 - ORDINANCE TO ADD A MANUFACTURED HOUSING OVERLAY TO PROPERTY ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY LOCATED AT THE END OF FOREST RIDGE DRIVE (OLD BEAR CREEK ROAD)

Mayor Martin opened the public hearing at 6:14 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that the petitioner, Trina Chapman, requested consideration of a manufactured housing overlay to three lots, comprising of 16 acres, zoned RM-16 Residential Multi-Family High Density located on Old Bear Creek Road and Forest Ridge Drive. PIN Nos. for the lots are: 9629.18-30-5167, 9628.06-39-4975, and 9628.06-49-3422. The lots are zoned RM-6. Two are currently vacant and one has a single family home on it. They are adjacent to an existing Manufactured Housing Overlay zone located on Old County Home Road. The Asheville City 2010 Plan calls for low density residential in this area. A number of area residents and property owners have voiced opposition to the application of the zoning overlay.

Staff recommended that application of the Manufactured Housing Overlay be approved for an approximately three acre northern portion of one lot (PIN No. 9629.18-30-5167) and denied for the other two lots. Upon reviewing the request and hearing from the petitioner and the public, the Planning & Zoning Commission recommended that the Manufactured Housing Overlay be approved as recommended by the staff.

The Asheville Planning & Zoning Commission, by a 5-0 vote, recommended that the Manufactured Housing Overlay zone be applied to an approximate three acre northern portion of one lot (PIN No. 9629.18-30-5167) and denied for the other two lots.

Mayor Martin closed the public hearing at 6:16 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2410 to add the Manufactured Housing Overlay zone be applied to an approximate three acre northern portion of PIN No. 9629.18-30-5167. This motion was seconded by Councilman Skalski and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 299

V. UNFINISHED BUSINESS:

A. CONTINUATION OF APPROVAL OF THE BUFFERING PLAN FOR THE GROUP DEVELOPMENT OF BROOKS-HOWELL VILLAGE

Mayor Martin said that the public hearing on this matter was held on August 26, 1997. On that date, Mr. Carleton Collins, architect for the project, said that even though the drawings submitted adhered to the ordinance in terms of what the composition of the buffer should be, he would be happy to meet with the adjacent property owner to determine exactly what the buffer would be.

Mr. Mike Matteson, Urban Planner, described the landscape buffer plan along the west property line between the proposed multi-family development and a single family residence. That plan was the result of the meeting between the architect and property owner. Staff feels this plan meets the intent of our landscape ordinance and the City's landscape architect feels the plan is an appropriate design.

Ms. Betty Lawrence, property owner, felt that the plan will meet the intent of the ordinance. She suggested that the plants be flagged by the landscape architect.

Mr. Carleton Collins, architect for the project, said that it is not their intent to have the landscape architect flag the plants, however; he felt sure that they would be laid out in a nice pattern between the trees.

Councilman Cloninger moved to approve the alternate buffering plan for Brooks-Howell Village. This motion was seconded by Councilman Sellers and carried unanimously.

V. NEW BUSINESS:

A. DISCUSSION - SIGN ORDINANCE REGARDING OUTDOOR ADVERTISING

Planning & Development Director Julia Cogburn said that at the Council Worksession held September 16, 1997, City Council directed staff to look at revisions to the Unified Development Ordinance as it pertains to outdoor advertising signs and to come back to them with additional information on some suggested revisions. The particular suggested revisions deal with the regulations pertaining to outdoor advertising signs (billboards). Council's interest was in looking at sending these wording amendments to the Planning & Zoning Commission for review at their October meeting.

The three draft ordinance changes which will be considered by the Planning & Zoning Commission are as follows:

1) Prohibiting any new outdoor advertising signs in the City of Asheville's zoning jurisdiction.

2) Requiring some/all existing outdoor advertising signs in the city's jurisdiction to come into compliance within a seven year period (signs in addition to those currently subject to coming into compliance). The additional signs required to come into compliance could incorporate:

a) all outdoor advertising signs in the city's jurisdiction; or

b) all outdoor advertising signs in the city's jurisdiction not currently complying with the city's sign regulations (this would cause to come into compliance those currently grandfathered due to their compliance with the 1977 regulations).

The current sign regulations classify outdoor advertising as off-premise signage and do not distinguish billboards, or outdoor advertising, from other kinds of off-premise signage. Off-premise signs are allowed in the CBII(Community Business II), HB(Highway Business), RB(Regional Business), CI(Commercial Industrial) and I(Industrial) districts, with a limitation of 150 feet per face and a maximum of 25 feet in height. A number of spacing restrictions are also included in the ordinance requirements.

On September 16, the Council indicated that it did not want to look at prohibiting other, directional-type, off-premise signs, nor did it want to look at requiring those signs to come into compliance beyond what is already required. The staff is looking, in conjunction with Council's request, at new regulations effecting the other types of off-premise signage.

Council had asked for some information indicating the numbers of signs that might be affected by the suggested changes. A chart is provided below.

Total Outdoor Advertising (Billboard) Signs (1990 Survey Base Data)	165
Removed to Date	39
Subject to Federal Law Protections (Cannot Be Subject to Coming into Compliance)	22
Comply with Current Sign Ordinance Regulations	14
Comply with 1977 Ordinance but Not Current Sign Ordinance Regulations	48
Signs Still to Come Down/Into Compliance Per the Current Regulations	42

After all signs are brought into compliance under the current regulations, 84 outdoor advertising signs will remain in the city's jurisdiction. An ordinance requiring all signs to come down (if Council passes an ordinance prohibiting outdoor advertising) would affect 62 signs. Those 22 remaining would be those subject to protection under state and federal laws. An ordinance requiring those not complying with the current regulations to come down would affect 48 signs -- leaving 36 signs within the city's jurisdiction.

Upon inquiry of Vice-Mayor Field, Ms. Cogburn said that since the 1989 ordinance was enacted, only one application has been received for a billboard. The application was approved, however, the billboard was never erected.

Discussion surrounded what type of signs would be required to come into compliance.

Mr. Darryl Merchant, General Manager of Fairway Outdoor Advertising, stated that his company provides a valuable and essential service to business. Fairway has and continues to try to comply with the many changes Asheville requires of sign companies and they have made significant expenditures coming into compliance. He urged City Council to consider the economic impact, impact to the traveling public, economies of other communities in the area, and impact on loss of jobs in billboards and tourism related fields if they proceed in the direction Councilman Cloninger is requesting.

Mr. Mike McCurry, tourist, said that he would rather not see the billboards along the highway.

Ms. Anne Campbell, Asheville native, said that she returned to Asheville because of the beautiful mountains and felt that billboards obliterate the view of those mountains. She said the topography of this area is very special and should be enhanced, not blocked by billboards. She urged Council to move forward with the elimination of billboards.

Mr. Frank Martin, resident of Asheville, cited several states that prohibit billboards noting that those states are prosperous and destination states for vacations. They have control over their environment and felt Asheville should do the same. Since Asheville has been designated as an All America City, we should protect it.

Mr. Jeff Nolan, Fairway Outdoor Advertising, said that the reason there has only been one application applied for since 1989 is that restrictions on new sign locations in Asheville are so restrictive. Because of those restrictions, the prohibition of new billboards is already being accomplished. He said that signs are erected because businesses need them. His company has spent millions of dollars to lease and buy property in Asheville and they are a legitimate business working with the City to come into compliance. They have already taken three structures down at considerable expense with no compensation.

Councilman Cloninger felt that people come to Asheville for the natural beauty of the area and we need to do what we can to protect that beauty.

City Attorney Oast said that no action is necessary by City Council at this time since at their worksession last week Council instructed Planning staff to draft revisions pertaining to outdoor advertising signs for presentation to the Planning & Zoning Commission at their October meeting.

B. RESOLUTION NO. 97-173 - RESOLUTION AMENDING THE CITY'S FEES & CHARGES MANUAL

City Manager Jim Westbrook said that during the budget process, three items related to fees and charges were omitted from the information presented to City Council. Staff requests City Council consideration of these items so as to become effective September 23, 1997.

The Engineering Department of the City of Asheville is requesting that the Asheville Standards Specifications and Details Manual be sold in Manual form for $25 per copy and the standard details be sold in a 10-Disk set for $100, plus shipping charges if applicable.

The Engineering Department is also requesting that a maximum for street cut permit fees be set at $ 2,500. Staff has evaluated the fee schedule for street cuts and feels that a maximum fee is appropriate for the large job size. This amount was reached based on a review of data from previous projects with large street cuts.

The Administration Department has drafted a copy fee policy that would be applicable to all City departments and addresses the different types of documents available for duplication.

Staff recommends that the City Council adopt the new fees effective September 23, 1997.

Mayor Martin said that members of Council have been previously furnished with copies of the resolution and it will not be read.

Vice-Mayor Field moved for the adoption of Resolution No. 97-173. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 213

C. RESOLUTION NO. 97-174 - RESOLUTION REQUESTING THE BUILDING CODE COUNCIL FOR THE AUTHORITY TO REVIEW PLANS AT THE LOCAL LEVEL AND BE EXEMPT FROM THE REQUIREMENTS FOR CERTAIN PLANS TO BE REVIEWED BY THE DEPARTMENT OF INSURANCE

Director of Building Safety Terry Summey said that this is consideration of a request to The Building Code Council for the authority to review plans at the local level and to be exempt from the requirements for certain plans to be reviewed by the Department of Insurance.

The North Carolina State Building Code, Volume 1-A, requires plans for certain facilities to be submitted and reviewed by the Department of Insurance (DOI) engineering staff. This review generally takes several weeks, or months to complete and may delay the issuing of the building permit by the local jurisdiction. If the local jurisdiction has appropriately certified plan review personnel on staff, this requirement may be waived by written request to DOI.

An inspection department may apply to the Building Code Council to review plans and specifications on buildings listed in Table 602. Such authority shall be granted provided:

1. The inspection department shall submit a written request for approval.
2. The inspection department shall state it is adequately staffed and the staff possess Standard Level III Certificates in all areas from the North Carolina Code Qualifications Board.
3. The approval shall be for up to 12 months.
4. The inspection department shall submit an annual written request for approval for the subsequent year by May 1 to be approved at the June meeting for the following year.

The City of Asheville Building Safety Department and The Fire Department's Life Safety Division currently have the following Level III Certifications on staff: Building - 9 Certificates; Electrical - 7 Certificates; Mechanical - 3 Certificates; Plumbing - 8; Certificates; and Fire Prevention - 7 Certificates.

Although the City of Asheville may be approved for local plan review, the below listed buildings will require review by the State Engineering Division, per Volume 1A-section 602.2.2.

1. High Rise (buildings in which the highest occupied floor is more than 75 feet above the highest firefighting vehicle apparatus access area)
2. Group A-1- Large Assembly
3. Group H- Hazardous over 100 people
4. Covered Malls
5. All buildings owned by a city, or county having a total gross area exceeding 10,000 sq. ft. and
6. All buildings owned by the State shall be submitted to the State Property and Insurance Fund Division.

Mecklenburg County and the City of Raleigh are other jurisdictions which are currently approved for local plan review.

The Director of Building Safety and the Fire Chief recommend that The City Council approve the request to The Building Code Council for the authority to review plans at the local level and to be exempt from the requirements for certain plans to be reviewed by the Department of Insurance.

Councilman Worley felt this was a great way to speed up the review process.

Mayor Martin said that members of Council have been previously furnished with copies of the resolution and it will not be read.

Councilman Worley moved for the adoption of Resolution No. 97-174. This motion was seconded by Vice-Mayor Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 215

D. RESOLUTION NO. 97-175 - RESOLUTION ADOOPTING THE REVISED CITY'S ECONOMIC DEVELOPMENT POLICY

City Development Director John Scaralia said that this is consideration of revisions to the City's Economic Development Policy which includes establishing grants for eligible firms.

As competition between municipalities for a limited number of business relocations and investments becomes more acute, communities are finding the need to become more proactive in positioning themselves as cost-effective destinations with strong pro-business climates. It follows that in order to expand economic development options and create more employment opportunities for the residents of Asheville, a program should be established which encourages business to locate and expand within the City.

The Economic Development Incentives Policy provides a new way to stimulate business investment within the City by establishing grants for eligible firms based on the amount of investment in the community, the number of quality jobs created, and their ability to meet certain financial and operational criteria.

On March 8, 1996, in response to a lawsuit which argued that business incentives provided by governments to companies are unconstitutional (*Maready vs. City of Winston-Salem*), the N.C. Supreme Court held "that N.C.G.S. [section] 158-7.1, which permits the expenditure of public moneys for economic development incentive programs, does not violate the public purpose clause of the N.C. Constitution." As a result, municipalities across the state have begun to develop and broaden their incentive policies in order to compete for expanding and relocating businesses.

This proposed revision is based on providing grants to companies seeking to locate and expand within the City, and follows the general format which other N.C. municipalities have adopted. It augments the original guidelines as set forth in Resolution #94-211, adopted by the City Council on October 1, 1994, and establishes new parameters to help increase the diversity of the tax base, offer quality employment opportunities for its citizens, and promote private business and industrial growth within the City of Asheville.

Councilman Skalski congratulated Mr. Scaralia, the City Manager and the Finance, Legal and Planning Departments for the fine effort they made over the past few months to begin forming one small "piece of the pie" to help economic development in Asheville. He said "the financial grants are one 'piece of the pie' that would fit very well with many other pieces. It should be pointed out that, in order for economic development to be successful, the entire pie must be in place. Here is the core of the 'pie' needed for economic development:

*1. Public Schools: Must be dramatically improved by providing more local control and family empowerment. Consider adding a new school for the arts, science and technology which could offer technical training to many of the brightest students beginning at the junior and senior high school levels.

*2. Technology: Such as adding a new Engineering School at UNC-A. Educated citizens with technical schooling and skills training are technology.

*3. Infrastructure: Fix it first! Upgrade and maintain our present system of public transportation, roads, sidewalks, water, sanitary and storm sewers. The current zoning ordinance (UDO) has set aside 15 percent of our land for industrial purposes. This is three times what most cities need. Statewide studies have shown that annexation causes taxes to increase significantly. Lower taxes are good for business! Therefore, we should avoid annexation.

4. Business Community Involvement: Without all the business stakeholders participation and empowerment, a community can not compete in a world economy. Skilled people are technology. Leaving them out weakens a city's economic development capabilities.

5. Comprehensive, Strategic, Economic Plan: What are the long range goals and objectives of Asheville's economy? Right now we are racing toward an economy that is almost entirely dependent upon tourism and retirees. Tourism spending and retiree location are totally discretionary in nature. Aren't retirees going to head to neighboring Henderson County where the taxes are 45 percent less than Buncombe County's?

* Studies have shown that cities with a well-educated work force and a solid, comprehensively planned infrastructure in place are very likely to have quality businesses, jobs, and an overall stronger and a more sustainable, growing, economy than cities that don't. (Items #1, 2 and 3 from the core of economic development).

"These above five economic issues are vastly more important than the new UDO zoning ordinance. Why did we only spend six weeks on this

'Economic Development Incentives Policy' to provide financial grants for businesses? We spent six years working on the new UDO! This makes no sense. Providing financial grants doesn't begin to address the primary issues of economic development in the Asheville area.

"Here are a few comments on the 'Incentives Policy,' financial grants: (1) small businesses with less than four employees should be given the highest priority; (2) the grant thresholds appear to be much too high; (3) why not use tax incentives; (4) why not include education and job training in the package; (5) what about putting grant money on jobs created and maintained, not capital investment; (6) how much participation and empowerment does the Asheville community have in this process now; (7) what kind of jobs will fit the existing trained workforce; (8) what kind of training should we implement how in anticipation of what kind of businesses; (9) how many jobs will this create; and (10) how much money can the City afford?

"Six or seven weeks is not much time to fully develop an economic policy, but John Scaralia and other department heads have made a good start.

"Why not set a business community task force to work on these issues? Shouldn't the core issues be discussed first? This is a vital issue of concern for everyone."

Mr. Scaralia said that they have been working on this policy since the fall of 1996 and staff feels this is the best policy adhering to local and state laws. The policy will need to be continuously measured and assessed stressing that the policy is just a tool that will help Asheville.

Councilman Worley felt that this policy is a good expansion to our existing policy. He then responded to some of Councilman Skalski's suggestions.

Mayor Martin addressed many of Councilman Skalski's questions and concerns. He felt that the Plan was very important and we needed to move forward and be innovative. He noted that the policy can always be amended.

Mayor Martin said that members of Council have been previously furnished with copies of the resolution and it will not be read.

Councilman Worley moved for the adoption of Resolution No. 97-165. This motion was seconded by Vice-Mayor Field and carried on a 6-1 vote, with Councilman Skalski voting "no".

RESOLUTION BOOK NO. 24 - PAGE 216

VI. OTHER BUSINESS:

RESOLUTION NO. 97-176 - RESOLUTION ADOPTING WRITTEN DECISION DENYING APPLICATION BY CC&J ENTERPRISES INC. FOR GROUP DEVELOPMENT PERMIT FOR "UNIVERSITY PLACE"

City Attorney Oast said that the City Council, at its regular meeting on March 25, 1997, and following a public hearing, denied approval to a proposal by CC&J Enterprises Inc. to construct a group development proposal by the name of "University Place" on Barnard Avenue in the City of Asheville. The Council's decision was appealed to Superior Court of Buncombe County where, on September 5, 1997, an Order was entered remanding the matter to City Council for entry of a written decision. The Council's decision was made by a 4-3 vote as indicated in the official minutes of that meeting. He presented City Council with a proposed written decision which reflects the reasoning of those members who voted in the majority. He stressed that even though some members of the City Council continue to disagree with the majority's decision, it is the decision of the Asheville City Council.

Councilman Skalski asked the City Attorney to make sure that if there was anything in the record about children, family size, demographics of the neighborhood, or any reference to parks, that it be included.

At this time (7:38 p.m.), Councilman Worley left the meeting not excused.

Upon inquiry of Vice-Mayor Field, City Attorney Oast said that he felt sure this would be scheduled for hearing as soon as possible after September 30, 1997.

Mayor Martin said that members of Council have been previously furnished with copies of the resolution and the findings and they will not be read.

Councilman Skalski moved for the adoption of Resolution No. 97-176. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 217

N.C. LEAGUE OF MUNICIPALITIES ANNUAL MEETING

Councilman Sellers appointed Vice-Mayor Field as the Asheville voting delegate at the N.C. League of Municipalities annual meeting in Raleigh in October and Councilman Worley as the alternate. This motion was seconded by Councilman Hay and carried unanimously.

HOUSING & COMMUNITY DEVELOPMENT

Councilman Hay was pleased to report that the Housing & Community Development Committee approved (on a 2-1 vote) the firm of Housing & Community Insight to prepare a five-year long range affordable housing strategy plan for Asheville. The study will consist of a comprehensive survey of the current housing situation and an evaluation of needs and organize strategy. He outlined the scope of work to be completed within four months at a cost of $27,200.

Vice-Mayor Field agreed with Councilman Hay in that we needed this plan for a long time in the City. She said that all firms were well qualified and each had some good strategies of involving the public. She was totally supportive of the plan which will let us know what we have, what we need, and how best to spend our housing money.

Councilman Skalski said that even though he basically is not against the affordable housing plan, he voted against it because he felt that it has to be included as part of a total package - and that was jobs. Studies have shown that unless you address quality jobs in your area, there is no way you can address housing. Another reason he felt the study is premature is because Asheville doesn't have a program in place to create jobs in Asheville, however, he did understand that there is a need for housing in the City.

Mayor Martin stated that programs do ultimately work together.

ONE YOUTH AT A TIME PROGRAM

Vice-Mayor Field said that she has received a request, as she was sure other Council members had also, from Rev. L.C. Ray to fund $10,000 to the One Youth at a Time Program. They have a $50,000 Community Foundation matching grant and have received $40,000 from Buncombe County. She felt that the jobs placement program has been a good and worthwhile program and recommended the City contribute $10,000 to the program based on receipt of information that the City would normally request to fund an outside agency.

Vice-Mayor Field moved to fund the One Youth at a Time Program, in the amount of $10,000, contingent upon receipt of the appropriate documentation that the City would normally receive to fund an outside agency. This motion was seconded by Councilman Cloninger and carried unanimously.

COMMUNITY MEETING

Due to the location of the September 30, 1997, City Council community meeting being unknown, Mayor Martin suggested that the City Clerk try to make arrangements at the Valley Springs Middle School or the Skyland Volunteer Fire Department. Vice-Mayor Field reported that the Crowfields Community Center was too small for a Council community meeting.

CLAIMS

The following claims were received by the City of Asheville during the week of August 29-September 11, 1997: Rainbow's End (Streets), Donna Robb (Streets), Paul Benson (Water), Becky Gudger (Streets), Charles Randle (Fire), Bell South (Water), Josephine Roberts (Sanitation), Lynn Holland (Water), Ruth Moraga (Sanitation), Beth Allender (Water) and William H. Melton Jr. (Water).

The following claims were received during the week of September 12-18, 1997: Blake Lasher (Water), The Summitt (Water), Laurie Sanders (Water) and Hyatt Electric (Inspections).

These claims have been referred to Asheville Claims Corporation for investigation.

LAWSUIT

The City was served with a Complaint on September 8, 1997, which is generally described as follows: Dept. of Transportation v. Josephine Simms Hammond, et vir, et al. The nature of the proceedings is condemnation proceeds of property in the Haw Creek Township at the intersection of Highways No. 70 and 74 and SR 2863 (Haw Creek Lane).

This matter will be handled in-house.

CLOSED SESSION

At 8:01 p.m., Councilman Cloninger moved to go into closed session for the following reasons: (1) to prevent the disclosure of information that is privileged or confidential pursuant to the laws of this State, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information being considered confidential is G.S. 160A-168, the Personnel Privacy Act - the statutory authority is G.S. 143-318.11 (a) (1); (2) to establish or to instruct the public body's staff concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property - the statutory authority is G.S. 143-18.11 (a) (5); and (3) to consult with an attorney employed by the City Council in order to preserve the attorney-client privilege between the attorney and City Council - the statutory authority is G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Sellers and carried unanimously.

At 8:55 p.m., Councilman Skalski moved to come out of closed session. This motion was seconded by Councilman Cloninger and carried unanimously.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 8:55 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Worksession

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT AGENDA:

Tree Ordinance Amendments

Summary: The consideration of several minor revisions to the Tree Ordinance.

All America City Budget Amendment

Summary: The consideration of appropriating the $10,000 Community Grant already received by the City to Asheville-Buncombe VISION, HandMade In America and The Minnie Jones Health Center.

At the request of Councilman Skalski, Audit/Budget Director Bob Wurst said that he would obtain the final figures on how much it cost the City of Asheville for the designation of All America City.

When Councilman Skalski asked if the $10,000 grant could go back into the General Fund, City Manager Westbrook said that the grant was given to the City with the understanding that it would be distributed to the community through the projects that were specified in the All America City application.

Councilman Skalski then suggested that since Asheville-Buncombe VISION has already received money from the City that its portion of the grant be designated for something else. He felt strongly that there is no overall comprehensive criteria on who gets the money and how much.

Amendments to Regional Water Authority Capital Project Ordinances (35 Fund and 29 Fund)

Summary: The consideration of housekeeping amendments to reflect the transfer of completed projects to the City's fixed asset ledger to be capitalized rather than expensed.

By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds in the 29 Fund.

Staff recommends Council approve amending and restating Capital Project Ordinance 82-25 and Capital Project Ordinance 92-17 in order to reflect the transfer of completed projects to the City's fixed asset ledger.

The Regional Water Authority approved a resolution amending and restating Capital Project Ordinance 82-25 and Capital Project Ordinance 92-17 on September 16, 1997.

At the request of Councilman Skalski, Assistant City Manager Doug Spell said that he would provide him with information on how much is in the Water Fund fund balance now.

Increase in Festivals Support Budget Amendment

Summary: The consideration of a budget amendment, in the amount of $90,000 to increase Festivals support, the cost of which will be offset by increased revenues.

Intent to Enter into Lease Agreement for Reid Annex

Summary: The consideration of resolution directing the City Clerk to advertise an offer to lease the Reid Annex Building to the Opportunity Corporation of Madison-Buncombe County for renovations.

West Area Annexation Sewer Improvements - Phase II

Summary: The consideration of adopting a resolution awarding the contract for the West Area Sanitary Sewer Improvements, Phase II, to Wheeler Construction Company Inc. in the amount of $367,615.

Bids on Bridge Replacement Materials

Summary: Consideration of a resolution to award Bid Request No. 469-98 for the purchase of pre-fabricated bridge replacement materials for the Public Works Department's Elizabeth Street Project.

Renewal of Regional Hazardous Materials Emergency Response Team Status with State of N.C.

Summary: The N.C. Department of Crime Control/Public Safety's Emergency Management Division has asked the City of Asheville to renew its agreement with the State to provide hazardous materials emergency response in Western North Carolina through September of 1999.

Haw Creek Fire Protection Agreement Extension

Summary: The consideration of a resolution authorizing the City Manager to sign a two-year fire protection agreement with the Haw Creek Fire Department for a term through June 30, 1999.

Subordination of Certain Demolition Liens

Summary: The consideration of a resolution authorizing the City Manager and others to subrogate demolition liens on certain properties.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

RESOLUTION NO. 97-177 - RESOLUTION DIRECTING THE DIRECTOR OF BUILDING SAFETY TO WAIVE THE PERMIT FEES FOR THE COMMUNITY PLAYGROUND TO BE BUILT BY VOLUNTEERS AT THE EMMANUEL LUTHERAN CHURCH AND SCHOOL

Mr. Terry Summey, Director of Building Safety, asked for consideration of a request to waive permit fees for a major community playground at the Emmanual Lutheran Church.

A major community playground is to be built by over 700 volunteers during October 22-26, 1997. at the Emmanuel Lutheran Church. Many volunteers have worked for over a year to spearhead building a community playground at the Emmanuel Lutheran Church and School. The playground will be available for community usage after Church activities. The playground has been designed by professional architects that have coordinated similar projects at other cities around the country.

The Director of Building Safety recommends that the City Council adopt the resolution waiving the $90 permit fee for this community project.

Councilman Sellers read a letter from the Mr. Robert C. Foerster, Principal of Emmanuel Lutheran Church and School, asking for the waiver of fees for this community oriented project.

When Councilman Skalski asked if the City has a policy for waiving these fees for any other groups, City Manager Westbrook said that the policy is that everyone pays the permit fee unless it is waived by City Council.

Councilman Skalski suggested a way of letting the community know that a waiver of fees might be possible, especially if it is a community oriented project.

Councilman Worley moved to waive the rules and take formal action at this meeting. This motion was seconded by Vice-Mayor Field and carried unanimously.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Councilman Skalski moved for the adoption of Resolution No. 97-177. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 223

RESOLUTION ENDORSING LEGISLATION FOR LOCAL ZONING AUTHORITY FOR ADULT ESTABLISHMENTS

Councilman Sellers said that "I, along with numerous others, am concerned that the opening of several establishments for the purpose of entertainment by 'topless' bare-breasted women in Asheville and/or Buncombe County is not in agreement with the strong family values this community has been established upon.

"This form of entertainment contributes to an attitude that is conducive to behavior that promotes molestation, rape, sex crimes and sexually transmitted diseases. These establishments discourage the channeling of sexual energies toward the constructive ends of marital fidelity and family commitment. This form of entertainment degrades womankind by exploiting them for selfish sexual ends and negatively affects individuals' attitudes toward sexuality.

"The youth in this community see these establishments as an accepted legitimate business and will receive a distorted impression of right and wrong. The tourists who visit Asheville for wholesome and decent reasons will receive a wrong message about our community.

"These businesses attract and encourage gambling, prostitution and drunk driving and will put an undue burden upon the Police Department Vice Division.

"We, the community strongly object and consider such businesses to be immoral, obscene and a public nuisance and should be closed. As a council we are changed with stewardship to our citizens now and generations to come. I hope each of you will support me on this matter."

City Attorney Oast explained that what is before City Council is a resolution endorsing Senate Bill 452 Strengthening Local Control Over Sexually Oriented Businesses.

Even though zoning and local use controls are recognized to be matters of concern for local governments, North Carolina statutes regulating sexually explicit conduct and adult establishments (sexually oriented business) have been interpreted by the courts in such a way as to establish a de facto doctrine of State pre-emption with respect to such matters. Localities still maintain some control over the location of sexually oriented businesses through zoning ordinances.

In the 1997 Session of the North Carolina General Assembly, a bill was introduced, Senate Bill 452, that would restore a measure of regulatory authority to local governments with respect to sexually oriented businesses, and partially abrogate the State's judicially-established pre-emption in this area. The bill requires that the constitutional protections that apply to such activities continue to be recognized.

The bill passed the Senate hardily, and seemed likely to pass the House as well, but failed to come out of committee before the Legislature adjourned in August. The bill had the support of the N.C. League of Municipalities and many local governments. Senator Roy Cooper of Rocky Mount introduced the bill, and expects it to be considered during the Short Session of the Legislature in 1998.

The resolution, if adopted, will express the Council's support for Senate Bill 452. Copies of the resolution will be sent to Senator Cooper, and to those members of North Carolina House whose districts include the City of Asheville.

City Attorney Oast felt it would be good for Asheville to have that additional regulatory authority; whether and how it is exercised is up to Council.

Vice-Mayor Field felt that Asheville should endorse any bill that strengthens the authority of local governments to regulate sexually-oriented businesses within their jurisdiction.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

NEGOTIATION OF INSTALLMENT PURCHASE CONTRACT

Finance Director Bill Schaefer said that this is consideration of a resolution authorizing the negotiation of an installment purchase contract, directing the publication of notice with respect thereto and providing for certain related matters.

Financing of the renovation of the Municipal Building, Water Maintenance Building and the City Building Roof; renovation of the first floor of the Grove Arcade as a public market; the construction of a high tech/flex building at Broadlands Technical Park and refunding of the Series 1991 COPs (which funded the acquisition of the Public Works Facilities) will require the issue of Certificates of Participation (COPs). The actual issuer of the COPs is Asheville Public Financing Corporation (APFC), a not for profit corporation which was formed to aid the City of Asheville in complex financing such as this COPs. In order to service the debt, the City will enter into an amendment to the existing 1991 installment purchase contract with APFC whereby the City agrees to provide periodic payments (which equal the debt service). The debt is to be secured by a deed of trust on the Municipal Building, the City Building, the Water Maintenance Building and a continued deed of trust on the Public Works Facilities (which was pledged for the 1991 COPs). In furtherance of the issue of COPs, the resolution provides the following:

1. Authorizes the City Manager and Finance Director to negotiate the APFC contract amendment and convey the deeds of trust to facilitate financing in an amount not to exceed $27,000,000.
2. Directs the Finance Director to file the required financing application with the Local Government Commission.
3. Directs the City Manager and Finance Director to retain Parker, Poe, Adams & Bernstein as Special Counsel and First Union Capital Markets, Corp.; Wheat First Butcher Singer; and A.G. Edwards & Sons Inc. as Underwriters.
4. Establishes a public hearing by City Council, on October 28, 1997 at 5:00 p.m., concerning the contract amendment, the deeds of trust, proposed projects and associated transactions

Mr. Schaefer responded to several questions from Councilman Skalski as they related to the Stephens-Lee Community Center financing, and the public non-taxable portion of the project which includes the Municipal Building, Water Maintenance Building and the City Building Roof and the private taxable portion which includes the renovation of the first floor of the Grove Arcade as a public market and the construction of a high tech/flex building at Broadlands Technical Park.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BREVARD ROAD SANITARY SEWER EASEMENTS

City Engineer Cathy Ball said that the City of Asheville has previously awarded a contract for the installation of a gravity sanitary sewer system to serve the Brevard Road and construction is underway. This project will provide access to public sanitary sewer service within the area.

Over the past several months, easement negotiations have been ongoing with property owners in this area. However, there are seven properties in which agreement has not been reached at this time regarding a sanitary sewer easement. Due to the need to complete the project, staff requests Council's consideration of a "Resolution of Condemnation" on seven properties in which easement negotiations have not been finalized. These properties are as follows:

- Pin Number 9627-20-81-3926 - Lelia Page Cornwell (along Dogwood Road)
- Pin Number 9627-20-82-3216 - Western Carolina Forklift (along Dogwood Road)

- Pin Number 9627-20-80-9493 - Leonard J. Effler and Tammy F. Effler (along Poodle Way)
- Pin Number 9627-20-80-7448 - Leonard J. Effler and Tammy F. Effler (along Poodle Way)
- Pin Number 9627-20-90-3807 - Joseph A. Dennis and Ronda H. Dennis (along Poodle Way)
- Pin Number 9627-20-80-2403 - A. Brigman, Heirs (along Pine Lane)
- Pin Number 9627-20-80-3312 - Fred Mathis and Flaura F. Mathis (along Pine Lane)

The City has just received appraisals if each of the properties to determine the fair market value of the property taking into consideration the provision of sanitary sewer service. From the City's perspective, this is a definite enhancement of the properties.

The City will continue to work with these property owners to attempt to finalize the easement negotiations. The primary purpose of the "Resolution of Condemnation" is to establish a time parameter of 30 days, which is a prerequisite to the filing of the complaint and "Declaration of Taking" so that construction may proceed.

Upon inquiry of Councilman Sellers, Ms. Ball said that most of the property owners want more money for their easement and one person, in particular, would like to build a shed in the easement area which MSD will not allow.

Staff recommends the resolution of condemnation be approved for the seven properties listed herein with direction for staff to continue to negotiate with the property owners to try and reach resolution if possible.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UPDATE ON FINANCING OF WOODRIDGE APARTMENTS

Mr. Larry Holt, Deputy Executive Director of the Housing Authority, explained that the Housing Authority has agreed in principle to issue up to $4,900,000 of its housing revenue bonds to finance a loan to Asheville - Woodridge LLC. Asheville-Woodridge LLC will use the loan proceeds for the renovation of the Woodridge Apartments development in Asheville, and to pay related expenses. The U.S. Internal Revenue Code ("Code") requires that for such bonds to be issued on a tax-exempt basis, the Asheville City Council must first approve their issuance. The Housing Authority will be holding a hearing on October 21, 1997, on the issuance of the bonds as required by the Code. The Housing Authority will report the proceedings of such hearing to the Council.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the formal City Council agenda on October 28, 1997.

CHEROKEE ROAD WALL CONTRACT

Ms. Suzanne Molloy, Assistant Director of Public Works, said that this is consideration of the selection of a contractor to reconstruct a retaining wall along a portion of Cherokee Road.

The City, through the Public Works Department, solicited bids for this project. Four bid proposals were received. The bidders were qualified and listed below:

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Company	MB Part	Drug Free	Bond	Bid
Thorpe Construction Co.	8.02%	Yes	Yes	$231,685
Buncombe Construction	2.1%	No	Yes	$247,100
Taylor and Murphy	0%	No	Yes	$280,000
R.E. Burns and Sons, Inc.	9.4%	No	Yes	$320,000

The Engineer's estimate for this project was $138,000. After review of these proposals and qualifications of the bidders, it was determined that the bids were too high and the engineer's estimate was too low. Staff has initiated negotiations with the lowest bidder, Thorpe Construction Company.

Staff is currently working with Day Engineering Services, P.A., Director of Historic Resources Commission, and Thorpe Construction Company to negotiate a cost for the project taking into consideration all available options. The cost to restore the historical nature of the wall is approximately $45-50,000. At this time, negotiations are still on-going.

If negotiations are successful and contingent upon Historic Resources Commission approval, the Public Works Department staff recommends City Council adopt a resolution authorizing the City Manager to enter into contract with Thorpe Construction Company to reconstruct the Cherokee Road retaining wall. Additionally, a budget amendment, in the amount of $240,000, will be required in order to appropriate funds for reconstruction of the retaining wall.

Upon inquiry of Councilman Worley, Ms. Molloy said the road has been closed since March of 1997. The community likes the road closed, however, for safety reasons, the road should be opened as soon as possible.

Councilman Cloninger asked about the difference in appearance of a regular retaining wall vs. the historical look of the wall. Ms. Maggie O'Connor, HRC Director, said that even though the HRC Commission has not reviewed the project yet, she felt sure the Commission would feel very strong, as well as the community, to reconstruct the wall back to its historical nature.

Upon inquiry of Councilman Sellers, Ms. Molloy said that the $240,000 would include the repaving and reconstruction of road.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RETREAT

City Manager Westbrook asked for guidance from City Council as to the location of their City Council retreat in January 1998. If City Council chooses an out of town retreat, staff will need to begin to look for a suitable spot early enough to ensure the reservation.

After each Council member expressed their views on an out of town vs. in town retreat, Mayor Martin instructed the City Manager to bring the topic up again at a future date.

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CHARLOTTE STREET ADVISORY COMMITTEE

Mr. Jerry Bailey, member of the Charlotte Street Advisory Committee, briefed Council on the progress, or lack thereof, of the Committee. He said that they will be meeting with City staff this week and will report back to Council their concerns.

Vice-Mayor Field said that if the Committee cannot come to consensus, and that is what City Council would prefer, then City Council will make the decisions.

RESCHEDULING OF NOVEMBER 4, 1997, CITY COUNCIL WORKSESSION

Mayor Martin noted that City Council has a scheduled worksession on Tuesday, November 4, 1997, which is election day for the Mayor and Asheville City Council. It was the consensus of City Council that if a worksession is needed that week, that the Tuesday, November 4, 1997, worksession be rescheduled until 3:00 p.m. on Wednesday, November 5, 1997, in the First Floor North Conference Room.

ADJOURNMENT:

Mayor Martin adjourned the meeting at 4:27 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday - October 14, 1997 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Martin gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SATURDAY, OCTOBER 18, 1997, AS "JAMES McCONNELL SMITH DAY"

Mayor Martin proclaimed Saturday, October 18, 1997, as "James McConnell Smith Day" in City of Asheville and presented the proclamation to Mr. Ron Holland who accepted the proclamation on behalf of Ms. Frances McDowell. He briefed the Council on the activities that will be taking place during that day.

B. PRESENTATION OF GRANTS IN RECOGNITION OF ALL AMERICA CITY DESIGNATION

Mayor Martin said that when the City of Asheville received the All America City designation in June, we qualified to submit a proposal to the Allstate Foundation for a $10,000 community grant. This grant was to be funneled back into the community for community projects. Handmade in America, the Asheville-Buncombe Vision, and the Minnie Jones Family Health Care Center were projects that were instrumental in our receiving the All America City designation. For this reason, we are dividing this grant between these three projects that are promoting partnerships, collaboration, and community input.

Vice-Mayor Field presented a check in the amount of $3,333.33 to Ms. Rebecca Anderson, representing HandMade in America. Councilman Worley presented a check in the amount of $3,333.33 to Ms. Minnie Jones, representing the Minnie Jones Health Center. Councilman Hay presented a check in the amount of $3,333.33 to Pam Wahl and Benson Slosman, representing the Asheville-Buncombe VISION. All recipients thanked Council for their support and explained how the grant funds would be used to benefit the City of Asheville and its citizens.

II. CONSENT:

At the request of Councilman Skalski, Items H, L and O were removed from the Consent Agenda for further discussion.

At the request of Mr. Ralph Bishop, Item C was removed from the Consent Agenda for further discussion.

A. RESOLUTION NO. 97-178 - RESOLUTION AUTHORIZING THE SALE OF DISPOSAL PARCEL 10.1 ON CARROLL AVENUE IN THE EAST END/VALLEY STREET REDEVELOPMENT AREA TO DEIRDRE RENEE TOBE

Summary: The consideration of conveyance of Disposal Parcel 10.1 on Carroll Avenue to Deirdre Renee Tobe in the amount of $7,875.

On September 23, 1997, the City Council directed the City Clerk to advertise for upset bids on Disposal Parcel 10.1 in the East End/Valley Street Community Improvement Area. The advertisement ran in the Asheville Citizen-Times on September 26, 1997, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Deirdre Renee Tobe in the amount of $7,875 was not upset and the sale to Deirdre Renee Tobe should be approved.

Approval of the resolution will authorize the sale of the property to Deirdre Renee Tobe for the amount of $7,875.00.

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B. RESOLUTION NO. 97-179 - RESOLUTION AUTHORIZING THE CITY ATTORNEY TO FILE A COMPLAINT AND DECLARATION OF TAKING AND OTHER RELATED DOCUMENTS IN BUNCOMBE COUNTY SUPERIOR COURT FOR THE CONDEMNATION OF CERTAIN TRACTS OF REAL PROPERTY LOCATED IN PHASES I OF THE BREVARD ROAD ANNEXED AREA FOR THE CONSTRUCTION AND INSTALLATION OF WASTEWATER LINES

Summary: The consideration of adopting a "Resolution of Condemnation" for seven properties located in the Brevard Road area.

The City of Asheville has previously awarded a contract for the installation of a gravity sanitary sewer system to serve the Brevard Road and construction is underway. This project will provide access to public sanitary sewer service within the area.

Over the past several months, easement negotiations have been on-going with property owners in this area. However, there are seven (7) properties in which agreement has not been reached at this time regarding a sanitary sewer easement. Due to the need to complete the project, staff requests Council's consideration of a "Resolution of Condemnation" on seven properties in which easement negotiations have not been finalized. These properties are as follows:

- Pin Number 9627-20-81-3926 - Lelia Page Cornwell (along Dogwood Road)
- Pin Number 9627-20-82-3216 - Western Carolina Forklift (along Dogwood Road)
- Pin Number 9627-20-80-9493 - Leonard J. Effler and Tammy F. Effler (along Poodle Way)
- Pin Number 9627-20-80-7448 - Leonard J. Effler and Tammy F. Effler (along Poodle Way)
- Pin Number 9627-20-90-3807 - Joseph A. Dennis and Ronda H. Dennis (along Poodle Way)
- Pin Number 9627-20-80-2403 - A. Brigman, Heirs (along Pine Lane)
- Pin Number 9627-20-80-3312 - Fred Mathis and Flaura F. Mathis (along Pine Lane)

The City is in the process of appraising each of the properties to determine the fair market value of the property taking into consideration the provision of sanitary sewer service. From the City's perspective, this is a definite enhancement of the properties.

The City will continue to work with these property owners to attempt to finalize the easement negotiations. The primary purpose of the "Resolution of Condemnation" is to establish a time parameter of 30 days, which is a prerequisite to the filing of the complaint and "Declaration of Taking" so that construction may proceed.

Staff recommends the Resolution of Condemnation be approved for the seven properties listed herein with direction for staff to continue to negotiate with the property owners to try and reach resolution if possible.

RESOLUTION BOOK NO. 24 - PAGE 225

C. RESOLUTION ENDORSING LEGISLATION FOR LOCAL ZONING AUTHORITY FOR ADULT ESTABLISHMENTS

This item was pulled from the Consent Agenda for further discussion.

D. RESOLUTION NO. 97-181 - RESOLUTION OF INTENT TO ENTER INTO A LEASE AGREEMENT WITH THE OPPORTUNITY CORPORATION OF MADISON-BUNCOMBE COUNTIES FOR THE RENOVATIONS TO THE REID ANNEX

Summary: The consideration of resolution directing the City Clerk to advertise an offer to lease the Reid Annex Building to the Opportunity Corporation of Madison-Buncombe County for renovations.

The Parks and Recreation Department submitted a reengineering proposal during the budget process to develop a collaborative effort to renovate the Reid Recreation Center Annex for Child Care. This effort resulted in working with the Opportunity Corporation of Madison-Buncombe County to provide the funding for the renovation of the Reid Annex and to operate a Head Start Child Care Program. The Opportunity Corporation has successfully received grant funding totaling $670,000 for the renovation which is scheduled to begin by the end of this calendar year. The Parks and Recreation Department will be working closely with the Opportunity Corporation and the Arts Alliance to develop an innovative program that will not only provide child care but also expose these children to a cultural arts environment. The Parks and Recreation Department is excited about this collaborative effort which will result in renovating an existing City facility at no cost to the City of Asheville. More importantly, this effort will provide a much-needed child care facility for parents who could not otherwise afford this service.

The Parks and Recreation Department recommends adoption of the resolution directing the City Clerk to advertise an offer to lease the Reid Annex Building to the Opportunity Corporation of Madison-Buncombe County for renovations.

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E. RESOLUTION NO. 97-182 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH WHEELER CONSTRUCTION CO. INC. FOR THE WEST AREA ANNEXATION SANITARY SEWER IMPROVEMENTS PHASE II

Summary: The consideration of adopting a resolution awarding the contract for the West Area Sanitary Sewer Improvements, Phase II, to Wheeler Construction Company Inc. in the amount of $367,615.

The City Council approved 3.2 million dollars for sewer improvements. This project is known as West Area Annexation Sanitary Sewer Improvements, Phase II. These funds were to be used for priority sewer improvements.

The City Engineering Department has developed construction plans for the West Area Annexation Sanitary Sewer Improvements, Phase II. The engineer's estimate for this project is in the amount of $420,900.

On Tuesday, September 30, 1997, at 9:00 a.m., the Engineering Department received four bids for the project. A tabulation of bids is as follows:

Wheeler Construction Co., Weaverville, N.C.	$367,615.00
Steppe Construction Co., Mill Spring, N.C.	$411,700.00
Hobson Construction Co. Inc., Arden, N.C.	$419,625.00
Buckeye Construction Inc., Canton, N.C.	$499,297.50

The construction time for this project is identified as 75 calendar days in the contract documents. If Contractor shall neglect, fail or refuse to complete the work within the time herein specified, then the Contractor pays the sum of $250 as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the contract. There are only four easements left to be signed on the project.

Staff recommends that City Council accept a resolution awarding the bid for West Area Annexation Sanitary Sewer Improvements, Phase II to the responsible low bidder, Wheeler Construction Company Inc., in the amount of $367,615, and authorize the City Manager to execute all necessary agreements and contracts.

RESOLUTION BOOK NO. 24 - PAGE 229

F. RESOLUTION NO. 97-183 - RESOLUTION AWARDING BIDS FOR PRE-FABRICATED BRIDGE REPLACEMENT MATERIALS TO POMONA SUPPLY COMPANY

Summary: Consideration of a resolution to award Bid Request No. 469-98 for the purchase of pre-fabricated bridge replacement materials for the Public Works Department's Elizabeth Street Project.

Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were received to furnish pre-fabricated bridge replacement materials for the Public Works Department's Elizabeth Street Project. Three (3) bidders submitted proposals as shown below:

Pomona Supply Co, Greensboro, N.C.	$57,543.50
Roger F. Williams Co., Asheville, N.C.	$62,710.20
Roger F. Williams Co., Asheville, N.C. (Alternate)	$58,678.20
Permatile Concrete Prod., Bristol, VA/TN	$84,004.18
Permatile Concrete Prod., Bristol, VA/TN (Alternate)	$80,650.18

Bid specifications permitted bids on either precast concrete bridge sections or on aluminum box culvert. In addition to the standard evaluation criteria, which includes compliance to specifications, cost, etc., bids were also evaluated on the basis of total overall cost to purchase the pre-fabricated bridge materials, as well as cost of work to be undertaken and materials to be furnished by the City for installation of the bridge. The bid summary shows the total overall cost to the City for each bid replacement method proposed.

Bids have been reviewed for technical compliance to specifications by the Public Works Department, and their concurrence received in the recommendation.

Funds for this purchase are to be from the Public Works Department appropriations, Account Code 60-430-15-851-13-4410.

Subject to Council's approval, it is recommended that the award be made to the bidder with the lowest overall cost, Pomona Supply Company, Inc., Greensboro, N. C., in the amount of $48,580.50 for the purchase of aluminum box culvert bridge materials.

RESOLUTION BOOK NO. 24 - PAGE 232

G. RESOLUTION NO. 97-184 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE STATE OF N.C. FOR SELECTION OF THE ASHEVILLE FIRE DEPARTMENT'S HAZARDOUS MATERIALS RESPONSE TEAM AS "REGIONAL RESPONSE TEAM" FOR MAJOR HAZARDOUS MATERIALS EMERGENCIES IN WESTERN NORTH CAROLINA

Summary: The North Carolina Department of Crime Control/Public Safety's Emergency Management Division has asked the City of Asheville to renew its agreement with the State to provide hazardous materials emergency response in Western North Carolina through September of 1999.

In 1994, the North Carolina General Assembly established funding for a "regional response" approach to hazardous materials emergencies. This approach involved selection of the state's top six local fire department hazardous materials response teams to respond to multi-county areas in case of emergency, using vehicles and equipment furnished by the state.

In late 1994, the Asheville Fire Department's "haz mat team" was selected by the State's Emergency Management Division as the "regional response team" for Western North Carolina. In mid-1995, the City and the State entered into an agreement through which AFD's hazardous materials response team was furnished with a response vehicle and equipment, and through which the State agreed to reimburse the City for training, maintenance, administrative and related expenses for regional response. Since this agreement was established, Asheville's "Regional Response Team 6" has responded to a major railroad derailment, an acid tanker overturn, a chemical warehouse fire and other significant regional incidents, as well as dozens of smaller local chemical emergencies.

The agreement between the City and the State expired in July, 1997. In early August, the City and State agreed to extend that agreement through the end of September in anticipation of a new agreement. That new agreement has been delivered to the City and reviewed by City staff and recommended to the City Manager for City Council approval.

The new agreement provides for hazardous materials emergency response for major incidents in North Carolina's 20 western counties. The State will continue to provide and maintain the team's response vehicle ("RRT 6") and to reimburse the City for provision of a vehicle to tow a newly-provided Regional Response Team trailer. The State will also reimburse the City for training expenses (up to $14,000), administrative expenses (up to $18,000), workers compensation expenses (up to $5,000) and medical surveillance/evaluation (up to $5,000) for each year of the proposed two-year agreement.

The Fire Chief recommends City Council adoption of a resolution authorizing the Mayor to enter into an agreement with the State of North Carolina through which the City of Asheville will provide hazardous materials emergency response in Western North Carolina, and the State will furnish response equipment and reimburse expenses of the City's hazardous materials response team for such response.

RESOLUTION BOOK NO. 24 - PAGE 234

H. RESOLUTION AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT PURCHASE CONTRACT REGARDING FINANCING OF THE RENOVATIONS OF THE MUNICIPAL BUILDING, WATER MAINTENANCE BUILDING AND THE CITY BUILDING ROOF; RENOVATION OF THE FIRST FLOOR OF THE GROVE ARCADE AS A PUBLIC MARKET; CONSTRUCTION OF A HIGH TECH/FLEX BUILDING AT BROADLANDS TECHNICAL PARK; AND REFUNDING OF THE SERIES 1991 CERTIFICATES OF PARTICIPATION

This item was pulled from the Consent Agenda for further discussion.

I. RESOLUTION NO. 97-185 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A TWO-YEAR FIRE PROTECTION AGREEMENT WITH THE HAW CREEK FIRE DEPARTMENT

Summary: The consideration of a resolution authorizing the City Manager to sign a two-year fire protection agreement with the Haw Creek Fire Department for a term through June 30, 1999.

In 1988, when the City of Asheville annexed in the Haw Creek area, the City entered into a fire protection agreement with the Haw Creek Fire Department. This agreement was pursuant to North Carolina law which requires a good-faith offer of a five-year fire protection agreement between the annexing city and any affected rural fire department in order to provide for makeup of lost "fire tax" revenue. In 1992, the City again annexed in the Haw Creek area; the 1988 agreement was amended and incorporated as part of a new five-year 1992 fire protection agreement, again in compliance with the aforesaid state law.

Although there is no longer a legal requirement that the City contract with Haw Creek Fire Department, there are benefits to continuing the present contractual relationship for a two-year period. Haw Creek has a five-day-a-week on-duty firefighter, who, with Haw Creek's equipment and volunteer personnel, serves as a "back-up" for Asheville Fire Department's Engine 8 (housed at Avon and Tunnel Road). Haw Creek also responds on a "first-in" basis (along with AFD resources) in Haw Creek and Sondley Estates.

At Haw Creek's request--and with the review and approval of the City Manager--Asheville Fire Department representatives met with Haw Creek Fire Department's Board of Directors in August and September to review the 1992 annexation contract and to identify future relationships. All participants agreed on the following points:

1. The Haw Creek Fire Department's existence should not depend on whether the City contracts with Haw Creek for fire protection services; and

2. As long as there are definable benefits to both parties to contract for services, continuation of an agreement is in the best interests of the City and Haw Creek.

Based on agreement on these points, Haw Creek and City staff representatives are proposing an agreement substantially similar to the annexation agreement agreed to and adopted in 1992, with the following two exceptions: First, reimbursement by the City would be at $53,760, which is less than half of the total amount budgeted for the last year of the 1992 agreement ($108,827), and, second, the Haw Creek Fire Department would agree to make a good faith effort to expand its fire tax protection area and/or look to partnerships with neighboring fire departments to provide for a revenue base that will leave the Haw Creek Fire Department independent of Asheville financial support. At the end of the two (2) year term the City would reassess benefits to the City from the Haw Creek Fire Department.

The relationship between the City and Haw Creek in the wake of annexation has been a success story. While the City's 1988 and 1992 annexations resulted in Haw Creek's loss of 90% or more of its fire tax area, the City and Haw Creek--with state approval--joined together so that Haw Creek could be eligible for fire tax revenue from the Chunn's Cove area (an area that Haw Creek had covered for years with no financial support from Chunn's Cove residents). Because Asheville's fire headquarters was within five road miles of the Chunn's Cove community (and Haw Creek's station was not), Asheville agreed to file for recognition as a "substation" for Haw Creek, so Haw Creek would be eligible for fire tax support from Chunn's Cove. As a result, Haw Creek depends on Asheville not for 90% of its revenues, but for about one-third of those revenues.

Haw Creek representatives have clear plans to develop a new all-weather road access that should result in the addition of new fire-tax response areas that are expected to correspondingly reduce Haw Creek's reliance on revenues from the City of Asheville.

The Fire Chief recommends that City Council adopt a resolution authorizing the City Manager to sign a two-year fire protection agreement with the Haw Creek Fire Department for a term through June 30, 1999.

RESOLUTION BOOK NO. 24 - PAGE 235

J. RESOLUTION NO. 97-186 - RESOLUTION AUTHORIZING SUBORDINATION OF CERTAIN DEMOLITION LIENS

Summary: The consideration of a resolution authorizing the City Manager and others to subrogate demolition liens on certain properties

When the City demolishes a dwelling that has been found to be dilapidated under the Minimum Housing Code, a lien for the cost of the demolition attaches to the property, and has the same priority as a lien for special assessments. The liens remain valid for 10 years.

Occasionally, the owners of the lots wish to rebuild on them, or have the opportunity to convey the lots to persons wishing to rebuild, but the demolition lien is a cloud on the title and may keep a person from conveying the lot or obtaining a construction loan. The result is that sometimes an otherwise desirable or buildable lot will remain vacant, and continue to be a blight on a neighborhood undergoing revitalization. As enforcement of the Minimum Housing Code is emphasized, and as rebuilding in the central city and infill development increase, this situation is likely to occur more frequently.

The resolution would give limited authority to the City Manager, the Planning Director and the Community Development Director, to enter into agreements to subordinate demolition liens in designated redevelopment areas. This is similar to the authority that now exists to subordinate deeds of trust on properties in redevelopment areas.

The resolution limits to $12,000 the principal amount of liens that may be subordinated, and requires that such subordinations be reported in the same manner as for deed of trust subordinations. The subordination would apply only to the extent needed to obtain construction financing, and the lien would have to be satisfied in order to obtain clear title to the affected property.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 24 - PAGE 236

K. ORDINANCE NO. 2411 - ORDINANCE AMENDING THE TREE ORDINANCE

Summary: City staff presented the Tree Ordinance to City Council at their worksession on May 20, 1997. The following are minor revisions to that ordinance:

1) Section 20-4: ADD "Engineering Director: The head of the City of Asheville Engineering Department or his / her designee."

2) Section 20-4: ADD "Parks and Recreation Director: The head of the City of Asheville Parks and Recreation Department or his / her designee."

3) Section 20-5 (B): "Additional Duties"

(a) Replace "1. The Planning and Development Director shall be responsible for formulating a Master Street Tree Plan (MTSP)...".

WITH: "1. The Parks and Recreation Director shall be responsible for formulating a Master Street Tree Plan (MTSP)...".

(b) Replace: "2. The Planning and Development Director shall have prepared another document entitled 'The Public Improvements Design Manual', which shall contain the guidelines and specifications for tree planting, care, maintenance, removal, and landscape design entitled Guidelines and Specifications of Tree Planting on Public and Private Property, which shall be adopted by City Council and used by developers, landscape architects, designers, and the general public in furtherance of the requirements and intent of this chapter. The guidelines shall be reviewed, at a minimum, every two (2) years by the Planning Department Director, the Public Works Director, and the Tree Commission. Major revisions to the Guidelines shall be approved by City Council."

WITH: "The Engineering Director shall have prepared another document entitled Asheville Standards Specifications and Details" manual, which shall contain the guidelines and specifications for tree planting, care, maintenance, removal and landscape design entitled Guidelines and Specifications of Tree Planting on Public and Private Property, which shall be adopted by City Council and used by developers, landscape architects, designers, and the general public in furtherance of the requirements and intent of this chapter. The Guidelines shall be reviewed, at a minimum, every two (2) years by the Planning and Development Department Director, the Parks and Recreation Director, the Engineering Director, the Public Works Director, and the

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Tree Commission. Major revisions to the Guidelines shall be approved by City Council."

4) Article IV, Section 20-52, "Inspection of Sites"

(a) Replace: "A. The Public Works Director and the Director of Planning and Development may periodically inspect areas subject to the provisions of this chapter."

WITH: "A. The Public Works Director, the Parks and Recreation Director, and the Director of Planning and Development may periodically inspect areas subject to the provisions of this chapter."

Staff recommends the adoption of the above revisions to Chapter 20 (Trees).

ORDINANCE BOOK NO. 16 - PAGE 301

L. BUDGET AMENDMENT RELATIVE TO THE ALL AMERICA CITY GRANT

This item was pulled from the Consent Agenda for further discussion.

M. ORDINANCE NO. 2412 - BUDGET AMENDMENT TO REPROGRAM LINE ITEMS IN THE CAPITAL PROJECT ORDINANCE (35 FUND) TO REFLECT THE TRANSFER OF COMPLETED PROJECTS TO THE CITY'S FIXED ASSET LEDGER

Summary: The consideration of housekeeping amendments to reflect the transfer of completed projects to the City's fixed asset ledger to be capitalized rather than expensed.

By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds in the 29 Fund.

Approve amending and restating Capital Project Ordinance 82-25 and Capital Project Ordinance 92-17 in order to reflect the transfer of completed projects to the City's fixed asset ledger.

The Regional Water Authority approved a resolution amending and restating Capital Project Ordinance 82-25 and Capital Project Ordinance 92-17 on September 16, 1997.

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N. ORDINANCE NO. 2413 - BUDGET AMENDMENT TO REPROGRAM LINE ITEMS IN THE CAPITAL PROJECT ORDINANCE (29 FUND) TO REFLECT THE TRANSFER OF COMPLETED PROJECTS TO THE CITY'S FIXED ASSET LEDGER

Summary: See Item M. above.

ORDINANCE BOOK NO. 16 - PAGE 305

O. BUDGET AMENDMENT TO PROVIDE ADDITIONAL FUNDING FOR FESTIVALS AND SECIAL EVENTS FROM REVENUES GENERATED BY THESE EVENTS

This item was pulled from the Consent Agenda for further discussion.

P. MOTION SETTING A PUBLIC HEARING ON OCTOBER 28, 1997, TO REZONE TWO LOTS ON WESTWOOD PLACE AND ARGYLE LANE FROM RM-8 TO CBD AND ONE LOT FROM RM-8 AND CB II TO CBD.

Q. MOTION SETTING A PUBLIC HEARING ON OCTOBER 28, 1997, TO REZONE A PORTION OF 1897 HENDERSONVILLE ROAD FROM RM-6 TO OFFICE BUISNESS, RS-2 AND RS-4.

R. MOTION SETTING A PUBLIC HEARING ON OCTOBER 28, 1997, TO REZONE PROPERTY AT YORKSHIRE AND REED STREETS FROM RS-8 TO OFFICE

S. MOTION SETTING A PUBLIC HEARING ON OCTOBER 28, 1997, TO CONSIDER A MODIFICATION REQUEST FROM THE SUBDIDIVISON STANDARDS TO PERMIT THE FLAGPOLE PORTION OF A LOT LOCATED ON OAKLEY SCHOOL ROAD TO BE USED IN CALCULATING COMPLIANCE WITH MINIMUM LOT AREA REQUIREMENTS

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions on the Consent Agenda and they will not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously

ITEMS REMOVED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

RESOLUTION NO. 97-180 - RESOLUTION ENDORSING LEGISLATION FOR LOCAL ZONING AUTHORITY FOR ADULT ESTABLISHMENTS

Summary: The consideration of a resolution endorsing Senate Bill 452 Strengthening Local Control Over Sexually Oriented Businesses

Even though zoning and local use controls are recognized to be matters of concern for local governments, North Carolina statutes regulating sexually explicit conduct and adult establishments (sexually Oriented Business) have been interpreted by the courts in such a way as to establish a de facto doctrine of State pre-emption with respect to such matters. Localities still maintain some control over the location of sexually oriented businesses through zoning ordinances.

In the 1997 Session of the North Carolina General Assembly, a bill was introduced, Senate Bill 452, that would restore a measure of regulatory authority to local governments with respect to sexually oriented businesses, and partially abrogate the State's judicially-established pre-emption in this area. The bill requires that the constitutional protections that apply to such activities continue to be recognized.

The bill passed the Senate hardily, and seemed likely to pass the House as well, but failed to come out of committee before the Legislature adjourned in August. The bill had the support of the North Carolina League of Municipalities and many local governments. Senator Roy Cooper of Rocky Mount introduced the bill, and expects it to be considered during the Short Session of the Legislature in 1998.

The resolution, if adopted, will express the Council's support for Senate Bill 452. Copies of the resolution will be sent to Senator Cooper, and to those members of North Carolina House whose districts include the City of Asheville.

At the request of Mr. Ralph Bishop, a copy of the resolution was furnished to him.

Mayor Martin said that members of Council have been previously been furnished with a copy of the resolution and it will not be read.

Vice-Mayor Field moved for the adoption of Resolution No. 97-180. This motion was seconded by Councilman Skalski and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 227

H. RESOLUTION NO. 97-187 - RESOLUTION AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT PURCHASE CONTRACT REGARDING FINANCING OF THE RENOVATIONS OF THE MUNICIPAL BUILDING, WATER MAINTENANCE BUILDING AND THE CITY BUILDING ROOF; RENOVATION OF THE FIRST FLOOR OF THE GROVE ARCADE AS A PUBLIC MARKET; CONSTRUCTION OF A HIGH TECH/FLEX BUILDING AT BROADLANDS TECHNICAL PARK; AND REFUNDING OF THE SERIES 1991 CERTIFICATES OF PARTICIPATION

Summary: Consideration of a resolution authorizing the negotiation of an installment purchase contract, directing the publication of notice with respect thereto and providing for certain related matters.

Financing of the renovation of the Municipal Building, Water Maintenance Building and the City Building Roof; renovation of the first floor of the Grove Arcade as a public market; the construction of a high tech/flex building at Broadlands Technical Park and refunding of the Series 1991 COPs (which funded the acquisition of the Public Works Facilities) will require the issue of Certificates of Participation (COPs). The actual issuer of the COPs is Asheville Public Financing Corporation (APFC), a not for profit corporation which was formed to aid the City of Asheville in complex financing such as this COPs. In order to service the debt, the City will enter into an amendment to the existing 1991 installment purchase contract with APFC whereby the City agrees to provide periodic payments (which equal the debt service). The debt is to be secured by a deed of trust on the Municipal Building, the City Building, the Water Maintenance Building and a continued deed of trust on the Public Works Facilities (which was pledged for the 1991 COPs). In furtherance of the issue of COPs, the attached resolution provides the following: (1) Authorizes the City Manager and Finance Director to negotiate the APFC contract amendment and convey the deeds of trust to facilitate financing in an amount not to exceed $27,000,000; (2) Directs the Finance Director to file the required financing application with the Local Government Commission; (3) Directs the City Manager and Finance Director to retain Parker, Poe, Adams & Bernstein as Special Counsel and First Union Capital Markets, Corp.; Wheat First Butcher Singer; and A.G. Edwards & Sons Inc. as Underwriters; and (4) Establishes a public hearing by City Council, on October 28, 1997 at 5:00 p.m., concerning the contract amendment, the deeds of trust, proposed projects and associated transactions.

Councilman Skalski was concerned that the City would be going in debt for $27 million in financing and $16 million in interest for a total of $43 million. He said the City's debt is now approximately $38 million. A lot of that money is on the municipal bonds that were taken out for sidewalk repairs, Pack Place Project and various small leasing agreements. He said that approving this finance will basically double our debt. He said the Municipal Building project is slated to cost about $14.2 million plus approximately $6 million in interest. He did feel this project should go forward and was long overdue.

Finance Director Bill Schaefer said that the proposal is to fund the entire package, not separate pieces. He pointed out that the debt of $27 million and the interest in the amount of $16.5 is over the life of the financing. When you finance, you look at what you are buying it for at the present value of the money. Over the life of the money that you borrow, you will pay interest on it - that's the value of that money. But what you are getting is not a debt of that interest, but a debt of the principle only.

Councilman Skalski said that the Water Maintenance Building project and the City Building roof project, each at $1.3 million, are also projects that should go forward. He was concerned, however, that according to the budget projections, in the year 2002, the City will have a $3.2 million shortfall, stressing that revenue is not increasing from the state and federal government. It will be tough for the City to meet its financial obligations.

Mayor Martin said that the debt is $27 million, not $43 million and you cannot include potential interest paid as debt.

Councilman Skalski said that if we borrow on the three publicly owned projects, that is approximately $16.5 million to borrow. He felt the City has an obligation for those buildings. He felt that before the City agrees to borrow the money to renovate of the first floor of the Grove Arcade as a public market and the construct a high tech/flex building at Broadlands Technical Park, we should take a look at where that money is going. He said the Grove Arcade renovation is basically going to be a privately done project by private investments. If the City signs that note for $2.25 million and then pays another $200,000 from the City's fund to do publicly owned infrastructure work then it will cost about $3.5 million. If something goes wrong, the City will be obligated to pay that off.

Councilman Skalski said the other project he has serious reservations about is the privately developed project at Broadlands Technical Park. This is a $2.5 million loan that the City will guarantee with public money for a private venture with a little over $300,000 of utility infrastructure that the City will provide. Can the City afford to do it? Should the City become a bank for private investors? What about the other thousands of businesses in Asheville talked about in the economic development policy? Where is the money going to come from to help them?

Mr. Schaefer said that the City proposes to finance approximately $2,250,000 for renovation of the first floor of the Grove Arcade. That is being done as a public market. The City's involvement is in lending our good name in the financing. The Grove Arcade Public Market Foundation in return for our assistance has pledged the revenues from its rents of the upper floors to service that debt. There is some minimal risk to the City on the financing; that should those rents be insufficient to service the debt, we could be in the real estate market. However, the debt is structured such that it can be repaid at anytime without penalty. Should the project not happen, the City can back out of it very quickly, smoothly and efficiently.

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Mr. Schaefer said that regarding the Broadlands building, the City is proposing to reimburse Biltmore Farms up to $310,000 for infrastructure - the water and sewer lines and the access road - and to finance construction, acquisition and equipping of the building to the extent of $2.5 million. There are other participants in addition to Biltmore Farms. The main participant, as far as financial banking, is AdvantageWest - the economic development arm of the State. AdvantageWest will provide for debt service from completion of the building for two years thereafter in order to provide time to market the building and find a permanent tenant or buyer. The developer, Biltmore Farms, will back the financing with full credit pledged to buy out the City two years after completion of the building should we not have a permanent tenant or buyer. That will be available from the initiation of the agreement. Once again, there is a minimal risk to the City. The financing is structured so that without penalty we can get out of it at anytime. He felt the Council has weighed the benefits against that risk and found it to be an advantageous route to go.

Mr. Schaefer pointed out the refunding of the 1991 COPs constitutes about $4.4 million of the $27 million we are proposing. The reason for that is the reduction in interest rates with a potential savings to the City of about $360,000 over the remaining life of that financing. That is not new money - the $4.4 million is old money and it is definitely the smart way to proceed now.

Mayor Martin said we have discussed this a number of times. The Grove Arcade is a historic landmark in the City of Asheville and a very unique building. It has the potential of having a very positive effect on downtown Asheville. The very minimal risk pales by comparison to the risks other cities take for far less worth-while projects than this. The benefits could be a million dollars in sales tax revenues every year. There is good reason for us to lend our name especially when a known developer enthusiastically embraces the project. As far as Broadlands building, we have practically no risk. This could provide a lot of jobs in the future for Asheville. These are the risks that we need to take. We need to do something in a positive fashion in order to get jobs - we can't wait for them to come because other cities are trying to get them. The danger is doing nothing.

Councilman Worley said that we have discussed these before and have agreed to do both of these projects. Beyond that, we are talking about a vision for Asheville. With any vision there are risks to be taken. We have analyzed both of these projects and they both have minimal risk. The Grove Arcade is an embodiment of our vision for an even better downtown and we have worked on that vision for a number of years. The Broadlands Technology Park is part of our vision for economic development - an effort to keep good paying jobs in Asheville.

Upon inquiry by Councilman Skalski, Mr. Schaefer said that we are not approving the final allocation of money by adoption of the resolution, only setting a public hearing.

Upon inquiry of Vice-Mayor Field about the City's debt margin, Mr. Schaefer said that as of June 30, 1997, the City can borrow $283,859,825 and we have only borrowed less than 1% of that amount.

Upon inquiry of Councilman Hay, Mr. Schaefer said that the $4.4 million refunding replaces existing debt. Debt service for the $5.3 on the taxable portion for the Grove Arcade and the Broadlands building are to be funded from other sources. That leaves the City with only the three facilities that Councilman Skalski addressed as being uniquely municipal responsibilities.

Councilman Hay said that finance is what his law practice is about and he is very familiar with risk when he sees it. It was his opinion that something backed by AdvantageWest and Biltmore Farms is virtually risk-free.

Upon request of Mr. Ralph Bishop, a copy of the resolution was furnished to him. He did not support the financing and wondered why the resolution has already been written to employ bond counsel.

Mr. Schaefer explained that before Council can consider the resolution approving the financing, those resolutions must be drafted and when you go into the bond market, you need nationally recognized bond counsel. For that reason, in advance of approving the financing itself, the City must retain counsel. The counsel will be paid from the proceeds of the borrowing - that is a cost of the issuance of the debt. The underwriter must be obtained in advance of the sale of the bond also in that they are the ones that underwrite it and actually sell the issue. The underwriter will be paid a portion of the proceeds but until the sale is consummated, there is no payment to the underwriter.

Upon inquiry of Councilman Cloninger due to a conflict of interest since he has been excused from voting in any matters involving the Grove Arcade, it was the opinion of the City Attorney that he should be excused from voting on this matter. Therefore, Councilman Worley moved to excuse Councilman Cloninger from voting. This motion was seconded by Councilman Sellers and carried unanimously.

Mayor Martin said that members of Council have been previously been furnished with a copy of the resolution and it will not be read.

Vice-Mayor Field moved for the adoption of Resolution No. 97-187. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 237

L. ORDINANCE NO. 2414 - BUDGET AMENDMENT RELATIVE TO THE ALL AMERICA CITY GRANT

Summary: This consideration of appropriating the $10,000 Community Grant already received by the City to Asheville-Buncombe VISION, HandMade In America and The Minnie Jones Health Center.

The City is in receipt of the grant in the amount of $10,000 from the Allstate Foundation. This action appropriates funding to allow disbursement of the grant funds to the recipient agencies.

Staff recommends approval of the budget amendment.

Councilman Skalski pointed out that it cost the City $53,500 to obtain the All America City designation. He felt that the City had to take almost $1 million out of Fund Balance to balance the budget this year and it doesn't make sense to spend $53,000 to get a $10,000 grant and then give it away.

Finance Director Bill Schaefer said that the $53,500 figure is appropriate right for the total expenses, however, a number of the participants indicated that they would be willing to reimburse the City for the expenses of their participation. But, in accordance with the sense of Council, that was not to be a limitation towards anyone participating, whether or not they could reimbursement. We are in the process now of soliciting those contributions which should be approximately $10,000.

City Manager Westbrook said that the Council originally authorized an expenditure of $30,000 which was based on 20 participants. Once plans started being formulated, it was determined that there was a much broader field that needed to go to Kansas City in order to present Asheville in the way it should be presented to maximize our chance to win. There were 56 who traveled and he felt that was the difference from the original authorization, noting that we are trying to collect some of those reimbursements.

Councilman Skalski pointed out that the City presented Handmade in America with a check earlier in the meeting. Even though he felt that Handmade is a very worthwhile project that helps a lot of small businesses, they have already received this year a $200,000 grant from the state from a $21 million state overflow fund that was handed out by different politicians throughout the state. He said there was really no public input on how that money was to be distributed. He felt that all the businesses in Asheville that need help should have been looked at, since Handmade already received a $200,000 grant and he knows they received money from other sources, like the Dept. of Transportation. He asked that an article dated February 18, 1997, from the News & Observer in Raleigh entitled "Passing Out the Goodies" be submitted for the record. (The article is kept on file in the Office of the City Clerk.)

Mayor Martin said that members of Council have been previously been furnished with a copy of the ordinance and it will not be read.

Councilman Worley moved for the adoption of Ordinance No. 2414. This motion was seconded by Vice-Mayor Field and carried on a 6-1 vote with Councilman Skalski voting "no".

ORDINANCE BOOK NO. 16 - PAGE 307

O. ORDINANCE NO. 2415- BUDGET AMENDMENT TO PROVIDE ADDITIONAL FUNDING FOR FESTIVALS AND SECIAL EVENTS FROM REVENUES GENERATED BY THESE EVENTS

Summary: The consideration of a budget amendment, in the amount of $90,000 to increase Festivals support, the cost of which will be offset by increased revenues.

Upon inquiry of Councilman Skalski, Parks & Recreation Director Irby Brinson explained that during the fiscal 1997/98 budget process, Parks & Recreation submitted a request to use revenue generated from festivals to increase administrative and technical support for festival activities and special events. This request is based upon recommendation from the Bele Chere Strategic Plan which was presented to City Council at their retreat in early 1997. It is proposed that revenues will be used to fund part-time staff to assist with the operations of over 35 festivals and special events produced by the department. Providing part-time assistance will allow the festival staff to aggressively work towards increasing revenue support to fund various events. In addition, funds will be used to enhance the logistical needs for these events which include improving electrical requirements, purchasing tents, physical landscape improvements downtown and other support features. This funding is only approved with the understanding that if the revenue producing festivals such as Bele Chere and First Night begin to lose money, then this additional financial support would not be available.

Mayor Martin said that members of Council have been previously been furnished with a copy of the ordinance and it will not be read.

Councilman Worley moved for the adoption of Ordinance No. 2415. This motion was seconded by Vice-Mayor Field and carried on a 6-1 vote, with Councilman Skalski voting "no".

ORDINANCE BOOK NO. 16 - PAGE 309

III. PUBLIC HEARINGS:

A. CONTINUATION OF PUBLIC HEARING RELATIVE TO REZONING EIGHT PARCELS ON THE SOUTHSIDE OF BROAD STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY TO OFFICE

Mayor Martin said that this public hearing was opened on September 9, 1997, and continued until this date.

Mr. Mike Matteson, Urban Planner, said that on September 9, 1997, City Council continued the public hearing so that the property owner and representatives of the neighborhood could meet to see if there was a mutually agreed upon solution or compromise. They did meet on two separate occasions but there was not a resolution. The City has received a request from the property owner who made the original request during the UDO process, Mr. Dennie Martin, to continue this public hearing again since he is out of town and would like to be present. City staff felt it was good planning sense to request City Council continue the hearing until November 25, 1997, because there are two other rezoning requests on Broad Street. The two requests are scheduled for the November 5 Planning & Zoning Commission meeting and they will more than likely be before City Council on November 25. Council's other options are to hear the rezoning tonight or, since the City is the petitioner, City Council can withdraw the petition.

The following persons urged City Council to vote at the meeting today and not continue the public hearing until November 25. Some reasons were, but are not limited to: Mr. Dennie Martin was aware that the public hearing was continued until this date and he has other partners and/or his attorney who could represent his interests; the continuation might be a way to hold off a decision until after the November 4 elections; many residents took time off from their jobs to come to this meeting; and a policy should be adopted on postponements so that people are not inconvenienced:

Mr. Vincent Ramsuer, 111 Broad Street
Mr. Arthur Davis, 12 Madison Avenue
Ms. Angela Scotchie, 91 Broad Streets
An area resident

Mayor Martin said that he received a letter dated October 6, 1997, from Mr. Dennie Martin which reads in part "I therefore request that the Council consider withdrawal of the pending petition for rezoning and add the area in question to the areas which are being considered by the Charlotte Street Plan." He asked Mr. Craig Justus, attorney representing Mr. Martin, if that is his client's wishes.

Mr. Justus said that in talking with staff, the property owners have filed an application to rezone what is now Office all the way down Broad Street to Mr. Martin's present business to Residential. He felt it made sense to consider all the Broad Street rezoning requests at one public hearing. Mr. Justus said that he did not represent Mr. Martin at any of the meetings nor did he attend them. Therefore, he cannot speak as his representative regarding what happened at those meetings. He believed Mr. Martin wanted the opportunity to speak to City Council on what happened at those meetings from his prospective, since City Council was asked not to attend the meetings.

Vice-Mayor Field said it sounded reasonable to look at the whole street at one time based on a more holistic view of the impact.

Upon inquiry of Councilman Hay, Mr. Matteson explained that if the City withdrew the petition, the zoning would remain RM-16, and would not be considered with the other two rezoning petitions which will be before City Council on November 25. He said that City Council or the property owner could bring the issue back again before Council in the form of a new petition.

City Attorney Oast also pointed out that in the case of a denial, Council can't take action on that particular request again for a year.

Upon inquiry of Councilman Skalski, Mr. Matteson said that one of the rezoning petitions coming to City Council involved about 12-14 lots going west from these 8 lots on Broad Street and the other rezoning petition is 22 Broad Street.

Councilman Skalski felt a small area plan, not on the scale of Charlotte Street, would benefit the entire area and would result in a compromise for everyone involved.

Mr. Matteson said that a small area plan typically involves more than just deciding the zoning of properties. He pointed out that staff is currently working on the Charlotte Street Small Area Plan and there are a number of other areas who have either requested a small area plan or that staff is considering a small area plan.

Councilman Hay was not inclined to postpone the hearing. He felt that it was already postponed for the parties involved in order to try to come up with a compromise. He didn't think postponement was fair to everyone who participated to this point. He felt Council should withdraw the application which leaves it at RM-16. But, it also creates an opportunity, if Mr. Martin chooses to do so, to submit a rezoning petition requesting that his lots be rezoned and by the time that process works its way through, perhaps Council can look at Broad Street all at one time.

Councilman Worley didn't feel that there would be enough time for a new rezoning petition to go through the process in order that it be considered at the November 25 meeting.

City Attorney Oast pointed out that Councilman Cloninger has previously been excused from voting on this matter due to a conflict of interest.

Councilman Worley moved to continue the public hearing until November 25, 1997. This motion was seconded by Councilman Sellers.

Upon inquiry of Councilman Skalski, City Attorney Oast felt that City Council should take some action on the request, however, if Council takes no vote at the meeting today, it would automatically be continued until their next meeting.

City Attorney Oast said that to leave the zoning the way it is now, Council has the options of voting to deny the rezoning petition or withdrawing the petition. He explained that the only difference is that unless there is a 3/4's vote of Council to resurrect the issue, it can't come back before Council for one year.

Vice-Mayor Field said that the community has strong feelings and there is a need for affordable housing. She also felt that it would be nice to do a small area plan, however, there are three rezoning requests that need to be dealt with, therefore, she would support continuing the public hearing until November 25. She suggested that City Council hold a worksession prior to November 25 to look at the all the rezonings. The worksession could be held in the evening.

Councilman Hay felt it was a good idea to get together at a worksession. He said that if Council withdraws the petition, the antagonism will be taken out of the process and neighborhood will have an obligation to work with Mr. Martin to control the progress of their own application on the rest of Broad Street. He, therefore, made a substitute motion to withdraw the application. This motion was seconded by Councilman Skalski.

Councilman Worley could easily vote to withdraw the petition if the other two rezoning petitions would be withdrawn too, because then all three issues could be discussed at one time. However, as long as the other two rezonings are scheduled for November 25, then Council should continue this hearing so they all stay on the same track.

Upon inquiry of Mayor Martin, Mr. Matteson said that if the petition is withdrawn, the earliest a new rezoning petition could be considered by the Planning & Zoning Commission would be at their December meeting.

City Attorney Oast pointed out that if the rezoning petition is withdrawn, the whole process starts again. Right now if the matter is continued, the protest petition remains valid. However, if the rezoning petition is withdrawn, the protest petition will need to be re-filed in order to be valid.

Mayor Martin then asked for a voice vote on Councilman Hay's substitute motion to withdraw the petition. Councilman Hay's motion failed on a 2-4 vote with Councilmen Hay and Sellers voted "yes" and Mayor Martin, Vice-Mayor Field and Councilmen Sellers and Worley voting "no".

Mayor Martin then asked for a voice vote on Councilman Worley's motion to continue the public hearing until November 25, 1997. Councilman Worley's motion carried on a 4-2 vote with Mayor Martin, Vice-Mayor Field and Councilmen Sellers and Worley voting "yes" and Councilmen Hay and Skalski voting "no".

Councilman Skalski moved to do a small area plan for this area. This motion died for a lack of a second.

Ms. Leni Sitnick, Asheville resident, suggested City Council consider establishing a public hearing/agenda item/postponement policy. That way neighborhoods who take time off from work, get baby-sitters, etc., are not inconvenienced. The policy should address a timely notice to go out to all the affected citizens.

Mayor Martins said that was an interesting suggested, however, you can't make a single policy that will be applicable in all situations.

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B. PUBLIC HEARING RELATIVE TO REZONING PROPERTY ON EMMA ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO CI COMMERCIAL INDUSTRIAL

Mayor Martin said that on September 9, 1997, this public hearing was continued until today at the request of the petitioner.

Mayor Martin opened the public hearing at 6:40 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is consideration of an ordinance to rezone property on Emma Road (PIN Nos. 9639.18-31-8279 and 9639.18-31-5890) from RM-8 Residential Multi-Family Medium Density to CI Commercial Industrial.

The subject property is located on Emma Road and is owned by Appalachian Stove. The 2010 Plan indicates this area to be low density residential. These two vacant tracts of land are surrounded on north, east, and west by mobile home parks and on the south by a golf course. One lot currently has one residential structure next to the main road. Emma Road is a narrow (only 17 feet wide) and winding, highly traveled residential collector street with no sidewalks and very little shoulder. This immediate area would need to be upgraded for access to any large permitted use in the CI district.

This site was reviewed by the Technical Review Committee and they confirmed that this site/area does not currently have the infrastructure to support every commercial/industrial development permitted in the CI district. The street is inadequate from design standards at any point of ingress to these properties. Limited turning movements from Louisiana Avenue onto Emma Road has dictated some restrictions on large vehicle use. Water flow for fire protection for certain uses could exist from the fire hydrant found on the property; however, any large permitted use would require infrastructure upgrades. Sewer service is available across Emma Road and the Southern Railway tracks but would also need upgrades for large development.

This property is outside the City limits of Asheville.

The Planning staff reviewed the rezoning request and recommended denial of PIN Nos. 9639.18-31-8279 and 9639.18-31-5890 from RM-8 Residential Multi-Family Medium Density to CI Commercial Industrial. At the August 6, 1997, the Planning & Zoning Commission meeting, the commissioners voted unanimously to deny the rezoning request of the two lots on Emma Road.

On August 18, 1997, Mr. Barry Eavenson, President of Appalachian Stove and Fabricators Inc. appealed the Planning & Zoning Commission's decision to City Council.

Mr. James Rice, one of the property owners, stressed that the property was originally zoned R-5 before the UDO changed its zoning and part of it was also zoned commercial industrial. He said that the size of and traffic on the road is common to the Emma community. He said water, sewer and a fire hydrant is on the property. He said there is electricity to the property and it's on a bus route. He said the plans for the property are to build small type businesses and office structures to support small businesses in this area. Their goal is to improve the community. He noted that this area is a very mixed area.

Upon inquiry of Councilman Worley, Mr. Ownbey said that other uses were looked at, but industrial did not allow both office and warehouses which the petitioner had requested. The commercial industrial district was the only zone that would allow both of those uses.

Mr. Ownbey answered questions from Councilman Worley relative to infrastructure limitations in that area.

Councilman Sellers said that he visited the property and felt that the community does limit itself to light industrial.

City Attorney Oast reminded City Council that any use in the commercial industrial district will be allowed if rezoned.

Mayor Martin closed the public hearing at 6:53 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved to rezone the property on Emma Road from RM-8 to CI. This motion was seconded by Councilman Worley and failed on a 2-4 vote, with Councilmen Sellers and Worley voting "yes" and Mayor Martin, Vice-Mayor Field and Councilmen Cloninger, Hay and Skalski voting "no."

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THORPE CONSTRUCTION COMPANY TO RECONSTRUCT THE CHEROKEE ROAD RETAINING WALL

B. BUDGET AMENDMENT TO RECONSTRUCT THE CHEROKEE ROAD RETAINING WALL

At the request of City staff, these items were postponed until October 28, 1997.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 23, 1997, AND THE WORKSESSION HELD ON OCTOBER 7, 1997

Councilman Worley moved for the adoption of the minutes of the regular meeting held on September 23, 1997, and the worksession held on October 7, 1997. This motion was seconded by Vice-Mayor Field and carried unanimously.

B. ORDINANCE NO. 2416 - BUDGET AMENDMENT RELATIVE TO THE HILLS OF BEAVERDAM

City Manager Westbrook said that this is consideration of a budget amendment, in the amount of $138,745, to establish a budget for the Hills of Beaverdam Street Improvement Project.

On August 12, 1997 Resolution No. 97-126 was adopted authorizing the City Manager to enter into an agreement with the Hills Of Beaverdam Homeowners Association, Inc. for street improvements. The City received the funding in the amount of 137,050 from the Homeowners Association on August 27, 1997, and additional funds of $337 on September 29, 1997. The City will also collect an additional $1,357 for driveway pipe installation not included in the original agreement. This budget amendment will reallocate all of the funding to the appropriate line item in order to purchase the materials for this project.

The Public Works staff recommends that a budget amendment in the amount of $138,745 be approved.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Skalski moved for the adoption of Ordinance No. 2416. This motion was seconded by Vice-Mayor Field and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 311

C. COUNCIL OF INDEPENDENT BUSINESS OWNERS RESOLUTION

Mr. Bob Selby, President of the Council of Independent Business Owners, read the following resolution dated October 14, 1997:

"WHEREAS, after years of struggling with amortization and sign control issues, the City of Asheville appeared to have come to a point of Resolution. There was no litigation and the outdoor advertising companies were voluntarily complying with the takedown orders; and

"WHEREAS, after years of factionalism, divisiveness, and interest group conflict, our community had come together in the Asheville Buncombe Visioning process to build a consensus for the future of our community and to emphasize the things that all of us could agree on and work on together; and

"WHEREAS, the recent proposals run the outdoor advertising companies completely out of Asheville and to severely restrict off-premise signs of all kinds made by Councilman Chuck Cloninger is made suddenly, without notice to the community and in the midst of a campaign for his re-election to City Council; and

"WHEREAS, the proposal was run through the Planning and Zoning Commission so rapidly that the Commission voted on drafts of the proposed ordinance which they had not even been able to read because they were handed out just before the meeting; and

"WHEREAS, the proposals are to be considered by the City Council of the City of Asheville.

"NOW, THEREFORE, be it resolved that the City Council of the City of Asheville is urged to reject Councilman Cloninger's proposals to ban off-premise signs in the City of Asheville because the proposal is misguided and bad for our community. The proposal is divisive and exclusionary. It violates property rights. It is extremely detrimental to many small businesses in the City of Asheville and it undermines the consensus building process that has been so successful over the last two years."

D. CITY SHOP

Mr. Harley Dunn suggested the City of Asheville open a shop that would sell extra City T-shirts, old street signs, old parking meters, etc. He felt that would be an excellent source of revenue.

City Manager Westbrook explained that Asheville has already looked into a shop of that type and outlined some of the obstacles to opening that shop.

E. REQUEST FROM COVEN OLDENWILDE

Ms. Niki Thurston, representing Dixie Deerman and Steve Rasmussen of Coven Oldenwilde in Asheville, requested City Council vote to recommend that the East Memorial Stadium's floodlights be turned off for the 3rd Annual Witch Ritual and hold Coven Oldenwilde responsible for lighting the area for the participants. The atmosphere that would generated by the lights in the stadium would be very harsh and it would not be conducive to the ritual Rite. They have come up with some alternate lighting that would provide safety for the individuals and would be more conducive to the religious and respectful atmosphere that they are trying to create for this particular ritual. She said that in addition to their lighting, there is (1) ambient lighting coming from McCormick Field below, (2) ambient lighting coming from the housing project and park directly behind there, and (3) there is fluorescent lighting in the parking lot abutting the stadium.

Mr. Irby Brinson, Director of Parks & Recreation, explained that in June they were contacted with an original application to conduct a 3rd Annual Witches Ritual at Memorial Stadium. The permit was approved and sent back on July 9. Mr. Jeff Joyce, Athletic Programs Supervisor, met with Ms. Deerman to discuss several items at that particular time about their particular use which included using the rest rooms, concession stand, having electrical outlets in the pressbox, and that they would have lighting with torches. Mr. Joyce suggested that they submit in writing their particular needs and he did receive their request on September 30. Outlined in their letter were eight specific needs. These needs ranged from removing goal posts and steel cable, repairing holes in fencing, to not turning on the Stadium lights. In their letter they referred to the potential for participants bumping into the goal posts and injuring themselves. They also referred to the fact that many may trip over the cable and hurt themselves. Mr. Joyce then brought the letter to his attention who recommended the letter be referred to the City's Risk Manager John Miall and the City Attorney Bob Oast.

Mr. Miall responded by stating that the City should rent the facility as is without modifications, and that the City should not agree to turn off any lights. Turning off the lights would be highly irresponsible of the City and would expose the City to an unacceptable level of risk. Mr. Miall faxed our excess liability carrier a copy of the request for their review and the carrier agreed with Mr. Miall. The effect of this is that having been advised to keep the lights on, the City may be denied coverage in the event of a loss if the lights are off. Mr. Joyce outlined this in a letter to the group dated October 2.

Upon inquiry of Councilman Sellers, Mr. Brinson said that the cost to rent the Stadium is $25 and since this is football season and the stadium is used by the West Asheville Youth Football, the goal posts are up.

Ms. Thurston said that regarding the goal posts, they have decided to make them very identifiable by using them in part of their Rite by decorating them and making it so that people have to go around them. The fixed steel cable will also be decorated, with some curtain-type ribbon that is very light and they will also have snap-sticks which will be used so that it will be easily identifiable to anyone going by there.

Upon inquiry of Vice-Mayor Field, Mr. Miall said that having the insurance carrier's recommendation in hand to not turn off the lights, would expose the City to the possibility of a loss for which they would deny coverage.

When Vice-Mayor Field asked Mr. Miall if he told the insurance carrier that there would be ambient light on the field, Mr. Miall responded that when Ms. Deerman called him, he conferenced the call to the insurance carrier and they talked about the possibility of dimming lights or turning on every other bank of lights. It was the insurance carrier's recommendation to not turn the lights off.

Upon inquiry of Councilman Sellers, Mr. Brinson said that each group is responsible to clean up after themselves.

Mr. Brinson pointed out that there are also drains in the field and impressions that when the field is lit, they are obvious, but not lit to standards would be a hazard as well.

Ms. Christie Howard, also speaking on behalf of Dixie Deerman and Steve Rasmussen, stressed that they are asking for alternative lighting, not total darkness, that will be more conducive to a spiritual atmosphere and a religious ritual. They have a good safety record and even requested a better, flatter site this year to take care of safety. They will be decorating the posts and cable so they won't be a hazard. They have 40 torches and 40 additional lights that will be hung onto the torches that will take care of the light, but won't be as brilliant and glaring as the floodlights. The City has waived their signing a hold harmless agreement and also waived their having to have liability insurance. They feel their risk has been reduced due to their diligent planning. This will be a controlled environment.

Mayor Martin explained that it would be hard for the City to create a potential liability. Even though they are a responsible group, they can't absolve the City from liability.

Upon inquiry of Vice-Mayor Field, Ms. Howard explained why APD Captain Lambert suggested Memorial Stadium as an alternate site this year.

Upon inquiry of Councilman Sellers, City Attorney Oast said that the City's policy is that the facility is available for use in accordance with our rules and regulations which have been established through the Parks & Recreation Department and other City departments. The only motion Council would need to make in this instance, if one is to be made, is to authorize staff to vary from that policy.

Councilman Skalski felt that he could not vote intelligently since he has not seen the alternative lighting plan.

Mr. Brinson said that the City's insurance carrier has recommended that the City not turn off the lights because it would expose the City to the possibility of a loss for which they would deny coverage.

Councilman Skalski moved to turn the floodlights off, subject to the group providing alternative lighting as outlined above, and the decoration of goal posts and steel cables. This motion died for lack of a second.

Vice-Mayor Field said that she has great respect for the religious observance that they intend to celebrate on October 31, but felt that Memorial Stadium was a totally inappropriate place for the event. She wished there was a more appropriate place at a reasonable price. Ms. Thurston responded that they have been denied neighborhood parks.

F. CLAIMS

The following claims were received by the City of Asheville during the week of September 19-25, 1997: Alice Weatherman (Water), Nancy Hudgins (Water), Reggie Sellers (Water), Wendy Medford (Streets), Brad Griffin (Streets) and Michelle LeBlanc (Streets).

The following claims were received during the week of September 26-October 2, 1997: John E. Grear (Water), Jim Gaddy (Sanitation), Urban Trail (Parks & Recreation) and Marilyn Gaines (Parks & Recreation).

The following claims were received during the week of October 3-9, 1997: Denise Sales (Civic Center), Fusia Davis (Streets), Marci Shipman (Water), Richard Pressley (Sanitation), Jack Pruitt (Streets) and Dany Roberts (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 7:23 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday - October 28, 1997 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Hay gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

Mayor Martin announced that Item G. will be removed from the Agenda.

A. RESOLUTION NO. 97-188 - RESOLUTION ENTERING INTO A LEASE AGREEMENT WITH THE OPPORTUNITY CORPORATION OF MADISON-BUNCOMBE COUNTIES FOR THE RENOVATION TO THE REID ANNEX

Summary: The Parks and Recreation Department submitted a reengineering proposal during the budget process to develop a collaborative effort to renovate the Reid Recreation Center Annex for Child Care. This effort resulted in working with the Opportunity Corporation of Madison-Buncombe County to provide the funding for the renovation of the Reid Annex and to operate a Head Start Child Care Program. The Opportunity Corporation has successfully received grant funding totaling $670,000 for the renovation which is scheduled to begin by the end of this calendar year. The Parks and Recreation Department will be working closely with the Opportunity Corporation and the Arts Alliance to develop an innovative program that will not only provide child care but also expose these children to a cultural arts environment. The Parks and Recreation Department is excited about this collaborative effort which will result in renovating an existing City facility at no cost to the City of Asheville. More importantly, this effort will provide a much-needed child care facility for parents who could not otherwise afford this service.

RESOLUTION BOOK NO. 24 - PAGE 242

B. ORDINANCE NO. 2417 - BUDGET AMENDMENT TO REALLOCATE FUNDS FOR THE PURCHASE OF A FIRE DEPARTMENT RESCUE TRUCK

Summary: Pursuant to G.S. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were invited to furnish a fire rescue truck to the City Fire Department. One bid was received.

In addition to evaluating the proposed equipment to determine compliance with bid specifications, an analysis of the sole bidder's price was conducted. From the analysis it was determined that the price bid the City reflects a discount of $80,000 off the manufacturer's list price and when compared to other municipalities' cost for comparable equipment, our price is considered to be very competitive, fair and reasonable.

The City of Asheville Capital Improvement Budget (CIB) included a proposal for purchase of a fire rescue truck in Fiscal Year 1999 at a cost of $120,000. Two months ago, Asheville Fire Department representatives learned of the availability of a fire rescue vehicle "demonstrator" with an estimated value of $200,000 or more available for $120,000. After local evaluation of that vehicle for mechanical soundness, and agreement on the part of the vendor to furnish all "as-new" warranties, the City Manager approved a reallocation of Fire Department CIP monies in this year's budget so the City could proceed with acquisition of this vehicle. This reallocation consists of postponement of replacement of a staff vehicle and some small-capital equipment.

This bid has been reviewed with Fire Chief John Rukavina, who supports this recommendation.

Funds for this purchase will be provided by a capital project established for the payment of the vehicle over a minimum five year period.

Staff recommends that the bid be awarded to the sole bidder, Chief's Fire and Rescue Inc., Jefferson, NC, in the amount of $120,000 for the purchase of a fire rescue truck consisting of a 1994 White Volvo model WG 42 cab and chassis with a 21 ft. Ranger Body.

ORDINANCE BOOK NO. 16 - PAGE 313

C. **RESOLUTION NO. 97-189 - RESOLUTION AWARDING BID TO CHIEF'S FIRE AND RESCUE INC. FOR A FIRE RESCUE TRUCK**

Summary: See Item B. above.

RESOLUTION BOOK NO. 24 - PAGE 243

D. **RESOLUTION NO. 97-190 - RESOLUTION APPROVING THE ISSUANCE BY THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE OF UP TO $4,900,000 REVENUE BONDS FOR IMPROVEMENTS TO THE WOODRIDGE APARTMENTS DEVELOPMENT AND TAKING RELATED ACTIONS**

Summary: The Housing Authority has agreed in principle to issue up to $4,900,000 of its housing revenue bonds to finance a loan to Asheville - Woodridge LLC. Asheville-Woodridge LLC will use the loan proceeds for the renovation of the Woodridge Apartments development in Asheville, and to pay related expenses. The U.S. Internal Revenue Code ("Code") requires that for such bonds to be issued on a tax-exempt basis, the Asheville City Council must first approve their issuance. The Housing Authority held a hearing on October 21, 1997, on the issuance of the bonds as required by the Code.

RESOLUTION BOOK NO. 24 - PAGE 245

E. **RESOLUTION NO. 97-191- RESOLUTION FIXING DATE OF PUBLIC HEARING ON NOVEMBER 11, 1997, REGARDING ANNEXATION OF PROPERTY LOCATED WEST OF OVERLOOK ROAD (SECTION 9 OF BILTMORE PARK)**

RESOLUTION BOOK NO. 24 - PAGE 256

F. **RESOLUTION NO. 97-192 - RESOLUTION REJECTING BIDS FOR THE CONSTRUCTION OF THE MORROW STREET SUBDIVISION**

Summary: McGill Associates on behalf of the Community Development Division opened bids for the construction of Morrow Street Subdivision on August 14, 1997. The lowest bid received for the project was in the amount of $229,620 from Thorpe Construction Company. The engineer's estimate for the project is in the amount of $164,863. The amount of funds available for the project is $187,000.

Community Development staff recommends rejection of the bids because all bids exceed the amount of available funds for the project. The Housing and Community Development Committee has concurred in the staff recommendation.

Due to the high cost of developing affordable home sites in the Morrow Street area, staff will be looking at other options in the Montford area for developing affordable housing sites.

RESOLUTION BOOK NO. 24 - PAGE 249

G. RESOLUTION ENTERING INTO A CONTRACT WITH JRM & ASSOCIATES FOR WIRELESS TELECOMMUNICATIONS CONSULTING SERVICES AND PROPERTY MANAGEMENT FOR COMMUNICATION FACILITIES

This item was removed from the Agenda.

H. RESOLUTION NO. 97-193 - RESOLUTION RESCHEDULING THE CITY COUNCIL WORKSESSION AGENDA FROM TUESDAY, NOVEMBER 4, 1997, TO WEDNESDAY, NOVEMBER 5, 1997, BEGINNING AT 3:00 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM, CITY HALL BUILDING

RESOLUTION BOOK NO. 24 - PAGE 250

I. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 11, 1997, TO CONSIDER OFF PREMISE ADVERTISING SIGNS IN THE CITY OF ASHEVILLE'S ZONING JURISDICTION

J. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 11, 1997, TO CONSIDER MINOR REVISIONS TO THE UNIFIED DEVELOPMENT ORDINANCE WHICH REVISIONS DO NOT ALTER THE INTENT OR PURPOSE OF THE STANDARDS

K. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 11, 1997, TO CONSIDER A SECTION 108 LOAN GUARANTEE APPLICATION IN CONNECTION WITH THE CITY-WIDE RESIDENTIAL REHABILITATION PROGRAM

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions and ordinances on the Consent Agenda and they will not be read.

Vice-Mayor Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A MODIFICATION REQUEST FROM THE SUBDIVISION STANDARDS TO PERMIT AN IRREGULAR PORTION OF A LOT LOCATED ON OAKLEY SCHOOL ROAD TO BE USED IN CALCULATING COMPLIANCE WITH MINIMUM LOT AREA REQUIREMENTS

Mayor Martin opened the public hearing at 5:03 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is a request to approve a modification from the subdivision standards to permit an irregular portion of a lot located on Oakley School Road to be used in calculating compliance with minimum lot area requirements.

This modification is for a specific lot located on Oakley School Road. The lot is approximately 13,000 square feet and zoned RS-8 (which requires a minimum lot size of 5445 square feet). This lot currently has two residential structures and the owner wishes to subdivide the lot into two separate residential lots. During the review with the surveyor, the staff was attempting to assist the property owner to determine how to meet the setback requirements with the existing structures and comply with the 25 foot flagpole width requirement (this did require the owner to purchase some land from the adjoining property owner) and incorrectly stated that the flagpole area could be used in calculating compliance with the lot area requirement. Subsection 7-15-1.K.2.d.3. of the subdivision regulations does not permit that.

When the minor subdivision plat was presented for approval, the error was discovered. City staff informed the surveyor and owner that the best way to correct this error was to request a modification from the subdivision requirements for this lot. This modification, under Section 7-15-1. J. of the UDO, may be approved by City Council, upon receiving the recommendation of the Planning and Zoning Commission. This modification request is on a case-by-case basis and is not an amendment to the subdivision regulations.

The Planning staff presented the modification request to the Planning and Zoning Commission at their October 1 meeting and the Commission voted unanimously to recommend approval of the modification for this particular lot only.

Mayor Martin closed the public hearing at 5:06 p.m.

Vice-Mayor Field moved to approve the modification request from the subdivision standards to permit an irregular portion of a lot located on Oakley School Road to be used in calculating compliance with minimum lot area requirements. This motion was seconded by Councilman Sellers and carried unanimously.

B. PUBLIC HEARING RELATIVE TO CONTRACT AMENDMENT TO THE EXISTING 1991 INSTALLMENT PURCHASE CONTRACT WITH ASHEVILLE PUBLIC FINANCING CORPORATION RELATIVE TO NEGOTIATION OF AN INSTALLMENT PURCHASE CONTRACT REGARDING FINANCING OF THE RENOVATION OF THE MUNICIPAL BUILDING, WATER MAINTENANCE BUILDING AND THE CITY BULDING ROOF; RENOVATION OF THE FIRST FLOOR OF THE GROVE ARCADE AS A PUBLIC MARKET; CONSTRUCTION OF A HIGH TECH/FLEX BUILDING AT BROADLANDS TECHNICAL PARK; AND REFUNDING OF THE SERIES 1991 CERTIFICATES OF PARTICIPATION

RESOLUTION NO. 97-194 - RESOLUTION APPROVING AN AMENDMENT TO THE INSTALLMENT PURCHASE CONTRACT WITH ASHEVILLE PUBLIC FINANCING CORPORATION AND RELATED MATTERS

Mayor Martin opened the public hearing at 5:07 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Councilman Cloninger asked to be excused due to a conflict of interest relative to the Grove Arcade as a public market. Councilman Worley moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilman Sellers.

Councilman Skalski asked if it would be possible to break down the different items in the package so that Councilman Cloninger can vote on the projects separately. Councilman Cloninger said that he talked with the City Attorney about that earlier and the City Attorney advised him that it would not be feasible to do that because of the financing involved.

Councilman Skalski then asked if Council could vote separately on the projects, not because of a conflict of interest, but because of a matter of principle. City Attorney Oast said that the matters are coming before Council as a package and any change would require a redrafting of the resolution. It was his opinion that Council could vote on the projects separately as to certain parts of it because Council does have the ability, pursuant to their Rules, to divide a question. However, Councilman Cloninger's conflict transcends all of these particular issues.

Mayor Martin then asked for a voice vote on the motion to excuse Councilman Cloninger from voting due to a conflict of interest. Said motion carried unanimously.

Mr. Bill Schaefer, Finance Director, said that this is consideration of a resolution approving an amendment to an installment purchase contract with Asheville Public Financing Corporation and providing for certain related matters.

Financing of the renovation of the Municipal Building, Water Maintenance Building and the City Building Roof; extension of water and sewer lines and an access road to Broadlands Technical Center; renovation of the first floor of the Grove Arcade as a public market; the construction of a high tech/flex building at Broadlands Technical Center and refunding of the Series 1991 COPs (which funded the acquisition of the Public Works Facilities) will require the issue of Certificates of Participation ("COPs"). The actual issuer of the COPs is Asheville Public Financing Corporation (APFC), a not for profit corporation which was formed to aid the City of Asheville in complex financings such as this COPs. In order to service the debt, the City will enter into an amendment to the existing 1991 installment purchase contract with APFC whereby the City agrees to provide periodic payments (which equal the debt service). The debt is to be secured by a deed of trust on the Municipal Building, the City Building, the Water Maintenance Building and a continued deed of trust on the Public Works Facilities (which was pledged for the 1991 COPs). In furtherance of the issue of COPs, the resolution provides the following: (1) Ratifies all actions of the City, City Manager, Finance Director, City Clerk and City Attorney in effectuating the financing; (2) Authorizes and approves the Preliminary Official Statement and Official Statement in connection with the financing; (3) Approves the Contract Amendment and authorizes and directs the City Manager and City Clerk to execute and deliver the Contract Amendment; (4) Authorizes and directs the City Manager and City Clerk to execute and deliver the Deed of Trust; (5) Approves the Financing Statements and authorizes the City Manager to execute and deliver them; (6) Approves the Certificate Purchase Agreement and authorizes the City Manager to execute the associated Letter of

Representation; and (7) Designates the City Manager as the City's Representative to act on behalf of the City in connection with the financing and authorizes, empowers and directs the City Manager, Finance Director and City Clerk to take necessary actions to carry out the financing.

Mr. Schaefer then briefed Council on public municipal financing and specific details of this financing. He outlined the municipal funding options for large projects which are (1) pay as you go; (2) General Obligation Bonds; (3) Revenue Bonds; and (4) Certificates of Participation. The City is proceeding with Certificates of Participation for which a public hearing is required. The certificates' debt service is subject to annual appropriations and is secured by property liens. In this case, we propose to place a lien on the Municipal Building, the Water Maintenance Building and a continuation of the lien on the Public Works Facility. He then reviewed the specific financing, noting that the total financing is not to exceed $27,000,000. He noted that the costs in this presentation are estimates because we don't know the true interest rates yet on the date we will go to market. However the not to exceed figure is firm.

We currently have a statutory debt limit for the City of $283.9 million - that's what we are allowed under North Carolina to issue. As of June 30, 1997, we have outstanding against that statutory limit $14.63 million. If we add the current proposed financing - $41.63 million, we are only approximately 15% of that total statutory limit.

He reviewed Series 1997A which are traditional municipal sorts of projects: Municipal Building renovation - $13.5 million; Water Maintenance Building renovation - $1.3 million; City Building Roof renovation - $1.413 million; Economic Development - $310,000; and Contingency - $660,000. The total project amount is $17.183 million. Additionally proposed to be financed is the cost of issuance (payment of the underwriters, printing of notices, payment to special counsel, etc.) - $161,000; and insurance on issue (insurance decreases our interest rate we will pay over the life of the issue) - $71,000. The total Series 1997A financing is $17.415 million. The Series 1997A has a cap figure of $18.5 million.

Series 1997B is a refunding of the callable portions of our 1991 Certificates of Participation which are currently outstanding - $3.4 million. Those Certificates were used for the financing of the Public Works Facility. The cost of issuance is $34,000 and the insurance is $15,000. The Series 1997B financing is $3.449 million. The Series 1997B has a cap figure of $4 million. We are refinancing this portion to obtain a lower interest rate. Our lower interest that we anticipate at this time will provide us an annual savings each year between $25,000-$30,000 through 2011, which is the final maturity on the debt. The net present value of that savings that we would realize is $277,000.

Series 1997C includes a loan to the Grove Arcade Public Market Foundation ("GAPMF") for renovation of the first floor in the amount of $2.25 million. The other project is the high tech/flex building at Broadlands Technical Park in the amount of $2.5 million. Other portions to be financed will be the cost of issuance - $28,000, insurance - $28,000 and capitalized interest - $767,000. He explained that we plan on financing the interest for the first 2.5 years. The total Series 1997C financing is $5.573 million. The Series 1997C has a cap figure of $6.5 million.

He explained the Grove Arcade project. He outlined the debt service sources - capitalized interest for 2.5 years. He said the

City's lease agreement with the GAPMF provides that the GAPMF pledged their rents that they receive from their developer of the upper floors of the Grove Arcade to the City. Rents start out at approximately $120,000 per year and escalate from the time the developer achieves 25% occupancy, plus a CPI based increase or 3% per year, whichever is higher. For security he stressed that the City owns the building. We advance funds only as construction progresses. As we advance those funds, the value of our building goes up. Our alternative, in event of default, is that we could repossess our building with our own improvements to that building. There is also a guarantee in a form from the developer in that he has five years to be up and operating. Some benefits include a potential for increased jobs in the area. Early studies show 70 new shops in the public market portion and throughout the entire building 600 new jobs. Increase of approximately $288,000 on the estimated sales tax; increase of state income tax; and a very small increase in property taxes. The developer plans on putting approximately $14 million of his own money into renovation of the upper floors. The project will sustain revitalization of the downtown area and provides a good anchor for the west side.

He then explained the high tech/flex space building. He outlined a debt service source of capitalized interest for 2.5 years. In this case we have Biltmore Farms and AdvantageWest that have a financial commitment to the operation. At the end of the construction, AdvantageWest stands to pick up debt service for 2 years thereafter. For security the land is subrogated to the City and the City will own the building. Funds are advanced under the loan only as construction progresses. We are looking to have a permanent occupant of that building and should we sell the building prior to 2 years after completion, those that have a financial interest in it (City, Biltmore Farms and AdvantageWest) will participate in any profits that may be realized. If after 2 years after completion the building is not sold, then Biltmore Farms buys out the City's interest and we have a guarantee by Biltmore Farms in the form of a letter of credit. Some benefits include a potential for increased jobs in the area. They anticipate by the completion of the flex space building itself to have approximately 35-50 new local hire jobs, paying as much as $12. This building is just the first segment of the Broadlands Technical Park, and as the entire project is built-out, we are looking at approximately 500 jobs. We anticipate an increase of approximately $3 million in property taxes and as the build-out proceeds, it is anticipated as much as $23 million worth of assessed valuation on the build-out producing approximately $131,000 per year at our present tax rates. This project is a nucleus for further growth. In our past experience with Biltmore Farms, they have gone through voluntary annexations and to date approximately 125 homes have been built with over $37 million in assessed valuation.

Councilman Skalski asked which financing will cost the taxpayers the least amount of money. Mr. Schaefer said that on the absolute straight rates, traditionally the General Obligation ("GO") bonds. However, when you look at the Series 1997C, we are looking at some flexibility in financing to be able to, with the Broadlands building, buy out of that whenever the opportunity presents itself at no penalty to us. That is not traditionally possible under a GO issue. In this kind of case, our proposed Certificates of Participation (COPs) financing that we have is probably the least expensive. It provides us with that flexibility and additionally, there are associated costs of issue on a GO issue that are not found in the COPs, i.e., conducting the public referendum. Additionally, we have some immediate needs on our buildings that should a public referendum fail, then we have no options. The COP's issue allows us to go forward in a very financially sound manner.

Councilman Skalski felt that General Revenue bonds in general would be cheaper. Mr. Schaefer said that there is absolutely no way to finance this under a revenue issue. He said there are no significant revenues associated with this to pledge.

Councilman Skalski talked about the Fiscal Year 1996 budget and what the City is obligated to now. Using the Fiscal Year 1996 budget book as a guide, he said the City has a $300 million infrastructure need that needs to be paid for before we begin to talk about economic development. He said that next year, MSD will have to finance a $24 million bond to begin to deal with that infrastructure need. With projects like this, the City does not need to become a bank. He noted that in the budget book, the outlook states that "Asheville's tax base continues to grow at a sluggish pace. That fact combined with the significant revenues controlled by the State which have little or no growth and Federal and State funding sources which in fact may not be available at all, are of great concern. Innovative management will work to provide City services more effectively at less cost." He felt that we are going to have to struggle with what we have on the table right now, let alone take on more. He said that in Fiscal Year 1996/97 reengineering proposals totaled $290,000 and we are proposing to do the same the next year. These savings will help, but they will not balance the budget. To balance the budget this year we had to take $905,000 out of our Fund Balance which takes it down to 16% of our total budget. In a typical North Carolina city Asheville's size, they have an average of 24% of their money kept in Fund Balance. He said we are running one third below the average.

Councilman Skalski inquired about the statement in the budget book that reads the General Capital Reserve Fund is balanced with a $3.4 million from the General Fund. He noted that it states that "the Municipal Building which houses the Police Department and Fire Administration and Station #1 is funded and we will begin complete renovations to the building at an estimated cost of $14 million. He asked why is the City borrowing another $14 million if the project is already funded. Mr. Schaefer said that in the Capital Improvements Plan the project is financed over 20 years and the first year's debt service is included.

Councilman Skalski said that in our Street & Sidewalk Fund, there is a total appropriation of $700,000 from the General Fund and it costs approximately $200,000 to do one mile of sidewalks. If a project comes up that has to be done, where will we get the money? He said that we are putting into Parking Services from the General Fund another $80,000 and that does not include the lease payments that we make on the garages.

He noted that every year we get $2 million in Powell Bill funds from the State to maintain our streets and sidewalks. We have had to supplement $1.7 million out of the General Fund for the Street and Sidewalk Reserve. To put things in perspective, he said that we are having to pay back $280,000 on the Pack Place debt and $1.8 million on the Sidewalk Bonds. There goes the entire $2 million from our Powell Bill funds that were supposed to go for streets and sidewalks. We are basically having to take $2 million out of the General Fund to provide for our street maintenance. How can Asheville afford to get into the private banking business with those kind of obligations on our books.

Mayor Martin said that the $17 million bonds which we floated were necessary for this community. It was perfectly legal and proper for Asheville to use the money from the Powell Bill fund to repay those bonds. He said that over the past 10 years, citizens have said that we can't continue to send our young people outside of Western North Carolina to seek employment. This has a potential of bringing 600-700 jobs to our community. We have found an innovative way to be of some assistance. We can sit and do nothing or we can try to attract the kind of industry that we want to have in our community.

City Manager Westbrook said that the economic outlook hasn't changed in a number of years. He said that we have to and do live within a balanced budget every year, but that doesn't mean we only concentrate on one thing. If we don't concentrate on everything we need to do to bring out a broad balanced, well diversified city, then we will lose. One thing that we have to do is work on economic development. Even though the funds may be slowing down from the Federal government, the City cannot slow down - we are in competition with other cities around the region for good solid business growth. This is an innovative way to provide economic development as well as the general municipal improvements we need to make to our buildings. In the budget regarding the Municipal Building, we showed a revenue stream coming from general City revenues sufficient to pay the debt service to be able to finance the reconstruction and renovation of that building starting this year. He noted that one of the goals arrived at during the Council retreat last year was encouraging City-wide economic development and improving the business climate. This is following through with that goal. He explained that Powell Bill funds from the State is actually money that comes from the State gasoline tax. All of that money goes back into streets, whether it is used by Public Works in our street crews or in direct repairs to the street. Since we have a greater need, last year we put in additional money for streets and sidewalks above and beyond whatever else we could do. We need to do that much and more every year.

City Manager Westbrook noted that the partners in the Broadlands project, in addition to the City and Biltmore Farms, are AdvantageWest, Carolina Power & Light Company, BellSouth and Buncombe County.

Mr. Aaron Zaretsky, on behalf of the GAPMF, thanked City Council for their cooperation and clarified that the bonds for the Grove Arcade Public Market do not in any way benefit the private developer. One hundred percent of those bonds go toward the non-profit creation of the Grove Arcade Public Market. However, if those bonds are not paid back, the City not only gets the $2.25 million in improvements on the building, but also the $10-15 million in private development on the building. The project will be generating jobs, generating opportunities for people and generating new taxes.

Mr. Chris Peterson, taxpayer and former member of City Council, was totally opposed to "giving sweetheart deals to millionaire business people." He felt Biltmore Farms does not need $2.6 million, neither does the developer from Atlanta that plans to develop the Grove Arcade. He felt that Council will have to raise taxes if it adds an additional $27 million onto the deficit. He felt this is a bad example for future Councils and Asheville government should not be getting into the banking business, especially with wealthy developers.

Mr. Jack Cecil, representing Biltmore Farms, said that they are pleased to be participating with the City in this economic development initiative. They see it as a way the City can grow the economic tax base of the City to the extent that they are willing to subordinate their land up-front to make this project go forward. Also in cooperation with AdvantageWest, they are willing to take the City out of any commitment of the $2.5 million if the building is not leased or is not sold within the 24 month period of time after the initial construction. He said that Biltmore Farms will also be contributing 4-5 acres of land to help jump-start the Knowledge Center which also is a partnership of public entities, non-profits and private development.

Upon inquiry of Councilman Skalski, Mr. Cecil said his definition of economic development is "through the expansion and retention of existing businesses within the City limits or the recruitment of new industries and businesses which will bring better higher paying jobs in town." The Knowledge Center will try to recruit smaller companies who pay higher wages so that we can facilitate the job base in order to have something for our future generations. It is also coupled with community development and residential development that we have done in Biltmore Park.

Councilman Skalski said that the top 20 cities in the country say that economic development is technology through job training. The best economic development policies in the country are totally tied to accountability. The company does not get either tax rebates, tax credits or stipends of any kind until they actually show that they have created the jobs. The Biltmore Farms proposal has no such mechanism. Asheville should be putting money into job training at the junior and senior high school levels for skilled trades and working with companies that actually have on-site jobs. This is more like a real-estate venture rather than economic development.

Mr. Dale Carroll, representing AdvantageWest, reiterated that this is not a recent initiative. This goes back to a study by Arthur Anderson with their expertise throughout this country and other parts of the world looking at how we can diversify the economy in Western North Carolina. We have been significantly dependent on traditional manufacturing wages. We are going to have to move away from that if we are going to make progress. Information technology companies that are going to be targeted to come into this technology park are the kinds of businesses that will put minimal strain on Asheville's infrastructure, will pay excellent wages, will provide good benefits and will be the type of corporate citizens that we would all be proud to have in the region and in Asheville. He feels that this is a unique opportunity to find an innovative solution to moving the economy forward.

Upon inquiry of Councilman Hay on why this project cannot go forward with private financing, Mr. Carroll said that you have to have the momentum to get a project like this started. The high tech flex space involves a certain amount of risk so with a partnership that includes the City, the regional commission AdvantageWest, and Biltmore Farms Inc. we were able to go into this together in a way that does not unreasonably burden any one of our three organizations. Without someone stepping up and making that high tech flex space available, we don't have any product to show the kinds of high growth companies that come in and maybe give you only hours to make your best proposal. With that in mind, we all have to be a part of stepping up and making an investment so we have a product to make available to the clients and consultants.

Upon inquiry of Councilman Skalski about how an empty building can create jobs, Mr. Carroll explained that if you reduce the amount of lead time for a fast growing company to get into production or operation, you have a competitive advantage.

Councilman Skalski felt you need to have skilled people first. He relayed a story about a company in Weaverville that wanted to employ an additional 100 skilled welders, but since they couldn't get the skilled workers, they couldn't expand.

Ms. Susan Andrew spoke in support of public/private partnership and economic development, however, she did not want the City to use public funds to help a wealthy developer. She felt they should sell some of their assets for this project and leave the public money to the public. She suggested this be put on the ballot for a public vote.

Ms. Leah Karpen, Charlotte Street resident, questioned why can't the Broadlands Technical Park get bank financing. There is no guarantee that there will be tenants or people to work in those places. She understands that the City's buildings need to be repaired, but the City has other needs and desires which were brought out in the Vision process, like greenways, public parks and things that people can use.

Mr. Richard Green, South Asheville resident and small developer, was concerned that the City could be setting a bad precedent in giving away $300,000 for infrastructure for this new project as well as a low interest loan. He asked what the City's policy is going to be on this in the future. He said he's in the process of building a project in the County and when the project is completed he would be very much in favor of going for voluntary annexation in order to get his share of the money available to developers in South Asheville.

Mayor Martin said that this is a well constructed business deal which will prove long term benefits to the City. He suggested Mr. Green talk to the City Manager and Finance Director about entering into a public/private partnership if he's interested in that.

City Attorney Oast explained that the $300,000 is for infrastructure and is not a grant. That type of economic development is specifically authorized by the General Statutes of North Carolina.

Upon inquiry of Ms. Terri Meinhold, dentist in Arden, Mayor Martin said that she could obtain a copy of the map of consideration regarding annexation from the City Manager's Office when that map is made available since it has not come before Council for action.

Mayor Martin closed the public hearing at 6:16 p.m.

Mayor Martin said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Field moved for the adoption of Resolution No. 97-194. This motion was seconded by Councilman Worley.

Councilman Skalski made a substitute motion to vote on the private developments separately and put it to a vote of the people. This motion died for a lack of a second.

Councilman Skalski said that he was in favor of allocating the money for the renovation of the Municipal Building, Water Maintenance Building, City Building roof and the refinancing of the Series 1991 COP's, noting that he has consistently asked this Council to approach the State legislature for money to be able to pay for our roads and infrastructure. However, he felt strongly that the City should not allocate money for the renovation of the first floor of the Grove Arcade as a public market nor for the construction of a high tech/flex building at Broadlands Technical Park. Therefore, he will have to vote against the entire resolution since the projects cannot be separated out. He saw no specific proposal or business plan to show how, in fact, we would be getting all the high paying jobs. Economic development is jobs and most cities that have serious economic development proposals base all their tax incentives or grant money on actual on-the-job performance.

It makes those companies accountable to the taxpayers. If all we do is go out and do real estate development and annex, we will only raise taxes. A study done by the N.C. League of Municipalities last year showed that every time a city goes over 50,000 in population, the taxes increase by 30-40% almost across the board. He felt that this idea of providing real estate development for some imaginary jobs that may or may not happen is not going to lower our taxes. He felt that City Council was going to have to raise taxes.

City Manager Westbrook explained that the City cannot operate legally with a deficit situation. There are no plans, from his standpoint, of raising taxes anytime in the future for these financings or any others. We will have to live within the means of our current tax structure.

Councilman Worley said that if you serve on Council you should have a vision for the future. You need to look down the road at the City's needs and look for ways to fulfill those needs. A theme consistently heard is that we need jobs in our community, economic development, and ways to keep our young people at home. Economic development of this type increases our tax base, makes us a more viable City, and allows us to do what we have done for the last nine years in maintaining our tax rate without any increase. Concerns he has heard are that we don't want to "spend" taxpayers money for a totally public and a public/private partnership. He stressed that when you look at the way they are being financed and the security that we have, it's a can't lose situation. We are not "spending" a dime of the taxpayers money on the Broadlands Technology Park. We are making that money available but if you look at the security that we have, we are absolutely guaranteed to get that money back and to not pay one dime in debt service and not have to raise taxes for that project. The same is true of the Grove Arcade. He believed that if you have a vision of what we need in the City, this is the thing to do.

Mayor Martin asked for a voice vote on the motion to adopt Resolution No. 97-194. This motion carried on a 5-1 vote, with Councilman Skalski voting "no".

RESOLUTION BOOK NO. 24 - PAGE 251

C. PUBLIC HEARING TO REZONE TWO LOTS ON WESTWOOD PLACE AND ARGYLE LANE FROM RM-8 TO CBD AND ONE LOT FROM RM-8 AND CB II TO CBD

ORDINANCE NO. 2418 - ORDINANCE TO REZONE TWO LOTS ON WESTWOOD PLACE AND ARGYLE LANE FROM RM-8 TO CBD AND ONE LOT FROM RM-8 AND CB II TO CBD

Mayor Martin opened the public hearing at 6:36 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Due to a conflict of interest, Councilman Sellers asked to be excused from voting. Therefore, Vice-Mayor Field moved to excuse Councilman Sellers from voting due to a conflict of interest. This motion was seconded by Councilman Cloninger and carried unanimously.

Mr. Carl Ownbey, Urban Planner, said that this Ordinance seeks the rezoning of two lots on Westwood Place and Argyle Lane (PIN Nos. 9638.15-54-4644 and 5708) from RM-8 to CBD and one lot (PIN No. 9638.15-54-5671) from RM-8 and CB II to CBD.

The subject properties are located on Westwood Place and Argyle Lane in West Asheville. Two of the parcels of land have existing commercial structures that are currently vacant and are zoned residential. The third lot has an existing commercial structure and is split zoned between residential and commercial. The 2010 Plan shows the area to be low density residential with some institutional and commercial development along Haywood Road. This rezoning will allow the existing structures to be used as commercial.

The zoning boundary line for south portion of lot 9638.15-54-5708 which is requested to be rezoned to CBD is to begin at the northeast corner of lot 9638.15-54-3772 and in a straight line direction approximately 80 feet to the northwest corner of lot 9638.15-54-6732.

The Planning staff reviewed the rezoning request and recommended approval of PIN Nos. 9638.15-54-4644 and 5708 from RM-8 to CBD and 9638.15-54-5671 from RM-8 and CB II to CBD. At their October 1, 1997, the Planning & Zoning Commission voted unanimously to approve the rezoning request.

Mayor Martin closed the public hearing at 6:38 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Field moved for the adoption of Ordinance No. 2418 This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 315

D. PUBLIC HEARING TO REZONE A PORTION OF 1897 HENDERSONVILLE ROAD FROM RM-6 TO OFFICE BUSINESS, RS-2 AND RS-4

ORDINANCE NO. 2419 - ORDINANCE TO REZONE A PORTION OF 1897 HENDERSONVILLE ROAD FROM RM-6 TO OFFICE BUSINESS, RS-2 AND RS-4

Mayor Martin opened the public hearing at 6:39 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that the petitioner seeks to rezone a portion of 1897 Hendersonville Road (PIN No. 9655-09-15-0034) lot from RM-6 (Residential Multi-Family, six units per acre) to OB (Office Business), RS-2 (Residential Single-Family, two units per acre), and RS-4 (Residential Single-Family, four units per acre).

This property is located west of Hendersonville Road. It is bordered on the west by Residential uses in a RS-4 zoning district, on the south by residential uses in a RS-2 zoning district, on the north by vacant land in a RS-6 zoning District, and on the east by commercial uses along Hendersonville Road. The petitioner is asking the rezoning to extend the existing OB zone westward towards the residential uses along Deer Run Road. In so doing, the petitioner has also asked that the residential zoning (RS-4) of the areas along Deer Run Road be extended eastward into the subject property by 75 feet, thus forming a buffer of 75 feet plus the setbacks required by future development between the future uses on the OB section of the land, and the residential uses to the west. The same thing has been done concerning the residential uses to the south of the proposed rezoning to create buffer for that area.

The 2010 plan shows this area as a transitional use area, and OB is considered a transition district between the residential areas, and the Highway Business zoning along Hendersonville Road.

Staff has received no comments opposed to this rezoning, and has received support from neighbors in the residential area to the west.

The City Planning and Development staff recommends approval of the rezoning request.

At their meeting of October 1, 1997, the Planning and Zoning Commission recommended unanimously to approve the proposed rezoning.

Mr. Laura Eide spoke in favor of the rezoning. She said that since the Office Business District and the Office District are quite different, she suggested perhaps and Office I District and an Office II District be explored.

Mayor Martin closed the public hearing at 6:44 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Skalski moved for the adoption of Ordinance No. 2419. This motion was seconded by Councilman Hay and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 317

E. PUBLIC HEARING TO REZONE PROPERTY AT YORKSHIRE AND REED STREETS FROM RS-8 TO OFFICE

ORDINANCE NO. 2420 - ORDINANCE TO REZONE PROPERTY AT YORKSHIRE AND REED STREETS FROM RS-8 TO OFFICE

Mayor Martin opened the public hearing at 6:46 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Councilman Cloninger asked to be excused from voting since his law firm is doing real estate work regarding this transaction. Therefore, Councilman Sellers moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

Vice-Mayor Field asked to be excused from voting since the applicant is her employer. Therefore, Councilman Worley moved to excuse Vice-Mayor Field from voting due to a conflict of interest. This motion was seconded by Councilman Skalski and carried unanimously.

Mr. Bruce Black, Urban Planner, said that the petitioner seeks to rezone the property at Yorkshire and Reed Streets (PIN Nos. 9647-12-85-1834,1964, a part of 5761) from RS-8 (Residential- eight units per acre) to O (Office).

This property is one block east of Hendersonville Road on Yorkshire Street, southeast of the intersection of Yorkshire and Reed Streets. It is currently vacant land. It is mildly steep near the Yorkshire Road and Reed Street intersection, and very steep as it moves southeasterly away from the intersection. The initial request by the applicant was for the rezoning of 2.8 acres. After working with the staff, the applicant has agreed to seek the rezoning as suggested by the Planning staff. This will place the front of the rezoned piece adjacent to an existing office zone, and will utilize existing city right-of-ways along the back of the property as buffers between the proposed office uses and the existing residential developments.

Staff has received no comments opposed to this rezoning, and has received three phone calls from a neighboring church supporting this rezoning.

The City Planning and Development staff recommends approval of the rezoning request.

At their meeting of October 1, 1997, the Planning and Zoning Commission recommended unanimously to approve the proposed rezoning.

Mayor Martin closed the public hearing at 6:49 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2420. This motion was seconded by Councilman Skalski and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 319

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 97-195 - RESOLUTION ESTABLISHING A HOLIDAY LIGHTING INCENTIVE PROGRAM

Mr. Mark Combs, Director of Public Works, asked for consideration of creating an incentive program for downtown businesses to mount holiday lights on their buildings.

Based upon the past success of holiday lighting in Biltmore Village by businesses in that area, last year staff and other interested persons promoted a similar program for Downtown businesses.

As an incentive to encourage businesses, the City is willing to provide "seed" money toward the purchase of the lights. This incentive will be a one time effort and businesses will be responsible for installing and maintaining the lights.

Also, with the impending renovation of Pritchard Park and the decrepit condition of the wiring, no holiday lighting is planned for that area. All of the Lexington Avenue trees will be wired and operated by businesses in that area for the first time.

It is hoped that the expansion of holiday lighting to buildings and streets in the Central Business District will assist in developing a public/private "partnership" that will increase retail potential, tourist interest, and overall community holiday spirit.

In view of Public Works efforts last year in stringing lights for longevity, it is estimated that approximately $5,000 in budgeted funds could be utilized for the purchase of lights for businesses who are willing to install them on their buildings.

Staff recommends that a program be established earmarking $5,000 for the purchase of holiday lights for downtown businesses. Staff will formulate a short, detailed policy to encourage maximum participation.

Mayor Martin said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Skalski moved for the adoption of Resolution No. 97-195. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 258

B. RESOLUTION NO. 97-196 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THORPE CONSTRUCTION COMPANY TO RECONSTRUCT THE CHEROKEE ROAD RETAINING WALL

Ms. Suzanne Molloy, Assistant Director of Public Works, said that this is consideration of the selection of a contractor to reconstruct a retaining wall along a portion of Cherokee Road.

The City, through the Public Works Department, solicited bids for this project. Four bid proposals were received. The bidders were qualified and listed below:

Company	MB Part	Drug Free	Bond	Bid
Thorpe Construction Co.	8.02%	Yes	Yes	$231,685
Buncombe Construction	2.1%	No	Yes	$247,100
Taylor and Murphy	0%	No	Yes	$280,000
R.E. Burns and Sons, Inc.	9.4%	No	Yes	$320,000

City staff has negotiated with the lowest bidder, Thorpe Construction Company, in efforts to lower the costs of construction. Alternative designs to reconstruct the wall and lower costs were not found to be acceptable by the Public Works Department. Therefore, upfront costs have not been identified to lower the costs. Should specific conditions be encountered during construction, construction requirements may be modified to bring down costs; however, at this time, the contract should remain as originally bid.

Ms. Molloy said that the design by the Public Works Department does include putting back on a stone veneer because we want to receive a Certificate of Appropriateness. The only way we have found we might lower the cost is that during construction if we find a portion of the wall that does not need to be repaired, that part will not be repaired. However, at this time we cannot verify that can be done. If that is the case, we would not expend all the funds approved today.

City Manager Westbrook said that the $240,000 is the worst case scenario. He felt the road is important for public access up the mountain, in particular from a public safety standpoint.

Councilman Cloninger said that he hoped that staff will continue to look at ways to save money on the project. When he looked at the side of the wall, he noticed it was covered with ivy and will no doubt will be again and as far as spending a substantial amount of additional money just to put a stone facade on the wall, he was just not sure it's justified. He is very supportive of historic property and historic projects, but was a little skeptical in this case. He did agree that the wall needed to be repaired.

Mayor Martin said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Skalski moved for the adoption of Resolution No. 97-196. This motion was seconded by Vice-Mayor Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 259

C. ORDINANCE NO. 2421 - BUDGET AMENDMENT TO RECONSTRUCT THE CHEROKEE ROAD RETAINING WALL

Ms. Suzanne Molloy, Assistant Director of Public Works, said that this budget amendment, in the amount of $240,000, is to reconstruct the Cherokee Road retaining wall.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Skalski moved for the adoption of Ordinance No. 2421. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 321

D. RESOLUTION NO. 97-197 - RESOLUTION AUTHORIZING ESTOPPEL CERTIFICATE FOR AIRPORT PROPERTY

City Attorney Bob Oast said that the City owns certain real property near the Airport on which is situated a Holiday Inn.

Davidson Hotel Partners, (herein "DHP"), the limited partnership that owns and operates the Airport Holiday Inn, has requested that the City execute an estoppel letter indicating that DHP is not in default on the lease. This is necessary in order for DHP to use its interest in the lease as security for new financing that it is obtaining.

A similar estoppel letter was executed by the City in 1994.

Staff recommends adoption of the resolution.

Mayor Martin said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 97-197. This motion was seconded by Councilman Skalski and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 260

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 14, 1997

Councilman Cloninger moved for the adoption of the minutes of the regular meeting held on October 14, 1997. This motion was seconded by Vice-Mayor Field and carried unanimously.

B. TRAFFIC STUDIES UNDER THE UNIFIED DEVELOPMENT ORDINANCE

Vice-Mayor Field said that the new Unified Development Ordinance ("UDO") requires certain projects obtain a traffic study. There are no certified traffic engineers in Asheville and the two that are available from the state have notified us that they are so busy they can't perform a traffic study for the next 8-10 weeks. Since we are at the beginning of this process, she suggested that in order not to hold projects up, that that they be allowed to provide the City with a traffic study a certain number of weeks down the road. The whole idea of the UDO is to facilitate and make it easier to do development - not to slow it down. She suggested staff report back to City Council with some recommendations very quickly on how to address this concern. She said another option would be to allow architects to perform those studies, since they technically have engineering degrees as well as architectural degrees. She felt that with a certain amount of training from City staff, that local architects might be allowed to be able to do some of this work.

It was the consensus of City Council to have staff look at the suggestions outlined by Vice-Mayor Field.

C. COVEN OLDENWILDE

Ms. Christy Howard, speaking on behalf of Dixie Deerman and Steve Rasmussen of Coven Oldenwilde in Asheville, said that John Miall was to have sent all members of Council a memo indicating that Dixie Deerman and Steve Rasmussen of Coven Oldenwilde have signed a hold harmless agreement that waives the City of Asheville of all liability for the 3rd Annual Witch Ritual. The memo should also read that they have secured $3 million of event insurance for any liability. She had a letter in hand stating that City staff will allow them to do the lighting as they see fit. The City does, however, recommend that the lighting be left on but they will show Coven Oldenwilde how to control the lighting, if they choose to change it.

City Attorney Oast said that City staff has not had time to prepare the memo to Council because the documents were not executed until Noon today. Following Council's last meeting, Council's concern was with the City agreeing to allow that the lights to be turned off - that it might expose the City to an unreasonable degree of risk. We have worked with Coven Oldenwilde and they have secured a policy of insurance that the City believes is sufficient to cover the risk associated with what they wanted to do. We have also obtained an indemnity agreement from them. We still suggest that the lights remain on, but if they don't, the City is covered. This requires no action from Council.

D. CLAIMS

The following claims were received by the City of Asheville during the week of October 10-23, 1997: Retaw (Water), Carlotta Roberts (Sanitation), Charlyn Acres (Water), James Moore (Traffic Engineering), Chris Beddingfield (Water), Michael McClanahan (Water), Joan Nicholson (Water) and Laura Petriz (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

E. CLOSED SESSION

At 7:12 p.m., Councilman Worley moved to go into closed session (1) to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the attorney and the City - statutory authority is G.S. 143-318.11 (a) (3); (2) to investigate a grievance by a public employee - statutory authority is G.S. 143-318.11 (a) (6); and (3) to discuss matters relative to the location or expansion or other businesses in the area served by the City of Asheville - statutory authority is G.S. 143-318.11 (a) (4). This motion was seconded by Vice-Mayor Field and carried unanimously.

At 7:30 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 7:45 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Wednesday - November 5, 1997 - 3:00 p.m.

Worksession

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Speed Limit Changes

Summary: The consideration of an ordinance to establish 15 mph on Lynmar Avenue; establish 20 mph on Swangar Road, Woodvale Avenue, Melrose Avenue, Manetta Road, Harrison Street, Starmount Drive, Covington Street, Sondley Drive, Sondley Drive North, Sondley Woods Place and South Sondley Drive; establish 25 mph on Sondley Parkway; reduce speed to 25 mph on Beaucatcher Road and Annadale Avenue; and reduce speed on King Street to 20 mph.

Mr. Doug Birch, representative of the Sondley Homeowners Association, asked that only one sign be posted for 25 mph at the entrance of the subdivision on Sondley Parkway. He said that they do not want different speeds posted on the different streets in the subdivision. Their primary request is that the speed be the same throughout the subdivision and their second request is that the speed be 25 mph.

Councilman Worley brought up the fact that each street must be posted with a speed limit for it to be enforced.

It was the consensus of City Council to remove the streets in the Sondley Subdivision from being considered at this time and instruct the Traffic Engineer to review the request.

Municipal Agreement for Bridge Inspections

Summary: The consideration of a municipal agreement with the N. C. Dept. of Transportation on a bi-annual basis for the re-inspection of bridges on the Municipal Street System.

Municipal Agreement for Maintenance of Street Lights along West Asheville/Riverlink Bridge

Summary: The consideration of an agreement with the N.C. Dept. of Transportation for the maintenance of nine street lights along Haywood Road at the West Asheville/Riverlink Bridge.

Budget Amendment re: Traffic Engineering Budget Transfer

Summary: The consideration of transferring the budget in the amount of $115,909 for the Traffic Engineer from Public Works to Engineering Department.

Agreement with Norfolk Southern Railway re: West Annexation Area Sewer System Improvements Phase II

Summary: The consideration of a contract with Norfolk Southern Railway Corporation for the City of Asheville to install an 8-inch pipeline beneath the railroad in connection with the West Annexation Area Sanitary Sewer System Improvements Phase II Project.

Withdrawal of Dedication of Overlook Drive

Summary: The consideration of finding the right-of-way known as Overlook Drive off Springdale Avenue not part of an adopted street plan.

Parks & Recreation Director Authority to Sign Contract Agreements

Summary: The consideration of a resolution authorizing the Director of Parks & Recreation to enter into co-sponsorship agreements and class instruction agreements for providing recreation services.

Railroad Crossing Signal on Bruce Road

Summary: The consideration of entering into an agreement with the N.C. Dept. of Transportation for a railroad crossing signal on Bruce Road.

West Asheville Reservoir & Water System Improvements Contract

Summary: The consideration of awarding construction contract to Cooper Construction Company for the West Asheville Reservoir and Water System Improvements Contract.

Mountaineer Inn Neon Signs at 155 Tunnel Road - Landmark Signs

Summary: The consideration of designating the large metal parapet signs atop the Mountaineer Inn at 155 Tunnel Road as landmark signs.

Lease of Portion of old Water Maintenance Building to Asheville City Schools

Summary: The consideration of a resolution directing the City Clerk to provide notice to the public of the intent of the City of Asheville to lease a portion of the Old Water Maintenance Building to the Asheville City Schools.

Agreement with Chamber of Commerce for Outside Agency Funding

Summary: The consideration of authorizing the City Manager to execute a contract with the Chamber of Commerce to receive the outside agency funding of $100,000 for Fiscal Year 1997/98.

Amendments of Regional Water Authority Capital Project Ordinance (Fund 35)

Summary: The consideration of a budget amendment to the Water Major Capital Project Ordinance 82-25 (35 Fund) to reflect actual monetary commitments in that Fund.

Amendments of Regional Water Authority Capital Project Ordinance (Fund 29)

Summary: The consideration of a budget amendment to reprogram funds in the 29 Fund from the 19&23/West Buncombe Water Line and Pipeline Phase III to the Mills River Water Resources Project.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place these item on the next formal City Council agenda.

CONTRACT FOR PROPERTY MANAGEMENT SERVICES FOR COMMUNICATIONS FACILITIES AND WIRELESS TELECOMMUNICATIONS CONSULTING SERVICES

Mr. Gerald Green, Urban Planner, said that in September, the City distributed two Requests for Proposals (RFP) soliciting assistance in the development of a comprehensive ordinance establishing standards for the placement of wireless telecommunications facilities in the City's jurisdiction and for the management of the city's property for the location of communications facilities. In response to the RFP's, proposals were received from only one firm for the two (2) identified tasks.

Regarding the wireless telecommunications consulting services, he outlined that the City's existing ordinance which regulates telecommunication towers does not address (1) stealth technology; (2) areas that may not be able to be served due to restrictions imposed; (3) review fees; and (4) anticipate new technology. There is a need for a new ordinance incorporating standards to address those issues. After the City solicited proposals for revising the current telecommunications ordinance, the RFP identified minimum qualifications for a consultant, those being (1) knowledgeable about telecommunications technology and (2) knowledge of local zoning issues. An evaluation committee composed of City staff reviewed the proposals and identified the proposals best meeting the criteria set forth in the RFP's. The evaluation committee is recommending that the City enter into contracts with Jenkins, Reed, Madison and Associates ("JRM") for the ordinance development.

The proposal submitted by JRM identifies the following tasks: (1) orientation meetings; (2) review and critique existing ordinance; (3) wireless training session (4) meet with wireless providers; (5) consultations with Planning staff and drafting proposed ordinance; (6) public participation workshop; and (7) present ordinance to City Council. The cost of the 148 hours of consulting services, travel expenses and related costs for telephone, copying and miscellaneous services is $21,790.

Development of a comprehensive wireless telecommunications ordinance which anticipates changes and new technology would put the City ahead of issues. The City would be better able to deal with issues related to telecommunications facilities, assuring that adequate service is provided while protecting those unique resources which make Asheville great.

Councilman Cloninger felt this comprehensive, cutting-edge ordinance will link Asheville to other cities for a regional approach to telecommunications towers.

Upon inquiry of Councilman Skalski, Mr. Green said that once the contract is approved, it would involve approximately 25 hours of Planning staff time.

It was the consensus of City Council to proceed with this contract and for City staff to continue to look for ways to reduce the cost.

Regarding the property management services for communications facilities, he said the City owns numerous properties which may be appropriate locations for communications facilities. The location of communications facilities on City property could generate revenue. Two obstacles to locating communications facilities on City property are (1) properties have not been evaluated for suitability; and (2) lack of staff to market and manage properties. The City has identified need for outside expertise to assist with this task. After the City solicited proposals from firms capable of undertaking this project, the RFP established certain minimum requirements, those being (1) experience in property management, including marketing of property; (2) experience in locating communications facilities; and (3) knowledge of communications facilities market and demand. An evaluation committee composed of City staff reviewed the proposal and recommended that the City enter into contracts with Jenkins, Reed, Madison and Associates ("JRM") for the property management services.

The scope of services to be provided by JRM includes: (1) audit and evaluation of City property to determine capacity; (2) marketing and advertising of City property wireless service providers; (3) intermodulation studies to determine electronic compatibility of tenants; (4) lease/license negotiation services to optimize revenues; (5) review of plans for facilities to assure aesthetic compatibility; (6) site construction coordination; (7) billing and collection services for all communications facilities; and (8) review of plans to assure compliance with FCC and FAA regulations. The management fee for services is 30% of total collected services. The term of the agreement is a five year initial term with a renewal term of three years.

The marketing and management of the City's property for the location of communications facilities has the potential to generate a substantial amount of revenue for the City.

Contract negotiations will be necessary, as there are some outstanding issues to be addressed in each of the contracts as presented by the proposer. These issues have been identified by the evaluation committee. The contract negotiations should address those issues identified by the evaluation committee and these issues should be resolved to the satisfaction of the City prior to signing of the contracts.

By use of a slide, he showed a five year projected revenue model of the VA Medical Center which showed a cumulative gross revenue of $221,612.

Mr. Green responded to questions from Councilman Hay regarding the management fee and what is involved in marketing.

Vice-Mayor Field suggested asking the consultants about their experiences with technology commissions, which are made up of citizens who advise the councils on technology.

Councilman Cloninger emphasized that the site management plan is not for the City to put towers on publicly owned property, but to maximize the use of stealth technology throughout the community. He stressed the City needs to regulate towers, not antennas that are approximately 10 feet tall. He explained that if we can use publicly-owned property, like existing building, water towers, etc., to put up antennas, then we can reduce the number of towers.

Councilman Cloninger pointed out that JRM is a minority owned business.

It was the consensus of City Council to proceed with this contract and for City staff to continue to look for ways to reduce the cost.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

COST OF SERVICES INCREASE FOR BASIC CABLE RATE

Assistant City Attorney Patsy Meldrum said that on March 1, 1997, InterMedia filed with the City of Asheville two FCC Forms, 1205 and 1240, both dated March 1, 1997, for the purpose of requesting an annual increase in its monthly rates and hourly service charges for its basic cable service tier. With the March 1, 1997, filing InterMedia proposed to increase the monthly rate for its basic cable service tier from $10.46 to $10.91, its expanded basic service tier from $13.55 to $14.09 and its hourly service charge from $19.58 to $36.72. By letter dated May 16, 1997, InterMedia filed FCC Form 1235 entitled "Abbreviated Cost of Service Filing for Cable Network". In its filing dated May 16, 1997, InterMedia proposed to increase its basic service rate by $1.00 per month and its expanded basic service rate by $3.00 per month, based on the cost of the rebuild of the cable system.

On June 10, 1997, the City Council adopted Resolution No. 97-90 which invoked additional time to review the requests of InterMedia, thereby giving the City until November 15, 1997, to review the requests. That resolution directed the City Manager to provide notice to InterMedia of that order extending the time for review of the requests. After receipt of that notice by InterMedia, InterMedia sent to the City Manager a letter dated July 30, 1997, stating that they were changing the monthly rate for the basic service back so that the $1.00 per month rate increase would not be implemented at that time.

The City of Asheville contracted with Rice, Williams Associates to provide certain consulting services for the cable television franchise of InterMedia. Rice, Williams Associates reviewed the proposed rate increases and furnished the City of Asheville with a report analyzing those proposals and recommending denial of the proposed rate increases. She briefly reviewed their report.

The City Manager and the City Attorney's Office recommend approval of the resolution.

Intermedia has requested that the City of Asheville reconsider denying the request and allow them to supplement their filing and issue an accounting order.

Ms. Meldrum responded to questions from Councilman Hay regarding the rebuild of the system.

Upon inquiry of Councilman Cloninger, Ms. Meldrum said that the City only has the ability to review, but the review is limited by the formula developed by the FCC. As long as they comply with the formulas then we have no other choice but to not act on the rates and let them go into effect or take some affirmative action.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

STEPHENS-LEE CONSTRUCTION CONTRACT

Mr. Lyle Willis, Contract Administrator, said that this resolution is consideration of entering into a construction contract to renovate the Stephens-Lee Center.

In October, 1997, City Staff solicited bids from eleven contractors to renovate the Stephens-Lee Center. Sealed bids as both single prime and separate prime contractors were received on September

18, 1997, at 3:00 p.m. based on design plans and specifications by Mathews and Glazer Architects. An estimate for construction cost was prepared by Mathews and Glazer Architects in the amount of $ 1,300,000.00 excluding site work and landscaping. The bid process resulted in the following three single prime bids:

Buncombe Construction Co., Inc.	$ 1,545,800.00
H&M Constructors, Inc.	$ 1,594,577.00
Donald C. Neal Construction Co., Inc.	$ 1,526,787.00

City staff has researched references given by the lowest bidder and concluded that they are a competent General Contractor. Sufficient funds are appropriated in the budget for this project.

The Parks and Recreation Department requests City Council to direct the City Manager to enter into a contract for $ 1,526,787.00 dollars with Donald C. Neal Construction Co., Inc.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

SCHEDULE OF CITY COUNCIL MEETINGS FOR DECEMBER 1997

It was the consensus of City Council to modify the City Council meeting schedule for December 1997 as follows: December 2, 1997 - formal; December 9, 1997 - worksession; December 16, 1997 - formal; December 23, 1997 - cancel meeting; and December 30, 1997 - cancel meeting.

Mayor Martin asked that the record show that City Council has instructed the City Manager to place this item on the next formal City Council agenda.

BOARDS & COMMISSIONS

As an official duty of the Vice-Mayor to oversee the process of board and commission appointments and for her and the committee members to make recommendations to the entire Council, she recommended that if someone has served one term, is interested in reappointment and has met the attendance requirements, that that person be reappointed to serve a second term.

Subject to the City Clerk verifying the criteria above, the Committee recommended the following: reappoint Rose Rose and Allen Roderick as Alternates to the Board of Adjustment; reappoint Carol King, Beth Lazer and Tim Fierle to the Asheville Downtown Commission; reappoint Ron Lambe and Althea Goode to the Transit Authority; and reappoint Bill Schaefer and Doug Spell to Victoria of Asheville.

Vice-Mayor Field said that the City Business & Development Commission has asked that Carol King be appointed as the Asheville Downtown Commission representative. The representatives for AdvantageWest, Asheville Downtown Association and Asheville Merchants Association have not been recommended at this time.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork for appointments as outlined above by Vice-Mayor Field.

It was the consensus of City Council to instruct the City Clerk to prepare the property paperwork to appoint Councilman Charles R. Worley to fill the vacancy on the ABC Board; appoint Vice-Mayor Barbara Field to fill the vacancy on the Metropolitan Sewerage District Board; appoint Karen Tessier to fill the vacancy on the Asheville Downtown Commission; appoint Peter Gentling and Jerry Bailey to the Tree Commission; and appoint Lionel Williams to the A-B Community Relations Council.

It was the consensus of City Council to wait for a recommendation from Wachovia Bank to fill the vacancy on the Firemen's Relief Fund.

It was the consensus of City Council to wait until the new Budget Director was hired to fill the vacancy on the Victoria of Asheville Board.

City Council instructed the City Clerk to arrange an interview with Willie McDaniel for a vacancy on the Transit Authority.

RESOLUTION NO. 97-198 - RESOLUTION AUTHORIZING THE EXCHANGE OF CITY OWNED REAL PROPERTY LOCATED ON BARTLETT STREET FOR REAL PROPERTY LOCATED NEAR BARTLETT STREET (PART OF THE MURRAY HILL PARK PROPERTY) OWNED BY OVERLOOK APARTMENTS LIMITED PARTNERSHIP

City Attorney Oast explained that the City of Asheville owns real property on Bartlett Street and Overlook Apartments Limited Partnership ("Developer") has contracted with the City to purchase from the City real property located near Bartlett Street consisting of 2.9 acres, more or less. The properties are adjacent to one another, and the City wishes to develop a park on part of the property owned by the Developer, and the Developer wishes to use part of the City's property in connection with its proposed housing development. The City and Developer have determined that it is in their mutual best interest for the City to exchange part of its property for part of the Developer's property, and have further determined that said exchange represents full and fair consideration to both parties. This resolution will authorize the Mayor to enter into Exchange Agreement and authorize the City Clerk to cause the notice to be published in the paper of Council's intent to authorize the exchange.

Mr. Ed Vess, Field Services Coordinator, illustrated and explained the transaction.

Councilman Worley moved to waive the rules and take formal action at this meeting on this matter. This motion was seconded by Vice-Mayor Field and carried unanimously.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Councilman Worley moved to adopt Resolution No. 97-198. This motion was seconded by Vice-Mayor Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 261

ADJOURNMENT:

Mayor Martin adjourned the meeting at 4:28 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday - November 11, 1997 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Sellers gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

A. RESOLUTION NO. 97-199 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR BRIDGE INSPECTIONS

Summary: The consideration of a municipal agreement with the N. C. Dept. of Transportation (NC DOT) on a bi-annual basis for the re-inspection of bridges on the Municipal Street System.

In 1983 the Federal Highway Administration developed the Federal Off-System Bridge Replacement Program. Since the establishment of the program, the City has replaced 16 bridges through the program. The program is funded 80% through federal funds and 20% through City funds and administered by NC DOT. To remain eligible for replacement funds and avoid penalties, it is required that all public bridges are inspected every two years. The NC DOT offers three options for meeting the bi-annual inspection requirements - (1) inspection with City forces; (2) City to hire a consultant to do the inspections; and (3) allow the NC DOT to do the inspections through a qualified private engineering firm.

Since 1983, the City has elected to execute an agreement with NC DOT to accomplish the required inspection through their personnel or engineering consultants. This process allows high numbers of bridges to be inspected under one contract or operation, and therefore, results in minimum inspection cost per bridge. NC DOT representatives anticipate the inspection costs to be $1800 per bridge for the upcoming inspection. The City has 24 bridges in need of inspection this year which would bring the cost to $43,200. The City's share of 20% is $8640. Funds for the City's share are budgeted in the Capital Projects Fund through the Bridge Replacement Program.

The Public Works Department staff recommends adoption of the resolution authorizing the Mayor to execute a municipal agreement with NC DOT for inspection of bridges on the Municipal Street System.

RESOLUTION BOOK NO. 24 - PAGE 262

B. RESOLUTION NO. 97-200 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH NORFOLK SOUTHERN RAILWAY FOR THE INSTALLATION OF AN 8-INCH PIPELINE BENEATH THE RAILROAD IN CONNECTION WITH THE WEST ANNEXATION AREA SANITARY SEWER IMPROVEMENTS PHASE II PROJECT

Summary: The consideration of a contract with Norfolk Southern Railway Corporation for the City of Asheville to install an 8-inch pipeline beneath the railroad in connection with the West Annexation Area Sanitary Sewer System Improvements Phase II Project.

This contract will require the City of Asheville to install, maintain, operate and remove an eight inch sanitary sewer pipeline in an eighteen inch casing pipe, under and across the right of way or property and any tracks of Railway, at Milepost T-5 minus 1,575 feet, for the construction of the West Annexation Area Sanitary Sewer System Improvements Phase II project and to pay the appropriate fees associated with the encroachment.

The Engineering Department developed construction plans for the West Annexation Area Sanitary Sewer System Improvements and this right of way is included to complete the construction of the sewer pipeline. The cost of the encroachment is $1,600 and the cost for insurance requirements is $350.00.

Staff recommends that City Council accept a resolution authorizing the City Manager to execute a contract with Norfolk Southern Railway Company for the right of way for the West Annexation Area Sanitary Sewer System Improvements Phase II and pay appropriate fees associated with the encroachment.

RESOLUTION BOOK NO. 24 - PAGE 263

C. RESOLUTION NO. 97-201 - RESOLUTION FINDING THAT THE DEDICATION DESCRIBED IN THE PROPOSED DECLARATION OF WITHDRAWAL FOR OVERLOOK DRIVE IS NOT PART OF THE STREET PLAN

Summary: The consideration of finding the right-of-way known as Overlook Drive off Springdale Avenue not part of an adopted street plan.

According to North Carolina General Statutes sec. 136-96, a right-of-way not utilized within 15 years of dedication can be abandoned through a recording of a Declaration of Withdrawal.

To proceed with this process, Mr. John D. Wilson, owner of PIN 9658-18-21-8701 and 9658-18-22-22-6371 has requested that the City of Asheville verify if the specific right-of-way is or is not part of the City's adopted street plan. The statute requires that the City adopt a resolution stating the right-of-way to be abandoned is or is not part of a proposed street plan. The unused road right-of-way off Springdale Avenue, named Overlook Drive, as shown on Plat Book 2, page 124, is not part of any such plan and is not a City maintained right-of-way; therefore, the City has determined that all necessary requirements of the statute will have been met by adopting the resolution.

The Public Works Department staff finds that the right-of-way known as Overlook Drive, from the intersection with the southwest corner of PIN No. 9658-18-21-6806 and southeast corner of PIN No. 9658-18-22-6371, in its entirety, as shown on Plat Book 2, Page 124 is not part of an adopted street plan and recommends the adoption of this resolution.

RESOLUTION BOOK NO. 24 - PAGE 264

D. RESOLUTION NO. 97-202 - RESOLUTON AUTHORIZING THE PARKS & RECREATION DIRECTOR TO EXECUTE CERTAIN CO-SPONSORSHIP AND CLASS INSTRUCTIONAL AGREEMENTS

Summary: The consideration of a resolution authorizing the Director of Park & Recreation to enter into co-sponsorship agreements and class instruction agreements for providing recreation services.

The Parks and Recreation Department is currently involved with over 100 co-sponsored groups that jointly provide recreation service with the department. In addition, instructor agreements are signed to provide fee-based recreation class instruction in a variety of areas. Currently, the City Manager is the only person authorized to sign these agreements. Through recommendation from the City Manager, the Parks and Recreation Department is asking City Council's approval for this responsibility to be given to the Director of Parks and Recreation.

The Parks and Recreation Department requests City Council approval for the Director of Parks and Recreation to enter into co-sponsorship and class instructor agreements.

RESOLUTION BOOK NO. 24 - PAGE 265

E. RESOLUTION NO. 97-203 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR A RAILROAD CROSSING SIGNAL AT BRUCE ROAD

Summary: The consideration of entering into an agreement with the N.C. Dept. of Transportation for a railroad crossing signal on Bruce Road.

Each year, the State of North Carolina examines all of the public-highway grade crossings in the State and ranks them according to their need for improvement. Based on an engineering investigation, the intersection of Bruce Road and Norfolk Southern Railway tracks qualifies for grade signalization improvements.

Under this program, the Federal Government will pay 90 percent of the eligible project cost. The City will be required to pay all costs not covered by Federal funds. Also, the City will be responsible for one-half of the annual maintenance cost of the signal installation.

The estimated cost for the Bruce Road Project is $90,000. The City's share of this cost is $9,000 for design and installation, and $1,058.50 annually for maintenance.

Based on current funding, this project will be scheduled for construction during the Federal fiscal year which begins October 1, 1997.

The Engineering Department recommends adoption of this resolution.

RESOLUTION BOOK NO. 24 - PAGE 266

F. RESOLUTION NO. 97-204 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR MAINTENANCE OF STREET LIGHTS ALONG WEST ASHEVILLE/RIVERLINK BRIDGE

Summary: The consideration of an agreement with the N.C. Dept. of Transportation ("NC DOT") for the maintenance of nine street lights along Haywood Road at the West Asheville/Riverlink Bridge.

The City Traffic Engineer made a request to NCDOT that the street lights along the West Asheville/Riverlink Bridge (Bridge No. 705) be repaired, pursuant to complaints from residents and motorists who use this facility. The City Traffic Engineer has performed the necessary analyses associated with the need to provide lighting in this area. NCDOT agreed to make the necessary repairs to the lighting standard at no cost to the City of Asheville. The City of Asheville currently pays the cost of electricity for these fixtures at a rate of $70.00 per month.

After completion of the repair by NCDOT, the City of Asheville will be responsible to make and/or pay for all necessary repairs to keep the lighting standards working properly. Staff has monitored these fixtures for the last ten months and are satisfied with their operation.

The Engineering Department recommends adoption of this resolution which will allow the City to control the maintenance and construction activities associated with lighting along this area.

RESOLUTION BOOK NO. 24 - PAGE 267

G. RESOLUTION NO. 97-205- RESOLUTION RESCHEDULING THE MEETINGS OF THE ASHEVILLE CITY COUNCIL IN DECEMBER 1997

Summary: Due to a change in City Council, it is necessary to reschedule the City Council meetings in December, 1997.

RESOLUTION BOOK NO. 24 - PAGE 268

H. RESOLUTION NO. 97-206 - RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE REGIONAL WATER AUTHORITY TO AWARD A CONTRACT TO COOPER CONSTRUCTION COMPANY FOR THE WEST ASHEVILLE RESERVOIR AND WATER SYSTEM IMPROVEMENTS CONTRACT

Summary: The consideration of awarding construction contract to Cooper Construction Company for the West Asheville Reservoir and Water System Improvements Contract.

Sealed bids were received for the Authority's West Asheville Reservoir and Water System Improvements Project on September 26, 1997. This project consists of the installation of approximately 9,000 linear feet of 16-inch waterline on Deaverview Road in West Asheville and the construction of a new 5 million gallon reservoir on Candler Knob Road, next to an existing 3 million gallon reservoir. This is a Phase II Master Plan project that will significantly increase water system storage as well as improve the reliability of water service to the Downtown and West Asheville areas.

Construction on this project is scheduled to begin in late November, 1997 with 210 days allocated for construction. There is a liquidated damages clause in the contract of $ 500.00 per day if the project is not completed on time. These bids were received in accordance with NC General Statute 143-129 and in accordance with the City of Asheville's Minority Business Plan. Funds in the amount of $1,562,000 are budgeted for the project in the Water Bond Capital Projects Fund. The engineer's estimate for the project was in the amount of $1,562,000. A total of six (6) bids were received, listed below in order of bid amount:

COMPANY	**BID**
Cooper Construction Company, Hendersonville, N.C.	$ 1,552,064.00
Buckeye Construction Company, Canton, N.C.	$ 1,588,980.00
Hobson Construction Company, Arden, N.C.	$ 1,665,825.00
Goodwater Construction Company, Greenville, S.C.	$ 1,775,250.00
Bryant Electric Company, Archdale, N.C.	$ 1,823,344.00
Ruby-Collins Incorporated, Smyma, GA	$ 2,086,566.00

The Regional Water Authority approved award of this contract to Cooper Construction Company on October 21, 1997, and staff recommends City Council's concurrence with the Authority's action.

RESOLUTION BOOK NO. 24 - PAGE 269

I. RESOLUTION NO. 97-207 - RESOLUTION DESIGNATING MOUNTAINEER INN NEON SIGNS LOCATED AT 155 TUNNEL ROAD AS LANDMARK SIGNS

Summary: The consideration of designating the large metal parapet signs atop the Mountaineer Inn at 155 Tunnel Road as landmark signs.

The neon signs atop the Mountaineer Inn located at 155 Tunnel Road were installed forty-five years ago. The sign meets criteria A, B, & C for landmark designation for the following reasons: (A) The Mountaineer Inn neon signs are an icon for the City of Asheville and are a part of our collective memory. "Historic signs give continuity to public spaces, becoming part of the community memory. They sometimes become landmarks in themselves, almost without regard for the building to which they are attached, or property on which they stand. Furthermore, in an age of uniform franchise signs and generic plastic "box" signs, historic signs often attract by their individuality: by a clever detail, a daring use of color and motion, or reference to particular people, shops, or events." (Preservation Brief #25); (B) The Mountaineer Inn neon signs are fine examples of the creative possibilities of neon. "Neon is a great 20th century contribution to the signmaker's art. 'Neon' coined from the Greek word for 'new,' is a 'new gas.' It has the property of glowing when an electric charge passes through it. (Argon, Krypton, xenon and helium share this property....Encased in glass tubes shaped into letters or symbols, neon offered signmaker's an opportunity to mold light into an infinite variety of shapes, colors, and images. Combined with an electric timer, the neon tubing could present images moving in succession. Neon first appeared in the 1920s and reached its height of popularity in the 1940s." (Preservation Brief #25); (C) The Mountaineer Inn and its signs are a good example of post World War II, roadside art and architecture.

At their regularly scheduled August meeting, HRC, by a unanimous vote, recommends to City Council that the neon Mountaineer Inn signs be designated landmark signs.

RESOLUTION BOOK NO. 24 - PAGE 270

J. RESOLUTION NO. 97-208 - RESOLUTION DIRECTING THE CITY CLERK TO PROVIDE PUBLIC NOTICE OF THE INTENT OF THE CITY OF ASHEVILLE TO LEASE A PORTION OF THE OLD WATER MAINTENANCE BUILDING TO THE ASHEVILLE CITY BOARD OF EDUCATION

Summary: The consideration of a resolution directing the City Clerk to provide notice to the public of the intent of the City of Asheville to lease a portion of the Old Water Maintenance Building to the Asheville City Schools.

The Asheville City Schools now use a portion of the basement of the Municipal Building for its Maintenance Division, pursuant to a 1996 agreement with the City of Asheville. With the renovations of the Municipal Building, the maintenance operations for Asheville City Schools will be moved to space in the Old Water Maintenance Building. The Asheville City Schools will be paying for alternates for construction which will provide them adequate space to provide their maintenance services. The terms and conditions of the agreement regarding the use of a portion of the Old Water Maintenance Building will be set forth in a lease.

The Parks and Recreation Department recommends City Council approval of the resolution directing the City Clerk to provide notice to the public of the proposed lease between the Asheville City Schools and the City of Asheville.

RESOLUTION BOOK NO. 24 - PAGE 272

K. RESOLUTION NO. 97-209 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH DONALD C. NEAL CONSTRUCTION COMPANY INC. TO RENOVATE THE STEPHENS-LEE RECREATIONAL CENTER

Summary: The consideration of entering into a construction contract to renovate the Stephens-Lee Center.

In October, 1997, City Staff solicited bids from eleven contractors to renovate the Stephens-Lee Center. Sealed bids as both single prime and separate prime contractors were received on September 18, 1997, at 3:00 p.m. based on design plans and specifications by Mathews and Glazer Architects. An estimate for construction cost was prepared by Mathews and Glazer Architects in the amount of $ 1,300,000.00 excluding site work and landscaping. The bid process resulted in the following three single prime bids:

Buncombe Construction Co., Inc.	$ 1,545,800.00
H&M Constructors, Inc.	$ 1,594,577.00
Donald C. Neal Construction Co., Inc.	$ 1,526,787.00

City staff has researched references given by the lowest bidder and concluded that they are a competent General Contractor. Sufficient funds are appropriated in the budget for this project.

The Parks and Recreation Department requests City Council to direct the City Manager to enter into a contract for $ 1,526,787.00 dollars with Donald C. Neal Construction Co., Inc.

RESOLUTION BOOK NO. 24 - PAGE 273

L. RESOLUTION NO. 97-210 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE ASHEVILLE AREA CHAMBER OF COMMERCE

Summary: The consideration of authorizing the City Manager to execute a contract with the Chamber of Commerce to receive the outside agency funding of $100,000 for Fiscal Year 1997/98.

The City Council Outside Agency Committee met to discuss the funding requests of all outside agencies during the budget process for the 1997/98 fiscal year. The Committee recommended approval and the full City Council did approve funding for the Asheville Area Chamber of Commerce at $100,000 for the 1997/98 fiscal year. Due to the amount of the approved funding, in order for the outside agency contract with the Chamber to be executed by the City, the City Council must adopt a resolution which authorizes the City Manager to execute the contract. No additional funding is requested.

City staff recommends approval of the resolution to authorize the City Manager to execute the outside agency contract with the Asheville Area Chamber of Commerce in the amount of $100,000 for the 1997/98 Fiscal Year.

RESOLUTION BOOK NO. 24 - PAGE 274

M. ORDINANCE NO. 2422 - BUDGET AMENDMENT TO REPROGRAM LINE ITEMS IN THE CAPITAL PROJECT ORDINANCE (29 FUND) FROM THE 19&23/WEST BUNCOMBE WATER LINE AND PIPELINE PHASE III TO THE MILLS RIVER PROJECT

Summary: The consideration of a budget amendment to reprogram funds in the 29 Fund from the 19&23/West Buncombe Water Line and Pipeline Phase III to the Mills River Water Resources Project.

By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds in the 29 Fund.

Staff is recommending reprogramming funds in the amount of $1,535,056 from the US 19&23/West Buncombe Water Line Project and the Pipeline Phase III Project to the Mills River Regional Water Resources Project. This will more accurately reflect the appropriation required for the original construction contracts, engineering fees and related expenses for the Mills River Water Resources Project. It will also provide adequate funding for change orders one through seven ($411,391) for Metric Construction as well as provide for a contingency ($745,524) in the Mills River Water Resources Project.

Staff recommends adoption of the budget amendment which will reprogram funds from the 19&23/West Buncombe Water Line and the Pipeline Phase III to the Mills River Regional Water Resources Project.

ORDINANCE BOOK NO. 16 - PAGE 323

N. ORDINANCE NO. 2423 - BUDGET AMENDMENT TO REFLECT ACTUAL MONETARY COMMITMENTS IN THE WATER MAJOR CAPITAL PROJECTS ORDINANCE (35 FUND)

Summary: The consideration of a budget amendment to the Water Major Capital Project Ordinance 82-25 (35 Fund) to reflect actual monetary commitments in that Fund.

By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance. Staff is recommending the following changes to Ordinance 82-25 (35 Fund):

- Close out Contingency ($151,171);
- Clout out the Southern Railway Project ($1,929) - this project was approved in 1991 and no request for payment has been received from DOT to date
- Reduce the Regional Water Resource Improvements from $534,105 to $373,232 - this will more accurately reflect the projected costs for South Buncombe Phase II and the remainder of the North Fork and Bee Tree Chemical Improvements

The deletion of these projects will bring the fund total in line with the current balance. This will result in a new total of $2,953,464 for the 35 Fund.

Staff recommends adoption of the budget amendment which will delete contingency and the Southern Railway Project and reduce Regional Water Resource Improvements to better reflect actual commitments for budgeted projects.

ORDINANCE BOOK NO. 16 - PAGE 325

O. ORDINANCE NO. 2424 - BUDGET AMENDMENT TO TRANSFER THE TRAFFIC ENGINEER FROM THE PUBLIC WORKS DEPARTMENT TO THE ENGINEERING DEPARTMENT

Summary: The consideration of transferring the budget in the amount of $115,909 for the Traffic Engineer from Public Works to Engineering Department.

Effective September 15, 1997, the Traffic Engineer function is moved from Public Works to Engineering Department. The "Traffic Operations" portion of this budget will remain with Public Works. This transfer between departments requires a formal budget amendment. This action transfers one full time position, fringe benefits and operating cost totaling $115,909 from the Public Works Department to the Engineering Department.

There is no net budget increase associated with this action.

Staff recommends consideration of the budget amendment.

ORDINANCE BOOK NO. 16 - PAGE 327

P. ORDINANCE NO. 2425 - ORDINANCE ESTABLISHING AND/OR CHANGING SPEED LIMITS ALONG CERTAIN CITY-MAINTAINED STREETS

Summary: The City Traffic Engineer has performed the necessary traffic analyses associated with the following locations as per the Manual on Uniform Traffic Control Devices and the North Carolina Supplement and is seeking authorization from the City Council to establish and /or change these speed limits:

Establish 15 MPH

(1) Lynmar Avenue (entirety)

Establish 20 MPH

(1) Swanger Road (entirety)
(2) Woodvale Avenue (entirety)
(3) Melrose Avenue (entirety)
(4) Manetta Road (entirety)
(5) Harrison Street (entirety)
(6) Starmount Drive (entirety)
(7) Covington Street (entirety)

Change to 20 MPH

(1) King Street (entirety)

Change to 25 MPH

(1) Beaucatcher Road (entirety)
(2) Annadale Avenue (entirety)

These locations have been reviewed over the past twelve months as per the request of residents and motorists who utilize these roadways. Field surveys and speed studies were conducted and data reviewed based upon the 85 th percentile speed, which is the speed at or below which 85 percent of the vehicles are moving. This speed is reviewed in relationship to the median speed and the pace speed range. The pace speed range is the range of speeds at which the largest concentration of motorists drive. These speeds were reviewed to address the speeding problems in the areas.

ORDINANCE BOOK NO. 16 - PAGE 330

Q. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 25, 1997, TO CONSIDER REZONING PROPERTY ON AZALEA ROAD FROM RS-2 RESIDENTIAL SINGLE FAMILY LOW DENSITY DISTRICT TO RIVER DISTRICT

R. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 25, 1997, TO CONSIDER REZONING PROPERTY LOCATED OFF BROAD STREET, WASHINGTON ROAD AND MADISON AVENUE FROM OFFICE DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

S. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 25, 1997, TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) TO ESTABLISH A DEFINITION FOR GRADING IN THE HILLSIDE AREA DEVELOPMENT STANDARDS

T. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 25, 1997, TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING THE DEFINITION OF ASSISTED LIVING FACILITIES

U. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 25, 1997, TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING THE RIVERFRONT DISTRICT DESIGN COMMITTEE AND RIVERFRONT DESIGN GUIDELINES

V. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 25, 1997, TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING LEVEL I SITE PLAN REVIEW PROCESS

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions and ordinances on the consent agenda and they will not be read.

Councilman Worley moved for the adoption of the consent agenda. This motion was seconded by Councilman Sellers and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER OFF-PREMISES ADVERTISING SIGNS IN THE CITY OF ASHEVILLE'S ZONING JURISDICTION

ORDINANCE NO. 2426 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES PROHIBITING FUTURE BILLBOARDS AND OTHER LARGE OFF-PREMISES SIGNS

ORDINANCE NO. 2427 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REQUIRING ALL OFF-PREMISES SIGNS NOT COMPLYING WITH NEW STANDARDS TO COME INTO COMPLIANCE WITHIN SEVEN YEARS

Mayor Martin opened the public hearing at 5:04 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

City Attorney Oast said that on November 6, 1997, a several protest petitions were received by the City Clerk filed by representatives of Fairway Outdoor Advertising Inc. and Outdoor Communications Inc. After examining the protest petitions and the law relating to protest petitions, it was his opinion that because the proposed amendments are text amendments, they are not appropriate for the filing of a protest petition. But, even if the protest petitions were appropriate, based on the City's review of the percentages necessary and how the language of the statute is to be applied, the property with respect to which the petition has been filed does not come to 20% of the property that would be involved in the ordinance under consideration. Therefore, it was his opinion that the protest petitions are not valid and therefore a 3/4's vote is not required - just a simple majority vote. In order to avoid a second vote, however, the ordinance will require a 5-2 vote. He also pointed out that Mr. Albert Sneed and Mr. Robert Long have submitted letters with the City Clerk indicating their objection to the ruling on the protest petition issue.

Ms. Julia Cogburn, Planning & Development Director, said that at the Council worksession on September 23, 1997, the Asheville City Council directed staff to prepare revisions to the Unified Development Ordinance as it pertains to outdoor advertising signs and take these revisions to the Planning and Zoning Commission for their review. Outdoor advertising signs are currently regulated under the category of "off-premises signs" in our ordinance. They are allowed in the higher impact commercial and industrial districts and are restricted to 150 square feet per face, two faces per sign and 25 feet in height. There are a number of spacing requirements pertinent to off-premises signs as well.

Additionally, under the current regulations, off-premises and on-premises signs in Asheville, erected prior to 1990, are subject to coming into compliance if not complying with either the 1990 ordinance (current ordinance) or the ordinance by which it was preceded (1977).

At the September 23 worksession, Council had indicated an interest in the Planning & Development staff and the Planning & Zoning Commission looking at ordinances which would do two things. The first would be to prohibit any additional outdoor advertising signs from being erected in the City's jurisdiction. And secondly, to consider additional amortization of outdoor advertising signs.

She then summarized the major provisions of the three proposed amendments to be considered by City Council:

1) Ordinance #1 - This ordinance would amend the regulations concerning off-premises signs to allow only off-premises signs that are a maximum of six (6) square feet per side and six (6) feet high. This ordinance would have the effect of prohibiting future billboards and other large off-premises signs. This ordinance does not have any impact on existing signs. This ordinance provides that the Board of Adjustment could not grant a variance to allow a larger off-premise sign. An amendment the Planning & Zoning Commission made deals with the spacing requirement. Basically as the regulations exist now, no off-premises sign can be located within 75 feet of an intersection. That provision was looking at larger off-premises signs. The Commission didn't feel that it was necessary anymore, if Ordinance #1 is adopted. And basically suggested that the wording be changed so that no off-premises sign shall be located within nor cause obstruction to the site visibility triangles of street intersections as described in a different section in the ordinance.

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2) Ordinance #2 - This ordinance would require all off-premises signs not complying with the standards in Ordinance #1, if adopted, to comply with those standards within 7 years.

3) Ordinance #3 - This ordinance would require all off-premises signs not complying with the standards in Ordinance #1, if adopted, to come into compliance within 7 years unless those signs comply with regulations adopted as of August 28, 1990. This ordinance would require those currently grandfathered, due to their compliance with the 1977 ordinance, to come into compliance within 7 years.

Ordinances #2 and #3 delete the provision allowing for off-premises signs which have obtained a variance to remain. If you kept in provisions where signs that had obtained variances were allowed to stay, it defeated the intent of each of those amortization provisions. It was her understanding that there are approximately 10 billboards that since 1977 that have been granted variances and the majority of those were obtained before 1990. She believed only one has been granted since 1990. They have suggested that the provisions allowing signs that have obtained variances to remain be deleted.

Ordinances #2 and #3 also introduced a new provision that would not have subsequent text and map changes trigger new amortization unless specifically called for with the amendment and except in the case of jurisdictional extension. This was suggested for administrative purposes basically thinking that every time a rezoning or text change took place a clock would start ticking on an amortization provision. While staff may still want to address this type of provision in the future, they felt it complicated the issue before Council today and therefore they strongly recommend going back to the original language with a minor change to Sec. 7-13-8 D 3 which basically provides that when map and text amendments take place, the amortization provisions are as previously stated.

Council previously received information on the numbers of billboards that might be affected by the suggested changes. Staff has worked to fine-tune these numbers and Ms. Cogburn used a map to illustrate the sign locations. The total outdoor advertising signs in the 1990 survey data base as of 11/11/97 is 149; signs that the City still has on record to come down or into compliance per the current regulations is 46; signs that are subject to federal law protections and not subject to coming into compliance is 25; signs that comply with the current regulations is 17; and signs that comply with the 1977 ordinance but do not comply with the current regulations is 61. Ordinance #2 would amortize 78 signs and leave in the City's jurisdiction 25 signs. Ordinance #3 would amortize 61 signs and leave in the City's jurisdiction 42 signs.

She said that since the Planning & Zoning Commission meeting, she has received one letter from John Modaff basically in favor of further regulations in terms of billboards; one call from Betty Madsen from Marshall in favor of billboards because they help her when she is traveling; and one call from an unidentified woman who felt if the City was interested in prohibiting billboards they should start with the All America City billboard.

At their meeting on October 1, 1997, the Asheville Planning and Zoning Commission recommended adoption of Ordinances #1 and #3 to the City Council. She clarified the vote from the Commission with respect to Ordinance #3. There were only six members present at that meeting - two of those members were opposed to any additional amortization provisions; two were in favor of Ordinance #2 and two were in favor of

Ordinance #3. Basically the four that were in favor of some additional amortization provision, in essence, compromised on Ordinance #3.

Upon inquiry of Vice-Mayor Field about how the six square feet came about, Ms. Cogburn said that it was suggested by staff after researching other ordinances throughout the state.

When Councilman Worley asked what kinds of signs are the 25 non-billboard off-premises signs, Ms. Cogburn said that typically they are directional signs.

The following individuals spoke against and commented on the ordinances as outlined above. Some comments are, but are not limited to: 28 are interstate protected and permitted signs; since Council adopted strict laws in 1977, the number of signs have dropped by over 150 and are now confined in the major commercial areas; Council should not take away the signs from the owners without just compensation; signs are a form of commercial speech that is confined to commercial areas; adopting the ordinances will result in litigation; people cannot afford to spend out substantial money for what was regarded as legal at the time and have it taken away from them; no problem with prohibiting future signs but leave the leave signs that are in existence left alone and left to the natural attrition that laws about spacing, etc., have resulted in; the people that will be hurt by the ordinance if you pass the amortization provision are the people that have to tear their own property down and over 20% of those people have filed a protest petition; it is practically impossible to build any more billboards with the current regulations as seen by only one permit being issued since 1990; objection to the compulsory taking of property without just compensation; the entire cost of eliminating billboards will be borne by the people who own the billboards - they paid the filing fee, obtained building permits and relied on the laws in good faith; disagreement with definition of amortization; Fairway Outdoor is voluntarily taking signs down and working with the City to take more down; it's not right nor fair to amortize these signs; the City should purchase the signs and not amortize them; the ordinance passage will affect approximately 50 employees; the lawsuit Fairway will be bringing before the City of Asheville will cost the citizens of Asheville hundreds of thousands of dollars; do not pass the amortization provisions; the business community has tried to comply with existing sign ordinance; effort to eliminate these businesses from our community without just compensation goes against the fabric of our community; this will run legitimate businesses out of Asheville; this is anti-business regulation; Outdoor Communication has spent millions of dollars and borrowed money to purchase an existing business in Asheville and their loans will not be forgiven in seven years; this will deter businessmen who may purchase existing businesses in Asheville; the Constitution of the United States says that government cannot take private property without just compensation; amortization is not compensation, just a delayed taking; there are no other amortizations in Asheville and they should not start with billboards; people do not carry televisions in their cars so they need a billboard or some other means to find lodging; small restaurants cannot afford to advertise with the larger restaurants on television; not fair for signs on the federal roadways that do not comply are allowed to stay up while others have to be removed; be fair to the small business people and people in the hotel and tourist industry; citizens of Asheville should be allowed to express their opinions on this issue as other polls have showed that the vast majority felt billboards were not a top problem; the definition of off-premise advertising will eliminate the banners on poles and trucks with City logos; according to the proposed ordinances if you annex property that has a billboard on it, the billboard would have to come down immediately with no compensation; it is everyone's goal to maximize scenic beauty in our city but destroying billboards is only a small step if indeed a step at all toward our goal; even if you take out the six billboards on Tunnel Road which are peacefully coexisting with a multitude of business identification signs, it is still ugly area with power poles, telephone poles, power lines, and telephone lines; City should concentrate on comprehensive program of fixing streets, repairing potholes, picking up trash, sweeping streets, and eliminating weeds in streets; billboards are some businesses only means of advertising because of their market, i.e. young kids driving on the roads; billboard companies give back to the community through donated space; billboard companies are a permanent part of this community; removal of signs will result in smaller signs more congested and closer together; a few billboards will not drive anyone away from Asheville; inconsistency toward businesses; business community needs the service of billboards; amortization will not increase tourism; the billboard industry would be willing to formulate a committee to find what they can do to work with the City Council to make the ordinance fair; there has not been a problem with tourism decreasing because of the billboards; regarding the issue of personal property there is the issue of relocation costs - if you deprive a person of all reasonable use of his property, the property owner is entitled to compensation; and 39 structures have already been lost due to attrition, loss of lease or development of properties which will continue:

Mr. Robert B. Long Jr., Attorney representing Outdoor Communications Inc. (presented a binder with pictures of off-premises permitted billboards)
Mr. Albert L. Sneed Jr., Attorney representing Fairway Outdoor Advertising Inc.
Mr. Darryl Merchant, General Manager of Fairway Outdoor Advertising Inc.
Mr. Bob Selby, President of Council of Independent Business Owners
Mr. Richard Drummond, Division Manager for Outdoor Communications for Tennessee and North Carolina
Mr. Carl Ricker, business owner with several companies in Asheville that employ over 3,000 employees
Mr. Tim Avery, employee of Outdoor Communications, and resident of Johnson City, Tennessee
Mr. Loyd Kirk, 866 Hendersonville Road, and owner and operator of the Forest Manor Inn on Hendersonville Road
Mr. Bill Lack, owner of small business
Mr. John Baggett, employee of Outdoor Communications
An employee of Outdoor Communications
Ms. Carol Collins, owner of small consulting business
Mr. Kerry Coxe, employee of Fairway Outdoor Advertising
Mr. Matt Mattan, Asheville resident
Mr. Kip Martin, majority owner of the Fuddruckers Restaurant
Mr. Roberts
Mr. Doug Thrash, property owner
Mr. Jeff Nolan
Mr. Kelly Mason, Asheville resident and employee of Fairway Outdoor Advertising

The following individuals spoke in support of the ordinances outlined above for several reasons, some of which are: never met anyone who visited or moved to Asheville because of a billboard; no knowledge of a business going out of business because they didn't advertise on a billboard; if Asheville allows a few businesses to use this form of advertising, what kind of message are we giving to other businesses who are prohibited from having this privilege - it is setting up an unfair obstacle for new businesses; billboard companies don't care about the beauty of our area; everyone benefits from keeping our area beautiful and only a few benefit from the huge billboards; billboard companies should be offered reasonable compensation based on depreciated value of their signs; billboards force advertising on individuals and communities; billboards violate citizens' rights to privacy and make citizens a captive audience to advertising; there are alternative ways of advertising other than billboards that provide the same information at less cost without degrading our landscape; billboards are a pollution; signage is a legitimate form of business but they should be limited in size, height, placement and number; billboards are oversized, badly located and too numerous; some billboards interfere with recognizing on-premise signs on Hendersonville Road; billboards are inappropriate in Asheville and neighborhoods; we don't need billboards on the highways advertising franchise properties that are in their own town; billboards deteriorate the scenic beauty; 60 competitive towns in North Carolina which do not allow billboards are successful resort beautiful communities; quality of our visitors is in no way enhanced by billboards; our focus on vision is for a scenic, beautiful and historic city; a national study made finds that historic, scenic cities in the United States are visited more often and have more dollar spending visitors than other cities in the United States; seven years should be sufficient for billboard companies to earn back their investment on the signs; regulation of billboards is not a taking of property; public doesn't want billboards; billboard companies are selling something they do not own; billboard companies are not interested in improving Asheville; and billboards are personal property and can be removed by the owners and put back up somewhere else:

Mr. Walter Plowe, small business owner in Asheville
Ms. Shirley Birdie, 706 River Ridge Drive
Ms. Betty Anthony, South Asheville resident
Mr. Jack McCuen, Innkeeper of Cedar Crest Victorian Inn
Mr. Hiram S. Cody, representative of the Western Coalition for Scenic Beauty (passed out a list of communities in North Carolina that do not allow new billboards and well-known facts concerning billboards)
Ms. Jane Bingham
Ms. Anne Campbell
Ms. Sunny Early, Asheville resident
Mr. Robert Fletcher
Ms. Hazel Fobes, Asheville resident
Mr. Dick Dawster
Mr. Frank Martin, Coordinator for the Coalition for Scenic Beauty

Councilman Cloninger said that the United States Supreme Court Justices have ruled that amortization is a valid means of removing billboards.

Mayor Martin closed the public hearing at 7:06 p.m. and announced a 10 minute break.

Mayor Martin said that members of Council have been previously furnished with copies of the ordinances and they would not be read.

Councilman Cloninger moved to adopt Ordinance No. 2426 prohibiting future billboards and other large off-premises sign. This motion was seconded by Councilman Skalski.

When Vice-Mayor Field asked what is reasonable compensation for the 78 billboards, Councilman Cloninger pointed out that the courts have ruled that amortization constitutes just compensation. City Attorney Oast said that until we have all the information, there is really no way of predicting how much it would cost, if anything.

Upon inquiry of Vice-Mayor Field regarding depriving someone all reasonable use of the property the billboards are on, City Attorney Oast said that he could not say conclusively that it is not an issue. The prospective ban is certainly less of an imposition than amortization would be because it just prohibits future use, it doesn't require the removal or amortization of anything.

Mayor Martin called for a vote on Ordinance No. 2426 and said motion carried unanimously.

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Councilman Cloninger moved to adopt Ordinance No. 2427 incorporating the two amendments outlined above by the Planning Department. This motion was seconded by Councilman Sellers.

Councilman Hay felt that basically there is a general agreement in the community that we want to eliminate billboards in the future. In addition, it represents an expression by our community of who we are. We set standards for ourselves and we express that, just like we do in our own lives. He was concerned about the fairness issue and the property rights issue and take some comfort in the fact that the courts have dealt with this. The constitutional issues seem to be well resolved and he felt there is some question as to how you go forward with the amortization and trust the courts to sort that out, if that what it comes to. The real question is do we compensate by paying up front or is amortization a fair and legal way to do that compensation.

Councilman Worley said that when the City passed the existing ordinance in 1990 and there was a tremendous amount of divisiveness at that time. Since then staff has been working closely with the sign companies and have made a lot of progress in that area. A number of signs have been removed with a schedule for removal of the rest of non-conforming signs. This Council can be pro-active in working to educate property owners and working with land owners as leases expire. I felt there is an issue of compensation for property and the possibility of lawsuits. He offered a substitute motion to instruct our staff to continue working pro-actively with the sign companies over then next two years to continue removing signs that are non-conforming under the current ordinance, and work with them to voluntarily remove other signs that have complied with our current ordinance and to report back to City Council by December 31, 1999, on the progress made. At that time Council can review that progress and make a decision whether to go forward with something as drastic as amortization. This motion was seconded by Vice-Mayor Field.

Councilman Cloninger felt that our staff has already been instructed to enforce the current sign ordinance.

Councilman Worley felt that his motion added an additional component of asking staff to work pro-actively on existing signs that do comply with the existing ordinance, to remove those. He felt we all have the same goal to protect our scenic beauty. It's a question of how we get to that goal. When each sign was constructed, they were permitted by our ordinances and legally built. Construction is not cheap and there is a significant legal investment in this type of property. He knows business well enough to suspect very strongly that the price the sign companies paid was not based upon the value of the sign as constructed, but rather the long term income stream that the sign will produce. Since financing is frequently tied in with that, he suspected that it is a sizable investment that seven years of income from amortization will not replace. If you put the issue into prospective, Council needs to consider similar regulation of other types of property. In no other instance has Council considered forcing the owner of property that has become non-compliant as a result of a change in our zoning ordinances to remove that property without compensation. The removal of the billboards is an emotional issue and if we really want to require elimination within seven years, then let's do it. But, let's do it with compensation and start a fund-raising drive among our citizens to raise the money to provide that compensation. He felt that amortization was not right and not fair with no compensation, considering the investment involved.

Vice-Mayor Field felt this was a very difficult issue. She has talked with the Planning Department staff and they were very enthusiastic about how cooperative the sign companies are being in taking down about 44 signs and the possibility of doing even more than that. She would like to see the opportunity to give the Planning staff a chance to resolve this problem. She felt we need to have the chance to work with people and she supports the process they went through developing the sign ordinance. Her concerns is that with seven years amortization, a new Council can be elected and bring the issue up again. She did not want to rip this community apart over this issue again if a consensus can be reached.

Mayor Martin also spoke with Planning Department staff and found that Fairway has been voluntarily removing some of the signs. He asked if Councilman Worley's substitutive motion passed, would Fairway be willing to continue that process. A representative from Fairway replied that they would be happy to.

Councilman Cloninger agreed that the sign issue has been divisive in the past, however, it's important to point out that we are only dealing with billboards. He is convinced that the overwhelming majority of the public wants the elimination of billboards. He also pointed out that the billboard companies are not voluntarily coming to the City and working with the City to remove billboards. The fact is that they only came to the table because this City Council made it clear to the billboard companies that they were going to start enforcing the sign ordinance. Notices of violations were sent to those companies and they were told that they would be fined.

Mayor Martin asked for a show of hands in favor of Councilman Worley's substitute motion. Said motion failed on a 3-4 vote, with Mayor Martin, Vice-Mayor Field and Councilman Worley voting "yes" and Councilmen Cloninger, Hay, Sellers and Skalski voting "no".

Mayor Martin then asked for a show of hands for Councilman Cloninger's motion to adopt Ordinance No. 2427. This motion carried on a 4-3 vote with Councilmen Cloninger, Hay, Sellers and Skalski voting "yes" and Mayor Martin, Vice-Mayor Field and Councilman Worley voting "no".

City Attorney Oast stated that since the ordinance passed by a simple majority, it will require a second vote which he recommended occur at the next formal meeting on November 25, 1997.

ORDINANCE BOOK NO. 16 - PAGE 334

B. **PUBLIC HEARING TO CONSIDER MINOR REVISIONS TO THE UNIFIED DEVELOPMENT ORDINANCE**

ORDINANCE NO. 2428 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO INCORPORATE VARIOUS MINOR REVISIONS

Mayor Martin opened the public hearing at 7:47 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, said that this ordinance will consider revisions to the Unified Development Ordinance (UDO) addressing minor wording changes which do not alter the intent or purpose of the standards.

As part of the on-going review of the UDO to assure that the standards and regulations in the ordinance meet the needs of the city, staff has identified a number of minor revisions. These revisions include new and revised definitions, permitting the TRC to "table" or "continue" consideration of development site plans, clarifying conditions for the issuance of permits, etc. The proposed revisions will not alter the intent of the standards established in the UDO. Existing standards and regulations will be clarified through the proposed revisions. The Planning and Zoning Commission reviewed the proposed revisions, made comments resulting in minor changes, and recommended adoption of the proposed revisions. He summarized the proposed revisions to the following sections:

Sec. 7-2-5 Definitions;
Sec. 7-5-1 Permits & Approvals;
Sec. 7-5-5 Conditional Use Approvals;
Sec. 7-5-9 Site Plan Review;
Sec. 7-5-19 Certificate of Occupancy;
Sec. 7-7-4 Review by the Asheville Planning & Zoning Commission;
Sec. 7-9-5 Manufactured Housing Rental Community Overlay District;
Sec. 7-10-2 Required Setbacks; Allowable Encroachments Into Required Set;
Sec. 7-10-3 Fences and Setbacks;
Sec. 7-11-1 Parking, Loading, and Access Standards;
Sec. 7-11-5 Traffic Impact Analysis;
Sec. 7-12-2 Soil Erosion & Sedimentation Control;
Sec. 7-15-1 Subdivisions;
Sec. 7-15-2 Figure 15-2;
Sec. 7-16-1 Uses by Rights, Subject to Special Requirements;
Sec. 7-17-5 Nonconforming Open Uses of Land; and
Sec. 7-17-8 Maintenance and Repair of Nonconforming or Conforming Structures on Nonconforming Lots.

The Asheville Planning and Zoning Commission, by a 6-0 vote, recommended adoption of the minor revisions to the UDO. The staff of the Planning and Development Department had recommended approval of the minor revisions.

Mr. Green responded to a concern of Councilman Hay relative the time frame involved if the applicant cannot both resubmit the revised site plan and appeal the Technical Review Commission decision.

Ms. Cathy Ball, City Engineer, responded to questions from Vice-Mayor Field relative to requirements for a traffic impact analysis and who can perform those analyses.

When Councilman Worley inquired about the standard: "The home occupation shall not increase the traffic which is found in its vicinity when the use is not in operation." Mr. Green responded that it is up to the interpretation of the enforcement staff after visiting the site. City Attorney Oast agreed the standard is not real clear but it is a similar criteria that is included in a lot of other zoning ordinances across the state. He would advise the Board of Adjustment, if they had to consider this, that it would be a "reasonable" increase.

Mayor Martin closed the public hearing at 8:04 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2428. This motion was seconded by Vice-Mayor Field and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 339

C. PUBLIC HEARING TO CONSIDER ANNEXATION OF PROPERTY LOCATED ON COLUMBINE ROAD (SECTION 9 OF BILTMORE PARK)

ORDINANCE NO. 2429 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE, NORTH CAROLINA, BY ANNEXING A CONTIGUOUS AREA LOCATED ON COLUMBINE ROAD AND KNOWN AS SECTION 9 OF BILTMORE PARK

Mayor Martin opened the public hearing at 8:05 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Paul Benson, Urban Planner, said that Biltmore Farms, Inc. has submitted an annexation petition for an 18.7 acre area (platted for 56 single family lots) identified as Biltmore Park, Section 9. This is the ninth annexation petitioned by Biltmore Farms, Inc. for property located on Columbine Road. This area is contiguous to corporate limits, specifically to Biltmore Park, Sections 6 and 7, which have been previously annexed. Biltmore Farms Inc. has requested that the effective date of the ordinance be effective in six months on May 11, 1998. The estimated tax base that this would represent upon development is approximately $13 million with an annual revenue of $75,000.

Mayor Martin closed the public hearing at 8:06 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Field moved for the adoption of Ordinance No. 2429. This motion was seconded by Councilman Cloninger and carried on a 6-1 vote, with Councilman Skalski voting "no".

ORDINANCE BOOK NO. 16 - PAGE 349

D. PUBLIC HEARING TO CONSIDER A SECTION 108 LOAN GUARANTEE APPLICATION IN CONNECTION WITH THE CITY-WIDE RESIDENTIAL REHABILITATION PROGRAM

RESOLUTION NO. 97-211 - RESOLUTION AUTHORIZING SUBMITTAL OF A FUNDING APPLICATION TO THE U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT THROUGH THE SECTION 108 LOAN GUARANTEE PROGRAM FOR THE CITY OF ASHEVILLE RENTAL REHABILITATION FOR OWNERS AND TENANTS (CARROT) LOANS

Mayor Martin opened the public hearing at 8:07 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Ed Vess, Field Services Coordinator, said that, this is consideration of a resolution to approve submittal of an application to the U. S. Department of Housing and Urban Development (HUD) for a Section 108 Loan Guarantee to generate 1.5 million dollars for rental rehabilitation loans.

The Section 108 loan guarantee program enables CDBG entitlement grantees to borrow money from the federal government at low interest rates for Community Development Block Grant ("CDBG") eligible activities. The proposed application is for a $1.5 million loan. If approved the money will be loaned to investor owners through the City of Asheville Rental Rehabilitation for Owners and Tenants (CARROT) loan program. The Section 108 loan funds will be used to provide decent housing opportunities for low and moderate income households at affordable rents. The Section 108 loan will be repaid using program income from the CARROT loans, program income from the existing rehabilitation loan portfolio and for the first three years a portion of the CDBG entitlement funds. It is anticipated that over the long term the program income from the CARROT loans will exceed the total repayments of the Section 108 loan by over $1 million. The goal of the Section 108 project is to rehabilitate 150 rental units over a three year period of time.

A public hearing on the draft application was conducted by Community Development staff on October 27, 1997, at 6:00 p.m. in the Wolcott Building.

Approval of the resolution will authorize submittal of the application for a Section 108 loan guarantee.

Mr. Vess then responded to various questions from Council.

Vice-Mayor Field was pleased that Asheville is in a place where we are leveraging our money as best we can to do more for the housing community.

Councilman Hay noted that the Housing & Community Development Committee recommends the approval of this as well.

Mayor Martin closed the public hearing at 8:18 p.m.

Mayor Martin said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Field moved for the adoption of Resolution No. 97-211. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 275

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 97-212 - RESOLUTION POSTPONING A DECISION ON THE REQUEST OF BRENMOR CABLE PARTNERS, L.P., (D/B/A INTERMEDIA) FOR AN ANNUAL INCREASE FOR ITS MONTHLY RATES FOR THE BASIC CABLE SERVICE TIER

B. RESOLUTION NO. 97-213 - RESOLUTION DIRECTING BRENMOR CABLE PARTNERS, L.P., (D/B/A INTERMEDIA) TO KEEP AN ACCURATE ACCOUNT PURSUANT TO SECTION 76.933 OF THE CODE OF FEDERAL REGULATIONS REGARDING ITS PROPOSED RATE INCRASE FOR COST-OF-SERVICE DUE TO REBUILD OF ITS SYSTEM

Ms. Patsy Meldrum, Assistant City Attorney, said that this resolution would deny the rate increases requested by InterMedia for the basic cable service tier.

By letter dated March 1, 1997, InterMedia filed with the City of Asheville two FCC Forms, 1205 and 1240, both dated March 1, 1997, for the purpose of requesting an annual increase in its monthly rates and hourly service charges for its basic cable service tier. With the March 1, 1997, filing InterMedia proposed to increase the monthly rate for its basic cable service tier from $10.46 to $10.91, its expanded basic service tier from $13.55 to $14.09 and its hourly service charge from $19.58 to $36.72. By letter dated May 16, 1997, InterMedia filed FCC Form 1235 entitled "Abbreviated Cost of Service Filing for Cable Network". In its filing dated May 16, 1997, InterMedia proposed to increase its basic service rate by $1.00 per month and its expanded basic service rate by $3.00 per month, based on the cost of the rebuild of the cable system.

On June 10, 1997, the City Council adopted Resolution No. 97-90 which invoked additional time to review the requests of InterMedia, thereby giving the City until November 15, 1997, to review the requests based on the rebuild of the system. That resolution directed the City Manager to provide notice to InterMedia of that order extending the time for review of the requests. After receipt of that notice by InterMedia, InterMedia sent to the City Manager a letter dated July 30, 1997, stating that they were changing the monthly rate for the basic service back so that the $1.00 per month rate increase would not be implemented at that time.

The City of Asheville contracted with Rice, Williams Associates to provide certain consulting services for the cable television franchise of InterMedia. Rice, Williams Associates reviewed the proposed rate increases and furnished the City of Asheville with a report analyzing those proposals.

In the consultant's report of their review of the rate increase for the hourly service charges, they found that appeared to be correct. With regard to their review of the annual rate increase, they did find some errors in that filing which had to do with the time period for the fees and the use of an incorrect inflation factor in their filing. On that basis, their recommendation was for denial of that rate increase.

The City provided Intermedia a copy of that report and Intermedia asked the City to review additional information. On November 7, 1997, Intermedia provided the City with an amended form for that annual rate increase. Therefore, staff is requesting that the decision on the request of Intermedia for an annual increase in its monthly rates for the basic service tier be postponed until review by the City can be completed within the time period and according to the regulations of the FCC.

With regard to their hourly service charge, since the consultant deemed that to be complete, the City would not be doing any further review at this time.

When the question came up on whether the City could require a rebuild of the system and whether or not once a company decides to rebuilt the system could we ask them to stop the rebuild of the system because subscribers would rather keep the old system and pay the old rates. Under federal law whenever there is a renewal of a franchise we can require them to rebuild the system. In this case because we are not yet at the formal renewal process under federal law, it's their election to determine whether or not to rebuilt the system and they have made that election. Since they have made that election, we can't stop them from doing the rebuilt. All we can do is review the rates that they are proposing as a result of the rebuilt to see that they comply with the federal regulations.

In the consultant's report, they did find some errors in the filing among which were inadequate information about the phasing in of the rebuild of the system. In addition, there was some discrepancy in information about the number of channels and that plays into the formula to determine the monthly rate that is allowed under the cost-of-service filing. Also there was no information regarding how they comply with the technical specifications under the federal law and finally they were doing it before completion of the entire rebuild of the system so there will be some numbers submitted to us once the rebuild is complete. Our choices are (1) do nothing and the rates go into effect; (2) issue an order regarding what the rates should be; (3) issue an accounting order directing them to keep track of all the actual costs of the rebuild of the system and at a later time after that accounting has been done, the City reviews that data and determines whether or not to issue a rate order and determines whether or not the increase requested is allowed by federal regulations or whether refunds would be appropriate to subscribers; and (4) deny the increase.

Based upon other information provided to the City by Intermedia, City staff recommends directing Intermedia to keep an accurate account of all amounts received by reason of the rate increase requested pursuant to federal regulations in order that the City may, at its option, subsequently issue a written decision regarding the rate increase and determine whether or not refunds should be provided to subscribers.

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions and they will not be read.

Councilman Hay moved for the adoption of Resolution No. 97-212. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 276

Councilman Hay moved for the adoption of Resolution No. 97-213. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 278

B. RESOLUTION NO. 97-214- RESOLUTION AUTHORIZING THE CIYT MANAGER TO ENTER INTO A CONTRACT WITH JENKINS, REED, MADISON & ASSOCIATES INC. FOR WIRELESS TELECOMMUNICATIONS CONSULTING SERVICES

RESOLUTION NO. 97-215 - RESOLUTION AUTHORIZING THE CIYT MANAGER TO ENTER INTO A CONTRACT WITH JENKINS, REED, MADISON & ASSOCIATES INC. FOR PROPERTY MANAGEMENT SERVICES FOR COMMUNICATION FACILITIES

ORDINANCE NO. 2430 - BUDGET AMENDMENT TO PROVIDE FUNDING FOR CONSULTING SERVICES TO ASSIST IN ESTABLISHING STANDARDS FOR WIRELESS TELECOMMUNICATIONS FACILITIES

Mr. Gerald Green, Urban Planner, said that in September, the City distributed two Requests for Proposals (RFP) soliciting assistance in the development of a comprehensive ordinance establishing standards for the placement of wireless telecommunications facilities in the City's jurisdiction and for the management of the city's property for the location of communications facilities. In response to the RFP's, proposals were received from only one firm for the two (2) identified tasks.

Regarding the wireless telecommunications consulting services, he outlined that the City's existing ordinance which regulates telecommunication towers does not address (1) stealth technology; (2) areas that may not be able to be served due to restrictions imposed; (3) review fees; and (4) anticipate new technology. There is a need for a new ordinance incorporating standards to address those issues. After the City solicited proposals for revising the current telecommunications ordinance, the RFP identified minimum qualifications for a consultant, those being (1) knowledgeable about telecommunications technology and (2) knowledge of local zoning issues. An evaluation committee composed of City staff reviewed the proposals and identified the proposals best meeting the criteria set forth in the RFP's. The evaluation committee is recommending that the City enter into contracts with Jenkins, Reed, Madison and Associates ("JRM") for the ordinance development.

The proposal submitted by JRM identifies the following tasks: (1) orientation meetings; (2) review and critique existing ordinance; (3) wireless training session (4) meet with wireless providers; (5) consultations with Planning staff and drafting proposed ordinance; (6) public participation workshop; and (7) present ordinance to City Council. The cost of the 148 hours of consulting services, travel expenses and related costs for telephone, copying and miscellaneous services is $21,790.

Development of a comprehensive wireless telecommunications ordinance which anticipates changes and new technology would put the City ahead of issues. The City would be better able to deal with issues related to telecommunications facilities, assuring that adequate service is provided while protecting those unique resources which make Asheville great.

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A budget amendment will be necessary, in the amount of $22,000, to provide for the consulting services in connection with establishing standards for wireless telecommunications facilities.

Mr. Green said that some other cities have expressed interest in participating with the City and that would lower the cost. Also, the staff person with the N.C. Division of Community Assistance has expressed an interest in their agency participating with the City in this study and they would underwrite some of the costs to further reduce the City's cost.

Councilman Skalski was encouraged about other cities participating in this study and asked staff to continue to look for ways to reduce the cost, possibly regarding the travel expenses.

Upon inquiry of Councilman Skalski about the $150 per hour rate, Mr. Green responded that the hourly rate ranges depending on their expertise and their locality. He speculated that this is probably a Washington, D.C., per hour rate but not a Western North Carolina per hour rate by any means.

Vice-Mayor Field was pleased that this firm is a 100% African American owned business.

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions and ordinance and they will not be read.

Councilman Cloninger moved for the adoption of Resolution No. 97-214 with staff continuing to look for way to reduce the cost. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 280

Councilman Cloninger moved for the adoption of Resolution No. 97-215. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 281

Councilman Hay moved for the adoption of Ordinance No. 2430. This motion was seconded by Councilman Cloninger and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 352

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 28, 1997, AND THE WORKSESSION HELD ON NOVEMBER 5, 1997

Councilman Hay moved for the adoption of the minutes of the regular meeting held on October 28, 1997, and the worksession held on November 5, 1997. This motion was seconded by Councilman Sellers and carried unanimously.

B. RESCHEDULING OF NOVEMBER 18, 1997 WORKSESSION

Because a number of City Council members will be out of town on November 18, Councilman Worley moved to (1) reschedule the Tuesday, November 18, 1997, worksession to Wednesday, November 19, 1997, to begin at 3:00 p.m. in the First Floor North Conference Room in the City Hall

Building; and (2) hold the Broad Street rezoning worksession at 7:00 p.m. on Wednesday, November 19, 1997, in Room 623 of City Hall Building. This motion was seconded by Councilman Sellers and carried unanimously.

C. BURTON STREET UPDATE

Upon inquiry of Councilman Cloninger, Planning & Development Director Julia Cogburn updated City Council on the efforts staff is taking with regard to some violations on Burton Street.

D. REQUEST OF DR. ALBERT ANDERSON

Dr. Albert Anderson explained that he is in the process of constructing a building on Asheland Avenue and his permit has been temporarily held up by the permitting process because of the requirement for the installation of a fire hydrant on the property. The Code requires that fire hydrants be located not less than 1,000 feet from each other and that is not the case on Asheland Avenue. He felt that, among other things, that the cost of the hydrant should be treated as a public benefit, like a street, especially since the City is supposed to be providing fire protection.

Fire Chief John Rukavina said that the State Fire Code requires that the "maximum distance from the nearest hydrant to the most remote exterior point of any building shall be 500 feet. The distance shall be measured on a roadway surface meeting the Fire Department access requirements of Section 602.6 of the Fire Prevention Code." He said the building meets the Code in all respects and from a fire protection standpoint the hydrant is something that would be very desirable. Dr. Anderson's building is in excess of 600 feet from the nearest hydrant and the cost for the hydrant would be approximately $2,000.

Councilman Cloninger suggested that if the new hydrant will benefit adjacent owners as well, perhaps they might share in the cost of the new hydrant.

City Manager Westbrook said that normally it is the developer's responsibility, not the taxpayers, who would pay for improvements for a piece of property being developed. If someone was building at the edge of the City where there were no hydrants, it would be the developer's responsibility to put those in as well as the roads and other infrastructure that would go into a development.

Vice-Mayor Field felt the City had some responsibility in this case since the fire hydrants are not less than 1,000 feet apart and it's in the center of our urban area.

City Manager Westbrook felt that City Council should be prepared to face this situation every time the City redevelops in the urban area and the area gets more dense.

City Attorney Oast agreed with the City Manager in that this may have a potential impact in the future.

Vice-Mayor Field moved to direct staff to take the appropriate steps to install the fire hydrant since this is in the Central Business District. This motion was seconded by Councilman Skalski and carried unanimously.

City Manager Westbrook felt that Council might be interested in staff bringing back what other cities do in this area.

Vice-Mayor Field said that the City should have fire hydrants within 1,000 feet from each other within the Central Business District and we might benefit from a survey of where the hydrants are and where there might be potential problems.

E. CLAIMS

The following claims were received by the City of Asheville during the week of October 24-30, 1997: Marilyn Muccio (Finance), Cecil Holt (Water) and Anna Day (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

F. CLOSED SESSION

At 9:07 p.m., Councilman Worley moved to go into closed session (1) to discuss matters relating to the location on expansion of industries or other businesses into the area served by the City - statutory authority is G.S. 143-318.11 (a) (4); and (2) to consult with an attorney employed or retained by the City Council in order to preserve the attorney-client privilege between the City and its attorney - statutory authority is G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Sellers and carried unanimously.

At 9:37 p.m, Councilman Worley moved to come out of closed session. This motion was seconded by Vice-Mayor Field and carried unanimously.

[redacted]

Mayor Martin adjourned the meeting at 9:37 p.m.

CITY CLERK

MAYOR

Wednesday-November 19, 1997 - 3:00 p.m.

Worksession

Present:	Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

CONSENT:

Establishing Price for 110 Morris Street

Summary: The consideration of establishing $79,500 as the price for surplus real property at 110 Morris Street which has been recommended for sale by the Planning & Development Department.

Contract for Old Water Maintenance Building Renovations

Summary: The consideration of allowing the City Manager to enter into construction contracts to renovate the Old Water Maintenance Building as follows:

General Separate Prime	Buncombe Construction Co., Inc.	$ 770,500
Plumbing Separate Prime	Bolton, Inc.	$ 32,650
Electrical Separate Prime	Bolton, Inc.	$ 82,920
Mechanical Separate Prime	Pyatt Heating and Cooling, Inc.	$ 50,300
Total Project Cost:		**$ 936,370**

Contract for Renovation of Restrooms at Civic Center

Summary: The consideration of allowing the City Manager to enter into a construction contract to renovate the restrooms at the Asheville Civic Center as follows:

Single Prime Contractor James Michael Keys; Keko, Inc. DBA Keys Construction	$ 93,501.00
Alternate 1	$ 30,646.40
Bid Total	$ 124,147.40

Budget Amendment re: Murray Hill Park

Summary: The Parks and Recreation Advisory Board and staff recommend approval of appropriation from the sale of a portion of property at Murray Hill for the development of a park.
The appraised value is $136,000 and the commitment for park development, in addition to the appraised value, is $50,000.

West Area Annexation Sewer Improvements Phase III, Contract B

Summary: The consideration of adopting a resolution awarding the contract to the lowest responsible bidder, Buckeye Construction Company Inc., in the amount of $340,494.

Speed Limit Changes - Sondley Subdivision

Summary: The consideration of establishing speed limits along Sondley Parkway, Sondley Drive, Sondley Drive North, Sondley Woods Place and South Sondley Drive at 25 mph.

Acceptance of Grant to Reduce Crime and Improve Public Safety and Appropriate Match

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under the U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, Local Law Enforcement Block Grant Program. This budget amendment will recognize as revenue the funds for the state grant and appropriate these funds.

Budget Amendment re: Fair Housing Assistance Program 11th Year

Summary: The consideration of a budget amendment, in the amount of $15,300, to continue federal funding for the eleventh year of the Fair Housing Assistance Program.

Approval of Computer Hardware/Software Contract

Summary: Consideration of a resolution approving the award of a contract to H.T.E. Inc. provide computer hardware/software and associated training and technical support.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

CONTRACT FOR CITY BUILDING EXTERIOR RENOVATIONS

Mr. Lyle Willis, Contract Administrator, said that in August, 1997, City staff solicited bids from twelve contractors for the City Building Exterior Renovation work, which he explained. Three sealed bids from single prime contractors were received on October 8, 1997, at 3:00 p.m. based on design plans and specifications by Westcott & Harris Architects. An estimate for construction cost was prepared by Westcott & Harris Architects in the amount of $1,081,022.00. The total time it will take to complete this project will be 300 consecutive calendar days. The City staff agreed that liquidated damages were not needed as an incentive to complete this project.

The bid process resulted in the following three single prime bids:

Midwest Maintenance, Inc.	$ 1,194,892.00
Western Waterproofing Company of America	$ 1,334,090.00
Service One, Inc.	$ 2,147,846.00

City staff has researched references given by the lowest bidder and concluded that they are a competent General Contractors. Sufficient funds are appropriated through the approved financing for this project.

The Parks and Recreation Department requests City Council to direct the City Manager to enter into a contract for $1,194,892.00 with Midwest Maintenance Inc. and adopt a budget amendment to finance the contract.

Upon inquiry of Councilman Sellers, Mr. Willis said that Midwest Maintenance Inc. is located out of Michigan, Western Waterproofing

Company of America is out of Knoxville, Tennessee, and Service One, Inc., is a local company.

Vice-Mayor Field praised the work of Service One Inc. and said that their bid was high because that they were going to have to hire people that type of experience to do the work.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

CONTRACT FOR MUNICIPAL BUILDING RENOVATIONS

Mr. Lyle Willis, Contract Administrator, explained how this process started and why it was determined that renovation of the Municipal Building was the most appropriate way to proceed. He then explained how the project would be done in two phases and where employees and equipment would be relocated during each phase, noting that some employees may be able to relocate to the 7th and 8th floors of the City Hall Building after some Building Code problems have been addressed.

He then explained that in September, 1997, City staff solicited bids from 41 contractors to renovate the Municipal Building, 21 of which were certified minority contractors. Fifteen sealed bids as both single prime and separate prime contractors were received on November 3, 1997, at 3:00 p.m. based on design plans and specifications by ENG\6A Architects. An estimate for construction cost was prepared by ENG\6A Architects in the amount of $12,520,000.00 including site work and landscaping. The project specifications require the project to be completed with 26 months from the notice to proceed issued to the Contractor and the Contractor will be assessed $500.00 per day everyday thereafter as liquidated damages. The formal bid process resulted in the following separate prime low bidders:

General Separate Prime	
Rentenbach Constructor, Inc.	$ 5,316,500
Plumbing Separate Prime	
ABL Plumbing and Heating Corp.	$ 749,495
Electrical Separate Prime	
Hayes & Lunsford Electrical Contractors, Inc.	$ 1,150,600
Mechanical Separate Prime	
Triangle Contractors, Inc.	$ 1,320,000
Total Project Cost:	$ 8,536,595

City staff and ENG/6A Architects have researched references given by the apparent lowest bidders and concluded that they are well qualified to compete this project. Sufficient funds are appropriated through the approved financing for this project.

The Parks and Recreation Department requests City Council to direct the City Manager to enter into multiple contracts for $8,536,595.00 with the listed above contracts and adopt a budget amendment to finance the contracts.

Councilman Worley was pleased that the bids came in $4 million under the estimate.

Upon inquiry of Councilman Cloninger about a possible conflict of interest because Hayes & Lunsford Electrical Contractors is a client of his law firm, City Attorney Oast said that he would investigate that concern and make a determination on it before formal action is taken.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

ECONOMIC DEVELOPMENT INCENTIVE - LUSTAR DYEING & FINISHING

Mr. John Scaralia, City Development Director, said that he is requesting City Council set a public hearing to consider an economic development incentive for Lustar Dyeing and Finishing. He then explained that Lustar Dyeing and Finishing, located at 144 Caribou Road, is the first local existing business which has made an application for an economic development grant.

He went through the company profile by stating that they (1) are an international manufacturer of knit fabrics; (2) are a subsidiary of Ge-Ray Fabrics from New Jersey; (3) were established in 1972; (4) have been in Asheville for nine years; (5) have a current employment of 295 full-time employees; and (6) have an annual payroll of $7.8 million.

He then explained their request of $3,600,000 which includes a capital equipment expansion of 6 dye machines - $1,989,000; dryer, compactor - $1,107,000; and the expansion of their existing facility of a 6k sq. ft. addition - $500,000.

He reviewed their current revenue of real property totaling $1,632,200 (land - $302,700 and buildings - $1,329,500); personal property totaling $5,362,270 for a total assessed valuation of $6,972,950. The City tax is $39,746.

He explained the following grant and projected revenue:

Assessment	One Year	Five Year
$3.6 M x. 0057	$20,520	$102,600
Level 1 (75%)	$15,390	$ 76,950
*Act. Tax Paid	$44,876	$224,380

*Current taxes of $39,746 plus after-grant tax of $5,130

Combined Assessment (end of grant period)
$10,572,950 (assessed valuation)
$60,266 taxes (plus 51.6% change)

He outlined the additional benefits being job creation (direct new jobs - 20; direct and indirect - 32); wages $500 ($469.14 ESC); community earnings $1,144,000; cost of job - $3,847.50 and economic return per dollar grant - $14,87.

Councilman Hay was pleased that the first grant application is from a local company expanding.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CABLE TELEVISION FRANCHISE RENEWAL

RESOLUTION NO. 97-216 - RESOLUTION MODIFYING SCHEDULED CITY COUNCIL MEETING TIME ON DECEMBER 2, 1997

Ms. Patsy Meldrum, Assistant City Attorney, stated that after a year of negotiations with Intermedia, an agreement has been reached for cable franchise renewal. She explained some of the changes since the 1967 franchise agreement.

She then summarized the cable television franchise renewal by explaining that the franchise will serve local residents well as the information highway evolves. The cable television system is being rebuilt to a capacity of 550 MHz. This will allow up to 80 analog channels and potentially hundred more as digital technology becomes available. Of special significance in this area is the fiber-to-the-feeder system which will ensure excellent picture quality. Activation of the upstream capacity by the Company during the rebuild will allow the system to provide Internet access and a wide range of future services. The Franchise requires the Company to make state-of-the-art improvements as new technologies become available and are implemented.

Other top-notch features of the Franchise include:

- Substantial regulatory oversight, including bonds and insurance provisions, transfer approval, revocation procedures, right-of-way management, and customer service standards with corrective action to be taken if standards are not met.

- Four channels available for local programming over the term. Initial funds of $200,000 for equipment and facilities access, and on-going support for access beginning in year 8 of about $36,000 per year. A portion of such funds will be treated as external costs, pursuant to FCC rules and agreements.

- A state-of-the-art fiber optic institutional network for voice, data, and video transmission to multiple public buildings for City and Asheville City Board of Education use. The ability to extend the network to new sites. The cost of the institutional network will be treated as external costs, pursuant to FCC rules and agreements.

- A franchise fee settlement of $150,000 plus approximately $260,000 in additional franchise fees over what would have been the remaining term of the existing franchise, based upon a 5% franchise fee being paid on gross annual revenues throughout the franchise renewal term.

- A seventeen year term.

She requested City Council schedule on November 25, 1997, three items: (1) an ordinance regulating cable service providers with an opportunity for public comment; (2) an ordinance granting the franchise to Intermedia for the operation and maintenance of a cable system with an opportunity for public comment; and (3) a budget amendment for cable consultant services since we have done more than initially budgeted.

Mayor Martin thanked Ms. Meldrum, City Manager Westbrook and the consultants for the work associated with this franchise renewal. He also thanked Mr. Joe Haight, Intermedia General Manager, for his assistance in working with the City on this franchise agreement.

City Attorney Oast explained that ordinances granting franchises are required to be considered at two different scheduled meetings of City Council. He suggested City Council take action on the items noted by Ms. Meldrum at the November 25 meeting, and that Council reschedule the December 2 meeting to begin at 3:00 p.m. with the only order of business to be the second vote by the outgoing Council on the franchise ordinance.

Councilman Worley moved to waive the rules to take formal action at this meeting on the scheduling of the cable television items. This motion was seconded by Councilman Sellers and carried unanimously.

Vice-Mayor Field moved to schedule on the November 25, 1997, meeting the following: (1) an ordinance regulating cable service providers with an opportunity for public comment; (2) an ordinance granting the franchise to Intermedia for the operation and maintenance of a cable system with an opportunity for public comment; and (3) a budget amendment for cable consultant services, and related items. This motion was seconded by Councilman Worley and carried unanimously.

City Attorney Oast then read a resolution as follows: Whereas, the Asheville City Council has the authority pursuant to G.S. 160A-71 to fix the time and place of their regular meetings; and Whereas, unfinished business will require a change in the time set for the regular meeting of City Council on December 2, 1997. Now, therefore, be it resolved by the City Council of the City of Asheville that the time of the regular meeting on December 2, 1997, shall be set for 3:00 p.m. in the First Floor North Conference of the City Building, and the swearing-in ceremony scheduled for 4:00 p.m. and the formal session scheduled to begin at 5:00 p.m., both in the Second Floor Council Chamber in the City Building, shall remain so scheduled and the 3:00 p.m. meeting shall be adjourned or rescheduled, as appropriate, to those later sessions.

Councilman Worley moved for the adoption of Resolution No. 97-216. This motion was seconded by Vice-Mayor Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 282

Councilman Hay noted that the City has been working on this franchise renewal for two years and felt adopting the agreement on December 2 was the most efficient way to finalize the negotiations.

Mayor Martin asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

BOARDS & COMMISSIONS

It was the consensus of City Council to have the City Clerk prepare the proper paperwork for appointing William L. Schaefer Jr. to the Firemen's Relief Fund.

It was the consensus of City Council to wait until AdvantageWest, Asheville Downtown Association and Asheville Merchants Association appoint their members on the City Business & Development Commission.

It was the consensus of City Council to wait until a new Budget Director is appointed to fill the vacancy on Victoria of Asheville Board of Directors.

OPPORTUNITY CORPORATION REQUEST

Mayor Martin said that he has received a proposal from the Opportunity Corporation of Madison-Buncombe Counties which requests the City of Asheville deed a small piece of property to the Corporation so that they may build a program service, customer intake and administrative building. The property is directly behind the Reid Center Annex playground and consists of approximately 1 and 1-1/2 acres. The Corporation requests the City deed this property for their service building as an "exchange" for the work that they are conducting on the Reid Center Annex. They plan to renovate that building to current standards and use it, in partnership with other community organizations, to operate a full day, year-round Head Start Child Development facility.

City Manager Westbrook recommended City Council refer the request to City staff and let staff review the proposal and report back on the December 9 worksession with a recommendation.

Ms. Vicki Heidinger, Executive Director of the Opportunity Corporation, said that they would be happy to work with the City within that timeframe.

PENALTY ABATEMENT

City Council instructed the City Manager to review the ordinance which makes the City Council the only authority to abate a penalty regarding the lack of obtaining a building permit. They suggested he bring back an ordinance change directing that responsibility to perhaps a review board or some other individual on staff.

CLOSED SESSION

At 4:20 p.m. Councilman Worley moved to go into closed session (1) to discuss matters relating to the location or expansion of industries or other businesses within the area served by the City Council - statutory authority is G.S. 143-318.11 (a) (4); and (2) to establish or to instruct the City staff concerning the position to be taken by or on behalf of the City in negotiating the price and other material terms of a proposed contract for the acquisition of land by purchase or exchange - statutory authority is G.S. 143-318.11 (a) (5). This motion was seconded by Councilman Cloninger and carried unanimously.

Mayor Martin said that an announcement could be made after coming out of closed session.

At 4:55 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Vice-Mayor Field and carried unanimously.

OFFER TO PURCHASE THE PROPERTY OWNED BY THE CITY OF ASHEVILLE KNOWN AS MEMORIAL STADIUM AND ASSOCIATED PROPERTY

Mr. Irby Brinson, Parks & Recreation Director, said that the City of Asheville owns property known as Memorial Stadium and property adjacent thereto. The Parks and Recreation Department has been working for several months on the possibility of selling Memorial Stadium and using the revenue to further develop and enhance recreation facilities in the community.

The City of Asheville has received an offer from Robert Camille, Jr. to purchase Memorial Stadium and associated property in the amount of $1,400,000. The sale of this property is authorized under N.C. General Statute sec. 160A-266 which authorizes cities to dispose of real property. The sale is subject to the upset bid process established by N.C. General Statute under sec. 160A-269. Recognizing that approximately $20 million is necessary over the next 15 years in order to enhance recreation facilities in the community, the Parks and Recreation Department has been exploring alternative financing to meet these needs without a tax increase. The revenue generated from the sale of Memorial Stadium will be used to develop and renovate other recreation facilities within Asheville. These include development of a multi-field youth baseball complex at Richmond Hill for use by the North Asheville Little League. In addition, a youth football field would be constructed to be used by the West Asheville Youth Football and the Asheville Rugby Club. The sale of Memorial Stadium also includes the purchase of approximately 100 feet of right-of-way at the end of Richmond Hill Drive into the Richmond Hill property. Funds will also be used to renovate the existing Mountainside Park to include new playground equipment and play area.

He said that he has talked with all the users of Memorial Stadium and they are in support of this proposal.

Mayor Martin noted that the City will still be able to use the existing facility until they break ground and the City will not have to acquire the right-of-way at the end of Richmond Hill Drive - it will be deeded back to the City.

Councilman Skalski was concerned about the economy of scale and referred to a chart based on the 1994-95 revenues and expenditures taken from "Fiscal Summary of North Carolina Municipalities for the fiscal year ended June 30, 1995." He explained that the chart indicates that any city over 50,000 in population has a dramatic increase in taxes and when you annex more land into the City - taxes go up. He also expressed concern over the comprehensive parks and recreation plan.

Vice-Mayor Field asked for a report regarding the increase in population and how it affects Asheville's taxes, in particular if the population goes up from 67,000 to 68,000.

Mr. Brinson responded to questions from Councilman Skalski as they related to other alternatives for the use of Memorial Stadium and the associated property.

It was the consensus of City Council to direct the City Manager to place a resolution authorizing the City Clerk to advertise an offer to purchase the property known as Memorial Stadium and associated property on the next formal City Council agenda.

BROAD STREET REZONING WORKSESSION

Mayor Martin said that City Council had received today an agreement signed by Mr. Dennie Martin, representing the Chestnut Hill Associates, and Arthur Davis, Vincent Ramsuer, Angela Scotchie and Colleen Watkins, representing the Chestnut Hill Neighborhood Association. Said agreement is dated November 17, 1997, and reads: "(1) The Association and Mr. Martin hereby jointly request a 30-day postponement of the public hearing scheduled for November 25, concerning the eight-lot section of Broad Street property. This rezoning request (RM-16 to Office) was petitioned by City Council, and involves two lots owned by Chestnut Partners. Postponement is requested in order to give the parties time to finalize negotiations for the purchase of said two Broad Street lots by Neighborhood Housing Services, for multi-family housing. (2) In consideration for these ongoing negotiations, the Broad Street neighbors will respect Mr. Martin's request that they also ask for postponement of the November 25 hearing regarding their own rezoning petition to change a 12-lot residential area from Office to RM-8 designation. (3) Mr. Martin, in return, agrees not to enter a Protest

Petition regarding the 12-lot rezoning request, pending the closing of the sales transaction with Neighborhood Housing Service."

City Manager Westbrook said that since the City Council had scheduled a Broad Street rezoning worksession for 7:00 p.m. later that evening with the community being invited, he thought Council may wish to postpone the worksession in light of the agreement.

Mayor Martin agreed that the new City Council might benefit from a worksession after they take office and there would be no need for the present Council to review the rezoning issues.

Planning & Development Director Julia Cogburn said that after contacting the neighborhood representative, Angela Scotchie, to see if their would be any objection to City Council canceling the 7:00 p.m. worksession, Ms. Scotchie replied that she did not see any problem and would contact the rest of the neighborhood. Ms. Scotchie did request that City Council postpone the public hearings scheduled for November 25, according to the agreement between the parties. Ms. Cogburn said that a message would be given to Dennie Martin of the worksession cancellation.

Councilman Skalski moved to cancel the 7:00 p.m. Broad Street rezoning worksession scheduled for later that day. This motion was seconded by Councilman Worley and carried unanimously.

It was the consensus of City Council that on November 25, 1997, the two scheduled public hearings involving Broad Street rezoning would be continued until January 13, 1998.

ADJOURNMENT:

Mayor Martin adjourned the meeting at 5:16 p.m.

Magdalen Paulson
CITY CLERK

MAYOR

Tuesday - November 25, 1997 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Skalski gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

At the request of Councilman Cloninger, Item O. was removed from the Consent Agenda to be discussed individually.

At the request of Councilman Skalski, Item D. was removed from the Consent Agenda to be discussed individually.

A. RESOLUTION NO. 97-217 - RESOLUTION ESTABLISHING MINIMUM PRICE FOR PROPERTY AT 110 MORRIS STREET

Summary: The Planning & Development Department, at the request of the Director of Parks & Recreation has recommended that surplus real property at 110 Morris Street be offered for sale. The property recommended for sale has undergone extensive interdepartmental review to insure that the property is not currently being utilized by the City and does not have an identifiable potential for future use by the City.

The parcel has been appraised by Ricky D. McClure at a value of $79,500.00 and that value is the recommended minimum price.

Resolution No. 95-134 adopted by City Council authorized the City Manager to execute an agreement with Russell G. Wood of Beverly Hanks and Associates to market and sell certain City owned properties. The Planning & Development Department recommends listing the subject parcel for sale as part of said agreement.

Approval of the resolution will establish a minimum price for the property at 110 Morris Street and authorize offering the parcel for sale by and through an agreement with Beverly Hanks and Associates.

RESOLUTION BOOK NO. 24 - PAGE 283

B. RESOLUTION NO. 97-218 - RESOLUTION ENTERING INTO A CONTRACT WITH BUNCOMBE CONSTRUCTION CO. INC., BOLTON INC., AND PYATT HEATING AND COOLING INC. FOR THE RENOVATION OF THE OLD WATER MAINTENANCE BUILDING

Summary: In September, 1997, City staff solicited bids from thirty-seven, 16 of which were certified minority contractors, to renovate the Old Water Maintenance Building. Nine sealed bids from both single prime and separate prime contractors were received on October 2, 1997, at 3:00 p.m. based on design plans and specifications by Padgett and Freeman Architects. An estimate for construction cost was prepared by Padgett and Freeman Architects in the amount of $ 1,234,837 including site work and landscaping. The project specifications require the project to be completed in 160 consecutive calendar days with $300 per day for liquidated damages assessed everyday thereafter. The bid process resulted in the following separate prime low bidders:

General Separate Prime -Buncombe Construction Co., Inc.	$ 770,500
Plumbing Separate Prime -Bolton, Inc.	$ 32,650
Electrical Separate Prime -Bolton, Inc.	$ 82,920
Mechanical Separate Prime -Pyatt Heating and Cooling, Inc.	$ 50,300
Total Project Cost:	**$ 936,370**

City staff has researched references given by the lowest bidders and concluded that they are competent Contractors. Sufficient funds are appropriated through the approved financing for this project.

RESOLUTION BOOK NO. 24 - PAGE 284

C. RESOLUTION NO. 97-219 - RESOLUTION ENTERING INTO A CONTRACT WITH JAMES MICHAEL KEYS; KEKO, INC., D/B/A KEYS CONSTRUCTION TO RENOVATE THE RESTROOMS AT THE ASHEVILLE CIVIC CENTER

Summary: In September, 1997, City staff solicited bids from 21 contractors to renovate the restrooms in the Asheville Civic Center, five of which were certified minority contractors. Two sealed bids from single prime contractors were received on October 9, 1997, at 4:00 p.m. based on design plans and specifications by Mathews and Glazer Architects. An estimate for construction cost was prepared by Mathews and Glazer Architects in the amount of $80,651.00. The project specifications require the project to be completed in 90 consecutive calendar days. The City staff agreed that liquidated damages were not needed as an incentive to complete this project. The informal bid process resulted in the following single prime low bidder:

Single Prime Contractor James Michael Keys; Keko, Inc. DBA Keys Construction	$ 93,501.00
Alternate 1	$ 30,646.40
Bid Total	$ 124,147.40
Total Project Cost:	$ 124,147.40

City staff has researched references given by the low bidder and concluded that James Michael Keys; Keko, Inc. DBA Keys Construction is a competent Contractor. Sufficient funds are appropriated in the Civic Center Budget.

RESOLUTION BOOK NO. 24 - PAGE 285

D. RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE THE PROPERTY OWNED BY THE CITY OF ASHEVILLE KNOWN AS MEMORIAL STADIUM AND ASSOCIATED PROPERTY

This item was removed from the Consent Agenda for discussion.

E. RESOLUTION NO. 97-220 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BUCKEYE CONSTRUCTION CO. INC. FOR THE PROJECT KNOWN AS WEST AREA ANNEXATION SANITARY SEWER IMPROVEMENTS PHASE III, CONTRACT B

Summary: The consideration of adopting a resolution awarding the contract to the lowest responsible bidder, Buckeye Construction Company Inc., in the amount of $340,494.

The City Council approved 3.2 million dollars for sewer improvements. This project is known as West Area Annexation Sewer Improvements, Phase III - Contract B. These funds were to be used for priority sewer improvements in the West Area and Brevard Road annexation area.

The Engineering Department has developed construction plans for the West Area Annexation Sewer Improvements, Phase III - Contract B. The engineer's estimate for this project is in the amount of $410,274.

The project was advertised for one month. On Tuesday, October 21, 1997, at 4:00 p.m., the Engineering Department received two bids for the project.. Therefore, a new advertisement was issued for bids to be opened on November 6, 1997, at 3:00 p.m., which was fifteen days from the first formal bid date. Bids were opened on November 6, 1997, at 3:00 p.m. and three bids were received. The low responsible bidder was Buckeye Construction Company Inc. of Canton, N.C., in the amount of $340,494. This contractor has previously performed contract work for the City. The construction time for this project is identified as 120 calendar days in the contract documents. The contract stipulates liquidated damages in the amount of $250 per calendar day beyond the approved contract time.

RESOLUTION BOOK NO. 24 - PAGE 286

F. RESOLUTION NO. 97-221 - RESOLUTION LEASING A PORTION OF THE OLD WATER MAINTENANCE BUILDING TO ASHEVILLE CITY SCHOOLS

Summary: The consideration of entering into an agreement with the Asheville City Schools to lease a portion of the Old Water Maintenance Building.

The Asheville City Schools now uses a portion of the basement of the Municipal Building for its Maintenance Division pursuant to a 1996 agreement with the City of Asheville. With the renovations of the Municipal Building, the maintenance operations for Asheville City Schools will be moved to a space in the Old Water Maintenance Building. The Asheville City Schools will pay for alternates for construction which will provide them adequate space in order to carry out their functions. The terms and conditions are outlined in the agreement.

RESOLUTION BOOK NO. 24 - PAGE 289

G. RESOLUTION NO. 97-222 - RESOLUTION AUTHORIZING THE EXCHANGE OF CITY-OWNED REAL PROPERTY LOCATED ON BARTLETT STREET (PART OF MURRAY HILL PARK PROPERTY) OWNED BY OVERLOOK APARTMENTS LIMITED PARTNERSHIP

Summary: This resolution will authorize the Mayor to convey City-owned real property on Bartlett Street in exchange for real property owned by Overlook Apartments Limited Company located near Bartlett Street (part of the Murray Hill Park property).

The City conveyed to Overlook Apartments LLC approximately 3 acres of land near Bartlett Street for the construction of 48 units of elderly housing subject to Overlook Apartments constructing a passive park. The city owns approximately 7.4 acres of land surrounding Overlook's property.

Overlook has agreed to exchange a portion of its land near Bartlett Street for a portion of the City's land on Bartlett street in a negotiated exchange whereby the passive park will be constructed as well as a greenway by the City.

The portion of real property owned by the City to be exchanged with Overlook has an estimated fair market value of $21,555. The portion of real property owned by Overlook to be exchanged with the City has an estimated fair market value of $53,583.

Approval of the resolution will initiate the exchange of the properties through the process provided in North Carolina General Statute Section 160A-271.

RESOLUTION BOOK NO. 24 - PAGE 290

H. RESOLUTION NO. 97-223 - RESOLUTION APPROVING AWARD OF CONTRACT WITH H.T.E. INC. TO PROVIDE A COMPUTER HARDWARE/SOFTWARE SYSTEM

Summary: The consideration of a resolution approving the award of a contract to provide computer hardware/software and associated training and technical support.

The City's present central computer systems are obsolete by today's industry standards and, most importantly, are not Year 2000 compatible. Additionally, several of the City's functions which could benefit from the speed and efficiency of computerization currently rely on manual recordkeeping and computation. To remedy these deficiencies, the City used a Request for Proposal process to select the best solution to our major computer automation needs. A team, with staff representation from each of the City's departments, developed central computer requirements for inclusion in an RFP and then evaluated contractors' proposals in response to the RFP. Proposals were solicited from eight companies; six of which responded. The evaluation process included: narrowing of the number of vendors under consideration by ranking of each of their written proposals; demonstrations of their systems by the selected vendors; site visits to other local governments with a vendor's systems in operational use; and extensive telephone discussions with other customers across the country. H.T.E., Inc. was selected as providing the best solution to the City's central computer hardware/software needs. Among the functions provided by the system are: accounting, cash receipts, inventory, purchasing, fixed assets, fleet management, work orders/facility management, personnel, land management, building permits, code enforcement, planning & zoning, business licenses. The initial cost of the H.T.E. system (including: license fees, training, data conversion, project management, technical support, and system hardware and software) is $1,033,962.10. Subsequent year's continuing licensing and support is $79,925.00. These amounts will spread across a five year lease of the system, as subsequent equipment schedules under the City's existing computer master lease agreement with Ontario Investments, Inc.

Funding for this project is budgeted in the Capital Improvement Plan beginning in the current fiscal year.

RESOLUTION BOOK NO. 24 - PAGE 291

I. RESOLUTION NO. 97-224 - RESOLUTION SETTING A PUBLIC HEARING ON DECEMBER 16, 1997, ON AN ECONOMIC DEVELOPMENT APPROPRIATION TO LUSTAR DYEING AND FINISHING LOCATED AT 144 CARIBOU ROAD

Summary: The consideration of a resolution setting a public hearing on an economic development appropriation to Lustar Dyeing and Finishing, Inc.

Lustar Dyeing and Finishing, Inc. is looking to modernize and expand its manufacturing facility located at 144 Caribou Road. Plans call for the addition of 6,000 sq. ft. to the existing building and the major purchase of machinery and equipment in order to increase production. The company plans to hire an additional 20 employees by July 1, 1998. Wages will average $12.50 per hour.

The firm plans to invest a total of $3.6 million within six months in the renovation and equipment upgrades for this project.

Staff recommends that City Council provide a grant under the terms and conditions set forth in the City's current economic development incentive policy. Specifically, it is recommended that the award be limited to no more than the maximum allowed under the current guidelines, estimated at approximately $15,390. per year for five years, for a total of $76,950 based on current assessments.

RESOLUTION BOOK NO. 24 - PAGE 292

J. RESOLUTION NO. 97-225 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A GRANT FROM THE US DEPT. OF JUSTICE TO REDUCE CRIME AND IMPROVE PUBLIC SAFETY

Summary: The consideration of a resolution authorizing the Mayor to accept grant funds under the U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, Local Law Enforcement Block Grant Program.

The City of Asheville has been awarded a grant under the Fiscal Year 1997 Local Law Enforcement Block Grants Program in the amount of $127,050. A local match of $14,117 is required. The purpose of the grant program is to fund projects, allowed under the grant program, designed to reduce crime and improve public safety. The specific program for which these funds will be used by the City has not yet been determined.

This budget amendment will recognize as revenue the funds for the state grant and appropriate these funds.

City staff recommends adoption of the resolution authorizing the Mayor to accept the award and adoption of a budget amendment to provide for the local matching contribution.

RESOLUTION BOOK NO. 24 - PAGE 293

K. ORDINANCE NO. 2431 - BUDGET AMENDMENT, IN THE AMOUNT OF $147,167, TO SET UP A BUDGET FOR THE GRANT FROM THE US DEPT. OF JUSTICE TO REDUCE CRIME AND IMPROVE PUBLIC SAFETY

Summary: See above Item. J.

ORDINANCE BOOK NO. 16 - PAGE 354

L. ORDINANCE NO. 2432 - ORDINANCE ESTABLISH 25 MILES PER HOUR ON SONDLEY PARKWAY, SONDLEY DRIVE, SONDLEY DRIVE NORTH, SONDLEY WOODS PLACE AND SOUTH SONDLEY DRIVE

Summary: The City Traffic Engineer has performed the necessary traffic analyses associated with the following locations as per the Manual on Uniform Traffic Control Devices and the North Carolina Supplement and is seeking authorization from the City Council to establish these speed limits:

Establish 25 MPH
(1) Sondley Parkway (entirety)
(2) Sondley Drive (entirety)
(3) Sondley Drive North (entirety)
(4) Sondley Woods Place (entirety)
(5) South Sondley Drive (entirety)

These locations have been reviewed over the past twelve months as per the request of residents and motorists who utilize these roadways. Field surveys and speed studies were conducted and data reviewed based upon the 85th percentile speed, which is the speed at or below which 85 percent of the vehicles are moving. This speed is reviewed in relationship to the median speed and the pace speed range. The pace speed range is the range of speeds at which the largest concentration of motorists drive. These speeds were reviewed to address the lack of posted speed limits in the area.

ORDINANCE BOOK NO. 16 - PAGE 356

M. ORDINANCE NO. 2433 - BUDGET AMENDMENT FOR THE FAIR HOUSING ASSISTANCE PROGRAM 11TH YEAR FUNDING

Summary: On April 28, 1987, the City of Asheville was recognized by HUD as having a fair housing enforcement program which is substantially equivalent to that of the Federal Fair Housing Act. The City has been carrying out its fair housing program under contract with the Asheville-Buncombe Community Relations Council and Fair Housing Commission since January 1988.

The City has received approval from HUD of $15,300 for the Fair Housing Assistance Program. This will be the eleventh year of funding through this program. The program is administered under contract by the Asheville-Buncombe Community Relations Council which provides staff support to the Asheville-Buncombe Fair Housing Commission. The City Community Development Division serves as Lead Entity and monitors the program.

ORDINANCE BOOK NO. 16 - PAGE 357

N. ORDINANCE NO. 2434 - BUDGET AMENDMENT TO APPROPRIATE FUNDING TO CONSTRUCT A PARK AT MURRAY HILL FROM REVENUES GENERATED FROM THE SALE OF PROPERTY

Summary: The Parks and Recreation Advisory Board and staff recommend approval of appropriation from the sale of a portion of property at Murray Hill for the development of a park.

Over the past year and a half, through a joint effort of Community Development and Parks and Recreation, an opportunity to develop a public/private venture has occurred with David Douglas and Associates. David Douglas proposed to purchase approximately three acres from the City of Asheville to construct 48 units for senior housing. The appraised value is $136,000 and the commitment for park development, in addition to the appraised value, is $50,000. The funds collected from the sale of the property will be used to construct a special populations park on the remaining land at Murray Hill.

The Parks and Recreation Advisory Board and the Parks and Recreation staff request approval by City Council of the budget amendment.

ORDINANCE BOOK NO. 16 - PAGE 359

O. BUDGET AMENDMENT TO ESTABLISH A PROJECT BUDGET FUNDED FROM CERTFICATES OF PARTICIPATION ISSUES 1997A AND 1997C

This item was removed from the Consent Agenda for discussion.

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Field and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION NO. 97-226 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE THE PROPERTY OWNED BY THE CITY OF ASHEVILLE KNOWN AS MEMORIAL STADIUM AND ASSOCIATED PROPERTY

Summary: The Parks and Recreation Department has been working for several months on the possibility of selling Memorial Stadium and using the revenue to further develop and enhance recreation facilities in the community.

Parks & Recreation has been in contact with a local architectural firm who has expressed interest in purchasing the property. The zoning of the property is institutional. The sale of this property is authorized under N.C. General Statute sec. 160A-266 which authorizes cities to dispose of real property. The sale is subject to the upset bid process established by N.C. General Statute under Section 160A-269.

Recognizing that approximately $20 million is necessary over the next 15 years in order to enhance recreation facilities in the community, the Parks and Recreation Department has been exploring alternative financing to meet these needs without a tax increase. The revenue generated from the sale of Memorial Stadium will be used to develop and renovate other recreation facilities within Asheville. These include development of a multi-field youth baseball complex at Richmond Hill for use by the North Asheville Little League. In addition, a youth football field would be constructed to be used by the West Asheville Youth Football and the Asheville Rugby Club. Until construction is started, all activities can continued to use the area. The sale of Memorial Stadium also includes the purchase of approximately 100 feet of right-of-way at the end of Richmond Hill Drive into the Richmond Hill property. Funds will also be used to renovate the existing Mountainside Park to include new playground equipment and play area.

The Parks and Recreation Department recommends approval of a resolution authorizing the City Clerk to advertise an offer to purchase the property known as Memorial Stadium and associated property.

Councilman Skalski was concerned with selling 21 acres of park land in the middle of the City when Asheville needs more parks. He suggested City Council hold a public hearing to get input from the residents on this issue. He also felt that the 10 day upset bid process (established by State law) was too short for a company to prepare a proposal if they were interested in bidding on the property.

Mr. H.K. Edgerton encouraged City Council to hold a public hearing on this matter, especially because of the proximity to Mountainside Apartments.

Mayor Martin noted that even though this area is 21 acres, there is only five acres that can be used as a park because the rest is hillside property.

Upon inquiry of Councilman Hay, Mr. Brinson said that a portion of the funds from the sale will be used to upgrade the playground facilities at Mountainside Apartments.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 97-226. This motion was seconded by Vice-Mayor Field and carried on a 6-1 vote, with Councilman Skalski voting "no".

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ORDINANCE NO. 2435 - BUDGET AMENDMENT TO ESTABLISH A PROJECT BUDGET FUNDED FROM CERTFICATES OF PARTICIPATION ISSUES 1997A AND 1997C

At the request of Councilman Cloninger, Councilman Sellers moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilman Skalski and carried unanimously.

Summary: The consideration of a budget amendment, in the amount of $19,025,060 to establish capital projects for improvements to the Municipal Building, Water Maintenance Building, City Hall and economic development projects for the Grove Arcade and Broadlands Building.

This budget amendment will establish project budget appropriations in the City's General Capital Projects Fund as follows:

	Total Appropriation
Costs of Issue	$220,238
Municipal Building	11,071,595
Water Maintenance Building	1,145,370
City Hall	1,528,457
Broadlands Infrastructure	310,000
Economic Development Loan	2,500,000
Grove Arcade Loan	2,250,000
	$19,025,660

Funding will be provided as follows:

Sale of C.O.P.s 97A	$13,771,965
Sale of C.O.P.s 97C	4,587,000
Construction Interest	666,692
	$19,025,660

Funding for debt service for the capital projects has been included in the City's Capital Improvement Plan adopted each year by City Council.

Councilman Skalski said that he was opposed to giving City money for private development.

Mayor Martin said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Field moved for the adoption of Ordinance No. 2435. This motion was seconded by Councilman Worley and carried on a 6-1 vote, with Councilman Skalski voting "no".

ORDINANCE BOOK NO. 16 - PAGE 361

III. PUBLIC HEARINGS:

A. CONTINUATION OF PUBLIC HEARING RELATIVE TO REZONING EIGHT PARCELS ON THE SOUTHSIDE OF BROAD STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY TO OFFICE

Mayor Martin said that City Council had received on November 19, 1997, an agreement signed by Mr. Dennie Martin, representing the Chestnut Hill Associates, and Arthur Davis, Vincent Ramsuer, Angela Scotchie and Colleen Watkins, representing the Chestnut Hill Neighborhood Association. Said agreement is dated November 17, 1997, and reads: "(1) The Association and Mr. Martin hereby jointly request a 30-day postponement of the public hearing scheduled for November 25, concerning the eight-lot section of Broad Street property. This rezoning request (RM-16 to Office) was petitioned by City Council, and involves two lots owned by Chestnut Partners. Postponement is requested in order to give the parties time to finalize negotiations for the purchase of said two Broad Street lots by Neighborhood Housing Services, for multi-family housing. (2) In consideration for these ongoing negotiations, the Broad Street neighbors will respect Mr. Martin's request that they also ask for postponement of the November 25 hearing regarding their own rezoning petition to change a 12-lot residential area from Office to RM-8 designation. (3) Mr. Martin, in return, agrees not to enter a Protest Petition regarding the 12-lot rezoning request, pending the closing of the sales transaction with Neighborhood Housing Service."

Vice-Mayor Field moved to continue the public hearing until January 13, 1998, without further advertisement. This motion was seconded by Councilman Worley and carried unanimously.

B. PUBLIC HEARING RELATIVE TO REZONING TWELVE LOTS LOCATED OFF BROAD STREET, WASHINGTON ROAD AND MADISON AVENUE FROM OFFICE DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

See Item A. above.

Councilman Worley moved to continue the public hearing until January 13, 1998, without further advertisement. This motion was seconded by Vice-Mayor Field and carried unanimously.

C. PUBLIC HEARING TO CONSIDER REZONING PROPERTY ON AZALEA ROAD FROM RS-2 RESIDENTIAL SINGLE FAMILY LOW DENSITY DISTRICT TO RIVER DISTRICT

Mayor Martin said that on November 24, 1997, City Council received a letter from Mr. Craig D. Justus, attorney representing the petitioner Darius Corbin. Mr. Justus said that his client is currently negotiating with RiverLink to donate one of the parcels to that organization. "The RiverLink Board is meeting December 4, 1997, to consider the donation. Since RiverLink's decision to accept this tract for a potential river park will play a major role in our rezoning application, my client and I would respectfully request that the public hearing be postponed until the Council's second meeting in December."

A representative of the Blue Ridge Parkway noted that the Parkway has a concern relative to an access issue and also a concern regarding land use. She requested Council continue the hearing until January 13, 1997.

Mr. Justus, attorney representing the petitioner, said that the access issue is moot and that the Parkway should have an opportunity to voice their concerns about land use at the public hearing.

Councilman Cloninger moved to continue the public hearing until December 16, 1997, without further advertisement. This motion was seconded by Vice-Mayor Field and carried unanimously.

D. PUBLIC HEARING TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING THE DEFINITION OF ASSISTED LIVING FACILITIES

ORDINANCE NO. 2436 - ORDINANCE TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING THE DEFINITION OF ASSISTED LIVING FACILITIES

Mayor Martin opened the public hearing at 5:24 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that the Planning and Zoning Commission has recommended an ordinance amendment to the Asheville City Council which deals with the definition of Assisted Living Facilities.

This ordinance amends Chapter 7 -Unified Development Ordinance- as it relates to the definition of Assisted Living Facilities.

The Planning staff has encountered some confusion by users of the Unified Development Ordinance pertaining to the extent and density of development for Assisted Living Facilities. Several zoning districts have density limits that are expressed both in terms of dwelling units per acre for residential development, and in square feet for non-residential uses. In one case, fear that the project would be classified as residential and thus subject to that standard very nearly caused a land sale contract to not be signed. This could have cost the city an assisted living facility development serving citizens and creating jobs.

In another case, a Realtor sought to have Assisted Living Facilities judged to be a residential use, in order to have it as a possible use for some land he was trying to sell that was zoned as Residential Single Family.

The proposed amendment more carefully defines the use, and places it in a non-residential category, which is commensurate with the zoning districts within which it is currently allowed.

The Planning and Zoning Commission unanimously recommended an amendment to Chapter 7 -Unified Development Ordinance- as it relates to the definition of Assisted Living Facilities.

Mayor Martin closed the public hearing at 5:27 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2436. This motion was seconded by Councilman Worley and carried unanimously.

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E. PUBLIC HEARING TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING THE RIVERFRONT DISTRICT DESIGN COMMITTEE AND RIVERFRONT DESIGN GUIDELINES

ORDINANCE NO. 2437 - ORDINANCE TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING THE RIVERFRONT DISTRICT DESIGN COMMITTEE AND RIVERFRONT DESIGN GUIDELINES

Mayor Martin opened the public hearing at 5:27 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that the Planning and Zoning Commission has recommended an ordinance amendment which deals with the Riverfront District Design Committee and the Riverfront Design Guidelines.

This ordinance amends Chapter 7 -Unified Development Ordinance- as it relates to the basis of the design review and composition of the River District Design Committee.

1. River District Review Guidelines: The Unified Development Ordinance (UDO) calls for mandatory review and voluntary compliance with design guidelines in the River District. This review is to be based upon the "River District Design Review Guidelines". These have been drafted by planning staff, and eventually need to be considered and enacted. There is no provision in the UDO for approval of these guidelines. This amendment makes it clear that the design guidelines for the River District will be considered and approved by City Council.

2. Composition of the River District Design Review Committee: There is a detailed provision in the UDO for the composition of the River District Design Review Committee. It was felt by staff that the scope of the

requirement that two members be "design professionals" could be defined to include, for the purposes of the River District Design Review Committee, artists (a predominate sector of the commercial business community presently occupying sections of the river), architects, and engineers. Although it would not be necessary for an artist to be appointed under this category, it may serve to create more flexibility for the council in the use of the one free category of person to be selected at councils discretion.

3. Rules and Records: The UDO clearly spells out the procedures the River District Design Review Committee should follow in its review of a submitted project. However, it makes no provision for other rules of procedure which would delineate such things as policy on absences, what constitutes a quorum, etc. This amendment to the UDO would grant the River District Design Review Committee the right to promulgate rules necessary for its smooth functioning.

4. The Riverfront Plan does not contain actual architectural guidelines. It is a plan for the type and extent of development in the area.

The Riverfront Open Space Design Guidelines contain guidelines which are appropriate in style and scale for the area immediately adjacent to the French Broad River, the development of which is contemplated as recreational. They do not contain guidelines that are appropriate for the redevelopment of the blighted areas of the river core area, not immediately adjacent to the French Broad River, nor, for the rest of the already developed areas of the river district.

Although respecting the spirit and direction of the Riverfront Plan, and the Open Space Design Guidelines is a primary objective of staff in creating the River District Design Guidelines, it was found that these guidelines needed to encompass many issues and problems of redevelopment and existing development which are not included in either document.

For these reasons, references to the Riverfront Plan and the Riverfront Open Space Design Guidelines as containing the Architectural Guidelines which create the standard for the Riverfront Design Review Guidelines against which the Riverfront Design Review Committee must compare plans are proposed to be removed from the UDO. This will allow a broader approach in constructing the Riverfront Design Guidelines. Planning staff recommends that the City hold a public meeting and seek public input concerning the Guidelines. It is further believed that requiring Council approval of the Guidelines (see above) would be an adequate safeguard for the interests of all involved.

The Planning & Development staff recommends approval of this amendment. The Planning & Zoning Commission unanimously recommended City Council amend Chapter 7 -Unified Development Ordinance- as it relates to the Riverfront District design committee and the Riverfront Design Guidelines.

Vice-Mayor Field suggested that the Riverfront District Design Review Committee include a landscape architect as well.

Mayor Martin closed the public hearing at 5:32 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Field moved for the adoption of Ordinance No. 2437, with the inclusion of a landscape architect on the Riverfront District Design Review Committee. This motion was seconded by Councilman Cloninger and carried unanimously.

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F. PUBLIC HEARING TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) TO ESTABLISH A DEFINITION FOR GRADING IN THE HILLSIDE AREA DEVELOPMENT STANDARDS

ORDINANCE NO. 2438 - ORDINANCE TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) TO ESTABLISH A DEFINITION FOR GRADING IN THE HILLSIDE AREA DEVELOPMENT STANDARDS

Mayor Martin opened the public hearing at 5:34 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that this is consideration of an amendment to the Unified Development Ordinance to establish a definition for grading in the Hillside Area Development Standards.

During the review of a project subject to the provisions of the Hillside Area Development Standards, several questions arose related to the definition of grading. Due to the limitations of the current definition of grading, many of these questions could not be answered immediately. The proposed revision provides a comprehensive definition of grading, as it is applied with the Hillside Area Development Standards. Those questions regarding what constitutes grading which were raised during application of the Hillside Area Development Standards are addressed in the revised definition of grading. Issues addressed in the revised definition include the removal of trees, the installation of underground utilities, and the creation of stormwater drainage and erosion control ditches. The revised definition of grading will improve administration and enforcement of the Hillside Area Development Standards.

The Planning and Zoning Commission unanimously recommended adoption of the revision to the Unified Development Ordinance to provide an improved definition of grading in the Hillside Area Development standards. The staff of the Planning and Development Department have also recommended approval of the revision.

Mayor Martin closed the public hearing at 5:36 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2438. This motion was seconded by Vice-Mayor Field and carried unanimously.

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G. PUBLIC HEARING TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING LEVEL I SITE PLAN REVIEW PROCESS

ORDINANCE NO. 2439 - ORDINANCE TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING LEVEL I SITE PLAN REVIEW PROCESS

Mayor Martin opened the public hearing at 5:36 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that the Planning and Zoning Commission has recommended an ordinance amendment which deals with the Level I Review process.

The proposed amendments extend the ten working day review requirement to all reviewing city departments, and define the forwarding of information required of the city by outside permitting agencies upon which the issuance of city permits depends, as an action which satisfies the ten working day requirement.

This amendment would not affect Level II or Level III site project reviews in any fashion.

The amendment also allows reviewing personnel to notify applicants by many different means as to the status of their project, including its approval. If a project were to be denied, the applicant would be informed in writing as to why the project was denied, and this notice could be delivered by either Certified Mail, or by Hand Delivery.

The Planning & Development staff recommends approval of this amendment. The Planning & Zoning Commission voted unanimously to recommend City Council amend Chapter 7 -Unified Development Ordinance- as it relates to the Level I Review process.

Mayor Martin closed the public hearing at 5:40 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Field moved for the adoption of Ordinance No. 2439. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2427 - SECOND READING OF ORDINANCE NO. 2427 TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES REQUIRING ALL-OFF PREMISES SIGNS NOT COMPLYING WITH THE NEW STANDARDS TO COME INTO COMPLIANCE WITHIN SEVEN YEARS

Mayor Martin said that the public hearing and first reading of this ordinance took place on November 11, 1997.

City Attorney Oast said that he received a letter today from Robert B. Long Jr., attorney representing Outdoor Communications Inc., for himself and for Albert L. Sneed Jr., attorney representing Fairway Outdoor Advertising Inc., in which they object to the ruling regarding the protest petition that was issued last week. There was no new information presented and his opinion on that issue has not changed. He will submit a copy of the letter to the City Clerk.

Vice-Mayor Field said that "several people have written to me and asked me about my position. And I believe I was fairly clear at the last meeting, but I'd just like to, one more time, make it very clear that I did vote for the elimination of billboards in the future, and had we had the opportunity, I would have voted for reversing the grandfathering which I had not voted for when we did that in 1993. However, I worked very hard on the sign ordinance with a lot of folks and we came to a consensus in the community, and I feel strongly that those signs that comply with the latest sign ordinance, which I believe is the 1990 or 1991 sign ordinance, should be allowed to remain. I do not think that it's fair for us to do as much in the community, to bring everybody together to come to some kind of consensus, to say this particular issue is okay and then a couple of years later, change our minds. It has nothing to do with billboards. I don't like billboards. I don't particularly think that Asheville should have billboards, but I do feel strongly that people should be able to depend on government, that we should be consistent and that I should be consistent. The other thing that concerns me is that a seven year amortization period means that the next Council election, if there is a will by the other side of this issue, then there may well be three new council members and a couple years later one more council member and the whole thing is reversed again, throwing the whole community back into turmoil again. I just don't want to do that. So, I am going to continue to vote against the ordinance to eliminate all billboards and amortize all existing billboards. We are talking about 22 billboards that are legal based on our 1990 sign ordinance. I think for 22 signs I don't want to tear this community in half again."

Mayor Martin said that he "feels very similarly to Vice-Mayor Field on this. I don't think this is a situation where we are talking about what you do with a end product, but how you go about it. I would really hate to subject the community, once again, to trouble and strife that we have gone through already. My vote will be against the ordinance once again, but it's not that I like billboards, it's just that I think this is not the right way to do it."

Councilman Worley said that he "voted against the ordinance and I intend to vote against it again today. I agree with what Vice-Mayor Field and Mayor Martin have said. I think in addition to that, I feel that it is inappropriate for someone to construct something, which has been done in a proper manner, to remove that without compensation. I understand that we are allowed to amortize so that they can recoup their investment but I'm not sure altogether that that is true. So I intend to continue to vote against the ordinance."

Councilman Cloninger said that he continues "to believe that eliminating all existing billboards within our jurisdiction is the right thing to do. It's a move that is supported by the overwhelming majority of the citizens of Asheville, I believe. I would just again Mayor, make the point that the divisiveness that's been created in this community in the past has been largely due to the issue of on-premises signs, not billboards."

Mayor Martin said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the second and final reading of Ordinance No. 2427. This motion was seconded by Councilman Sellers and carried on a 4-3 vote, with Councilmen Cloninger, Hay, Sellers and Skalski voting "yes" and Mayor Martin, Vice-Mayor Field and Councilman Worley voting "no".

ORDINANCE BOOK NO. 16 - PAGE 334

V. NEW BUSINESS:

A. RESOLUTION NO. 97-227 - RESOLUTION ENTERING INTO A CONTRACT WITH MIDWEST MAINTENANCE INC. FOR THE CITY BUILDING EXTERIOR RENOVATIONS

Mr. Lyle Willis, Contract Administrator, said that in August, 1997, City staff solicited bids from twelve contractors for the City Building Exterior Renovation. Three sealed bids from single prime contractors were received on October 8, 1997, at 3:00 p.m. based on design plans and specifications by Westcott & Harris Architects. An estimate for construction cost was prepared by Westcott & Harris Architects in the amount of $1,081,022.00. The total time it will take to complete this project will be 300 consecutive calendar days. The City staff agreed that liquidated damages were not needed as an incentive to complete this project.

The bid process resulted in the following three single prime bids:

Midwest Maintenance, Inc.	$ 1,194,892.00
Western Waterproofing Company of America	$ 1,334,090.00
Service One, Inc.	$ 2,147,846.00

City staff has researched references given by the lowest bidder and concluded that they are a competent General Contractors. Sufficient funds are appropriated through the approved financing for this project.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Skalski moved for the adoption of Resolution No. 97-227. This motion was seconded by Councilman Cloninger and carried unanimously.

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B. RESOLUTION NO. 97-228 - RESOLUTION ENTERING INTO A CONTRACT WITH RETENBACH CONSTRUCTOR INC., ABL PLUMBING AND HEATING CORP., AND TRANGLE CONTRACTORS INC. FOR THE RENOVATION OF THE MUNICIPAL BUILDING

RESOLUTION NO. 97-229 - RESOLUTION ENTERING INTO A CONTRACT WITH HAYES AND LUNSFORD ELECTRICAL CONTRACTORS INC. FOR THE RENOVATION OF THE MUNICIPAL BUILDING

Councilman Cloninger said that Hayes and Lunsford Electrical Contractors Inc. is an on-going client of his firm and asked that he be excused from voting on that portion. City Attorney Oast said that City Council could vote on three contracts and then take a separate vote on the electrical contract. Therefore, Councilman Worley moved to excuse Councilman Cloninger from voting on the electrical contract due to a conflict of interest. This motion was seconded by Councilman Sellers and carried unanimously.

Mr. Lyle Willis, Contract Administrator, said that in September, 1997, City staff solicited bids from 41 contractors to renovate the Municipal Building, 21 of which were certified minority contractors. Fifteen sealed bids as both single prime and separate prime contractors were received on November 3, 1997, at 3:00 p.m. based on design plans and specifications by ENG\6A Architects. An estimate for construction cost was prepared by ENG\6A Architects in the amount of $12,520,000.00 including site work and landscaping. The project specifications require the project to be completed with 26 months from the notice to proceed issued to the Contractor and the Contractor will be assessed $500.00 per day everyday thereafter as liquidated damages. The formal bid process resulted in the following separate prime low bidders:

General Separate Prime	
Rentenbach Constructor, Inc.	$ 5,316,500.00
Plumbing Separate Prime	
ABL Plumbing and Heating Corp.	$ 749,495.00
Electrical Separate Prime	
Hayes & Lunsford Electrical Contractors, Inc.	$ 1,150,600.00
Mechanical Separate Prime	
Triangle Contractors, Inc.	$ 1,320,000.00
Total Project Cost:	$ 8,536,595.00

City staff and ENG/6A Architects have researched references given by the apparent lowest bidders and concluded that they are well qualified to compete this project. Sufficient funds are appropriated through the approved financing for this project.

The Parks and Recreation Department requests City Council to direct the City Manager to enter into multiple contracts for $8,536,595 with the listed above contracts.

Upon inquiry of Councilman Hay, Mr. Willis outlined what is done to investigate a contractor, noting that the general prime is the contract expediter.

Councilman Worley was pleased to have award a bid that is $4 million less than the estimate.

At the request of Councilman Cloninger, Mr. Willis explained the track record of Rentenbach Constructor, Inc.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved to adopt Resolution No. 97-228. This motion was seconded by Councilman Sellers and carried unanimously.

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Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Skalski moved for the adoption of Resolution No. 97-229. This motion was seconded by Councilman Hay and carried unanimously (Councilman Cloninger was excused from voting).

RESOLUTION BOOK NO. 24 - PAGE 296

C. **ORDINANCE REGULATING CABLE SERVICE PROVIDERS**

ORDINANCE GRANTING A FRANCHISE TO BRENMOR CABLE PARTNERS, L.P. (D/B/A INTERMEDIA) FOR THE OPERATION AND MAINTENANCE OF A CABLE SYSTEM

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A SETTLEMENT AGREEMENT WITH BRENMOR CABLE PARTNERS, L.P. (d/b/a INTERMEDIA) AND TELE-COMMUNICATIONS INC. (UACC MIDWEST, INC., d/b/a TCI) REGARDING FRANCHISE FEES

ORDINANCE NO. 2440 - BUDGET AMENDMENT, IN THE AMOUNT OF $30,000, FOR CABLE CONSULTANT SERVICES

Summary of ordinance adopting regulations for cable service providers located in the City of Asheville:

The City of Asheville does not now have an ordinance regulating cable service providers. Article 8 of Chapter 160A of the North Carolina General Statutes authorizes North Carolina cities to adopt ordinances in the exercise of police power delegated to them. N. C. Gen. Stat. sec. 160A-319 authorizes North Carolina cities to grant franchises to public enterprises, including, but not limited to, cable television systems. Federal and State law authorize cities to regulate cable service providers in other ways. This ordinance would include provisions regarding the granting of franchises to cable service providers and regulations regarding their use of the public- rights-of-way.

The City Manager and the City Attorney's Office recommend adoption of the ordinance regulating cable service providers.

Summary regarding granting a cable television franchise to Brenmor Cable Partners (d/b/a Intermedia):

At an election held on July 28, 1967, the citizens of the City of Asheville approved, by referendum, the granting of a franchise to Thoms Broadcasting Companies, Inc., for the construction and operation of a community antenna television system in the City of Asheville. The cable television franchise granted to Thoms Broadcasting Companies, Inc., has been transferred to successive franchisees and Brenmor Cable Partners, L.P. (d/b/a InterMedia) is the current franchise holder.

That franchise was granted for thirty five (35) years, which time period would end in the year 2002. Many technological advances have occurred and various regulatory laws have changed since 1967. As part of those technological advances, InterMedia is in the process of completing a rebuild of the cable system within its franchise areas in the City of Asheville and in Buncombe County.

As a result of the rebuild of the cable system, InterMedia requested that the City of Asheville enter into renewal negotiations. Based upon technological and regulatory changes since 1967, the City of Asheville was also interested in negotiating a renewal of the franchise terms and conditions. The City of Asheville and Brenmor have completed negotiations and have agreed to proposed terms and conditions for a franchise renewal to present to the City Council of the City of Asheville for receipt of public comments on the proposed franchise renewal and consideration by the City Council of an ordinance granting the franchise renewal to InterMedia.

The proposed franchise renewal includes, among other provisions, major terms and conditions as follows:

1. The rebuild of the cable system will increase capacity from 350 Megahertz to 550 Megahertz. This capacity will allow up to 80 analog channels, with 57 channels being activated upon

completion of the rebuild, and potentially hundreds more channels as digital technology becomes available.

2. The rebuilt system will use fiber optics which will ensure excellent picture quality.

3. Activation of the upstream capacity of the cable system during the rebuild will enable the cable company to provide Internet access and a wide range of future services to subscribers.

4. Four channels will be dedicated solely for governmental, educational and/or public access programs as designed by the City of Asheville. InterMedia will provide $200,000 for equipment and facilities for the access channels. In addition, InterMedia will provide on-going support for the access channels in the amount of about $36,000 per year, beginning in the eighth year of the franchise term.

5. A-state-of-the-art fiber optic institutional network is included which can provide voice, data and video transmission to multiple public buildings for use by the City of Asheville and Asheville City Board of Education.

6. The franchise term includes the next four years and eight months of the 1967 franchise and a new term of twelve years and four months, for a total of seventeen years.

7. Franchise fees will be paid to the City of Asheville by InterMedia in the amount of 5% of the gross annual revenues from the cable system in Asheville.

8. A requirement is included that InterMedia make state-of-the-art improvements as new technologies become available and are implemented in areas served by InterMedia which are comparable to the cable system in the City of Asheville.

9. Other terms include regulatory oversight, bonds and insurance provisions, transfer approval requirements, revocation procedures, management of the public rights-of-way and customer service standards.

The City Manager and the City Attorney's Office recommend consideration and approval of the ordinance granting the franchise to InterMedia.

City Manager Westbrook introduced Ms. Jean Rice, partner of Rice, Williams & Associates, the firm which provided consulting services in the negotiations of a franchise renewal with Brenmor Cable Partners, L.P. (d/b/a Intermedia).

Ms. Rice gave City Council a brief overview of proposed cable television ordinance and franchise and the highlights of the entire package. She reviewed the changes in the cable television industry and industry factors. She reviewed the renewal process which involved a community needs assessment, request for proposal and renewal proposal. It has taken about 2 years to work through the details of the proposal and their main concern was to keep the subscriber cost low.

She then outlined the major key elements:

(1) Rebuild - 80 channels (550 Mhz); fiber to the feeder design; 1,000 homes per node design; upstream capacity from nodes to be activated at completion of the rebuilt; standards for supervision of construction and cut over plan to minimize disruption; subscriber notification of construction schedule; rebuilt construction completion in one year; stereo signals; service to all residences meeting a density of 20 homes per mile or proportionate distance; back-up power at the headend and at every fiber node; ongoing technical standards; detailed construction standards; emergency alert continuation and upgrade; and a state of the art clause that will keep Asheville current with similar size cities.

(2) Access - three access channels to be provided after rebuild and one for expansion; prior to rebuild, Channel 10 to be made available for access; access equipment - $200,000 for initial equipment; ongoing support and replacement for equipment of 15 cents per month per subscriber starting in year 8 (minimum of $360,000); company to provide free drops to public buildings; and closed circuit programming to be available to non-I-net sites.

(3) Institutional Network - company to install and maintain fiber I-net to 21 city and educational sites; 4 fibers to each location; I-net to support video, voice, and data applications for governmental and educational purposes; capability to add to the network in the future for the cost of construction to any new sites; estimated incremental cost of $380,000; and company to maintain the I-net.

(4) Consumer Practices - 57 active channels after the rebuild; City right to regulate rates retained; FCC standards to be complied with; outage rebate for outages of 6 hours or more; company will respond to repair calls with 24 hours; parental control; and business office in the City.

(5) Term - 5 years of existing term; and 12 years thereafter.

(6) Franchise Fee - 5% of gross revenues; and $150,000 plus over $200,000 over next five years.

(7) Regulatory Provisions - transfer and revocation provisions; insurance and bond requirement; indemnification provision; and City's rights reserved.

Ms. Rice then answered various questions and comments from Council, some of which were the definition of gross revenue, competition by other companies, the difference of between 550 digital and 750 analog; what the contract offers the City; state of the art clause; what is the fiber to feeder design; the uniqueness of the Institutional Network; the reason why the City would want to enter into the franchise agreement with one company for 17 years; would a subscriber have to have a digital television set to get digital channels; the reasoning behind a 17 year franchise agreement; what the $200,000 for initial equipment might consist of; the cost to equip the 21 sites and will the equipment last through the term of the franchise agreement; what the value is to the City with this franchise agreement; what type of increases could be passed onto the subscriber; and how the franchise agreement can be reviewed.

When Ms. Rice was asked about the state of the art clause, she said that it would be maintained equivalent to other Intermedia systems in communities of similar size in the three-state area of the Carolinas and Georgia - not the whole country.

When Ms. Rice was asked what would be the cost to equip the 21 sites with the initial equipment for I-net, her response was inconclusive.

Upon inquiry of Councilman Skalski about what the typical cable rate if increase over the next 10 years would be, Ms. Rice said that it was estimated that it might go up about 105%. That would mean a typical current monthly rate of $30 would increase to about $60. Councilman Skalski stated that he had a real problem with negotiating a 17 year long contract with so many variables and having little control over the rates.

Councilmen Hay and Skalski asked if other cable companies could have been approached for competitive quotes - either now or later. Ms. Rice said that no one else would be interested at this time. Both Ms. Rice and City Manager Westbrook stated that it would be unlikely that any other company would come into the Asheville market within the 17-year life of this proposed contract currently being negotiated with Intermedia. One of the reasons, continued City Manager Westbrook, was that a new company would have to negotiate with Intermedia to purchsae the cable, in the ground, from Intermedia.

City Manager Westbrook said that the I-net did not include the City's elementary schools, only the middle and high school.

When Councilman Hay asked how important was it to the cable company to renegotiate the franchise now, Ms. Rice said to some extent they have started their rebuild and it is somewhat more to our benefit given the franchise fees at this point in time and the I-net construction.

Upon inquiry of Councilman Cloninger, Ms. Rice said that cable digital will not require more transmission towers.

Councilman Skalski felt City Council needed more time within which to review this contract.

Upon inquiry of Mayor Martin, Ms. Rice said that given the market here and what impact you wanted on the rate, which was low, she felt this was a good contract.

Assistant City Attorney Patsy Meldrum read the revised definition of "gross annual revenues" noting that another revision to the ordinance is language on how transfers are to occur.

Ms. Meldrum then reviewed with Council the resolution which would authorize the Mayor to execute a settlement agreement with InterMedia and TCI regarding franchise fees.

The 1967 franchise requires that the franchise holder pay to the City of Asheville 6% of the gross monthly service charges collected annually for providing the radio and television signals over the cable system within the corporate limits of the City of Asheville. Under the 1967 franchise, that payment was deemed to be full compensation for use of the City's property rights, services rendered, supervision and inspection of equipment and facilities.

Concerns had been raised by the City of Asheville regarding whether or not the City had been paid all of the fees due under the 1967 franchise. The City of Asheville, Tele-Communications, Inc. (UACC Midwest, Inc., d/b/a TCI), and the current franchise holder, Brenmor Cable Partners, L.P. (d/b/a InterMedia) have reviewed the language of the 1967 franchise and franchise fee payments made to the City of Asheville during the last few years. As a result of discussions by the parties regarding this issue, the City of Asheville, InterMedia and TCI have reached an agreement to settle any concerns regarding prior payments of franchise fees under the terms of the 1967 franchise.

The agreement would result in a total cash payment to the City of Asheville of $150,000, payable in three installments of $50,000 over the next three years. In addition, the City and InterMedia have negotiated terms and conditions of a franchise renewal which include more specific language regarding the payment of franchise fees from the gross annual revenues of the cable system in the City of Asheville. Those new terms and conditions will result in the City of Asheville receiving approximately $260,000 in additional franchise fees over what would have been the remaining term of the 1967 franchise.

A settlement agreement has been prepared to reflect the understanding of the parties.

The City Manager and the City Attorney's Office recommend approval of the settlement and of the resolution.

When asked how the proposed settlement amount was arrived at, Ms. Meldrum said that it was based on an audit done by the Consultants Rice & Williams. Ms. Meldrum said that the audit only reached back over the past three years.

Ms. Meldrum then summarized the budget ordinance amendment would transfer $30,000 to the account for payment of services to the cable television consultant.

The City of Asheville has previously entered into an agreement with Rice, Williams Associates for the provision of consulting services in the negotiations of a franchise renewal with Brenmor Cable Partners, L.P. (d/b/a InterMedia). In addition, Rice, Williams Associates has furnished other services regarding franchise fee payment review and rate review for the cable television franchise with InterMedia.

Due to the length of the negotiation process with InterMedia for the franchise renewal and other review matters which are ongoing, additional funds are needed to pay for those services. This budget ordinance amendment would authorize an increase of $30,000 for the budget for these services during the next several months.

Staff recommends adoption of the budget ordinance amendment.

Upon inquiry of Councilman Hay about the urgency of adopting these items, Ms. Meldrum said that the reason is that it has taken a couple of years to get to this point. Basically this process started with this City Council two years ago. During those two years Council has been kept informed of the different steps which started with the community needs assessment, compliance audit, the audit of the franchise fees, putting together the request for proposal, and their response. All through that two year process Council has been tracking the progress. Staff is trying not to lose the memory bank process that might occur and that is the reason why the timing is so important.

Councilman Hay asked if it would be any harm to the negotiating process if Council needed a couple more months to educate the new Council members about this issue. Ms. Meldrum said there could be some impact on that because things change over time, like a change in their corporate structure or changes in technology. She felt that was difficult to forecast.

At 7:35 p.m., Vice-Mayor Field asked to be excused for a prior commitment regarding her job. Therefore, Councilman Hay moved to excuse Vice-Mayor Field. This motion was seconded by Councilman Cloninger and carried unanimously.

Councilman Cloninger felt that City Council needed to postpone voting on these matters until they have had ample opportunity to review the documents which City Council has recently received. He complimented Mr. Haight, staff and the consultant for the hard work and time that they put into the documents. He felt that if this is a good agreement then it will stand the test of public scrutiny and if the agreement needs improvement then that public scrutiny will help Council improve it.

Councilman Skalski agreed that these matters should be postponed until Council, as well as the public, has had an opportunity to review the documents. He further stated that he had only received the draft of the proposed franchise agreement 2-1/2 days ago, late Saturday morning. He said that he had a great many questions himself and from the public which he could not answer. One week was not enough time to negotiate a contract this large. The new Council would take office in one week and he could see no reason why the new Council couldn't continue on with this matter, noting that surely it would be at least $200 million over 17 years.

Councilman Worley stated pros and cons relative to continuing these matters. He noted this Council has been very involved with the negotiations over the past two years. He offered a proposal to go forward and vote on these matters today recognizing that it is not the final vote. The final vote will be taken in one weeks and if Council's questions and concerns are not answered within the week, then Council can postpone action at that time. If the questions and concerns are answered, Council can then take a final vote.

Councilman Cloninger felt City Council should have an opportunity to discuss these matters at a worksession along with a public hearing at a regular Council meeting. Therefore, Councilman Cloninger moved to table these matters until such time as the new Council members take office and discuss scheduling dates. This motion was seconded by Councilman Skalski and failed on a 3-3 vote, with Councilmen Cloninger, Hay and Skalski voting "yes" and Mayor Martin and Councilmen Sellers and Worley voting "no".

Mr. Joe Haight, General Manager of Intermedia, spoke at length about the system they are installing along with the benefits to both the cable company and the City if they enter this franchise agreement. He then outlined some statistics regarding the cable system.

At 8:00 a.m., Mayor Martin announced a 10 minute break.

Upon inquiry of Councilman Hay, Mr. Haight said that if Council postponed action on these matters for a couple of months, it would change his schedule. He would have to know that there was a contract in place before he could proceed. He noted they proceeded in a good faith. He hoped that if the agreement was not signed, that his company would go forward with the rebuild, but it would probably not have some of the benefits to the City.

Mr. Haight then responded to several questions and comments from Council and the public. He defended his company's decision to limit the system band width to 550 Mhz rather than the 750 Mhz being built by many other cable systems around the country. He acknowledged that the additional 200 Mhz in other systems is reserved for advanced digital services. He said that Intermedia's proposed system for Asheville would concentrate on delivering conventional alalog TV programming only. He said, repeatedly, that the 550 Mhz system could employ digital compression to squeeze more channels out of the 550 band width. He said that the cost of going digital over the I-net would be born by the City.

When Councilman Skalski inquired as to what the current yearly gross sales were, Mr. Haight responded that in the Asheville market, Intermedia currently has 31,000 subscribers, with an average monthly bill of $31. Mr. Haight said that Intermedia's gross revenues for 1997 would be approximately $7.8 million.

Mr. Chris Peterson spoke in opposition of the franchise agreement and expressed why he felt the agreement was not a good deal for the City of Asheville.

Mr. Wally Bowen asked, and Mr. Haight responded, to several questions relative to the franchise agreement. Mr. Bowen urged Council not to vote on these matters until more public input could be obtained. He felt this is a very complex issue and it requires time to study. He also felt the longer Council waits to review the agreement, the stronger the City's position is for possible other competitors to come in.

Mr. Charlie Patton, subscriber, felt that City Council should depend on City staff and the consultants who are technically informed. He thought Council should vote on the matter.

Mr. Mark Rosenstein, volunteer of Mountain Area Network, suggested City Council delay any decision on this matter that will affect the community for more than the 17 years of the franchise agreement. He felt the public has not had an opportunity to review the agreement and comment accordingly.

Mr. Steve Curtis, Contractor for the current cable operator and other cable operators in Western North Carolina, urged City Council to proceed with voting on these matters so the City won't be left behind and not get some of the benefits of the franchise agreement.

Mayor Martin said that the City has a professional staff and a qualified consultant hired to negotiate these documents. If they feel the contract is the best contract the City can obtain, then he felt we should listen to them.

Councilman Sellers said that he would have to rely on staff's recommendation on this complex contract.

Mr. Phil Davis urged City Council not to vote on these matters tonight.

Mayor Martin said that members of Council have been previously furnished with a copy of the ordinance regulating cable service providers and it would not be read.

Councilman Worley moved to adopt the ordinance regulating cable service providers. This motion was seconded by Councilman Sellers and failed on a 3-3 vote, with Mayor Martin and Councilmen Sellers and Worley voting "yes" and Councilmen Cloninger, Hay and Skalski voting "no".

City Attorney Oast informed City Council that since the ordinance failed, proceeding with the ordinance granting a franchise and the resolution authorizing the Mayor to execute a settlement agreement would not be necessary.

Councilman Hay suggested that the first order of business when the new Council takes office should be this matter.

Mayor Martin said that members of Council have been previously furnished with a copy of the budget amendment ordinance for the cable consultant services and it would not be read.

Councilman Hay then moved to adopt Ordinance No. 2440. This motion was seconded by Councilman Skalski and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 373

D. RESOLUTION NO. 97-230 - RESOLUTION APPOINTING A MEMBER TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Summary: The term of Osborne Hart expired on November 13, 1997. This resolution will appoint Charles R. Worley to serve a three year term, term to expire November 13, 2000, or until his successor is appointed.

Mr. Everett Parrish voiced opposition to the appointment of Councilman Worley to the ABC Board because of the appearance of impropriety arising out of his membership in a club which met on City property in which alcohol reportedly was consumed. He also felt that the stipend and per diem for meetings may be looked upon as a reward for past civil service duties.

At the request of Councilman Worley, Councilman Sellers moved to excuse Councilman Worley from voting due to a question regarding his official conduct. This motion was seconded by Councilman Hay and carried on a 5-1 vote, with Councilman Skalski voting "no".

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Sellers moved for the adoption of Resolution No. 97-230. This motion was seconded by Councilman Hay and carried on a 5-1 vote, with Councilman Skalski voting "no".

City Clerk Burleson informed City Council that a new Chair for the ABC Board would need to be appointed.

Councilman Cloninger moved to appoint Ralph Morris as Chair of the ABC Board. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 297

E. RESOLUTION NO. 97-231 - RESOLUTION REAPPOINTING ALTERNATE MEMBERS TO THE BOARD OF ADJUSTMENT

Summary: The terms of Rose Rose and Allen Roderick as alternates on the Board of Adjustment expire on January 21, 1998. This resolution will reappoint Mrs. Rose and Mr. Roderick to each serve a three year term as Alternates to the Board of Adjustment. Their terms will expire January 21, 2001, or until their successors have been appointed and qualified.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Skalski moved for the adoption of Resolution No. 97-231. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 298

F. RESOLUTION NO. 97-232 - RESOLUTION CONFIRMING CAROL KING AS THE ASHEVILLE DOWNTOWN COMMISSION REPRESENTATIVE ON THE CITY BUSINESS AND DEVELOPMENT COMMISSION

Summary: Ord. 2309 established the City Business and Development Commission. Said ordinance authorized various agencies to appoint members to the Commission.

The term of Scott Jarvis, the Asheville Downtown Commission representative, has expired and the Downtown Commission has requested that Ms. Carol King be appointed as their representative for a three year term. Her term will expire on October 1, 2000, or until her successor is appointed.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 97-232. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 299

G. RESOLUTION NO. 97-233 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Summary: The term of Leslie Daugherty expires on December 31, 1997.

Councilman Cloninger moved to (1) appoint Martha Fawbush to the Community Relations Council to serve a three year term, term to expire December 31, 2000, or until her successor is appointed; and (2) to forward to the Community Relations Council the applications of Mr. Robert Campbell and Mr. William Bailey who they felt were also exceptionally well qualified. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 300

H. RESOLUTION NO. 97-234 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE DOWNTOWN COMMISSION

Summary: The terms of Alan Levy, Carol King, Beth Lazer and Tim Fierle expire on December 31, 1997. This resolution will appoint Karen Tessier and reappoint Carol King, Beth Lazer and Tim Fierle to each serve a three year term. All terms will expire on December 31, 2000, or until their successors are appointed.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 97-234. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 301

I. RESOLUTION NO. 97-235 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Summary: The term of Mitch McEntire, as a member of the Firemen's Relief Fund Board of Trustees expires on January , 1998. This resolution will appoint William L. Schaefer Jr. to serve a two year term, term to expire January 1, 2000, or until their successor has been appointed and qualified.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 97-235. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 302

J. RESOLUTION NO. 97-236 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD

Summary: The term of Ben Slosman expires on January 19, 1998. This resolution will appoint Barbara Field to serve a three year term. Her term will begin on January 20, 1998, and expire on January 19, 2001, or until her successor is appointed.

Councilman Skalski felt it was not a good idea for a citizen board to have a City Council member on it.

Mr. Everett Parrish voiced opposition to the appointment of Vice-Mayor Field to the MSD Board because he felt that due to her employment with an architectural firm, there was an implied conflict of interest.

City Attorney Oast said that Vice-Mayor Field would be subject to the same conflict of interest rules on the MSD Board that she is subject to on City Council.

Councilman Hay said he spoke with Vice-Mayor Field concerning Mr. Parrish's concern. He said Vice-Mayor Field is simply not involved in projects at her architectural firm at the stage when infrastructure is being considered, in particular where her vote on the MSD Board would have any connection with any job they may later receive in the future. If her firm does eventually work on projects, that work would come long after the infrastructure decisions have been made.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 97-236. This motion was seconded by Councilman Sellers and carried on a 5-1 vote with Councilman Skalski voting "no".

RESOLUTION BOOK NO. 24 - PAGE 303

K. RESOLUTION NO. 97-237 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE TRANSIT AUTHORITY

Summary: The terms of Ron Lambe, Althea Goode and David Fort expire on December 31, 1997.

Councilman Cloninger moved to (1) reappoint Ron Lambe and Althea Goode to each serve a four year term, terms to expire December 31, 2001, or until their successors have been appointed; and (2) to appoint Willie McDaniel to serve a four year term. His term will also expire on December 31, 2001, or until his successor has been appointed. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 304

L. RESOLUTION NO. 97-238 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE TREE/GREENWAY COMMISSION

Summary: The term of Leni Sitnick, as a member of the Asheville Tree/Greenway Commission, expired on August 1, 1997, and Joey Moore has resigned leaving an unexpired term. This resolution will appoint Dr. Peter Gentling to serve a three year term, term to expire July 1, 2000, or until his successor has been appointed. This resolution will also appoint Mr. Jerry Bailey to serve the unexpired term of Mr. Moore, term to expire July 1, 1999, or until his successor has been appointed.

City Council will also need to appoint, at the request of the Asheville Tree/Greenway Commission, the non-voting ex-officio members. Those members are: a representative from the N.C. Arboretum, a representative from the N.C. Agricultural Extension Service, a representative of BellSouth, and Dr. Lowell Orbison, 60 Brookwood Road, Asheville, N.C.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 97-238. This motion was seconded by Councilman Skalski and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 305

M. RESOLUTION NO. 97-239 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF DIRECTORS OF VICTORIA OF ASHEVILLE INC.

Summary: The terms of William L. Schaefer, S. Douglas Spell and Robert G. Wurst, as members of the Board of Directors of Victoria of Asheville Inc., expire on November 29, 1997. This resolution will reappoint Mr. Schaefer and Mr. Spell to each serve a three year term, terms to expire on November 29, 2000, or until their successors have been appointed.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 97-239. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 306

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 11, 1997, AND THE WORKSESSION HELD ON NOVEMBER 19, 1997

Councilman Worley moved for adoption of the minutes of the regular meeting held on November 11, 1997, and the worksession held on November 19, 1997. This motion was seconded by Councilman Skalski and carried unanimously.

B. ORGANIZATION MEETING OF CITY COUNCIL

City Manager Westbrook said that at the recent organization meeting of the Mayor-Elect and two Councilmembers-Elect, it was suggested that the organization meeting be held at 4:00 p.m. on December 2, 1997, in the Public Works Facility at 161 South Charlotte Street. He noted that the Civic Center Banquet Room was not available.

It was the consensus of City Council that the organization meeting be held at 4:00 p.m. on Tuesday, December 2, 1997, in the Council Chamber of the City Hall Building due to the historical nature of the Council Chamber.

Because the cable television issue will not require a second vote on Tuesday, December 2, City Manager Westbrook suggested Council cancel their 3:00 p.m. meeting time on that date. Therefore, Councilman Skalski moved to reschedule the beginning of their December 2, 1997, meeting from 3:00 p.m. until 4:00 p.m. in the Council Chamber on the Second Floor of the City Hall Building. This motion was seconded by Councilman Worley and carried unanimously.

C. REQUEST OF BRIAN FELDSTEIN

After hearing a complaint from Mr. Brian Feldstein, Mayor Martin suggested Mr. Feldstein meet with the City Manager to see if his concerns could be addressed.

D. REQUEST OF WILLIAM IRBY

After hearing a concern of Mr. William Irby about parking in an alley, City Attorney Oast said that he would need to investigate whether the alley in question is a public or private alley. He said that he would investigate the matter and contact Mr. Irby with his findings.

E. CLAIMS

The following claims were received by the City of Asheville during the week of October 31 - November 13, 1997: Gwendolyn Thrasher (Streets), Betty Allen (Water), Bob Scroggs (Water) and Dan Pisano (Water).

The following claims have been received by the City of Asheville during the week of November 14-20, 1997: Julia Curry (Water), Karen Kalka (Civic Center) and Joe Eckert (Inspections).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 9:56 p.m.

Magdalen Burleson
CITY CLERK

Ami Sitnick
MAYOR

Tuesday - December 2, 1997 - 4:00 p.m.

ORGANIZATIONAL SESSION:

Mayor-elect Leni Sitnick welcomed everyone to the organizational session and introduced Dr. Buddy Corbin, Calvary Baptist Church; Rabbi Shmuel Birnham, Beth Israel Synagogue; and Dr. John Grant, Mt. Zion Missionary Baptist Church, each who gave the invocation.

The Honorable Ronald K. Payne, Buncombe County Superior Court Judge, administered the Oath of Office to the following:

Mayor Leni Sitnick
Councilman M. Charles Cloninger
Councilman H. Earl Cobb
Councilwoman Barbara Field
Councilman Edward C. Hay Jr.
Councilman Thomas G. Sellers
Councilman O.T. Tomes

RESOLUTION NO. 97-240 - RESOLUTION OF APPRECIATION FOR MAYOR RUSSELL M. MARTIN

Mayor Sitnick read the resolution.

Resolution No. 97-240 was adopted by acclamation.

Mayor Sitnick presented Mr. Martin with the resolution, a plaque, his name plate and a City pen.

RESOLUTION BOOK NO. 24 - PAGE 307

RESOLUTION NO. 97-241 - RESOLUTION OF APPRECIATION FOR COUNCILMAN JAMES J. SKALSKI

Councilman Cloninger read the resolution.

Resolution No. 97-241 was adopted by acclamation.

Councilman Cloninger presented Mr. Skalski with the resolution, a plaque, his name plate and a City pen.

RESOLUTION BOOK NO. 24 - PAGE 308

RESOLUTION NO. 97-242 - RESOLUTION OF APPRECIATION FOR COUNCILMAN CHARLES R. WORLEY

Councilwoman Field read the resolution.

Resolution No. 97-242 was adopted by acclamation.

Councilwoman Field presented Mr. Worley with the resolution, a plaque, his name plate and a City pen.

RESOLUTION BOOK NO. 24 - PAGE 309

Mayor Sitnick recognized Dr. Wayne Montgomery, Mr. Richard Wood, Mr. Eugene C. Ochsenreiter Jr. , Mr. Larry McDevitt, Mr. W. Louis Bissette and Mr. Kenneth M. Michalove, all former Mayors of Asheville.

Mr. George Breece then read the following letter to Mayor Sitnick: "Congratulations on your election as Mayor of Asheville. You have earned the trust of the people of your community and you deserve to be proud of this tremendous achievement. I look forward to working with you as we seek to improve our country. Hillary and I send our best for a very successful term. Sincerely, Bill Clinton." President Clinton also sent Mayor Sitnick the Presidential Pin which Mr. Breece presented to her in memory of her mother.

ELECTION OF VICE-MAYOR

Councilwoman Field nominated Councilman Hay as Vice-Mayor of the City of Asheville.

There being no further nominations, Councilwoman Field moved to elect Councilman Hay as Vice-Mayor. This motion was seconded by Councilman Cloninger and carried unanimously.

Mayor Sitnick announced that a recess would be held for approximately 20 minutes.

REGULAR MEETING:

INVOCATION

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

III. PUBLIC HEARINGS:

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. MOTION SETTING A PUBLIC HEARING ON DECEMBER 16, 1997, RELATIVE TO THE TRANSIT OPERATING ASSISTANCE GRANT APPLICATION

Councilman Cloninger moved to set a public hearing for December 16, 1997, relative to the transit operating assistance grant application. This motion was seconded by Councilwoman Field and carried unanimously.

B. RESOLUTION NO. 97-243 - RESOLUTION FIXING DATE OF PUBLIC HEARING FOR DECEMBER 16, 1997, ON THE QUESTION OF ANNEXATION OF PROPERTY KNOWN AS SECTION 10 OF BILTMORE PARK

Mr. Paul Benson, Urban Planner, said that Biltmore Farms, Inc. has submitted an annexation petition for a 3.9 acre area identified as Biltmore Park, Section 10. This is the tenth annexation petitioned by Biltmore Farms Inc. for property located west of Overlook Road. This area is contiguous to the existing corporate limits, specifically to Biltmore Park, Section 5.

Upon inquiry of Councilman Tomes, Mr. Benson explained that a voluntary annexation is when the property owner has come to the City and has requested annexation.

Vice-Mayor Hay further explained that as sections in Biltmore Park are developed, they are petitioning for annexation. He noted this is the 10th time they have petitioned for annexation.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Mr. Ralph Bishop asked that Mayor Sitnick investigate the possibility of having resolutions and ordinances read at the meetings so that people who attend the meetings know what is taking place.

Mayor Sitnick said that she would be happy to discuss the request with the entire Council.

Councilman Tomes moved for the adoption of Resolution No. 97-243. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 310

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON NOVEMBER 25, 1997

Because former Councilman James Skalski submitted proposed amendments to the November 25, 1997, minutes, it was the consensus of Council to delay approving or amending those minutes until Council has had an opportunity to review the proposed amendments. Mayor Sitnick said that this item would be postponed until the December 16, 1997, meeting.

B. COMMENTS BY MR. RALPH BISHOP

Mr. Ralph Bishop asked for a statement in writing by a "court order" or a "judicial opinion" that (1) they have abolished G.S. 160A-72; (2) specifically stating that G.S. 160A-72 is unconstitutional; and (3) Asheville does not have to keep full and accurate minutes of Council proceedings.

Mayor Sitnick said that she has talked with some "lawmakers" in Raleigh, in addition to some staff at the Institute of Government, and the law says that you must keep accurate minutes on what is done, but not necessarily what is said. Audio and video tapes of our Council meetings are available.

City Attorney Oast said that the Asheville City Council does keep full and accurate minutes within the meaning of the law. Asheville does abide by Robert's Rules of Order and the Supreme Court cited Robert's Rules of Order with approval and that provides specifically that the minutes are a record of what is done and not what is said.

Mayor Sitnick offered to meet with Mr. Bishop, discuss his concerns and see what can be done to satisfy those concerns.

Mr. Daniel Breen suggested the City investigate some computer software that will transcribe tapes verbatim.

C. COMMENTS BY MR. JOHN REDMOND

Mr. John Redmond asked City Council to investigate concerns that the City of Asheville is trying to remove Mr. Jones, owner of Jolly Cab Company, from his property inappropriately.

City Attorney Oast said that the City of Asheville has an on-going civil action against the property which is occupied by Mr. Jones. This is a nuisance abatement action and he is not at liberty to comment on it any more at this time. He said that he would be happy to brief Council on this matter in an appropriate manner and at an appropriate time.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:25 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - December 9, 1997 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman H. Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT AGENDA:

Agreement with N.C. Dept. of Transportation for Improvements at NC 151/Pisgah Highway from Fowler Mountain Road to US 19-23-74

This item was removed from the Consent Agenda.

Agreement with N.C. Dept. of Transportation for Improvements at US 74 from I-40 Interchange to SR 2775 which includes Mine Hole Gap

This item was removed from the Consent Agenda.

Establishing Price for Certain City-owned Parcels of Real Property

Summary: The consideration of establishing minimum prices for certain parcels of surplus real property that have been recommended for sale by the Planning & Development Department.

At the request of Councilwoman Field, Mr. Ed Vess, Field Services Coordinator, said that he would update the tax values to make sure that they were the present tax values and not the tax values from the re-evaluation done four years ago.

Mr. Vess explained that the contract with the Realtor was authorized in 1995, noting that other Realtors could work through that Realtor.

Prescription Drug Card Company Administrator

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with Smith Premier Drug Company to administer the Employee Benefit Drug Card.

Budget Amendment re: State Controlled Substance Excise Tax

Summary: The consideration of a request that $30,000 of the State Controlled Substance Excise Tax funds be appropriated to enhance law enforcement activities in fiscal 1997/98.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

AUDIT REPORT

Finance Director Bill Schaefer said that as required by N. C. General Statute 159-34, outside auditors Crisp Hughes Evans LLP of Asheville, North Carolina, performed an audit of the

City of Asheville for the fiscal year ended June 30, 1997. They gave the City a "clean" audit opinion.

Mr. Ed Cody, Engagement Partner, highlighted information about the audit, the audit process and their results.

City Council discussed briefly the City's fund balance and the deficit of the Civic Center.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BUDGET AMENDMENT RE: WATER RESOURCES DEPARTMENT

Assistant City Manager S. Douglas Spell, said that this is consideration of adjusting budget expenditures in order to more accurately match projected revenues for the FY 1998 Water Resources Department budget.

Within the last several weeks it has come to staff's attention of a need to make an adjustment to the FY 1998 Water Resources Department's budget. City staff continually monitors the budget to ensure that revenues and expenditures fall within an acceptable range during the budget year. Based on that review, staff recommended several adjustments to the expenditure side of the budget. These recommendations were presented to the Water Authority at their meeting on November 18, 1997. The Water Authority approved staff's recommendation.

As background, during the preparation of the FY 1998 budget, revenues for utility charges were projected to be $18,253,660.00. The actual utility charges in FY 1996 were $15,510,505.00 and for FY 1997 $15,987,651.00. As a result of the review process, staff forecasts revenues in the current fiscal year to be $16,307,404.00. Staff therefore recommends reducing the revenue budget to meet the forecast above.

A significant portion of the overstated revenue is as a result of a billing adjustment error that occurred during the prior year when the new billing software system was brought on-line. The old system and new system were run in parallel for approximately 30 days when the old system went down and the new system had to be operated alone. The amount of the adjustment error used in the projections for utility charges was in the amount of $783,484.00. This amount projected across the full year resulted in approximately a $2.2 million over-projection of total revenue for FY 1997/1998.

Another item that affects the budget is the requirement as a part of the bond covenants to have 120% of the debt service. The additional 20% "cushion" amounts to the need for an additional $426,400.00.

Finally, an error in the computation estimated for the cost allocation plan resulted in a shortfall of funds. This error resulted in an amount of $229,000.00.

In order to meet the revised forecast revenue projections, the expenditure side of the budget would also need to be adjusted. The net budget adjustments consist of approximately $2.2 million. Over the past month, City staff have begun a review of the monthly reports and yearly trends compared to first quarter data. These trends and forecasts are consistent with the most recent revenue projections provided by the City Finance Department. Staff met with Division Heads in the Water Resource Department to outline the budget adjustments necessary and solicit their comments, support and suggestions.

As a result of those meetings and detailed analysis by Water Resource Department staff, the following strategies were utilized in order to identify budget adjustments:

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- The filling of vacant positions was postponed with the exception of one meter reader position which was critical to on-going needs in this Division;

- The purchase of new capital equipment was delayed except for several pieces of equipment which were necessary due to safety concerns including backhoe trailers and portable lights;

- Various other line items were reduced based upon historical expenditure in the line item accounts;

- Capital Projects were analyzed in order to determine if any projects could be delayed until future years.

In moving forward with this strategy, it was our goal to not adversely affect any service programs and continue the high level of service the City is committed to providing. Several other line items which have not been reduced were identified and discussed with Division Heads as being essential that we not exceed the budgeted funds. Examples of these pertain to overtime and materials line items. Additionally, the Department has begun to examine various reengineering areas within the Department to provide increased productivity and try to reduce costs by trying to "work smarter".

City staff also looked at a couple of industrial water accounts which have announced closings. Even though these two accounts would have no significant impact on the current year's revenues, staff reviewed these to determine future impact. In discussions with officials at Gerber, it is my understanding that they plan to close their production facility on April 3, 1998. Currently, the City receives approximately $400,000.00 per year in water revenues from the water use by Gerber. Therefore, the impact for FY 1998 is projected to be approximately $100,000.00 for the three months they are expected to be closed during this budget year. The other industry which has a lesser impact is National Linen. It is my understanding that this facility closed on November 1, 1997. However, the water usage from this facility is approximately $48,000.00 per year. Therefore, the revenue impact for FY 1998 is projected to be $32,000.00. Staff will take these into consideration as a part of the revenue projections for next year.

The Regional Water Authority has reviewed and approved these budget adjustments. Upon approval of the necessary budget adjustments, the budget will also require approval by Buncombe County consistent with the agreement dated November 11, 1995.

Mr. Spell answered various questions from Council regarding postponement of filling vacant positions to line item reviews.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

DISPOSITION OF REAL PROPERTY POLICY

Mr. Ed Vess, Field Services Coordinator, said that this is consideration of adopting a Real Property Disposition Policy which has been developed to govern the sale of City-owned real property.

The purpose of the Real Property Disposition Policy is to provide a clear and consistent process for the disposition of City-owned real estate which complies with applicable federal and state regulations; is understandable, accessible and fair to the general public; and maximizes the return to the City considering both monetary and public benefit.

The objective is to assign responsibility within the City for coordinating the disposition of real property, and to establish requirements for determining the availability of real property for disposition; procedures for carrying out the disposition of real property; and, conditions for participation by real estate brokers in the sale of City-owned real property.

Under the proposed policy the Director of Planning & Development will be responsible for maintaining an inventory of City-owned property and coordinating the sale of same.

Approval of the resolution will establish the policy for disposition of City-owned real property.

Councilman Hay felt it was good to have this written policy in place so the public will know exactly what they need to do if they are interested in purchasing some City property.

Upon inquiry of Councilman Tomes, Mr. Vess said that the City never has had a written policy regarding the disposition of City property but has followed State law.

Councilman Tomes felt that since the City never had a policy in the past, he felt he needed additional information on why a policy was needed now. Mr. Vess responded that staff has been working on this policy for a long time and even though the written policy is not critical, it will make a structured and predictable procedure. With a written policy there will be no confusion as to how this process is supposed to work.

Councilwoman Field inquired about the possibility of a staff person becoming a real estate broker so the City wouldn't have to pay a broker's commission. Mr. Vess responded that he was a broker and has handled a number of sales for the City. He did specifically point out the provision in the policy stating the circumstances that a commission would not be paid to a broker.

City Attorney Oast clarified the statement which read "The City Council reserves the right to reject any and all bids and to waive any irregularities in the bidding process."

Mr. Vess responded to questions from Councilman Cobb relative to lots being available for affordable housing and where does the money go from the sale of the property.

Mayor Sitnick wanted staff to make sure that all City property is being used to the highest benefit.

Mayor Sitnick suggested developing an inventory of developable and non-developable properties. With non-developable properties, the City might consider donating some larger parcels for neighborhood parks and smaller parcels to possibly Magic Community Gardens. This way the property is off our maintenance rolls and helping the community.

Mayor Sitnick said that when the City develops an affordable housing policy, the issue of lots for affordable housing and other of issues can be addressed.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

VOLUNTARY ANNEXATION OF SECTION 10 OF BILTMORE PARK

Mr. Paul Benson, Urban Planner, explained to Council that North Carolina law permits cities to annex property if annexation is requested in writing by 100% of the property owners of the property to be annexed. However, these annexations are limited to property within three miles of the existing corporate limits and no closer to another city. If they meet these conditions they may be contiguous to the existing city limits or satellite areas. Typically, annexations are petitioned for 1 of 2 reasons: 1) to extend city services, especially water and sewer, or 2) to permit a restaurant or nightclub to serve alcoholic beverages that are permitted in the city but not in the surrounding county.

In the case of Biltmore Park, the owner, Biltmore Farms Inc. and the City of Asheville entered into an agreement by which the city would pay up to $185,000 in partnership with Buncombe County and Biltmore Farms Inc. to extend a sanitary sewer line along Long Shoals Road from Estes Elementary School to the French Broad River. In return, Biltmore Farms Inc. has agreed to petition for annexation of their property, within 6 months of development.

Including the pending petition, Biltmore Farms has petitioned 10 sections of the residential development, located west of Overlook Road and north of Long Shoals Road, called Biltmore Park. Together, these annexations include 176 acres subdivided into 233 lots. With an estimated contribution to the city tax base of $250,000.00 per lot when developed these annexations have increased the tax base by approximately $58,250,000. This tax base yields over $300,000 per year in property tax to the city at current tax rates.

All improvements such as internal utilities, street and sidewalk construction, street signs and lighting are made by the developer. The city is responsible for normal city maintenance services upon the effective date of annexation.

The Section 10 annexation consists of a single lot of 3.9 acres located north of Holt Lane and contiguous with Section 5, which was annexed on August 21, 1995. A public hearing on this annexation was set by City Council resolution for December 16, 1997. The applicant has requested a six month delay of the effective date to June 16, 1998.

Mr. Benson responded to questions from Councilman Cobb relative to City's standards regarding street construction, the projected final size of the development and if the developer is setting property aside for parks,

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

1997 BELE CHERE REPORT

Mr. Irby Brinson, Parks & Recreation Director, introduced Ms. Joyce Harrison, the 1998 Bele Chere Chair. He then presented the 1997 report of Bele Chere which includes a financial statement and status of Bele Chere Strategic Plan.

In January, 1997, City Council approved the Bele Chere Strategic Plan for the next five years. A part of that plan included an annual report to City Council each year after the festival was completed. He then reviewed an update of the Strategic Plan and a financial statement for the 1997 festival. The financial statement shows that Bele Chere made a total of $64,941. This is due largely to an overall increase in sponsorships of approximately $30,000 from 1996 and better accountability for the sale of beverages. The profit made from Bele Chere will go into the festival fund and will be used to enhance Bele Chere as well as other festivals and special events produced by the department, therefore reducing the City's taxpayers' support of these events. The highlights from the Strategic Plan include a reduction in the number of arrests made in this year's festival compared to 1996. Arrests were down approximately 60%. In addition, a proactive dialogue was established with downtown merchants to discuss on-going issues regarding the festival. This has resulted in better communication and trust by both groups. The Bele Chere Festival could not possibly be produced at its current level of quality without the continued support of all City departments. Without their commitment to this festival, the behind-the-scenes functions of this event would not be possible.

The Parks and Recreation Department recommends City Council's endorsement of the annual report for Bele Chere.

Discussion surrounded whether the City should accept contributions or sponsorship from Harrah's Casino in Cherokee, N.C., for the 1998 Bele Chere Festival, noting that they were a $9,000 sponsor last year.

Councilman Sellers felt that the City should not accept sponsorship from Harrah's Casino in that the City is trying to make Bele Chere more family oriented by trying to phase out alcohol and felt it was not appropriate to accept contributions from a gambling casino. Councilman Cloninger agreed.

Councilwoman Field had a different point of view. She felt that the City should take advantage of whatever sponsorships they could. She did not feel that Asheville would be bringing gambling into the festival, noting that they did support three events last year and she didn't see any gambling at that festival.

Mayor Sitnick agreed that gambling does not go hand-in-hand with family festivals and felt that the City could generate money in other places.

Mr. Brinson responded to questions from Councilman Cobb about the budget figures for the City's involvement with the festival and whether the festival is still manageable.

At the request of Councilman Sellers, City Attorney Oast said that he would prepare a resolution for Council's consideration next week directing the Bele Chere Board not to accept contributions or sponsorship from businesses that promote gambling.

Councilwoman Field suggested remaining silent on this issue and just not accept the contribution. Councilman Cobb agreed with Councilwoman Field.

Mr. Brinson felt that he preferred some specific direction for not only this issue, but other sponsorship issues in the future.

Mayor Sitnick suggested the City Attorney draft a resolution to be discussed at the next formal City Council meeting.

RETREAT

It was the consensus of City Council to hold the City Council/staff retreat on either the weekend of January 9 or January 30, 1998, depending on the availability of Highland Lake or Freedom Retreat.

City Manager Westbrook said that he would meet with the Council Retreat Committee on a draft agenda for the retreat.

Mayor Sitnick suggested a procedure whereby each Council member would create a list prior to the retreat that incorporates all of the issues that they would like to bring to fruition or any new thoughts or concerns that were brought up during the campaign. City Manager Westbrook said that the Committee would work on that procedure.

City Manager Westbrook was given direction from City Council as to what they would like the role of departments to play in the retreat.

RESCHEDULING JANUARY 6, 1998, WORKSESSION

Due to the number of City Council members involved in the newly elected officials school offered by the Institute of Government, Councilwoman Field moved to reschedule the Tuesday, January 6, 1998, worksession to Monday, January 5, 1998. The worksession would begin at 3:00 p.m. in the First Floor North Conference Room in the City Hall Building. This motion was seconded by Councilman Sellers and carried unanimously.

At 5:00 p.m., Mayor Sitnick announced a five minute break.

CITY COUNCIL BOARD/COMMISSION LIAISONS

Mayor Sitnick reviewed the City Council Board/Commission liaison and members list and where appropriate, with the concurrence of the entire Council, assigned Council members. For those appointments requiring Council approval, they will be scheduled at the next formal City Council meeting.

ABC Board	Earl Cobb - Liaison
ADA Compliance Committee	Earl Cobb - Member
Air Pollution Control	Chuck Cloninger - Liaison
Airport Authority	Edward Hay - Liaison
Arts Alliance	Barbara Field - Liaison
Asheville Downtown Commission	Barbara Field - Member Chuck Cloninger - Member
Asheville Regional Housing Consortium	Barbara Field - Chairman
Asheville School Board	Edward Hay - Liaison O.T. Tomes - Liaison
Bele Chere "Where We Go In The Future	Tommy Sellers - Liaison
Boards & Commissions	Edward Hay - Chairman Barbara Field Tommy Sellers
Board of Adjustment	Earl Cobb - Liaison

Buncombe County Drug Commission	O.T. Tomes - Liaison
Carriage Permit Advisory	No liaison
Charlotte Street Small Area Plan	Tommy Sellers
Citizens/Police	Tommy Sellers - (non-voting Member)
City Business & Development	Barbara Field - Member till 10/1/98 Vacancy - Member till 10/1/99
Civic Center Commission	Edward Hay - Liaison
Civic Center Future Task Force	Edward Hay, Chair Tommy Sellers Charles Worley
Civil Service Board	O.T. Tomes - Liaison
Community Relations Council	Edward Hay - Liaison
County Environmental Affairs	Barbara Field - Member (County appoints)
County Solid Waste Committee	Barbara Field - Member (County appoints)
CrimeStoppers	Tommy Sellers - Member
Disability Review Board	Chuck Cloninger, Chair
Electrical Examiners	Tommy Sellers - Liaison
Fair Housing Commission	Earl Cobb - Liaison
Fees & Charges Committee	Barbara Field Tommy Sellers Earl Cobb
Festivals	Leni Sitnick - Member
Firemen's Relief Fund	No liaison
Greenway Commission	Chuck Cloninger. Chair Barbara Field Edward Hay
Historic Resources Commission	Chuck Cloninger - Liaison
Housing Authority	Leni Sitnick - Liaison
Housing & CD Committee	Barbara Field, Chair Edward Hay O.T. Tomes

Land of Sky Regional Council	Leni Sitnick O.T. Tomes - Alternate
Light Up Your Holidays	Tommy Sellers - Liaison
Mayor's PACE Committee	Leni Sitnick Barbara Field Chuck Cloninger
Metropolitan Sewerage Board	Barbara Field - Member
Minority Business Commission	O.T. Tomes - Liaison
Opportunity Corporation	No liaison
Outside Agency Reviews	Tommy Sellers Chuck Cloninger Earl Cobb
Pack Place Board of Trustees	Edward Hay - Member
Planning & Zoning Commission	Tommy Seller - Liaison
Recreation Board	Earl Cobb - Liaison
Mayor's Retreat Committee	Chuck Cloninger Leni Sitnick O.T. Tomes
Resource Centers	Tommy Sellers Earl Cobb O.T. Tomes
Steering Committee for Visioning	Rock McClure - Member Edward Hay - Member
Tourism Development Authority	Barbara Field - Ex-officio Member
Transit Authority	Chuck Cloninger - Liaison O.T. Tomes - Liaison
Transportation Advisory Committee	Chuck Cloninger - Chair Leni Sitnick - Member Earl Cobb - Liaison
Tree Commission	Chuck Cloninger - Liaison

It was the Council's consensus to refer the vacancy on the City Business and Development Commission to the Boards & Commissions Committee.

CABLE FRANCHISE AGREEMENT

At the request of Councilman Cloninger, it was the consensus of City Council to instruct the City Manager to prepare a timetable at the January 5, 1998, regarding the cable television franchise agreement. The timetable should suggest (1) a worksession date for staff and the consultant to bring the new Council members up to date; (2) a date and place for a public educational meeting whereby members of the public could ask questions; and (3) a date and place for a public hearing on the cable TV franchise agreement. City Council agreed that the public meeting should be held in the evening and individuals should try to submit questions and comments prior to the meetings.

AMERICAN HERITAGE RIVER INITIATIVE

Ms. Carol A. Collins, Buncombe County Chapter Chairman of The Preservation of Private Property Rights Alliance of Western North Carolina, read a prepared statement and distributed to Council several documents. Said statement, reads in part: "We ... request that each governing body reconsider their earlier endorsement and promotion of the American Heritage Rivers Initiative and application of the French Broad River as a river so designated. While it is believed that there is considerable honor in the designated title and a possible benefit to tourism, it is apparent that the federal attention and expedited funding is seen as the most desirable benefit to be derived from this designation. However, as citizens are learning of the vagueness of this arrangement, there is considerable growing concern that the honor of the title and the enticement of the federal funding would result in onerous federal government intrusion with all the federal attention from the River Navigator and the 13 federal agencies coordinating the funding and assistance. Many are realizing that when the Departments of Agriculture, ... get involved, there not be 'new regulations' to complicate the situation for property owners who reside in the entire watershed of the French Broad. Because the coordinating agency, the Council on Environmental Quality, is not granted the power to govern or regulate rivers or watersheds within sovereign states, this initiative represents a challenge of the Congress' s powers and rights of states, in line with the protections granted in the Fourteenth amendment. In fact, the issue of the challenge of Congress's power has been central to the outcry about this initiative since it's announcement in the Federal Register last spring. Because American Heritage River nominations are expected for, but not limited to 79 American rivers, ..., we are gravely concerned that in piecemeal fashion the American Heritage Rivers Initiative will rapidly acquire federal jurisdiction of the entire nation's waterways, ports and private property in the broad watersheds. The ... Initiative is so loosely written that it could be interpreted to mean that if a portion of a river is designated, the entire watershed is impacted. This has enormous consequences. With ... respect, our organization contends that only part of the 'river community' has been heard from in Buncombe County ...; and many who earlier endorsed the local application were uninformed about the complex nature and potential complications of the initiative. Representing another dimension of the 'river community' we announce our intention to officially file our request to opt The French Broad out of the controversial competition for designation as an American Heritage River."

After brief discussion, Councilmen Hay and Cloninger, with the consensus of City Council, instructed the City Attorney to prepare a resolution for the next formal Council meeting reaffirming support for efforts to designate the French Broad River as an American Heritage River.

PLANNING & ZONING COMMISSION MEETING LOCATION REQUEST

Chair of the Planning & Zoning Commission Jane Mathews requested that the Planning & Zoning Commission be allowed to use the Council Chamber for their regularly scheduled meetings.

After discussing the pros and cons of the Council Chamber and other alternate meeting places, it was the consensus of Council to pursue this matter further.

MEETING TIMES OF CITY COUNCIL BOARDS AND COMMISSIONS

Mr. Brian Peterson asked City Council to adopt a policy requesting all boards and commissions to meet at times that would not require the volunteer members to leave their jobs to attend the meetings.

Councilwoman Field said that each board and commission is empowered to set their own meeting times.

CLOSED SESSION

At 6:42 p.m., Councilwoman Field moved to go into closed session for the following reasons (1) to prevent the disclosure of information that is privileged or confidential pursuant to G.S. 160A-168, the Personnel Privacy Act - statutory authorization 143-318.11 (a) (1); (2) to consult with an attorney employed by the City Council in order to preserve the attorney-client privilege between the attorney and the Council - statutory authorization 143-318.11 (a) (3) - the parties in the lawsuit about which the Council expects to receive advice are CC&J Associates, the City of Asheville, and the Jackson-Woolsey Neighborhood Association; and (3) to establish, or to instruct the City's staff concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract for the acquisition of real property - statutory authorization is 143-318.11 (a) (5). This motion was seconded by Councilman Sellers and carried unanimously.

At 7:32 p.m., Councilman Cloninger moved to come out of closed session. This motion was seconded by Vice-Mayor Hay and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:32 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - December 16, 1997 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Cobb gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION BY ALBEMARLE PARK MANOR GROUNDS ASSOCIATION

Mr. Rich Mathews, representing the Albemarle Park Manor Grounds Association briefed Council on the background of Albemarle Park's Centennial. He urged Council to celebrate their Centennial with them and presented each member with a ticket for the upcoming house and grounds tour. He also thanked Council for the opportunity to participate in the neighborhood matching grant program.

B. HOUSING AUTHORITY PRESENTATION

Ms. Annette Coleman, Chairman of the Housing Authority Board of Directors, presented City Council with two checks totaling $76,749.82 for payment in lieu of taxes. This payment brings their total to $1.1 million through 1996. She thanked Council for all of their support and assistance in helping the Housing Authority in its goal to provide affordable housing to our residents in the community.

II. CONSENT:

A. RESOLUTION NO. 97-244 - RESOLUTION APPROVING THE DISPOSITION OF REAL PROPERTY POLICY

Summary: The purpose of the Real Property Disposition Policy is to provide a clear and consistent process for the disposition of City-owned real estate which complies with applicable federal and state regulations; is understandable, accessible and fair to the general public; and maximizes the return to the City considering both monetary and public benefit.

The objective is to assign responsibility within the City for coordinating the disposition of real property, and to establish requirements for determining the availability of real property for disposition; procedures for carrying out the disposition of real property; and, conditions for participation by real estate brokers in the sale of City-owned real property.

Under the proposed policy the Director of Planning & Development will be responsible for maintaining an inventory of City-owned property and coordinating the sale of same.

RESOLUTION BOOK NO. 24 - PAGE 312

B. RESOLUTION NO. 97-245 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH SMITH PREMIER PHARMACY PLAN INC. TO ADMINISTER ITS EMPLOYEE DRUG BENEFIT CARD

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with Smith Premier Drug Company to administer the Employee Benefit Drug Card.

Since 1994 the City has contracted with Pharmacy Network National Corporation to administer its drug card. In the past several years there have been several problems with the administration of that card. Attempts to rectify those problems have been only partially successful.

In October, 1996 a letter was given to the current carrier outlining specific problem areas that needed to be addressed to continue its administration of the City's card. As of this date only about half of the problems have been corrected.

Further, since the advent of the card program the City has seen its drug costs increase at a fairly high rate. The proposal from Smith Premier Drug shows approximately a $90,000 per year reduction in plan costs over the current administrator largely based on administrative fees, and drug costs.

One other proposal was considered, but it was marginally more expensive than the recommended contract, and did not adequately address some elements of cost relating to the program.

The cost for this contract is fully budgeted in the employee benefit line item, and will require no additional appropriation of funds.

RESOLUTION BOOK NO. 24 - PAGE 313

C. RESOLUTION NO. 97-246 - RESOLUTION APPOINTING A MEMBER TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Summary: At the City Council worksession held on December 9, 1997, the City Clerk was instructed to prepare the proper paperwork to appoint Councilman Earl Cobb as a member of the Americans with Disabilities Act Compliance Committee to serve a term according to the length of his Council term of office.

RESOLUTION BOOK NO. 24 - PAGE 314

D. RESOLUTION NO. 97-247 - RESOLUTION APPOINTING A MEMBER TO THE POLICE OFFICERS & FIREFIGHTERS DISABILITY REVIEW BOARD

Summary: At the City Council worksession held on December 9, 1997, the City Clerk was instructed to prepare the proper paperwork to appoint Councilman Cloninger as the Chairman to the Police Officers & Firefighters Disability Review Board to serve a term according to the length of his Council term of office.

RESOLUTION BOOK NO. 24 - PAGE 315

E. ORDINANCE NO. 2441 - BUDGET AMENDMENT TO ALLOW THE STATE CONTROLLED SUBSTANCE EXCISE TAX BE APPROPRIATED TO ENHANCE LAW ENFORCEMENT ACTIVITIES

Summary: The consideration of a request that $30,000 of the State Controlled Substance Excise Tax funds be appropriated to enhance law enforcement activities in fiscal 1997/98.

The City receives a share of the proceeds from the State Controlled Substance Excise Tax. To date, approximately $37,000 has been received. These funds cannot be used to fund Police Department General Operations and must be appropriated to enhance law enforcement activities. The Police Department has identified specific uses for approximately $30,000 of these funds, at this time. One use will be the preparation of an A.P.D. recruitment video. This action will establish a special appropriation within the Police Department Administration budget in the amount of $30,000. Use of the funds will be monitored to ensure compliance with State requirements.

ORDINANCE BOOK NO. 16 - PAGE 375

F. ORDINANCE NO. 2442 - BUDGET AMENDMENT TO ADJUST EXPENDITURES IN THE FISCAL YEAR 1998 WATER RESOURCES DEPARTMENT BUDGET

Summary: The consideration of adjusting budget expenditures in order to more accurately match projected revenues for the FY 1998 Water Resources Department budget.

Within the last several weeks it has come to staff's attention of a need to make an adjustment to the FY 1998 Water Resources Department's budget. City staff continually monitors the budget to ensure that revenues and expenditures fall within an acceptable range during the budget year. Based on that review, staff recommended several adjustments to the expenditure side of the budget. These recommendations were presented to the Water Authority at their meeting on November 18, 1997. The Water Authority approved staff's recommendation.

As background, during the preparation of the FY 1998 budget, revenues for utility charges were projected to be $18,253,660.00. The actual utility charges in FY 1996 were $15,510,505.00 and for FY 1997 $15,987,651.00. As a result of the review process, staff forecasts revenues in the current fiscal year to be $16,307,404.00. Staff therefore recommends reducing the revenue budget to meet the forecast above.

A significant portion of the overstated revenue is as a result of a billing adjustment error that occurred during the prior year when the new billing software system was brought on-line. The old system and new system were run in parallel for approximately thirty (30) days when the old system went down and the new system had to be operated alone. The amount of the adjustment error used in the projections for utility charges was in the amount of $783,484.00. This amount projected across the full year resulted in approximately a $2.2 million over-projection of total revenue for FY 1997/1998.

Another item that affects the budget is the requirement as a part of the bond covenants to have 120 percent of the debt service. The additional twenty (20) percent "cushion" amounts to the need for an additional $426,400.00.

Finally, an error in the computation estimated for the cost allocation plan resulted in a shortfall of funds. This error resulted in an amount of $229,000.00.

In order to meet the revised forecast revenue projections, the expenditure side of the budget would also need to be adjusted. The net budget adjustments consist of approximately $2.2 million. Over the past month, City staff have begun a review of the monthly reports and yearly trends compared to first quarter data. These trends and forecasts are consistent with the most recent revenue projections provided by the City Finance Department. Staff met with Division Heads in the Water Resource Department to outline the budget adjustments necessary and solicit their comments, support and suggestions.

As a result of those meetings and detailed analysis by Water Resource Department staff, the following strategies were utilized in order to identify budget adjustments:

- The filling of vacant positions was postponed with the exception of one (1) meter reader position which was critical to on-going needs in this Division;
- The purchase of new capital equipment was delayed except for several pieces of equipment which were necessary due to safety concerns including backhoe trailers and portable lights;
- Various other line items were reduced based upon historical expenditure in the line item accounts;
- Capital Projects were analyzed in order to determine if any projects could be delayed until future years.

In moving forward with this strategy, it was our goal to not adversely affect any service programs and continue the high level of service the City is committed to providing. Several other line items which have not been reduced were identified and discussed with Division Heads as being essential that we not exceed the budgeted funds. Examples of these pertain to overtime and materials line items. Additionally, the Department has begun to examine various reengineering areas within the Department to provide increased productivity and try to reduce costs by trying to "work smarter".

City staff also looked at a couple of industrial water accounts which have announced closings. Even though these two (2) accounts would have no significant impact on the current year's revenues, staff reviewed these to determine future impact. In discussions with officials at Gerber, it is my understanding that they plan to close their production facility on April 3, 1998. Currently, the City receives approximately $400,000.00 per year in water revenues from the water use by Gerber. Therefore, the impact for FY 1998 is projected to be approximately $100,000.00 for the three (3) months they are expected to be closed during this budget year. The other industry which has a lesser impact is National Linen. It is my understanding that this facility closed on November 1, 1997. However, the water usage from this facility is approximately $48,000.00 per year. Therefore, the revenue impact for FY 1998 is projected to be $32,000.00. Staff will take these into consideration as a part of the revenue projections for next year.

The Regional Water Authority has reviewed and approved these budget adjustments. Staff will be glad to respond to any questions regarding the proposed budget adjustments. Upon approval of the necessary budget adjustments, the budget will also require approval by Buncombe County consistent with the agreement dated November 11, 1995.

ORDINANCE BOOK NO. 16 - PAGE 377

G. MOTION RELATIVE TO ENDORSING THE 1997 BELE CHERE ANNUAL REPORT

H. MOTION SETTING A PUBLIC HEARING ON JANUARY 13, 1998, TO ESTABLISH A NEW THESHOLD FOR THE PREPARATION OF TRAFFIC IMPACT ANALYSES

I. MOTION SETTING A PUBLIC HEARING ON JANUARY 13, 1998, TO REZONE PROPERTY ON GLENDALE AND SPRINGVALE AVENUES FROM RM-16 TO CI

J. MOTION SETTING A PUBLIC HEARING ON JANUARY 13, 1998, RELATIVE TO LEVEL THREE PLANNING REVIEW FOR THE MEADOWS APARTMENTS- PHASE II LOCATED ON ASCENSION DRIVE IN WEST ASHEVILLE

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER REZONING PROPERTY ON AZALEA ROAD FROM RS-2 RESIDENTIAL SINGLE FAMILY LOW DENSITY DISTRICT TO RIVER DISTRICT

Mayor Sitnick opened the public hearing at 5:07 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that the original request was to rezone two lots on Azalea Road from RS-2 Residential Single Family Low Density District to River District.

The two parcels of land (PIN Nos. 9668.00-42-4133 and 9668.18-31-2659) are currently vacant. One has been used for placement of rock and soil and filled well above the floodplain and the other adjacent parcel (still in the floodplain) is used as access. However, the only access to these two parcels of land is across a 20 foot bridge that has been indicated to be substandard and on land not owned by the petitioner. This adjacent land is owned by the Blue Ridge Parkway which has not given permission to rezone their property and opposes the rezoning of the two lots. This area is basically farm land and open space and not suitable for any high intensity development. Information received from the Technical Review Committee revealed the infrastructure (water, sewer and street) is basically inadequate for the type of development permitted in the River District. However, MSD has indicated that a 48-inch sewer line does exist on the north side of Azalea Road across from this site. There is a private sewer line that exists underneath the bridge that runs to The Cove, but it would be the developer's responsibility to get permission to tie into that private line. The 2010 Plan designates this area to be parks and open space.

The Planning staff has reviewed the request and recommended to the Planning and Zoning Commission to deny the request. At their November 5, 1997, meeting, the Planning & Zoning Commission voted 5-2 to deny the rezoning request.

On November 6, 1997, the petitioner appealed the Planning & Zoning Commissioner's decision to City Council.

On December 16, 1997, a letter was received by the petitioner's attorney withdrawing "PIN No. 9668.00-42-4133 from his rezoning application out of deference to the Blue Ridge Parkway and to show his intentions to work with RiverLink on turning this area into a river park." The letter also reads that it is his "client's intentions to remove the bridge spanning under the Blue Ridge Parkway Bridge as primary access to the property designated as PIN No. 9668.18-31-2659. Instead, my client intends to construct a bridge across the Swannanoa River to the City of Asheville's specifications, and dedicate that bridge to the City. That bridge could possibly be used by the City's Parks and Recreation Department in their plans for soccer fields on the adjoining land now being negotiated by the City for purchase."

Mr. Ownbey answered various questions from Council, some being, but not limited to, how the Blue Ridge Parkway Overlay relates to this property, if the property would be subject to a traffic impact study and who would make the improvements if the study showed a need for improvements, if floodplain restrictions would apply to this property, if the property is visible from the Blue Ridge Parkway, why would someone want to put a single family home on that property since it is so close to a railroad track, what kind of buffering would be required if the property were developed, and why the petitioner is requested the River District opposed to a Commercial District.

Upon inquiry of Councilwoman Field about this being a possible spot zoning, City Attorney Oast said that only a court can determine whether something is spot zoning or not. He felt that it depends on the facts and circumstances on each case. He has looked at some case law, and under at least one case on facts very similar to this (Godfrey v. Union County), the courts have found spot zoning.

Mayor Sitnick said that City Council has talked about developing the Lake Craig property which would probably be using Azalea Road for access. She questioned how would the developing of the Lake Craig property impact the rezoning of this property. Mr. Ownbey responded that it would depend on the development and whether the City would upgrade Azalea Road since it is a City street.

When Councilwoman Field asked about the amount of traffic Azalea Road could carry, Mr. Ownbey said it could carry about 4,000 cars a day if it were a standard City two lane road (22 feet wide). However, Azalea Road is maybe 16-18 feet in some places.

Mayor Sitnick asked about the reasoning behind the staff's and the Planning & Zoning Commission's denial. Mr. Ownbey said that staff felt it was inappropriate area for any kind of River District development. The 2010 Plan calls for this area to be an open and green space area for low intense development.

Discussion then surrounded the impact of rezoning this property in conjunction with the Lake Craig property, noting that if the City does develop the Lake Craig property for soccer fields, additional traffic would be on Azalea Road.

Councilman Tomes wondered how the City could justify developing parcels adjacent to this piece of property for recreational activities which will have a large gathering and deny the rezoning of this property because of the amount of traffic it will generate on Azalea Road.

Councilman Cloninger pointed out that the City is only speculating about the Lake Craig property.

Mr. Craig Justus, attorney representing the petitioner Darius Corbin, urged City Council to rezone this property noting that the sole issue is whether this piece of property is suitable for the River District. He said that the purpose of the River District is set up to provide flexibility to turn unproductive land that is near the river into productive land. The River District provides incentives for those owners to promote public access and greenways that protect the river resources as well as to provide opportunities for people to actually come to the river and use it. This is a 20 acre tract that has problems being used for residential development. The Planning & Zoning Commission even said that this property is really not suitable for any kind of residential use since it is located close to the highway and the railroad track. He felt the ordinance has built in protections to the river resource as well as promoting opportunities from people to come down and use the river. He said that the 2010 Plan calls for this area to be parks and open space for the reason of holding property for the Lake Craig recreational soccer fields. He felt that an open space and park is not providing any productive uses for the City - no tax benefits and unless the City has the money to buy it, it's not providing any benefits to the public to use it. Regarding traffic, no matter if the property remains zoned RS-2 or River District, they will be problems on Azalea Road. He stressed that the ordinance is built to address these situations - the traffic impact study requirement. He said the buffer overlay is set up and it provides for height restrictions, but it also provides for buffering. He passed out pictures noting that while you're on the Blue Ridge Parkway on a bridge, you can only see the property for two seconds which property is about 1/4 mile away. He felt that with the buffer overlay district that exists to protect the Parkway, that that would be sufficient to address any visibility questions the Parkway may have. There is a large power line that runs through the middle of this property and to move the power line and acquire the easements to move the power line would cost $305,000 - which is another reason why it's not suitable for residential. The N.C. Dept. of Transportation reports that Azalea Road should be able to handle 3-5,000 vehicles per day unless they arrive and depart at the same time.

The following individuals spoke against the rezoning of this property for several reasons, some being, but not limited to: the neighborhood has submitted a petitioned from residents on Azalea Road, Gash Farm Road and Gashes Creek Road opposing the rezoning because of the traffic impact; Azalea Road is very narrow, windy, has blind curves, is caving in at some points and no shoulders; the development proposed is not just a flea market, but a big commercial business; flea markets should not be located in residential areas; the Dreamland Drive-In flea market is only a few miles down the road; the Dreamland Drive-Inn already has a lot of traffic congestion; the rezoning will add a tremendous traffic impact on Swannanoa River Road which is already a busy road; traffic safety of children who ride bikes at Recreation Park and people who bring their pets by the River; when tourists drive on the Parkway, we don't want them to see a flea market; this crossing is the only open area viewed along the Parkway in the Asheville area and this is significant to the Blue Ridge Parkway because there are only four river crossings in 470 miles of the Parkway; and some homes can see this property.

Nancy Richards, 23 Gash Farm Road (passed out a newspaper article)
Davon Heath, 15 East Hawthorne Drive - Beverly Hills Area (passed out pictures in front of Dreamland Drive-Inn showing congestion)
Susie Lapson, 13 Gash Farm Road (passed out pictures showing the view from the Blue Ridge Parkway)
Laura Rotegard, Community Planner representing the Blue Ridge Parkway
Brian McKenna, 137 Beverly Road in Beverly Hills

City Attorney Oast said that Council has heard indications on what the property will be used for. He reminded Council that if they rezone the property, any use in the River District is allowed. Councilman Cloninger read the uses allowed in the River District.

Upon inquiry of Vice-Mayor Hay, Senior Planner Gerald Green briefed Council on the status of the design guidelines for the River District.

Upon inquiry of Councilwoman Field, Assistant City Manager Doug Spell indicated that the parking lots can be an impervious surface like gravel.

Ms. Bette Jackson, 128 Beverly Road and President of the Beverly Hills Neighborhood Association, said that when the Lake Craig property issue was first in the paper she spoke with Ms. Julia Cogburn and they agreed that there would be a team effort to work on the traffic patterns. She felt that they will be part of the planning process.

Mr. Darius Corbin, petitioner, presented City Council with a petition containing 8 names of people who live within 400 feet of the proposed rezoning which "do not oppose the flea market location on Azalea Road or the rezoning."

Mayor Sitnick closed the public hearing at 6:20 p.m.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Sellers moved to rezone PIN No. 9668.18-31-2659 from RS-2 to River District. This motion was seconded by Councilman Tomes.

Councilman Sellers said that he felt that even though he is concerned about the traffic and respects the neighbors concerns, he feels that with the proper buffering the area is suitable for a River District rezoning.

Vice-Mayor Hay felt that there was a lot of debate about how to design the River District during the UDO process and Council ended up with a split vote. He was concerned that any thing can go in the River District and there is no other District in the UDO that is as wide-open as the River District.

Councilman Cloninger felt this is an issue of viewshed protection for the Blue Ridge Parkway. He felt that the previous Council took aggressive action to try to protect the viewsheds along the Parkway and if Council were to rezone this property that would be inconsistent with the previous efforts made to protect the scenery along the Parkway.

Councilman Cobb felt that while the property is not developed yet, with the growth in Asheville we need to protect our neighbors.

Mayor Sitnick said that she has great respect for the 2010 Plan in that it helps create our visions for the future. She too was concerned about the traffic on Azalea Road and will also be concerned with any potential development of the Lake Craig property as well. She expressed concern about the infrastructure and given the high intensity of the development proposed, she felt it would be a burden on the existing infrastructure already there.

Councilwoman Field stressed that Azalea Road needs to be looked at for improvements regardless what happens with this rezoning request.

Mayor Sitnick then called for a show of hands on Councilman Seller's motion. Said motion failed on a 3-4 vote, with Councilwoman Field and Councilmen Sellers and Tomes voting "yes" and Mayor Sitnick, Vice-Mayor Hay and Councilmen Cloninger and Cobb voting "no".

B. PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT APPROPRIATION TO LUSTAR DYEING AND FINISHING LOCATED AT 144 CARIBOU ROAD

RESOLUTION NO. 97-248 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH LUSTAR DYEING AND FINISHING TO PARTICIPATE IN CAPITAL IMPROVEMENTS

Mayor Sitnick opened the public hearing at 6:28 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. John Scaralia, City Development Director, said that Lustar Dyeing and Finishing, Inc. is looking to modernize and expand its manufacturing facility located at 144 Caribou Road. Plans call for the addition of 6,000 sq. ft. to the existing building and the major purchase of machinery and equipment in order to increase production. The company plans to hire an additional 20 employees by July 1, 1998. Wages will average $12.50 per hour.

The firm plans to invest a total of $3.6 million within six months in the renovation and equipment upgrades for this project.

Staff recommends that City Council provide a grant under the terms and conditions set forth in the City's current economic development incentive policy. Specifically, it is recommended that the award be limited to no more than the maximum allowed under the current guidelines, estimated at approximately $15,390. per year for five years, for a total of $76,950 based on current assessments.

He went through the company profile by stating that they (1) are an international manufacturer of knit fabrics; (2) are a subsidiary of Ge-Ray Fabrics from New Jersey; (3) were established in 1972; (4) have been in Asheville for nine years; (5) have a current employment of 295 full-time employees; and (6) have an annual payroll of $7.8 million.

He then explained their request of $3,600,000 which includes a capital equipment expansion of 6 dye machines - $1,989,000; dryer, compactor - $1,107,000; and the expansion of their existing facility of a 6k sq. ft. addition - $500,000.

He reviewed their current revenue of real property totaling $1,632,200 (land - $302,700 and buildings - $1,329,500); personal property totaling $5,362,270 for a total assessed valuation of $6,972,950. The City tax is $39,746.

He explained the following grant and projected revenue:

Assessment	One Year	Five Year
$3.6 M x. 0057	$20,520	$102,600
Level 1 (75%)	$15,390	$ 76,950
*Act. Tax Paid	$44,876	$224,380

*Current taxes of $39,746 plus after-grant tax of $5,130

Combined Assessment (end of grant period)
$10,572,950 (assessed valuation)
$60,266 taxes (plus 51.6% change)

He outlined the additional benefits being job creation (direct new jobs - 20; direct and indirect - 32); wages $500 ($469.14 ESC); community earnings $1,144,000; cost of job - $3,847.50 and economic return per dollar grant - $14,87.

Mr. Scaralia answered various questions from Councilman Tomes regarding what standards are required to qualify for the grant, and what instruments have been put in place to by the City to ensure that the standards are met.

Councilman Tomes said that he has been somewhat disenchanted with incentive grants, especially on the part of government, because they don't actually address the problem of trying to enhance the economic base of people who are in the workforce. He feels that not only is there a responsibility, but there is some sense of accountability that we must be sensitive to as we deal with grants.

Mayor Sitnick asked that the City Manager furnish all Council members with a copy of the economic development policy.

Mayor Sitnick was pleased that this grant will benefit a local company which provides jobs for Asheville residents. When a company comes in from another area, she hoped they would hire a large percentage of local people and not just bring a lot of their workforce.

Vice-Mayor was pleased that the first grant is to a local company.

Mr. Larry Casper, General Manager of Lustar Dyeing and Finishing, explained their workforce and thanked Council for their support with this grant.

Mayor Sitnick closed the public hearing at 6:49 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 97-248. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 316

C. PUBLIC HEARING TO CONSIDER THE FILING OF AN APPLICATION WITH THE FEDERAL TRANSIT ADMINISTRATION FOR A TRANSIT OPERATING ASSISTANCE GRANT

RESOLUTION NO. 97-249 - RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION WITH THE FEDERAL TRANSIT ADMINISTRATION

Mayor Sitnick opened the public hearing at 6:50 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this grant will assist in offsetting the operating cost of the Asheville Transit Authority. These funds will be used for operating the fixed route transit system and assists in funding the City's comparable paratransit program operated under "BOOST".

The estimated net project cost is $1,362,741. The federal share is estimated at $367,091, the local share is estimated at $813,485, and the state share is estimated at $182,165.

Mayor Sitnick closed the public hearing at 6:51 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 97-249. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 317

D. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED NORTH OF THE HOLT AT BILTMORE PARK (SECTION 10 OF BILTMORE PARK)

ORDINANCE NO. 2443 - AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO PROPERTY LOCATED NORTH OF THE HOLT AT BILTMORE PARK (SECTION 10 OF BILTMORE PARK)

Mayor Sitnick opened the public hearing at 6:52 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Paul Benson, Urban Planner, said that Biltmore Farms, Inc. has submitted an annexation petition for a 3.9 acre area located north of Holt Lane identified as Biltmore Park, Section 10. The applicant has requested a six month delay of the effective date to June 16, 1998. This is the tenth annexation petitioned by Biltmore Farms Inc. This area is contiguous to the existing corporate limits, specifically to Biltmore Park, Section 5, which was annexed on August 21, 1995.

Upon inquiry of Councilman Cobb, Mr. Benson explained that the developer requests the effective date of the annexation be six months after adoption because that allows them time to develop the property and sell the lots prior to the annexation becoming effective.

Mayor Sitnick closed the public hearing at 6:55 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No 2443. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 385

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS FOR THE SALE OF PROPERTY OWNED BY THE CITY OF ASHEVILLE KNOWN AS MEMORIAL STADIUM AND ASSOCIATED PROPERTY TO ROBERT CAMILLE JR. IN THE AMOUNT OF $1,400,000

Mr. Irby Brinson, Director of Parks & Recreation, said that the Parks and Recreation Department has been working for several months on the possibility of selling Memorial Stadium and using the revenue to further develop and enhance recreation facilities in the community.

The Department has been in contact with a local architectural firm who has expressed interest in purchasing the property. The sale of this property is authorized under N.C. General Statute sec. 160A-266 which authorizes cities to dispose of real property. This sale was subject to the upset bid process established by N.C. General Statute under Section 160A-269.

Recognizing that approximately $20 million is necessary over the next 15 years in order to enhance recreation facilities in the community, the Parks and Recreation Department has been exploring alternative financing to meet these needs without a tax increase. The revenue generated from the sale of Memorial Stadium will be used to develop and renovate other recreation facilities within Asheville. These include development of a multi-field youth baseball complex at Richmond Hill for use by the North Asheville Little League. In addition, a youth football field would be constructed to be used by the West Asheville Youth Football and the Asheville Rugby Club. The sale of Memorial Stadium also includes the purchase of approximately 100 feet of right-of-way at the end of Richmond Hill Drive into the Richmond Hill property. Funds will also be used to renovate the existing Mountainside Park to include new playground equipment and play area.

On November 25, 1997, City Council authorized the City Clerk to advertise an offer to purchase City-owned property known as Memorial Stadium. No upset bids have been received.

Discussion surrounded the draft Offer to Purchase and Contract, which was only furnished to City Council earlier in the day.

City Attorney explained the ways in which City Council can dispose of its property.

Councilman Sellers noted that there is only 6-7 acres of this property that is suitable for development due to the steep grades. Councilman Tomes felt, however, that given the technology available, there may be ways in the future to develop the other acreage.

Upon inquiry of Councilman Cobb, Mr. Brinson said that the Parks & Recreation Department is currently doing a Master Plan for parks and recreation. At the Master Plan meeting held last night, the central area has more park land than any other area of the City. He stressed that what will come out of the master plan will be to enhance what we have and expand park facilities to those other areas.

Upon inquiry of Councilman Cobb, Mr. Brinson explained that he contacted the users of Memorial Stadium and that from a recreation standpoint, the neighborhood would be enhanced with the renovation of Mountainside Park.

Mr. Brinson said that since Memorial Stadium is not on the tax rolls, with the sale not only will it be put back on the tax rolls, but we will get tax revenue from that sale.

Council then discussed the pros and cons of selling Memorial Stadium.

Mayor Sitnick was a firm supporter of parks and recreation but felt that this issue has been brought to the table, especially with three new Council, without ample time for not only their review, but for public comment as well. She supported a city-wide parks bond and felt the community would support one as well. She felt it was poor public policy to sell parks reminding Council that she urged the prior Council for a parks designation as part of the UDO. She was concerned we are in the middle of doing a Master Plan for parks and recreation and wished Council could wait until that was finished to see how Memorial Stadium fits into the scheme of the plan. She felt the opportunity for upset bids was too short. She said that she would like to postpone this issue until she had more time to assess all of the ramifications of selling a City park.

Councilman Tomes agreed that the matter should be postponed so he could review the documents in detail.

Councilman Cobb felt that a public hearing might be in order to see if anyone else had a better idea for the use of the Stadium property.

When Vice-Mayor Hay asked if delaying action on this matter would interfere with the plans for development in a significant way, Mr. Robert Camille responded that since there is a third party involved and they have been working with the City for over a year, he was unsure how much longer they would be willing to wait. He noted that Memorial Stadium is rarely used and out of the six or seven developable acres, the City is retaining three of those for a playground.

Mr. Doug Claxton, attorney representing Mr. Robert Camille, said that all the concerns expressed at this meeting have been addressed and carefully considered.

Mr. Brian Peterson, on behalf of the Coalition of Asheville Neighborhoods, asked City Council to reject the bid or to postpone action on this matter. He urged Council not to be short-sited and sell the property.

Ms. Susan Andrew, 419 Beaucatcher Road, urged Council to allow additional public comment on this issue and suggested contacting the immediate neighbors as well.

Councilman Cloninger felt that if the City were to sell this property and use the proceeds for something other than parks, he would be against it. However, he stated that the sale of this property will result in badly needed parks in other parts of Asheville.

Mr. Tom Asick, 1998 President of the North Asheville Little League, urged City Council to proceed with the sale of this property and briefed Council on the need for a suitable field in North Asheville.

Vice-Mayor Hay said that for several years City Council has been trying to find a place in North Asheville to build a field and Richmond Hill is the only place.

Mayor Sitnick said that she is not against recreation because she feels it is the best investment on the front-end for our children, but she still preferred to have additional time to review this matter and solicit public comment.

Mr. Jim Orr, Vice-Chair of the Parks and Recreation Advisory Board, said that the Board unanimously supported moving forward with the sale of Memorial Stadium.

Mr. Tom Wilson, resident of North Asheville, realized the need for a ballpark in North Asheville, but voice opposition to selling Memorial Stadium for that purpose.

Councilman Tomes moved to delay action on this matter and set a public hearing for February 10, 1997. This motion was seconded by Councilman Cobb.

Councilwoman Field said that this is a culmination of a lot of hard work from the Parks & Recreation Department staff who have absolutely the best interests of the City at heart. She has seen the property and knows how difficult and expensive it would be to development.

Mayor Sitnick asked for a show of hands on Councilman Tomes' motion. This motion carried on a 4-3 vote, with Mayor Sitnick, Vice-Mayor Hay and Councilmen Cobb and Tomes voting "yes" and Councilwoman Field and Councilmen Cloninger and Sellers voting "no".

City Manager Westbrook stated that the Parks and Recreation Department is nationally accredited and exceeds national standards for their work.

Councilman Cloninger understood the request for postponement, but was concerned that there was a potential for losing the buyer.

Councilman Tomes then moved to reconsider the motion. This motion was seconded by Vice-Mayor Hay and carried unanimously.

Councilman Tomes moved to delay action on this matter and set a public hearing for January 27, 1998. This motion was seconded by Councilman Cobb and carried unanimously.

At 8:15 p.m., Mayor Sitnick announced a ten minute break.

B. RESOLUTION NO. 97-250 - RESOLUTION DIRECTING THE BELE CHERE BOARD NOT TO ACCEPT CONTRIBUTIONS OR SPONSORSHIP FROM BUSINESSES THAT PROMOTE GAMBLING

City Attorney Oast said that at general direction from City Council, he has prepared a draft resolution directing the Bele Chere Committee to turn down proposed offer of sponsorship by Harrah's Casino.

Councilman Sellers said that he has worked the last couple of years toward making the Bele Chere festival a little more family oriented. He felt that this resolution will help to work toward that goal.

Councilwoman Field said that mentioning Harrah's name specifically in the resolution concerns her in that it makes it look like the people who work at, and who own, Harrah's are bad when they are actually doing something absolutely legal where they are doing it (in Cherokee). She didn't see how accepting sponsorship by Harrah's can possibly hurt the Bele Chere festival and would not support the resolution. She wondered why we were singling out not accepting sponsorship from gambling businesses and not alcohol businesses.

City Attorney Oast then read the resolution deleting the reference to Harrah's Casino.

Councilman Sellers moved for the adoption of Resolution No. 97-250. This motion was seconded by Councilman Cloninger and carried on a 6-1 vote with Councilwoman Field voting "no".

RESOLUTION BOOK NO. 24 - PAGE 318

C. RESOLUTION NO. 97-251 - RESOLUTION REAFFIRMING SUPPORT FOR EFFORTS TO DESIGNATE THE FRENCH BROAD RIVER AS AN AMERICAN HERITAGE RIVER

City Attorney Oast said that at the direction from City Council, he prepared a draft resolution reaffirming support for efforts to designate the French Broad River as an American Heritage River.

Vice-Mayor Hay felt that the designation is an excellent opportunity to do some special things for the French Broad River and whole-heartedly supported the application for designation. He then read the resolution.

Ms. Karen Cragnolin, Executive Director of RiverLink, spoke in support of the designation listing the many organizations and people who also supports the plan.

Vice-Mayor Hay moved for the adoption of Resolution No. 97-251. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 319

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETINGS HELD ON NOVEMBER 25, 1997, DECEMBER 2, 1997, AND THE WORKSESSION HELD ON DECEMBER 9, 1997

Councilman Cobb moved for the adoption of the minutes of the formal meeting held on November 25, 1997, as amended by Mr. Jim Skalski and City Clerk Burleson; the formal meeting held on December 2, 1997, and the worksession held on December 9, 1997. This motion was seconded by Councilman Cobb and carried unanimously.

B. RESOLUTION NO. 97-252 - RESOLUTION RATIFYING ACTION OF THE CITY MANAGER REGARDING A GIFT OF STOCK TO THE CITY'S URBAN TRAIL PROGRAM

Audit/Budget Director Bob Wurst said that Ms. Martha Gentry wishes to donate Barnett Bank shares with an approximate value of $10,000 to the Urban Trail Program in memory of her husband Hugh E. Gentry. This resolution will authorize the City Manager to accept said donation and to execute an agreement authorizing Wachovia Bank & Trust to sell the aforementioned stock on behalf of the City and remit the proceeds to the City of Asheville.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Hay moved for the adoption of Resolution No. 97-252. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 320

C. CITY COUNCIL RETREAT

City Manager Westbrook announced that the City Council retreat would be held on February 6-8, 1998, at Highland Lake Inn.

Mayor Sitnick requested that City Council submit their "lists" to the City Manager or City Clerk as soon as possible for culmination of one list for the Retreat Committee to review.

D. PRIMARY ELECTION RESULTS - CITY OF ASHEVILLE - OCTOBER 7, 1997

GENERAL ELECTION RESULTS - CITY OF ASHEVILLE, NOVEMBER 7, 1997

Attached hereto as Exhibit "A" is the abstract containing the number of legal votes cast in the Primary Election, City of Asheville, held on October 7, 1997. Also attached as Exhibit "B" is the abstract containing the number of legal votes cast in the General Election, City of Asheville, held on November 7, 1997.

E. TELECOMMUNICATION TOWERS

Councilman Cloninger said that a company is proposing to build a telecommunication tower in East Asheville outside the City's jurisdiction. He requested, and the City Council concurred, that the City Manager prepare a statement making them aware of the goals of the City Council and how we are attempting to meet those goals with our telecommunication tower ordinance. He was directed to encourage them to use stealth technology instead of a conventional tower if at all possible.

F. LAUREL EIDE

Ms. Laurel Eide presented Christmas center pieces to Vice-Mayor Hay, Councilman Cloninger and Senior Planner Gerald Green for their hard work regarding zoning issues on the Blake Mountain area. She noted that her "buffer" gift was made with the pine needles and holly bushes.

G. CLAIMS

The following claims were received by the City of Asheville during the week of November 21-28, 1997: Heather Taylor (Water), Jeremy Sizemore (Water), Richard Bowden (Water), Shelia Balentine (Water), Sonny Johnson (Water), Melissa Watkins (Water), Steven Lee Poore (Water), and James Griffee (Water).

The following claims were received during the week of November 28-December 11, 1997: Jeri Swaim (Water), Shelia Davis (Water), Bell South (Streets), Marilyn Schlosser (Fire) and Wayne Erbsen (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

H. LAWSUIT

On December 8, 1997, the City was served with a Notice of Charge of Discrimination from Teresa L. Flowers. The nature of the proceeding is sexual discrimination charging the City of Asheville, naming Steve Hughes, former Operations Manager of the Asheville Civic Center.

This lawsuit will be handled in-house.

I. CLOSED SESSION

At 8:45 p.m., Councilwoman Field moved that City Council go into closed session in order to consult with an attorney-client employed by the Council in order to preserve the attorney-client privilege between the Council and its attorney - statutory authorization is G.S. 143-318.11 (a) (3). The parties in the lawsuit about which the Council expects to receive advice are the City of Asheville, C.C. & J. Enterprises Inc. and the Jackson-Woolsey Neighborhood Association. This motion was seconded by Councilman Sellers and carried unanimously.

At 9:15 p.m., Councilwoman Field moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

City Attorney Oast announced that City Council directed him to institute an appeal in the matter of C.C. & J. Enterprises Inc. v. the City of Asheville.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:20 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

EXHIBIT "A"

STATE OF NORTH CAROLINA -- BUNCOMBE COUNTY
PRIMARY ELECTION, CITY OF ASHEVILLE
OCTOBER 7, 1997

The County Board of Elections for the said County, having opened, canvassed and judicially determined the original returns of the Primary Elections, City of Asheville, in the Asheville City Precincts of this county, held as above stated, we do here certify that the above is a true abstract hereof, and contains the number of legal votes cast in the said precincts, according to the returns made to said Board, for the Primary Election.

This 10th day of October, 1997

IN TESTIMONY WHEREOF, I hereunto set my hand and affix my notarial seal, this 10th day of October, 1997

Trena D. Parker
Trena D. Parker

My Commission Expires 6/14/2000

Talmage Penland
CHAIRMAN

Winona McDonnold
SECRETARY

Linda Reese
MEMBER

BUNCOMBE COUNTY BOARD OF ELECTIONS

PCT#	H.K Edgerton	Larry Linney	Leni Sitnick	Charles Worley	
1	27	19	73	46	
2	55	26	202	48	
3	25	5	123	89	
4	6	7	326	357	
5	11	7	225	442	
6	4	2	111	147	
7	33	11	196	118	
8	66	25	119	95	
9	8	6	109	119	
10	32	26	44	24	
11	20	10	33	17	
12	8	1	61	74	
13	8	1	62	83	
14	26	10	68	94	
15	9	5	162	291	
16	5	9	113	186	
17	7	6	227	200	
18	3	3	122	198	
19	13	2	106	244	
20	2	2	63	46	
21	6	5	121	144	
22	9	6	165	304	
23	1	1	53	66	
24	4	5	37	132	
25	4	3	103	170	
ABS	4	1	43	45	
TRAN	0	0	5	5	
					TOTAL VOTES
TOTAL	396	204	3072	3784	7456

TOTAL IN CITY	% TURNOUT
47919	15.56%

	H.K Edgerton	Larry Linney	Leni Sitnick	Charles Worley
Absentee	4	1	43	45

STATE OF NORTH CAROLINA – BUNCOMBE COUNTY
PRIMARY ELECTION, CITY OF ASHEVILLE – ABSENTEE ABSTRACT
OCTOBER 7, 1997

The County Board of Elections for the said county, having opened, canvassed and judicially determined the absentee returns of the Primary Elections, City of Asheville, in the Asheville City Precincts of this county, held as above stated, we do here certify that the above is a true abstract hereof, and contains the number of legal votes cast in the said precincts, according to the returns made to said board, for the Primary Election.

This 7th Day of October, 1997

IN TESTIMONY WHEROF, I hereunto set my hand and affix my notarial seal, this 7th Day of October, 1997

Trena D. Parker

My Commission expires 6/14/2006

CHAIRMAN

Winona McDonnold
SECRETARY

Linda Reese
MEMBER

EXHIBIT "B"

STATE OF NORTH CAROLINA - - BUNCOMBE COUNTY
GENERAL ELECTION, CITY OF ASHEVILLE, OFFICE OF
MAYOR AND CITY COUNCIL
NOVEMBER 7, 1997

The County Board of Elections for the said county, having opened, Canvassed and judicially determined the original returns of the General Elections, City of Asheville, in the Asheville City Precincts of this County, held as above stated, we do here certify that the above is a true Abstract hereof, and contains the number of legal votes cast in the said Precincts, according to the returns made to said board, for the General Election.

This 7th day of November, 1997

IN TESTIMONY WHEREOF, I hereunto set my hand and affixed my notarial Seal, this 7th day of November 1997

Trena D. Parker
Trena D. Parker

My commission expires 6/14/2000

Talmage Penland
CHAIRMAN

Winona McDonnold
SECRETARY

Linda Reese
MEMBER

BUNCOMBE COUNTY BOARD OF ELECTIONS

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Abstract for the

Buncombe County, NC
NON-PARTISAN GENERAL ELECTION
NOVEMBER 4, 1997
BUNCOMBE COUNTY, NORTH CAROLINA

MAYOR
CITY OF ASHEVILLE

ASHEVILLE

PRECINCT	LENI SITNICK	CHARLES R. WORLEY	WRITE-IN
01	231	75	1
02	559	81	3
03	449	127	0
04	618	492	1
05	430	652	0
06	247	198	0
07	451	184	1
08	455	171	0
09	270	171	0
10	237	61	0
11	143	46	0
12	168	100	1
13	145	141	0
14	221	128	0
15	394	396	0
16	278	279	1
17	426	276	1
18	242	293	0
19	267	335	0
20	137	77	0
21	329	192	0
22	337	456	0
23	105	117	0
24	111	193	0
25	290	223	2
CITY Total	7540	5464	11

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[redacted] Abstract for the [illegible]

Buncombe County, NC
NON-PARTISAN GENERAL ELECTION
NOVEMBER 4, 1997
BUNCOMBE COUNTY, NORTH CAROLINA

MAYOR
CITY OF ASHEVILLE

	LENI SITNICK	CHARLES R. WORLEY	WRITE-IN
ELECTION DAY	7540	5464	11
ABSENTEE	148	126	0
PROVISIONAL	2	1	0
TRANSFER	6	3	0
GRAND TOTALS	7696	5594	11

Buncombe County, NC
NON-PARTISAN GENERAL ELECTION
NOVEMBER 4, 1997
BUNCOMBE COUNTY, NORTH CAROLINA

CITY COUNCIL
CITY OF ASHEVILLE

ASHEVILLE

PRECINCT	CHUCK CLONINGER	EARL COBB	BARBARA FIELD	EDWARD C. HAY, JR.	JOHNNY LLOYD	JOHN C. REDMOND	TOMMY SELLERS	O. T. TOMES
01	137	96	194	133	169	38	96	218
02	305	190	338	271	267	80	180	493
03	295	210	349	291	244	87	194	405
04	823	516	735	806	384	170	600	551
05	846	455	861	776	379	169	689	471
06	330	223	339	276	191	82	304	195
07	340	308	419	335	285	93	276	381
08	283	232	373	258	328	79	240	472
09	244	243	295	230	210	95	250	224
10	89	47	142	92	190	28	62	271
11	60	41	117	61	112	17	63	155
12	160	167	173	155	102	50	180	132
13	161	202	213	159	85	50	210	144
14	166	190	226	162	149	63	207	189
15	489	643	559	449	227	150	535	359
16	354	402	391	309	177	112	408	217
17	515	303	506	459	230	118	386	384
18	376	307	376	351	207	104	337	195
19	419	326	483	396	233	120	383	262
20	116	104	153	105	84	38	99	106
21	332	265	374	312	229	115	312	258
22	610	375	622	550	291	146	492	367
23	162	121	142	128	62	48	142	94
24	200	241	196	167	107	85	228	103
25	316	271	378	295	188	103	319	252
CITY Total	8128	6478	8954	7526	5130	2240	7192	6898

Abstract for the

Buncombe County, NC
NON-PARTISAN GENERAL ELECTION
NOVEMBER 4, 1997
BUNCOMBE COUNTY, NORTH CAROLINA

CITY COUNCIL
CITY OF ASHEVILLE

ASHEVILLE

PRECINCT	JAMES L. WATKINS, JR.	DEE WILLIAMS	WRITE-IN	WRITE-IN	WRITE-IN	WRITE-IN	WRITE-IN	WRITE-IN
01	83	195	4	2	1	1	1	1
02	120	347	5	1	1	0	0	0
03	110	350	7	3	2	0	1	1
04	125	476	6	4	3	1	1	0
05	105	369	5	0	0	0	0	0
06	58	216	1	0	0	0	0	0
07	103	410	5	1	0	0	0	0
08	164	316	4	1	1	1	1	1
09	82	247	15	2	2	0	0	0
10	81	178	0	0	0	0	0	0
11	41	93	1	0	0	0	0	0
12	54	131	2	0	0	0	0	0
13	53	130	2	1	0	0	0	0
14	66	166	1	1	1	0	0	0
15	92	351	7	5	1	1	0	0
16	84	256	3	0	0	0	0	0
17	83	302	5	0	0	0	0	0
18	85	235	2	0	0	0	0	0
19	83	284	4	0	0	0	0	0
20	31	125	2	2	1	1	0	0
21	103	240	4	2	1	0	0	0
22	95	314	2	1	0	0	0	0
23	26	83	1	0	0	0	0	0
24	53	118	1	0	0	0	0	0
25	74	250	4	2	1	0	0	0
CITY Total	2054	6182	93	28	15	5	4	3

Buncombe County, NC
NON-PARTISAN GENERAL ELECTION
NOVEMBER 4, 1997
BUNCOMBE COUNTY, NORTH CAROLINA

CITY COUNCIL
CITY OF ASHEVILLE

	CHUCK CLONINGER	EARL COBB	BARBARA FIELD	EDWARD C. HAY, JR.	JOHNNY LLOYD	JOHN C. REDMOND	TOMMY SELLERS	O. T. TOMES
ELECTION DAY	8128	6478	8954	7526	5130	2240	7192	6898
ABSENTEE	209	127	184	196	82	42	170	122
PROVISIONAL	1	2	1	2	2	0	3	1
TRANSFER	3	3	8	3	6	1	4	5
GRAND TOTALS	8341	6610	9147	7727	5220	2283	7369	7026

Abstract for the

Buncombe County, NC
NON-PARTISAN GENERAL ELECTION
NOVEMBER 4, 1997
BUNCOMBE COUNTY, NORTH CAROLINA

CITY COUNCIL
CITY OF ASHEVILLE

	JAMES L. WATKINS, JR.	DEE WILLIAMS	WRITE-IN	WRITE-IN	WRITE-IN	WRITE-IN	WRITE-IN	WRITE-IN
ELECTION DAY	2054	6182	93	28	15	5	4	3
ABSENTEE	30	116	2	1	1	0	0	0
PROVISIONAL	1	2	0	0	0	0	0	0
TRANSFER	2	5	0	0	0	0	0	0
GRAND TOTALS	2087	6305	95	29	16	5	4	3

BUNCOMBE COUNTY, NORTH CAROLINA
WRITE-IN SUMMARY REPORT
GENERAL ELECTION, NOVEMBER 4, 1997

CITY OF ASHEVILLE, MAYOR

WRITE-IN NAME	VOTES
DONALD DUCK	2
KARPEN, MORRIS	1
KERMIT THE FROG	1
LINNEY, LARRY	2
SHIELDS, JAMES E	1
STORROW, DONNA	1
TOMES, O.T.	1
WEIGAND, BENJAMIN	1
WILLIAMS, DEE	1

BUNCOMBE COUNTY, NORTH CAROLINA
WRITE-IN SUMMARY REPORT
GENERAL ELECTION, NOVEMBER 4, 1997

CITY OF ASHEVILLE, CITY COUNCIL

WRITE-IN NAME	VOTES
AANYBDY-OBUT	1
ALLEN, CALVIN	1
BATES, LARRY	1
BEACHBOARD, PAT	4
BENNET, SEAN	1
BOB, NEIL N	1
BREEN, DANIEL M	1
BROOKS, SONIA	1
BROWN, JIM	3
CAPPS, SCOTT	1
CHAMBERS, RICHARD	1
CHAPMAN, REID	1
COCKTAIL	1
COFFEE, MICHAEL P	1
COSTELLO, BILL	1
DANIELS, JAMES W.	1
DEBRUHL, JAMES	1
DEEL, HAROLD	1
DEEL, LYNN	1
DEEL, MAE	1
DICKS, ANITA	1
DOVER, BEN	1
ECHEATEDBYNOPARTYLISTED	1
EDGERTON, HAROLD K.	4
ELINGBURG, RAY	1
FERGUSON, ERNEST	1
FREE CHOICES	1
FRYAR, GARY	1
GARNER, JAMES F., JR	1
GENTRY, SUSAN	1
GILLIGAN	1

GOODWYN, REBECCA FAYE	1
GRAY, FRED A	1
GRAY, JULIE	1
GRAY, MICHAEL	1
GREEN, RICHARD	1
GRIST, MARTHA E	1
HALL, BOB	1
HALL, ROBERT, SR.	1
HANRAHAN, CLARE	1
HARRIS, SABRINA	1
HENRY	1
HITTLEMAN, DEAN	1
HOPEY, MARK	1
HUNT, MICK	1
JACKSON, BETTE	1
JOHNSON, MAURICE	1
JONES, NOEL	1
LAWRENCE, SHELDON	1
LEVY, ALAN	1
LIVINGSTON, STEVE	1
LONG, MARK	1
MAINWARING, GAWAIN	1
MANSON, CHARLES	1
MARSHALL, CHARLES	1
MASAOKA, ANNE	3
MCKENNA, CHRIS	1
MICKEY MOUSE	1
MILLER, JON	1
MILLER, MIKE	1
MITCHELL, HENRY	9
MONTGOMERY, CARLOS A.	1
MULVANEY, JOSPEH BRADFORD	1
NO BODY	1
NO ONE	1
NORTON, JOEL	1
PAYNE, KEITH	1
PELLI, CHRIS	1
PETERSON, BRIAN	1
PETERSON, CHRIS	1
PITTMAN, CHARLES	2
PRICE, JULIAN	1
QUIGLEY, JOHN	1

RAINEY, GENE	1
REESE, JEAN	1
REYNOLDS, PAUL H.	2
ROBINSON, DON	1
ROBINSON, HENRY	1
RUNYON, MICHAEL	1
S	1
SABO, THERESA	1
SITNICK, LENI	3
SIVILS, RUSTY	1
SKALSKI, JIM	9
SKALSKI, PAT	1
SPANELLI, STEVEN A.	1
SQUIRES, DWAYNE	1
STANLEY, BILL	1
TAGER, TRISTAN	1
TEICH, HANK	1
THE RAINBOW WARRIOR	1
THORPE, MICHAEL	1
TORPEY, JIM	1
VEHAUN, M. JERRY	1
WALTERS, JULIA	1
WATERS, CHRIS	1
WHITE, PRIMETIME	1
WHITE, SUSAN	1
WHITLEY, DAVID G.	2
WHITLEY, DAVIO	1
WILLIAMS, KENNETH	1
WILLIAMS, LEE	1
WILLIAMS, MICHAELS	1
WOLF, ALLEN	1
WOODY, MAJOR	1
WORKMAN, DELORES	1
YOUNG, CHARLES	1

Monday - January 5, 1998- 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr. Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Emergency Mutual Aid Agreement

Summary: The North Carolina League of Municipalities has drafted the first multi-purpose, standardized, mutual aid agreement for providing and receiving assistance among governments that is more effective and efficient, and also provides faster reimbursement from FEMA, and also covers concerns related to insurance and liability issues.

Bids relative to a Street Sweeper

Summary: It is recommended that the bid be awarded to the low bidder, N. C. Equipment Company, Asheville, N. C., in the amount of $110,368.00 for the purchase of a 1997 'Ford' CF-8000 cab and chassis with a 'Johnston' model 605 sweeper.

Bids relative to Motor Vehicles

Summary: Consideration of a resolution to award Bid Request No. 472-98 for the purchase of seventeen (17) assorted fleet vehicles. It is recommended that awards be made to the low bidder of each item as follows:

Bid items 1, 2, 3, 4, and 6 award to Matthews Ford, Asheville, N. C. in the amount of $265,275.00 for the purchase of vehicles described in the bid summary for these items.

Bid item 5 award to Carolina Truck Center, Hickory, N. C. in the amount of $37,593.00 for the purchase of the vehicle described in the bid summary for this item.

Grand total of all awards as recommended $302,868.

Radio Maintenance Contract Award

Summary: The consideration of a resolution to renew the City's radio system maintenance agreement for one additional year with Motorola Communications and Electronics Inc. The renewal agreement includes a monthly increase of $282.50, which covers additional equipment purchased by the City that has come out of warranty during the past year. The total monthly cost of this service during the renewal period will be $11,619.15.

Bid award for Central Business District Waterlines - Phase I

Summary: The consideration of awarding a construction contract to Cooper Construction Company for the " Asheville Central Business District Waterlines-Phase I"

Design Phase II for W.T. Weaver Boulevard Greenway

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Genesis Group Inc. for the development of the W.T. Weaver Boulevard Greenway - Phase II.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

REPORT FROM THE TASK FORCE ON THE FUTURE OF THE CIVIC CENTER

Vice-Mayor Hay, Chairman of the Task Force on the Future of the Civic Center, briefly reviewed with City Council the purpose of the Task Force and how Hunter Interests Inc. was selected as the consultant. He then reviewed the consultant's report on the market overview for the Asheville Civic Center expansion prepared by the consultant. He outlined the market area analysis, the competitive environment, the overview demand analysis, their recommendations, and the preliminary estimated utilization in a stabilized year of operation.

In summary, based on the market overview analysis, the recommended expansion should include a high quality 18,000- to 30,000-square foot ballroom that is divisible into four rooms, and 10,000 to 15,000 square feet of high quality meeting/breakout space which should include tiered seminar rooms. This facility should be supported by a private-sector-developed headquarters hotel of at least 250-guest rooms. It is imperative that the conference/convention component be developed in a first class manner and include sophisticated telecommunication capabilities and an integrated hotel to ensure that Asheville realizes its maximum return on this considerable investment.

Vice-Mayor Hay said that the Task Force supports these recommendations and asked City Council to approve proceeding to Phase II of the feasibility study which is a detailed market analysis. He noted that the amount is budgeted.

Vice-Mayor Hay then answered various questions from City Council relating to the size of the addition, the parking problems in downtown, the flow of traffic in the area, the anticipated completion date of Phase II, and Buncombe County's participation.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

MINORITY BUSINESS PLAN

Finance Director Bill Schaefer said that in 1993, the City contracted with Research and Evaluation Associates, Inc. for a "Minority Business Study to Support City of Asheville Minority Business Plan". The study's purpose was to determine whether there was sufficient evidence of discrimination in the award of contracts and procurement of supplies, materials and services during the past to justify continuance of the then-existing Minority Business Plan and, if so, to identify any modifications to the plan which would be required to place the plan on a legally defensible basis. The City's current Amended Minority Business Plan, dated December 6, 1994, incorporated revisions recommended by the disparity study. In July 1996 the City and County established a joint Minority Affairs Office. In November 1996, the Minority Business Commission held a retreat at the YMI Cultural Center to begin the process of developing a joint Minority Business Plan to provide policy and direction for a joint City/County minority business program. They used the City's existing 1994 plan as the baseline from which to develop the new joint plan. During the ensuing year, the Commission held a series of meetings with various constituencies, including representatives of minority businesses, the general public, and City and County staffs, to receive their comments and recommendations regarding the joint plan. The draft City of Asheville/County of Buncombe Minority Business Plan is recommended by the Minority Business Commission for adoption by the City and County.

Mr. Schaefer then reviewed the significant changes from the 1994 Plan as follows:

Inclusion of Buncombe County in all aspects of the Plan. Note: separate goals are established for the City and County (Section VII.D.3; page 17 of draft). The City goals are at the same as adopted in the 1994 Plan.

Minority Business Commission Membership: Increases membership from 9 to 11(Sec IV.A.3; page 4 of draft).
Retains: Council of Independent Business Owners, Associated General Contractors of America, Women in Construction, Asheville Area Chamber of Commerce, Asheville-Buncombe Community Relations Council, and Asheville Business Development Center.
Deletes : Black Business and Professional League, YMI Cultural Center, and American Institute of Architects.
Adds: Minority Business Alliance, NAACP, and Three Certified Minority Business Owners (one each from the four categories for which goals have been established: construction, professional services, procurement, and other services). Note: Past suggestions to include representation by the NAACP have not been adopted.

Staff Evaluations: Requires as part of the evaluation of department heads, that good faith efforts towards goal attainment be a consideration in evaluations and that City and County Managers meet semi-annually, at the request of the Commission, to discuss specific concerns. (Sec IV.B.3; page 6 of draft). Note: Similar evaluation requirements were suggested for inclusion in previous editions of the Plan; however, they were not adopted.

Certification of Minority Business Firms: Changes responsibility for certification of firms from the Minority Business Commission to the Minority Affairs Office and clarifies procedures and responsibilities for appeals of certification denial (Sec VII; pages 12 through 16).

Enforcement: Strengthens enforcement options: Bids containing no documentation of good faith efforts shall be deemed non-responsive. Expands sanctions for failure to make or maintain good faith efforts to add provisions for removal of bidders from bid lists and/or debarment for a period of one year (Sec VI; pages 17 - 19)

Grievance Procedure: Clarifies the procedures and responsibilities. Provides that when a grievance has been submitted, the bid process shall be held and no award will be made until such time as the grievance is resolved or a final decision regarding the grievance is made by the City or County Manager (Sec IX; page 19).

Additionally, numerous changes have been made to improve clarity, to streamline procedures and to generally enhance the plans functionality in fulfilling its purposes of widening opportunities for participation, increasing competition, and ensuring the proper and diligent use of public funds.

City staff recommends continuing to work with County staff to incorporate, in the Minority Business Commission-recommended draft of the Plan, mutually acceptable language regarding any issues for which Council suggests revisions to the Commission's draft.

Ms. Laura Todd, Chair of the Minority Business Commission, spoke in support of the Plan and answered questions from City Council.

There was some discussion about the Commission make-up. Councilwoman Field explained why the American Institute of Architects representative was originally included on the Commission. She also wondered whether the three certified minority business owners members on the Commission would have a conflict of interest and not be allowed to bid for either the City or County contracts during their term on the Commission.

Councilman Tomes felt that the commitment to this Plan should be mandated by the City Manager to City department heads and reviewed during their evaluations. City Manager Westbrook said that it is part of their evaluations, but not mandated. He feels that their commitment to the Plan is just as important as customer service, community sensitivity, etc., all of which are incorporated into their evaluations.

Mr. Schaefer then answered various questions from City Council relative to the Plan and stressed that the City of Asheville is committed to making improvements.

It was the consensus of City Council that the City staff continue to work with County staff to address City Council's concerns.

In addition, Mayor Sitnick established a Mayor's Committee consisting of Councilwoman Field and Councilmen Cobb and Tomes to review City Council's concerns with the Commission and the Minority Affairs Office and bring back to City Council additional recommendations.

CONSIDERATION OF PURCHASE OF REAL PROPERTY - FRENCH BROAD GOLF COURSE AND SETTING A PUBLIC HEARING TO BE HELD ON TUESDAY, JANUARY 13, 1998, AT 5:00 P.M. IN THE COUNCIL CHAMBER, SECOND FLOOR OF THE CITY HALL BUILDING

Mr. Irby Brinson, Parks & Recreation Director, said that the Parks and Recreation Department and the Parks and Recreation Advisory Board have been investigating alternative means of financing Parks and Recreation capital projects.

In 1996, City Council approved a long-range plan for Parks and Recreation. It was recognized in that plan that approximately $20 million in capital improvement is necessary over the next 15 years to enhance and maintain the Parks and Recreation facilities and services for this community. The department is currently undertaking a comprehensive Master Plan which has already identified additional needs and services. These include the development of new and comprehensive recreation centers, greenway development, riverfront development, more athletic fields, additional passive park areas, development of district and regional parks, and enhancing cultural programs and facilities. Currently, the Parks and Recreation Department receives an average of about $500,000 per year in capital improvement dollars through the annual budget process. The majority of these funds are used to maintain and repair existing facilities with little funding going to new projects. In reviewing possible funding sources, the likelihood of increasing taxes and increasing fees and charges is not a viable solution to this concern. The department, over the past few years, has looked at alternative means of financing which includes grants and foundation funding. The department has been successful in securing over the past year approximately $300,000 in grants. In addition, the department has sold property which has very little recreation use and will use the revenue to further develop recreation facilities. However, the results of the above covers only a small percentage of the needs.

Recreation departments throughout the country recognize that the only facilities that generate a profit from their operations are golf courses. The City of Asheville has an opportunity to purchase the French Broad River Golf Course. The staff has, over the past several months, investigated the feasibility of the purchase of this golf course and solicited the services of the National Golf Foundation to complete a market analysis and feasibility study. The results of that review by the National Golf Foundation states that the purchase of the French Broad River Golf Course is very positive and represents a potentially successful financial investment. In addition, Parks and Recreation staff has physically reviewed the course's potential and recommends purchase as well. The current sale price for the facility is $3.5 million. The initial investment of the course was $5.2 million by the previous owner. The projected ten-year cash flow for the French Broad River Golf Course shows a potential of making revenue in the second year as well as paying off the debt service for the loan for the purchase.

The Parks and Recreation Department feels very comfortable with the cash flow analysis. It should be noted that the profit received from the golf course will be used to help fund the above mentioned needs. Selling of certificates of participation in the amount of $1 million represents an annual payment of approximately $90,000 per year. The cash flow analysis shows that the department could successfully borrow several million dollars in the future and allow the profit from the golf course to pay the debt service as well. The Parks and Recreation Department suggests that a public hearing be held on January 13, 1998, to allow the public an opportunity for input in regard to this issue.

The Parks and Recreation Department and Advisory Board recommends holding a public hearing to discuss the possible approval by City Council to proceed with financing for the purchase of the French Broad River Golf Course by the City of Asheville.

Mr. Brinson then went into detail of the National Golf Foundation's findings noting that the future success of the Golf Course is dependent upon making physical improvements to the golf course, upgrading the maintenance program, providing excellent customer service and maximizing revenues from the various profit centers.

Mr. Brinson then addressed the issue of flood problems at the Golf Course.

He recommended City Council to tour the Golf Course with him at 2:00 p.m. on Tuesday, January 13, 1998.

Mayor Sitnick praised the City Manager and Mr. Brinson for being creative and looking for alternative funding for parks and recreation, which is of great importance to City Council and the community. She noted that she has received several comments from the community, some being, but not limited to, the aroma from the farm land nearby; flooding concerns; if the private sector couldn't make the Golf Course successful, then how can the City; the cost for improvements recommended; will the capital improvements turnout the revenues anticipated in a timely manner; and since the course is in bankruptcy and has been for sale for a number of years, can the City wait and negotiate a better price?

Mr. Brinson responded to each of the comments outlined by Mayor Sitnick.

Mayor Sitnick noted that the prospect of the additional 9.5 acres was interesting. She said that she talked with Mayor Winston Heston of Sanford, N.C., who has a similar situation in Sanford. Mayor Heston felt that it was a good deal for the City of Sanford and felt the most important thing was to make sure that the City owns the golf course and not to let the ownership or control out of the City.

Fletcher Mayor Bob Parrish and Fletcher City Manager Craig Honeycutt noted that this property is located entirely in the Town of Fletcher which is located in Henderson County. They voiced concerns about matters such as police and fire protection. They noted that if the property is purchased by the City, it will become tax exempt and the Town of Fletcher will lose approximately $11,000 in tax revenue. They hoped to be able to work out some type of agreement with the City to compensate the Town for the loss of revenues.

City Manager Westbrook said that he planned on contacting the Town of Fletcher after City Council has instructed him to proceed with the possible purchase.

It was the consensus of City Council to hold a public hearing on Tuesday, January 13, 1998, at 5:00 p.m. in the Council Chamber, Second Floor, City Hall Building, to receive comments on the proposed purchase of the French Broad River Golf Course by the City.

CABLE TELEVISION FRANCHISE REVIEW SCHEDULE

City Manager Westbrook said that City Council instructed him to develop a procedure for consideration by City Council for setting forth the dates and times for public input for the proposed ordinance regulating cable service providers, the proposed ordinance granting a cable television franchise to InterMedia, and the proposed franchise fee settlement agreement.

At the December 9, 1997, Council worksession, staff was given direction by Council to schedule a worksession, a public input meeting and a public hearing for consideration of the proposed ordinance regulating cable service providers, the proposed ordinance granting a cable television franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia), and the proposed franchise fee settlement agreement ("cable television documents"). The purpose of this report is to recommend the following meeting dates and times for the proposed public input:

A. January 20, 1998 - Council Worksession - 3:00 p.m. in the 1st Floor North Conference Room - City Hall Building. The purpose of this item on the Council worksession agenda will be to review the cable television documents with Council. This will be primarily for the benefit of new Council Members but will also be of benefit to the public in understanding the proposed cable television documents.

B. February 10, 1998 - Community Meeting - 7:00 p.m. in the William F. Wolcott Jr. Building - 161 S. Charlotte Street. The purpose of the community meeting will be to allow the community to meet with City staff, the City's consultant and the cable television company on an informal basis to discuss the cable television documents and to ask questions. It is my understanding from the previous worksession that Council wants to be part of the audience for this meeting.

C. February 24, 1998 - Public Hearing - 5:00 p.m. in the Council Chamber - 2nd Floor of the City Hall Building. This will be a regular public hearing held by City Council at a formal Council meeting to receive further input prior to making a decision on the cable television documents.

If this report reflects the direction of Council for public input on the cable television documents, City Manager Westbrook recommended Council formally approve this process at their next regular Council meeting.

Mr. Wally Bowen, Citizens for Media Literacy, thanked City Council for the additional opportunities for input but hoped that the timetable outlined would not lock Council into a deadline for exploring all the issues. He passed out an article from the New York Times that reported "around the country, some small towns and cities are fed up with high cable TV rates and limited choices are building their own cable networks to compete with large, private cable companies."

When Mr. Mark Rosenstein inquired about the appropriate time for public comments, Mayor Sitnick said that worksessions are typically for staff to meet with Council with information they have gathered at Council's request in order that City Council can become educated and familiar with the issues.

After some discussion about public input, City Attorney Oast cautioned City Council on allowing public comment at worksessions when there is a public hearing scheduled. There might be a perceived unfair advantage for people to be allowed to comment substantially on an item at a worksession and then again at the public hearing, whereas some people may only come to the scheduled public hearing thinking that is the appropriate time for their comments to be heard.

Vice-Mayor Hay felt that it needs to be made clear to the public when public comments are acceptable.

Mayor Sitnick was committed to allowing flexibility for speakers at worksessions because if they have taken time out to come to a meeting, they should be allowed to be heard. She felt that Council should create a statement about public comments at worksessions, public hearings, public forums, community meetings etc. She felt that at the upcoming City Council Retreat this can be defined.

Ms. Nelda Holder thanked City Council for the opportunity for additional input from the public and felt Council needed to look at as much a broad spectrum as possible.

Mr. Scott Barber felt that access to communications media is vital to democracy.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

LEVEL III PUBLIC HEARING WORKSHOP

Since the January 13, 1998, would be the first Level IIII public hearing considered by City Council since the adoption of the Unified Development Ordinance, City Attorney Oast reviewed how City Council should proceed with the quasi-judicial hearing.

It was the consensus of City Council that after the hearing if the project was approved, that staff draft the Order and have the Mayor sign it. If the project is denied, staff will draft the Order and bring the Order back to the City Council for adoption. A second vote may be required in some instances.

MASSACRE IN MEXICAN STATE OF CHIAPAS

Mayor Sitnick said that there is a public effort to raise funds to help the people who have been massacred in Chiapas, which is close to Asheville's Sister City San Cristobal de Las Casas. It was the consensus of City Council to send a letter of sympathy to those families.

MEETINGS

Councilman Tomes agreed to attend the N.C. Coalition for Public Transportation meeting in Raleigh, N.C., on January 21, 1998.

It was noted that a member of the Asheville Transit Authority Board might consider attending the forum on bus rapid transit on January 15, 1998.

NC LEAGUE OF MUNICIPALITIES

It was the consensus of City Council to have the Mayor write a letter on behalf of the City Council supporting Councilwoman Field's candidacy to fill out the term of former Councilman Charles Worley as a member of the North Carolina League of Municipalities Board of Directors.

BROWNFIELDS AGREEMENT APPLICATION

Through a request of Mr. Reese Lasher, Councilwoman Field showed a drawing of a proposed project located on Fairview Road and said that the State requires a letter of support from the City of Asheville. It was the consensus of City Council instruct the City Manager to write a letter in support of the Brownfields Agreement Application and to place this item on the next formal City Council agenda.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:10 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - January 13, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Vice-Mayor Hay gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE WEEK OF JANUARY 12-16, 1998, AS THE "ASHEVILLE AREA CHAMBER OF COMMERCE WEEK"

Mayor Sitnick read the proclamation proclaiming the week of January 12-16, 1998, as the " Asheville Area Chamber of Commerce Week" in honor of the Asheville Area Chamber of Commerce Centennial. She presented the proclamation to Mr. Jay Garner and Mr. Ray Bailey who thanked City Council for their support.

B. PROCLAMATION PROCLAIMING THE WEEK OF JANUARY 12-19, 1998, AS "DR. MARTIN LUTHER KING JR WEEK"

Councilman O.T. Tomes read the proclamation proclaiming the week of January 12-19, 1998, as "Dr. Martin Luther King Jr. Week" in the City of Asheville and presented it to Ms. Oralene Simmons. Ms. Simmons briefed City Council on some events and activities that would be taking place during the week.

C. RECOGNITION AND APPRECIATION TO ANN VASILIK FOR THE BICENTENNIAL PIECE LOCATED ON THE FIRST FLOOR OF THE CITY HALL BUILDING

Mayor Sitnick recognized the expressed City Council's appreciation to Ms. Ann Vasilik for the bicentennial art piece located on the First Floor of the City Hall Building.

Ms. Vasilik hoped that City Council would allow the art piece to be displayed in other locations such as the library, schools and hospitals.

II. CONSENT:

A. RESOLUTION NO. 98-1 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. LEAGUE OF MUNICIPALITIES FOR PROVIDING AID TO OTHER MUNICIPALITIES WITHIN THE STATE OF NORTH CAROLINA IN THE EVENT OF A NATURAL OR MAN-MADE DISASTER

Summary: The North Carolina League of Municipalities has drafted the first multi-purpose, standardized, mutual aid agreement for providing and receiving assistance among governments that is more effective and efficient, and also provides faster reimbursement from FEMA, and also covers concerns related to insurance and liability issues.

In responding to mutual aid rendered to municipalities impacted by Hurricane Fran, a generic agreement was drafting which covered the following:

- Basic time for assistance is seven days, but can be modified when parties agree.
- Establishes that needs of 'home' municipal residents are first priority, and a municipality may decline to provide assistance.
- When a disaster strikes, a city may request help if it determines that its own resources are inadequate.
- Requests can be made directly to another city or through an emergency management system.
- Outlines required information such as conditions, type of assistance needed (personnel, equipment), length of time, etc.
- The City receiving a request for aid would agree or decline to provide assistance.
- The *requesting City* is responsible for basic employee needs, work assignments, documented actual costs and expenses (to include personnel, equipment and materials), and direction and record-keeping to provider.
- The *providing City* is responsible for direct supervision of their personnel and equipment, crew communications, daily time records, (personnel, equipment hours, etc.) customary pay (to be reimbursed), and submittal of invoices for reimbursement.
- Each party holds the other harmless from liability.
- All activities performed are declared government functions.
- Agreement to last for at least one year, and for one year in subsequent years, unless terminated by a 60-day notice.

Key staff (including the Legal, Risk Management, Police, Fire, Parks and Recreation, and Public Works Departments) have reviewed the document and agree with the intent and language of the Agreement.

RESOLUTION BOOK NO. 24 - PAGE 321

B. RESOLUITON NO. 98-2 - RESOLUTION AWARDING BID TO N.C. EQUIPMENT COMPANY FOR A STREET SWEEPER FOR THE PUBLIC WORKS DEPARTMENT

Summary: Consideration of a resolution to award Bid Request No. 473-98 for the purchase of a street sweeper for the City of Asheville Public Works Department, Street Division.

Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were invited to furnish a street sweeper for the Public Works Department, Street Division. The following two bids were received:

N.C. Equipment Company, Asheville, N.C.	$110,368
Johnston Sweeper Company, Chino, CA	$127,931

Bids have been reviewed for technical compliance to specifications by the Public Works Department and the Fleet Management Division, and their concurrence received in the following recommendation.

Funds for this purchase are to be from the Street Division's appropriations, Account Code 20-430-15-427-00-5740.

Subject to Council's approval, it is recommended that the bid be awarded to the low bidder, N. C. Equipment Company, Asheville, N. C., in the amount of $110,368.00 for the purchase of a 1997 'Ford' CF-8000 cab and chassis with a 'Johnston' model 605 sweeper.

RESOLUTION BOOK NO. 24 - PAGE 322

C. RESOLUTION NO. 98-3 - RESOLUTION AWARDING BIDS FOR FLEET VEHICLES

Summary: Consideration of a resolution to award Bid Request No. 472-98 for the purchase of seventeen (17) assorted fleet vehicles.

Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were received to furnish the Police, Fire, Parks, Building Safety and Public Works Departments, and Asheville Transit Authority as bid items 1 through 6. Matthews Ford, Asheville, N.C., was the sold bid meeting specifications for bid items 1,2, 3, 4, and 6 as follows:

Bid Item 1 - Five 1998 Ford Crown Victoria for Police Department	$96,960
Bid Item 2 - Two 1998 Ford F-150 for Fire Department	$39,740
Bid Item 3 - One 1998 Ford F350 Van for Parks & Recreation Dept.	$21,887
Bid Item 4 - Seven 1998 Ford Rangers for Building Safety Dept.	$92,505
Bid Item 6 - One 1998 Ford Taurus for Transit Authority	$14,183

The following bids were received for one 1998 International Cab & Chassis with a Heil Dumping Unit for the Public Works Department:

Bid No. 5:

Carolina Truck Centers, Hickory, N.C.	$37,593.00
Volvo & GMC Truck Center, Hickory, N.C.	$38,480.00
Carolina Truck & Body, Asheville, N.C.	$38,839.00
W. Carolina Freightliner, Asheville, N.C.	$39,800.00
Volvo & GMC Truck Center, Hickory, N.C.	$43,899.5 0

Bids have been reviewed for technical compliance to specifications by the Fleet Management Division and their concurrence received in the following recommendations.

Funds for the purchase of these vehicles are to be from the requisitioning departments capital equipment appropriations for FY 97/98. All vehicles are budgeted as replacement vehicles.

Subject to Council's approval, it is recommended that awards be made to the low bidder of each item as follows:

Bid items 1, 2, 3, 4, and 6 award to Matthews Ford, Asheville, N. C. in the amount of $265,275.00 for the purchase of vehicles described above.

Bid item 5 award to Carolina Truck Center, Hickory, N. C. in the amount of $37,593.00 for the purchase of the 1998 International Cab & Chassis with a Heil Dumping Unit.

Grand total of all awards as recommended $302,868.00.

RESOLUTION BOOK NO. 24 - PAGE 324

D. RESOLUTION NO. 98-4 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH GENESIS INC. FOR DESIGN PHASE II OF THE W.T. WEAVER BOULEVARD GREENWAY

Summary: The Parks and Recreation Department was directed to select the services of an interdisciplinary firm to provide a complete scope of design and engineering services for the W.T. Weaver Boulevard Greenway - Phase II.

The City of Asheville is continuing its greenway development along Glenn's Creek on W.T. Weaver Boulevard and within the UNC-A campus. The construction of the first phase of this development is complete and extends from Merrimon Avenue to Barnard Avenue (approximately 2,200 feet in length). The second phase of the W.T. Weaver Boulevard Greenway project shall extend from Barnard Avenue to Broadway (approximately 2,100 feet in length). It will tie into the sidewalks and future greenway along Broadway.

The greenway will be located mostly within the campus of the University of North Carolina at Asheville (which includes the land outside of the Botanical Gardens), with some portions located within the City of Asheville's right-of-way for W.T. Weaver Boulevard and the North Carolina Department of Transportation's right-of-way at Broadway. The staff of the City of Asheville and UNC-A have been working together to execute the necessary agreements and easements for this greenway project.

Most of the planning, design and construction was accomplished by City of Asheville staff in Phase I, the majority of the planning and design work in Phase II will be done by private consultants with construction eventually implemented by private contractors. Staff was charged to solicit the services of an interdisciplinary team (landscape architects, architects, engineers, etc.) with one lead firm who can provide planning, design, construction drawings and specifications, contract documents, bidding procedure, quality assurance of construction, and as-built drawings for the W.T. Weaver Boulevard Greenway - Phase II.

The City of Asheville Parks and Recreation Department solicited requests for proposals from qualified planning and design professionals. The proposal review team to select a firm via city policy included Erin McLoughlin (Planning & Development Department), Suzanne Molloy (Public Works), Al Kopf and Alan Glines (Parks and Recreation), Melissa Acker (UNC-A), and Susan Roderick (Tree and Greenway Commission). After reviewing the proposals and interviewing several firms, the team recommended the selection of Genesis Group, Inc. Staff has been negotiating with the Genesis Group, Inc. to reach a reasonable scope of work and fee estimate.

The following scope of work and associated fee estimates reflect "turn-key" professional consultant services by Genesis Group, Inc. (with the exception of trail easements to be performed by staff) as delineated in the city's request for proposal:

Stage I - Pre-Design Analysis	$ 5,200
Stage II - Conceptual Design	14,520
Stage III - Construction Documentation	14,382
Stage IV - Construction Administration	15,000
Site Survey	2,500
Soil Testing and Engineering	3,500
Reimbursable Expenses	2,000
Total	$57,102

Stages I and II are specific in terms of professional labor estimates, Stages III and IV reflect estimated costs which might vary pending the final design solution. Genesis Group, Inc. proposes a nine month completion process for planning, design, and implementation.

The Parks and Recreation Department recommends that authorization be given to the City Manager to enter into a contract with Genesis, Inc. for the development of the W.T. Weaver Boulevard Greenway - Phase II.

RESOLUTION BOOK NO. 24 - PAGE 328

E. RESOLUTION NO. 98-5 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SERVICE AGREEMENT RENEWAL WITH MOTOROLA COMMUNICATIONS & ELECTRONICS INC. RELATIVE TO MAINTAINING THE CITY'S RADIO SYSTEM AND ASSOCIATED EQUIPMENT

Summary: In August of 1994, the City of Asheville entered into a service agreement with Motorola Communications and Electronics, Inc. for the maintenance of the City's radio communication system. Due to the wide range and diversity of high technology used in the City's radio systems and the complex integration of the technologies of each segment, it was determined that a single vendor contract would best fulfill the City's need for reliability of the radio system and rapid response maintenance for any portion of the system that may fail. The agreement provides for a fixed rate maintenance cost per unit of equipment for a three year period. Although the three year period has now expired, a renewal clause in the agreement allows the City to renew for a period of one additional year at the original maintenance cost per unit.

The renewal agreement includes a monthly increase of $282.50, which covers additional equipment purchased by the City that has come out of warranty during the past year. The total monthly cost of this service during the renewal period will be $11,619.15.

Funds have been appropriated in the Finance Department, Information Services Division, Account No. 10-410-10-441-08-4400 to cover the monthly cost of this agreement.

RESOLUTION BOOK NO. 24 - PAGE 329

F. RESOLUTION NO 98-6 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE FINDINGS OF HUNTER INTERESTS INC. REGARDING ITS PHASE I MARKET OVERVIEW REPORT SUBMITTED TO THE TASK FORCE ON THE FUTURE OF THE CIVIC CENTER AND TO PROCEED WITH PHASE II

Summary: Based on the market overview analysis, the recommended expansion should include a high quality 18,000- to 30,000-square foot ballroom that is divisible into four rooms, and 10,000 to 15,000 square feet of high quality meeting/breakout space which should include tiered seminar rooms. This facility should be supported by a private-sector-developed headquarters hotel of at least 250-guest rooms. It is imperative that the conference/convention component be developed in a first class manner and include sophisticated telecommunication capabilities and an integrated hotel to ensure that Asheville realizes its maximum return on this considerable investment. The Task Force supports these recommendations and recommends City Council proceed to Phase II which is a detailed market analysis.

RESOLUTION BOOK NO. 24 - PAGE 330

G. RESOLUTION NO. 98-7 - RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE REGIONAL WATER AUTHORITY TO AWARD THE BID OF ASHEVILLE'S CENTRAL BUSINESS DISTRICT WATERLINES - PHASE I PROJECT TO COOPER CONSTRUCTION COMPANY

Summary: Sealed bids were received for the Authority's " Asheville Central Business District Waterlines-Phase I" project on December 2, 1997. This Master Plan Phase II project includes the installation of new waterlines on Haywood Street from College Street to Patton Avenue and a section of Biltmore Avenue from Meadow Road to Forest Hill Drive. The project was bid such that either street section could be accepted separately. This project will improve available fire protection, improve the reliability of water service and help reduce the unaccounted for water percentage. Three bids were submitted with Cooper Construction Company submitting the low bid of $1,656,057. All the bids received are listed below in the order of their bid:

COMPANY	BID
Cooper Construction Company Hendersonville, North Carolina	$ 1,656,057
Hobson Construction Company Arden, North Carolina	$ 1,742,110
Ruby-Collins Incorporated Smyrna, Georgia	$ 3,201,550

Only $ 760,000 is budgeted for the construction of this project. Staff discussed this project and determined that the Biltmore Avenue component of the project offered greater immediate benefit to the operation of the water system. Also, the Biltmore Avenue waterline component of the project was within the funds allocated, the Haywood Street waterline was not. Accordingly, staff recommended and the Regional Water Authority approved award of a modified contract to Cooper Construction Company for the Biltmore Avenue 12-inch component of the project. Cooper's low bid price for this component of the project was $ 550,131.00. The planned 12-inch waterline installation on Haywood Street will be considered in the future as possibly a joint project with other utilities desiring to upgrade their existing facilities along Haywood Street. Construction on this project is scheduled to begin in late January, 1998 with 180 days allocated for construction. There is a liquidated damages clause in the contract of $ 500.00 per day if the project is not completed on time. These bids were received in accordance with NC General Statute 143-129 and in accordance with the City of Asheville's Minority Business Plan.

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The Regional Water Authority approved award of this modified contract to Cooper Construction Company on December 16, 1997, and staff recommends City Council's concurrence with the Authority's action.

RESOLUTION BOOK NO. 24 - PAGE 331

H. MOTION ADOPTING DATE AND TIMES FOR PUBLIC INPUT FOR THE PROPOSED ORDINANCE REGULATING CABLE SERVICE PROVIDERS, THE PROPOSED ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE, AND THE PROPOSED FRANCHISE FEE SETTLEMENT AGREEMENT

Summary: At the December 9, 1997, Council worksession, staff was given direction by Council to schedule a worksession, a public input meeting and a public hearing for consideration of the proposed ordinance regulating cable service providers, the proposed ordinance granting a cable television franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia), and the proposed franchise fee settlement agreement ("cable television documents"). The purpose of this report is to recommend the following meeting dates and times for the proposed public input:

A. January 20, 1998 - Council Worksession - 3:00 p.m. - First Floor North Conference Room - City Hall Building. The purpose of this item on the Council worksession agenda will be to review the cable television documents with Council. This will be primarily for the benefit of new Council Members but will also be of benefit to the public in understanding the proposed cable television documents.

B. February 10, 1998 - Community Meeting - 7:00 p.m. - William F. Wolcott Jr., Building - 161 South Charlotte Street. The purpose of the community meeting will be to allow the community to meet with City staff, the City's consultant and the cable television company on an informal basis to discuss the cable television documents and to ask questions. It is my understanding from the previous worksession that Council wants to be part of the audience for this meeting.

C. February 24, 1998 - Public Hearing - 5:00 p.m. - Council Chamber on the Second Floor of the City Hall Building. This will be a regular public hearing held by City Council at a formal Council meeting to receive further input prior to making a decision on the cable television documents.

Staff recommends Council approve the processes outlined in this report to provide public input on the proposed cable television documents.

I. MOTION SETTING A PUBLIC HEARING ON JANUARY 27, 1998, TO REZONE 216 SHELBURNE ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions on the Consent Agenda and they will not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

III. PUBLIC HEARINGS:

A. CONTINUATION OF PUBLIC HEARING RELATIVE TO REZONING EIGHT PARCELS ON THE SOUTH SIDE OF BROAD STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY TO OFFICE

Mayor Sitnick said that this public hearing was opened on September 9, 1997, and continued until October 14, 1997. On October 14, 1997, the public hearing was again continued until November 25, 1997. On November 25, 1997, the petitioner requested the public hearing be continued again until this date.

City Attorney Oast reminded City Council that on September 9, 1997, Councilman Cloninger was excused from voting on this matter due to a conflict of interest.

City Attorney Oast also said that a valid protest petition has been received, thus invoking the 3/4's vote requirement. Since Councilman Cloninger has been excused from voting, there would need to be a unanimous vote by City Council to adopt the ordinance.

Mr. Mike Matteson, Urban Planner, said that this is consideration of rezoning eight properties on the south side of Broad Street (between Madison Avenue and Charlotte Street) from RM-16 to Office.

When Council adopted the Unified Development Ordinance and the official zoning maps, it appears that their intention was to zone at least two of these properties as "Office". That intention, however, was not translated by staff onto the official zoning maps. Rather, these properties were designated as being zoned RM-16. Staff is presenting this rezoning as a way to correct this mapping error and has included the additional properties so as to create a more desirable zoning pattern in the area.

The RM-16 zoning district is a high-density multi-family district allowing up to 16 units per acre. The Office district allows a mixture of small scale office uses and residential uses at a density of up to 8 units per acre.

At their August 6, 1997 meeting, the Planning and Zoning Commission voted 4-3 to recommend denial of the rezoning.

Mr. Matteson said that there have been negotiations taking place for the past couple of months between the property owner and Neighborhood Housing Services. Those negotiations have resulted in the Neighborhood Housing Services purchasing the two properties in question. Therefore, the individual making the original request that precipitated this rezoning petition no longer owns the property and the new owner is content with the with the existing zoning. In light of those recent developments, staff is recommending that City Council, as the petitioner in this case, withdraw the petition whereby leaving these properties zoned residentially.

Mayor Sitnick closed the public hearing at 5:30 p.m.

Councilwoman Field moved to withdraw the rezoning petition. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE

B. PUBLIC HEARING RELATIVE TO REZONING TWELVE LOTS LOCATED OFF BROAD STREET, WASHINGTON ROAD AND MADISON AVENUE FROM OFFICE DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

ORDINANCE NO. 2444 - ORDINANCE TO REZONE TWELVE LOTS LOCATED OFF BROAD STREET, WASHINGTON ROAD AND MADISON AVENUE FROM OFFICE DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

Mayor Sitnick said that this public hearing was continued from November 25, 1997, pursuant to a request of the petitioners.

Mayor Sitnick opened the public hearing at 5:31 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Mike Matteson, Urban Planner, said that this request is to rezone twelve properties on either Broad Street, Madison Avenue or Washington Road from Office to RM-8 Residential Multi-Family Medium Density.

The twelve properties total approximately 1.8 acres in size and are surrounded by RM-8 zoning to the North, RM-16 zoning to the East and Office zoning to the South and West.

The Office District allows a mixture of small scale office uses and residential uses with a density of up to eight units per acre. The RM-8 District allows single or multi-family residential uses with a density of up to eight units per acre.

Staff recommends approval of the rezoning for the following reasons: (1) All of the properties are currently used for residential purposes; and (2) The 2010 plan calls for residential uses for these properties.

At their November 5, 1997, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning.

Ms. Angela Scotchie, 91 Broad Street; Mr. Arthur Davis, 12 Madison Avenue; and Mr. Vincent Ramsuer, 111 Broad Street; all spoke in support of the rezoning of the area.

Mayor Sitnick closed the public hearing at 5:35 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2444. This motion was seconded by Councilman Cobb and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE

C. PUBLIC HEARING TO REZONE PROPERTY ON GLENDALE AND SPRINGVALE AVENUES FROM RM-16 TO CI

ORDINANCE NO. 2445 - ORDINANCE TO REZONE PROPERTY ON GLENDALE AND SPRINGVALE AVENUES FROM RM-16 TO CI

Mayor Sitnick opened the public hearing at 5:36 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is consideration of an ordinance to rezone property on Glendale and Springvale Avenues from RM-16 Multi-Family Residential to CI Commercial Industrial.

The majority of these lots are vacant tracts of land and are surrounded on the north and west by commercially zoned lots and on the south and east by residential property. This area of residential lots has diminished over the years and the houses in the area are abandoned or have been demolished. The development trend for this area seems to be toward commercial industrial and not residential.

The Technical Review Committee states that this area has substandard water flow for fire protection for commercial development with only a 2" line on Springvale and Dogwood. However, the 6" line on Glendale Avenue can be accessed. The Technical Review Committee states that the streets in the area are substandard for any commercial development and any access would need to be upgraded by the developer.

This property is within the city limits of Asheville.

The Planning staff reviewed the rezoning request and recommended approval of PIN # 9658.17-21-4378 and 9658.18-21-5239, 5291, 5593, 5636, 6455, 7317 from RM-16 Multi-Family Residential to CI Commercial Industrial except for a 20 foot buffer strip of lots 5291 and 7317 along Dogwood Lane which was recommended to be rezoned to RS-8 to be compatible with the residential zoning on the other side of Dogwood in order to restrict any commercial access from these lots onto Dogwood Lane.

At the December 3, 1997, Planning & Zoning Commission, the Commissioners voted 3 to 2 (with 2 commissioners absent) to accept staff's recommendation to approve the rezoning request except the buffer strip should be 5 foot instead of 20 foot.

Upon inquiry of Councilman Sellers, Mr. Ownbey explained that buffer strip would keep any commercial development from these lots having direct access onto Dogwood Lane. He noted that there will be a 25 foot buffer strip required in addition to the 5 foot strip.

When Councilman Cobb questioned traffic improvements, Mr. Ownbey said that under the UDO the developer will be responsible to improve McArthur Lane, Springvale Drive and Dogwood Lane to City standards, if they use those as access to the flea market proposed across the street from these lots.

Upon inquiry of Councilwoman Field, Mr. Ownbey said that multi-family can be built on commercial industrial property.

Mr. Ownbey responded to questions from Councilman Cobb as it related to buffer requirements and if the buffer can be reduced if a fence were built.

Mr. Clay Mooney, landscape architect representing one of the property owners involved in this rezoning request, explained that his client owns 4 of the 7 parcels requested to be rezoned. He said the use of the four lots will be for overflow parking from the flea market across the street. In the present plans, there is sufficient parking on the site of the flea market based on a ratio developed by the Planning Department to accommodate the number of vendors anticipated.

City Attorney Oast reminded City Council that if the rezoning is granted, the property will be available for any use allowed in the Commercial Industrial District.

Due to a conflict of interest, Councilman Hay moved to excuse Councilman Cloninger from voting on this issue. This motion was seconded by Councilman Sellers and carried unanimously.

Due to a conflict of interest, Councilman Hay moved to excuse Councilwoman Field from voting on this issue. This motion was seconded by Councilman Cobb and carried unanimously.

Mr. Bob Mayhew, one of the partners of the property, spoke in support of the rezoning noting that they will also be adding low income housing on 2 of the lots.

Upon inquiry of Mayor Sitnick, Mr. Mayhew said that they will only pave the walk-way in the flea market area. As for the other parking portion, most of it will be gravel mixed with mulch in order to try and get a grass coverage so that in 3-4 years they can mow it and have a compacted area for parking. He said they will not pave the whole 12-15 acres.

Mr. Mayhew responded to Councilman Sellers question about traffic patterns in the area and if there was a need for additional signalization.

Mr. Ron Chandley, representing vendors of the old flea market, urged Council to rezone this property noting that a flea market needs ample parking to be successful.

Mr. Bob Long Jr., attorney representing owner of the lot located at the corner of Glendale Avenue and Dogwood Lane, requested Council to rezone the property and that the buffer be held to five feet.

Mr. Pat Logan, resident in the Oakley community, spoke in support of the rezoning and felt it may help improve a blighted area.

Mr. Ownbey noted that the Planning & Zoning Commission has requested the City Engineer to investigate the possibility of installing no parking signs on Glendale Avenue, Dogwood Lane and Springvale Avenue, even if this area does not get rezoned.

When Mayor Sitnick asked Mr. Ownbey why some Commission members voting against the rezoning, Mr. Ownbey recalled that they basically wanted to retain multi-family residential in the area.

Mr. James Cheeks, Traffic Engineer, responded to questions relative to the traffic in the area.

Mayor Sitnick closed the public hearing at 6:12 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cobb moved for the adoption of Ordinance No. 2445. This motion was seconded by Councilman Tomes and carried unanimously.

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D. PUBLIC HEARING FOR THE LEVEL III PLANNING REVIEW FOR THE MEADOWS APARTMENTS - PHASE II LOCATED ON ASCENSION DRIVE IN WEST ASHEVILLE

Mayor Sitnick said that next on the agenda is the application of Meadows Apartments for a conditional use permit to build Phase II of an apartment complex, which is a Level III project, on property situated on Ascension Drive in West Asheville. This is a public hearing for Council to consider whether the requested permit should be issued. There being no preliminary matters to be considered, she opened the public hearing at 6:21 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing. She then administered the oath to anyone who anticipated speaking on this matter.

Mayor Sitnick reviewed the procedures for this hearing by stating that City Council will first hear from staff who will describe the proposal and provide some background information. Then the applicant may make a presentation and then comments from the public will be taken. She said that there will be an opportunity for questions and rebuttal comments, as necessary. Following the hearing, Council will then debate the proposal and will take action on the request. Hearing no questions about the procedure, she asked for staff's presentation.

Mr. Carl Ownbey, Urban Planner, said that this is consideration of Conditional Use approval and permit (as outlined in the UDO) for the Meadows Apartments - Phase II located on Ascension Drive in West Asheville.

By use of a map, he reviewed the location of the project with Council. This project is for the 168 unit expansion of the Meadows Apartments. The project has been submitted and reviewed under Level Three - subsection 7-5-9(A) of the UDO by the Technical Review Committee. They have approved this project with several conditions which the developer has addressed except for approval of revised water and sewer installation plans. This property is within the City Limits of Asheville.

City Council must take formal action as set forth in subsection 7-5-5 (E) 2 and shall state if the proposed conditional use meets or does not meet each of the standards set forth in subsection 7-16-2 (C).

He then reviewed the standards and the recommended findings on those standards as follows:

Conditional Use Standards:

1. That the proposed use or development of the land will not materially endanger the public health or safety:

The proposed development conforms to the development standards of the current zoning ordinance and is the second phase to the existing apartment complex. The proposed development has been approved for water and sewer service.

2. That the proposed use is reasonably necessary for the health and general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region:

The proposed development increases the range of housing opportunities to the community and increases the available affordable housing for the City.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property:

The proposed development is consistent with the residential development to the south (Meadows Apartments - Phase I) and is adequately buffered from the single-family developments to the west and north.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood in which it is located:

The proposed 168 unit residential development will the constructed on approximately 17 acres of adjacent land. This equates to approximately 9.8 units/acre. The current zoning permits 16 units/acre. The adjacent single-family residential development is zoned for 8 units/acre.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City:

The proposed development conforms to the 2010 Plan in that the plan indicates this area to be low to medium density residential which outlines 8 to 10 units/acre.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities:

The proposed development is within the city limits and will receive water and sewer services, police and fire protection, and public transportation is provided to the existing apartments.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard:

The proposed development was required to provide a "traffic impact analysis" outlining the project's impact on the surrounding streets and traffic patterns. The report was reviewed and approved by City staff. The report recommended that access to the Camelot neighborhood through Ector Street be limited. That has been set up in the form of a gate at Ector Street onto Evelake Drive. It will be open only during certain hours during the day allowing no access from Meadows Apartments except during certain hours. The bus will be re-routed to accommodate that gate.

The Planning staff and the Technical Review Committee recommend approval of the Conditional Use Permit for the Meadows Apartments - Phase II located on Ascension Drive in West Asheville with the condition that water and sewer installation plans are approved by the City prior to any construction.

Upon inquiry of Vice-Mayor Hay about who will manage the gate, Mr. Ownbey said that it will be part of Meadows Apartments and they are working out the specifics where it will be accessible for emergency vehicles.

When Councilman Cobb asked about recreational facilities for the children, Mr. Ownbey said that they will have a community building, swimming pool and recreational land.

Responding to questions from Councilman Cobb, Mr. James Cheeks, Traffic Engineer, said that the traffic impact study did not recommend a traffic signal or any kind of modification to the existing traffic signal at Evelake and Leicester Highway due to the distance between the existing drive and that signal.

When Mayor Sitnick asked if there are any provisions for walkways, Mr. Ownbey said that the project was required to have a sidewalk all the way around the interior plus the green area will have some designs.

Mr. John Crabtree, President of Meridia Inc., briefed Council on how this will be combined with Phase I. He noted that the property is significantly under the maximum density allowed under the zoning and they have complied or exceeded the requirements of the traffic impact analysis.

Upon inquiry of Councilwoman Field, Mr. Crabtree said that the average rental price of a unit would be from mid-$500 to $750. He said there are 61 one-bedroom units, 96 two-bedroom units and 12 three-bedroom units. He said the Phase I of the project has predominantly three-bedroom units. He said that the do rent to families with children.

A resident of 37 Evelake Drive stated that it would be nice to have additional space between the end of the backyards and the beginning of the parking lot.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 6:40 p.m.

Councilwoman Field moved to approve the Conditional Use Permit for the Meadows Apartments - Phase II located on Ascension Drive in West Asheville with the condition that water and sewer installation plans are approved by the City prior to any construction. This motion was seconded by Councilman Tomes.

Mayor Sitnick then said that there has been a motion and a second to approve the conditional use permit as presented by staff with the condition that water and sewer installation plans are approved by the City prior to any construction, and the Council is required to determine that certain standards have been met based on the evidence presented at today's hearing. She then said that she would read the list of standards, and if Council wishes to take a separate vote on any one of the standards, so say when she reads it out, or Council's silence, you will be indicating it's agreement that the standard has been satisfied.

Mayor Sitnick said the actual vote should be: The Asheville City Council finds, after consideration of the information presented at this public hearing, that the Conditional Use Permit for the Meadows Apartments - Phase II located on Ascension Drive in West Asheville, if developed as proposed in accordance with the submitted plans and with the condition that water and sewer installation plans are approved by the City prior to any construction, together with any modifications or conditions approved by Council:

(a) will promote and not endanger the public health or safety.
(b) will not injure the value of adjoining or abutting property.
(c) will be in harmony with the character of the neighborhood.
(d) will generally conform with the comprehensive plan.
(e) is appropriately located for utilities and service delivery.
(f) will not cause undue traffic congestion or hazards.
(g) will comply with all required standards and specifications.

Mayor Sitnick said that hearing no negative votes of the foregoing standards, she asked for a vote on Councilwoman Field's motion to grant the Conditional Use Permit. Said motion carried unanimously.

E. PUBLIC HEARING TO RECEIVE COMMENTS ON THE PROPOSED PURCHASE OF THE FRENCH BROAD RIVER GOLF COURSE BY THE CITY OF ASHEVILLE

Mayor Sitnick opened the public hearing at 6:42 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Irby Brinson, Director of Parks and Recreation, gave City Council an overview of the flooding situation that occurred at the French Broad River Golf Course. Staff has evaluated the situation over the past few days to determine the best means of removing the water, however, it will be costly. Based upon that, staff is recommending that the City not purchase the French Broad River Golf Course at this time. He did emphasize that this was a mechanism to generate revenue for parks and recreation needs. We still have those needs and they will continue to grow. He estimated approximately $30 million for the next 15 years. He said that he will not shy away from bringing creative ideas to City Council. He felt that it was in their best interest to look at all alternatives to help increase funding for parks and recreation and they will continue to do that.

The Mayor and Council thanked Mr. Brinson for reaching out to new ways to bring in revenue into the City. They encouraged him to continue to bring those ways to Council along with his recommendations.

Council also thanked the people in the community who called and wrote letters for and against the purchase of the golf course.

Upon inquiry of Frank Young, City Attorney Oast said that if this issue is again considered by City Council, it will be advertised.

Mr. Samuel Camp, member of the Parks and Recreation Advisory Board, felt that the newspaper unfairly reported that there was "undercover dealings" going on with regard to the possible purchase - which is totally inaccurate. He said that the Advisory Board is, and will continue to, look at providing recreation for all citizens of Asheville.

Mr. Jerry Rice, County resident, passed out to Council a list of properties and programs the City gave to the County when the Water Agreement was being negotiated. The tax rate impact on County residents ended up, according to his calculations, being 2.95 cents. He hoped City Council would take these items back.

Dr. Bruce Baker urged Council to look at other places for parks and recreation that doesn't have as much risk as a golf course.

Mayor Sitnick closed the public hearing at 7:04 p.m.

Councilman Tomes moved to accept staff's recommendation that the City not purchase the French Broad River Golf Course at this time. This motion was seconded by Councilman Cobb and carried unanimously.

F. PUBLIC HEARING RELATIVE TO AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES (UNIFIED DEVELOPMENT ORDINANCE) TO ESTABLISH A NEW THRESHOLD FOR THE PREPARATION OF TRAFFIC IMPACT ANALYSES AND MAKING MINOR CLARIFICATIONS IN THE INFORMATION REQUIRED IN THE ANALYSES

ORDINANCE NO. 2446 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO ESTABLISH A NEW THRESHOLD FOR THE PREPARATION OF TRAFFIC IMPACT ANALYSES AND MAKING MINOR CLARIFICATIONS IN THE INFORMATION REQUIRED IN THE ANALYSES

Mayor Sitnick opened the public hearing at 7:07 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, said that the Unified Development Ordinance currently requires that a Traffic Impact Analysis be prepared for all Level II and Level III projects and for those Level I projects for which the city's Traffic Engineer determines that an analysis is needed. The building size (square footage) of a project determines the level of that project. Therefore, the requirement that a Traffic Impact Analysis be prepared is currently based on the size of a project instead of the traffic generated by the project.

Based upon projects reviewed since the adoption of the UDO, it has become clear that size of a project is not the most reasonable indication of traffic impacts. The proposed amendment would base the requirement that a Traffic Impact Analysis be prepared upon the traffic generated by the development instead of on the building size of the development. Developments generating 100 or more trips during the peak hour will be required by the proposed revision to prepare a Traffic Impact Analysis. This revision fosters a relationship between the traffic impact of a project and the requirement for an analysis, assuring that those projects with a more significant impact on the traffic identify actions to mitigate them.

The Asheville Planning and Zoning Commission, by a 5 - 0 vote, recommended adoption of the revision to the UDO to revise the threshold for preparation of a Traffic Impact Analysis. The staff of the Planning and Development Department has also recommended approval of the revision.

Mr. Green then explained what a traffic impact analysis is and why and how they chose 100 or more trips as the requirement.

Councilwoman Field said that since there are no traffic engineers in Asheville that a person can hire to do traffic impact analyses and the ones in North Carolina are very busy, could architects be trained and then allowed to do those traffic impact analyses. City Attorney Oast said that it is his opinion that Council can specify appropriate professionals such as planners, engineers, architects, etc. who could obtain the basic training and certification to present that kind of information. Since we do have a traffic engineer on staff, he could analyze that information to make sure that it complies with the requirements.

City Engineer Cathy Ball said that according to state statutes, architects were not supposed to do traffic engineering studies. She did not have a problem with allowing them to perform those studies, as long as they were trained in how to conduct those studies. Her concern was that we may need to look at it from a legal standpoint.

Councilwoman Field felt that the City should make the language as broad a possible in order that qualified professionals from our own community can provide this service.

Mr. James Cheeks, Traffic Engineer, responded to questions from Mayor Sitnick about the way the traffic impact studies are conducted, noting many adjustments are made in the reports, for instance seasonal adjustments.

Mayor Sitnick closed the public hearing at 7:21 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2446. This motion was seconded by Councilman Tomes and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. MOTION AUTHORIZING THE MAYOR TO WRITE A LETTER IN SUPPORT FOR A BROWNFIELDS AGREEMENT APPLICATION BEING MADE FOR PROPERTY LOCATED AT 105 FARIVIEW ROAD

Planning & Development Director Julia Cogburn said that at the worksession on January 5, 1998, the Asheville City Council directed staff to look into a request submitted to them by Reese Lasher of Western Investment Company. The request was for the City Council to provide him with a letter of support for a Brownfields Agreement Application being submitted by Western Investment Company for property located at 105 Fairview Road.

The North Carolina General Assembly, during the 1997 legislative session, authorized and approved a new state initiative. The new initiative, named the Brownfields Property Reuse Act, is designed to allow prospective developers to develop a contaminated piece of property with less than complete clean up of the contamination on the site and without threat of legal action by the Environmental Protection Agency. The purpose of the Act is to encourage the reuse or development of properties known as "brownfields properties" (those that may have been or were contaminated by past industrial and commercial activities), but are still attractive locations for redevelopment. The properties are closely monitored during development to ensure safe development.

The property at 105 Fairview Road is a former industrial site. Carolina Production Finishing Incorporated was located there until it closed in the mid-1980's. The property was sold to the proposed developer in early 1997 by Buncombe County at a tax foreclosure proceeding. The property had been unattractive to prospective buyers because of the perceived contamination on the site.

The property is located in a primarily industrial area. It is zoned CI (Commercial Industrial) and is 6.18 acres in size. The current tax value on the property is listed at $235,600. The property currently contains two buildings. The property had previously been studied as a superfund site but did not qualify. Some cleanup of the property has occurred to date (tank removal, etc.) but the cleanup was not complete in nature.

The developer proposes to redevelop the property. Their plans are to rehab the existing building on the site and to make it available to some company who wish to use it for appropriate uses in the commercial industrial district --- offices, warehousing, light industrial, etc.

The developer, if receiving designation under the Brownfields Property Reuse Act, would be required to do certain additional cleanup as required by the state to provide for safe development of the site. As she understand it, there has been a Phase II Environmental Assessment that has already been conducted and there are only very minor problems which remain on the site.

As part of the preliminary assessment by the State into the Brownfields Application, letters of support from the community are required. These letters can come from many different sources. One of the most common, obviously, is to seek the support of the local government in whose jurisdiction the property lies. This is why the request has come to Council.

The letter will of course need to indicate that all development will be done in accordance with all city regulations, etc. This appears to be a wonderful opportunity to put a piece of property back to use, to increase the City's tax base on this property and to gain additional and safe cleanup of the site.

Staff recommends that Council direct staff to draft a letter in support of the redevelopment of the property at 105 Fairview Road by Western Investment Company.

Upon inquiry of Councilman Tomes, Ms. Cogburn said that Ms. Jeannette Stanley, with the NC Superfund Section, indicated that the developer is responsible for cleaning up, to their satisfaction, property so that workers would not be jeopardized.

After discussion, Councilwoman Field moved to table this issue until responses to Council's concerns could be addressed, in particular if there has been any indication of off-site substance migration and if there are any reports on ground water contamination. This motion was seconded by Councilman Tomes and carried unanimously.

Councilman Cloninger said that he has read several articles about what other cities in North Carolina are doing to facilitate the reclamation of hazardous sites, including tax breaks. He asked the City Manager to look into whether there might be some potential for us to do that in Asheville. The City Manager reported to him that thankfully we don't have very many sites that fit into that category. However, he hoped we could keep this in mind and then in the future if we have more of these kinds of sites realized, perhaps on the river, that we might develop some sort of policy to provide incentives for them to be reclaimed.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 16, 1997, AND THE WORKSESSION HELD ON JANUARY 5, 1998

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on December 16, 1997, and the worksession held on January 5, 1998. This motion was seconded by Councilman Cobb and carried unanimously.

B. PUBLIC INPUT

At the request of Councilman Cloninger and as a result of inaccurate information in the newspaper, it was the consensus of City Council that Mayor Sitnick and Vice-Mayor Hay meet with the Citizen-Times editorial staff to advise them of Council's policy regarding public input, when the use of closed sessions are appropriate, and also what Council's policy will be in the future. Mayor Sitnick felt that perhaps a press conference to educate the media would be appropriate as well.

C. AMERICAN HERITAGE RIVER INITIATIVE

Ms. Karen Cragnolin, updated City Council on the status of the American Heritage River Initiative, bringing with her 4,000 letters of support for the designation of the French Broad River as an American Heritage River. She urged City Council to contact Representative Charles Taylor and ask that he meet with RiverLink representatives to discuss this Initiative, the benefits it will bring our regional, and his opposition to it.

Councilwoman Field moved that the Mayor contact Representative Taylor and request a meeting with City Council and/or representatives of RiverLink as soon as possible because the announcement will be made soon of the ten rivers which will be part of the program. This motion was seconded by Councilman Sellers and carried unanimously.

D. REQUEST OF RICHARD ROBERTS OF 3 OAKS DRIVE

Mr. Richard Roberts, 3 Oaks Drive off Rice Branch Road, asked the City to help them with the maintenance of their road.

Public Works Director Mark Combs said that he has met with Mr. Roberts and some of his neighbors and have given them a package of materials which contains information on what it would take for the City to legally take over maintenance of a road. He recommended that unless the street is accepted by the City, that the City not provide any maintenance of that street. He said that he would be happy to meet with Mr. Roberts and his neighbors to discuss the policy of 50/50 participation with the City by special assessments or upfront costs for upgrading that street to City standards.

E. COMMENTS FROM JERRY RICE REGARDING WATER RESOURCES BUDGET

Mr. Jerry Rice voiced concern over the Water Resources Department mid-year adjustment budget amendment which was adopted by the Regional Water Authority of Asheville, Buncombe and Henderson, the Asheville City Council and the Buncombe County Commissioners. He felt the errors in the budget were not caused by a computer, but were human errors.

Mayor Sitnick suggested Mr. Rice meet with the City Manager to review the matter and then, if he would like, she would be happy to meet with him.

F. ASHEVILLE SISTER CITIES

Councilwoman Field updated City Council on the massacres in Mexican State of Chiapas, which is close to Asheville's Sister City San Cristobal de Las Casas. She hoped that the Citizen-Times newspaper would report as events occur there in order to keep concerned the public more informed.

G. YMI CULTURAL CENTER REQUEST

Mayor Sitnick said that she has received information along with a letter of request from Mr. Gene Ellison regarding the establishment of a reorganization committee relative to the YMI Cultural Center. She felt it would be appropriate to establish a Mayor's Committee to meet with Mr. Ellison to discuss his request and to keep City Council informed of whether City Council should take any actions. She appointed Vice-Mayor Hay as Chair, Councilwoman Field and Councilman Tomes.

H. CLAIMS

The following claims were received by the City of Asheville during the week of December 12-31, 1997: Michell Leonard (Water), Vernon L. Grimsley (Fire), Shambra Hall (Police), Nina Smith (Water), Martha Parker (Water), Randy McKinney (Water), Jeff Foster (Parks & Recreation) and William Rickman (Sanitation).

The following claims were received during the week of January 1-8, 1998: Julius Siebert (Streets), Mary Sagonias (Water); Timothy A. Hoglen (Police); Susan Livingston (Sanitation); Sandra Hines (Police); Dillingham Construction (Water); Lalani Roberts (Streets) and Jennifer Stastny (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

I. LAWSUIT

On December 29, 1997, the City was served with the following lawsuit: Gabriel Ferrari v. City of Asheville - invasion of privacy and miscellaneous other claims.

This lawsuit will be handled by an outside attorney.

J. CLOSED SESSION

At 8:08 p.m., Councilwoman Field moved to go into closed session (1) to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties in the lawsuits about which the Council expects to receive advice are: Tiffany Livengood, Robert Moore and the American Knights of the Ku Klux Klan, and the City of Asheville; Morris Communications Corporation d/b/a Fairway Outdoor Advertising, Outdoor Communications Inc., and Maple Cove Inc. and the City of Asheville; and the State of North Carolina, City of Asheville, and Elijah Ulysses Jones - statutory authority is G.S. 143-318.11 (a) (3); to (2) establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the price and other material terms of a contract for the acquisition of real property by purchase - statutory authority is G.S. 143-318.11 (a) (5); (3) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State, specifically, the Personnel Privacy Act, G.S. 160A-168 - statutory authority is G.S. 143-318.11 (a) (1); and (4) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City - statutory authority is G.S. 143-318.11 (a) (4). This motion was seconded by Councilman Sellers and carried unanimously.

At 9:20 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

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VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:20 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - January 20, 1998- 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Request for The Faith Tabernacle Congregation Sign located at 36 Michigan Avenue be designated as a Landmark Sign

Summary: The consideration of a request from The Faith Tabernacle Congregation that their 40 year old hand crafted metal sign located at 36 Michigan Avenue be designated a landmark sign.

Clerk authorized to Advertise Offer to Purchase Disposal Parcels 1A and 52A at the Intersection of Hilliard and Asheland Avenues

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids regarding Disposal Parcels 1A and 52A at the intersection of Asheland and Hilliard Avenues.

The bid of Price Associates in the amount of $101,000.00 for the purchase of Disposal Parcels 1A and 52A in the East Riverside Redevelopment Project is not less than the established minimum price of $101,000.00.

City Attorney Oast said that before the next formal meeting, he would have an opinion relative to the real estate commission.

Releasing of Any Potential Interest in Real Property located on Mount Clare Avenue

Summary: The consideration of adopting a resolution releasing any interest, if any, the City may have against real property located on Mount Clare Avenue.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

REPORT BY THE PRESERVATION SOCIETY

Mr. Harry Weiss presented City Council with a check in the amount of $5,000 which represented the amount of the City's participation in 1990 to help fund the rehabilitation of the Jenkins Building at 32 Broadway, which was damaged by a fire. He presented City Council with photographs of the building.

Mr. Weiss then reviewed with Council the new historic preservation state tax credits that became effective January 1, 1998, noting that this is an exciting time for rehabilitation and housing incentives for our community.

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RIVER DISTRICT DESIGN GUIDELINES

Mr. Bruce Black, Urban Planner, said that the Unified Development Ordinance requires the River District Design Guidelines be approved by the City Council. The Guidelines have been reviewed by the Planning and Zoning Commission, and they have recommended unanimously that the Guidelines be adopted by the Council.

The River District Guidelines concentrate primarily upon the River Core Area (the area from Lyman Road north to the train trestle across the French Broad River), establishing Character Buildings upon which future design and renovation should be based. It is part of an overall attempt to create a similarity in design such that the area remains recognizable as a district.

Other areas of the River District are also addressed, but not to the same extent as the River Core Area. All facets of building appearance, and site design are dealt with.

It is the intent of the Guidelines to be general, flexible, and constructive in nature, allowing constructive and creative dialogue between the Design Review Committee and the building or site designer.

The Planning staff has held a public meeting at A-B Tech on December 16, 1997. All property owners of record in the River District were notified of the meeting by U.S. Mail. Twenty-eight people attended, including residents, people who work in the area, and business owners.

In addition, a number of business owners in the River Core Area were contacted individually, and the contents of the River District Design Guidelines were reviewed with them.

There were no objections to the contents of the guidelines, and there were several constructive suggestions for improving the River Core District, which will be pursued.

The UDO requires that the review by the Design Review Committee is mandatory, and that compliance is voluntary.

City staff recommends City Council adopt the River District Design Guidelines.

At the request of Councilwoman Field, Mr. Black said that he would be happy to meet with her to help her understand the guidelines and address any concerns she may have.

Mr. Black then responded to questions from Council as they related to flooding in the area.

Mayor Sitnick noted that Council will be discussing at their upcoming retreat working with colleges and universities to produce some art pieces for the public open spaces. She felt the River District might be a good place for those art pieces.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

YMI CULTURAL CENTER

Mr. Gene Ellison, Interim Director and Chairman of the YMI Reorganization Committee, briefed Council on the importance of the YMI Cultural Center to the entire community and brought them up-to-date on the progress being made to date on the reorganization. He understood why City Council declined to appropriate any funds to the YMI in 1997, however, he now urged Council to reconsider appropriating $25,000 to the YMI - $10,000 which would go directly to the Internal Revenue Service and $15,000 to the YMI for operating expenses.

Mayor Sitnick commended Mr. Ellison's effort and stated that last week she appointed an ad hoc committee of Vice-Mayor Hay, Councilwoman Field and Councilman Tomes to review the documents previously submitted, meet with Mr. Ellison and report back to Council as soon as possible.

Councilman Cobb felt that if the community was made aware of the dollars needed for air conditioning and an elevator, they might be willing to help.

Councilman Tomes also commended Mr. Ellison for his unselfish efforts with the YMI Cultural Center. He stressed that the YMI Cultural Center is a showcase for Asheville.

Mayor Sitnick felt that this City Council is committed to working with groups on The Block to enhance, improve and empower it. They will be very serious in their considerations.

Mr. H.K. Edgerton, tenant in the YMI Cultural Center, spoke in support of Mr. Ellison's efforts.

STATUS REPORT ON THE BILTMORE AVENUE PROPERTIES

Mr. Ed Vess, Field Services Coordinator, said that certain real properties acquired under redevelopment and held for higher marketing potential are currently being rented and should be reviewed for consideration for sale in light of current downtown market conditions.

The properties located at 5, 7 1/2, 9, & 11-13 Biltmore Avenue were acquired as part of the Pack Plaza Redevelopment Project. At the time the properties were acquired they were in a run-down condition as were many of the surrounding properties before the completion of the Pack Plaza Project.

At the time the properties were acquired the market for downtown property was depressed, but there were signs that with the investment in the Pack Plaza Redevelopment Project a resurgence of the downtown was in the offing. A plan was developed to hold and manage the properties until the effects of the Pack Plaza Project and the anticipated private investment had boosted downtown property values. Part of the plan was to lease, at below market rates, to tenants willing to spend money upfront renovating the buildings. In order to make the buildings more rentable, the City through the Housing Authority replaced the old leaky built-up roofs on the buildings with new single ply membrane roofs.

In August of 1988, the Arts Council leased 11-13 Biltmore Avenue and spent in excess of $100,000 on improvements to the building. Not long thereafter, Be Here Now leased 5 Biltmore Avenue spending over $50,000 for improvements and WNC Habitat for Humanity leased 9 Biltmore Avenue and spent about $50,000 for improvements.

The property at 135 Cherry Street was acquired as part of the Head of Montford Redevelopment Project. It was leased to Neighborhood Housing Services of Asheville who spent about $25,000 for renovations.

All of the buildings are in generally good maintainable condition at the present time. However, window repairs are needed at 5 Biltmore Avenue and 11-13 Biltmore Avenue at an estimated cost of about $10,000.

The high demand for downtown property indicates that it would be prudent to consider selling the property at this time and putting this property back on the tax rolls. The revenue would be Community Development program income and could be used for eligible CDBG purposes. On the other hand, due to current market conditions, the property has potential to generate greater lease revenues than is presently being realized. If the property is retained for the lease revenues, consideration should be given to bringing rents up to market rate as soon as feasible under the leases and in a manner that is fair to the tenants.

He reviewed the schedule of leases which showed the tenant, the current lease status, the current rental amount and the estimated market rent for each unit.

The three non-profit tenants are currently paying well below market rates. If the rent is increased to market rate under the lease, Council if inclined to do so, could allow a rent abatement to reduce the rent to a lesser amount on an annual basis. That would allow Council to provide assistance to the non-profits, if desired, while avoiding the negative effect on the market value of the property a below market lease would cause.

City staff recommends the properties located at 5, 7 1/2, 9, & 11-13 Biltmore Avenue be (1) reviewed for consideration for sale in light of current downtown market conditions; or (2) the rents be brought to market rates as soon as feasible.

Councilwoman Field asked if the City sold the properties would the leases go with them. Mr. Vess responded that they would, however, the new owner could raise the rents when the leases expire.

Upon inquiry of Councilman Tomes, Mr. Vess said that he has contacted all the tenants and advised them he was bringing this report to the Council. He felt that most of the tenants would like to continue to lease their properties for a long term. Mr. Vess said that if they were to sign a new lease, the lease it should be at the new market rates.

When Mayor Sitnick asked if the revitalization efforts at the Head of Montford might increase the value of the property, Mr. Vess felt that it would. He also felt that the property in downtown Asheville would increase as well. He outlined advantages to Council of selling the property and the advantages of holding onto it.

Councilwoman Field felt that the City should not sell the buildings at this time because the property values will increase. She felt Council may want to look at this issue again in a year or so.

Councilman Cloninger agreed with Councilwoman Field in that he wanted to be cautious about selling property that has a good revenue stream. He did feel it would be appropriate to bring the rents up to market value and that it needed to be done in a fair way.

Vice-Mayor Hay felt that as long as the City owns the property, it will stay the way it is. If it's sold, a developer can make improvements which will help Biltmore Avenue flourish. If the City sells the property now, we may have an opportunity to do something for affordable housing in the future - maybe a revolving fund.

It was then the consensus of Council for Mr. Vess to obtain appraisals on the properties, thus allowing him to provide additional information to Council on the projected revenue streams.

Mr. H.R. Miller, Jr., owner of the business located at 5 Biltmore Avenue - Be Here Now, presented City Council with a letter asking that their lease which will expire on April 30, 2000, be continued for an additional three years to April 30, 2003, with a five year option to renew. He felt Council should take into consideration their substantial improvements to the building, among other things, and let them recoup their investment by the continuance of the lease.

CONVEYANCE OF PROPERTY TO ON BREVARD ROAD TO HENDERSON COUNTY

Assistant City Manager Doug Spell said that on November 11, 1995, the Regional Water Authority, City of Asheville, Buncombe County, and Henderson County entered into the Water Agreement. This agreement was a part of the overall provision of water service via the Mills River Water Treatment Plant.

One condition which is a part of the aforementioned Water Agreement pertains to the City of Asheville transferring by deed 137.21 acres to Henderson County on Brevard Road (NC 191). The stipulation outlined in Section XXII of the Agreement indicates that Henderson County must convey the property to MSD to be used for a wastewater treatment plant site within ten (10) years or convey it to a regional water and sewer authority of which Henderson County, the Authority and Asheville are a part. If neither of these conditions are complied with within the 10 year date of the transfer of the deed to Henderson County the property automatically reverts back to the City of Asheville.

The City Attorney's office has reviewed the deed prepared by the attorney for the Regional Water Authority. The deed has been prepared to take into account the automatic reversion to the City of Asheville in the event the property is not utilized in accordance with the stipulations of the agreement.

Staff recommends that City Council authorize the Mayor to execute the deed transferring the property to Henderson County in accordance with the Water Agreement dated November 11, 1995.

Councilman Tomes asked for the City Manager to provide him with additional information on the Water Agreement.

Councilwoman Field noted that the agreement was signed over two years ago. The ten year stipulation does not come into effect until the transfer is complete and the longer we wait to transfer the property, the chances are they'll meet the stipulations.

Mayor Sitnick was not comfortable in making a decision to transfer 137.21 acres to Henderson County until she fully understands the history and details of the agreement. She suggested Council table this matter until all of Council has had sufficient time to be educated on this item.

Councilman Cloninger agreed with Mayor Sitnick, but noted that we should not send any signals to Henderson County that we do not intend to abide by the contractual legal obligations that we have.

It was the consensus of City Council to postpone action on this matter until the Council understands the details.

CABLE TV FRANCHISE REVIEW

Assistant City Attorney Patsy Meldrum reviewed the proposed cable television documents with City Council not only for the benefit of the new Council members, but for the benefit of the public in understanding the proposed cable television documents. She also included some responses to recent inquiries sent to the City Council about the proposed documents.

She reviewed the history of the renewal process: (A) TCI requested renewal discussions and City agreed; (B) City did Request for Request for Proposals ("RFP") for consultant; (1) list of consultants (a) N.C. League of Municipalities; (b) National Association of Telecommunications Officers and Advisors (NATOA); (c) seminars; (d) certified minority business list; (2) contacted three consultants and requested proposals; (3) comparison chart done; references checked; (4) presentation to City Council; (6) Rice, Williams Associates selected; agreement for services; (C) renewal process outlined by the consultant (not in formal renewal window/process): (1) initial consultation; (2) community needs assessment; (3) compliance evaluation; (4) technical analysis; (5) prepare request for proposals; (6) response to RFP from cable company; (7) evaluate RFP; (8) negotiate documents; (9) prepare documents; and (10) present documents for consideration by city council; (D) collateral issues which affected process/negotiations: (1) transfer of TCI to InterMedia (Nov. 1995 to Sept. 1996); (2) franchise fee issue; (3) City's authority limited by federal laws and regulations.

Throughout Ms. Meldrum's presentation, she and the City's consultant Jean Rice, responded to various questions from Council. Some questions were, but are not limited to, who was contacted in the community needs assessment, if the community needs assessment was outdated, the definition of "gross annual revenues", why it's in the City's best interest to require a franchise agreement, why there is a slim chance of another cable company operating in Asheville, could Asheville negotiate an exclusive franchise, how is it in the City's benefit to go with a long-term franchise, why is the City limited in its ability to regulate cable rates, clarification of the state-of-the-art clause, the reasons why the City could deny a franchise to InterMedia, what it means to a city to own their own cable system, approximately how much would it cost the City to purchase a cable system, what would be the monetary advantage to the City today if the franchise were granted, and exactly what an analog channel is.

Additional information requested by Council included a summary of the events leading up to the 1967 franchise, how the current proposal differs from the RFP, and a list of the four tests the cable company has to meet in order that a franchise renewal be granted under the formal renewal process.

She then outlined one element of the proposal which is the regulatory ordinance (ordinance regulating cable service providers): (1) establishes definitions - most importantly = "gross annual revenues" and "transfer"); (2) registration and franchise required; (3) application and approval standards for franchise; (4) franchise fees required; right to audit; (5) right to inspect records and cable system; (6) access channels, access equipment and institutional network required; (7) customer service standards (subject to federal laws and regulations): (a) standard installation = not less than 150 feet; (b) no fee for disconnection unless agreed to by subscriber; (c) credit for outages; (d) business office; (e) telephone answering; (f) complaint handling; (g) subscriber information; (h) response to service complaints and outages; (I) subscriber privacy) and (j) rate regulation; (8) performance evaluation/annually/public; (9) construction and technical standards; (10) technical performance testing; (11) removal or abandonment of cable plant; (12) transfer of franchise, ownership or control (a) transfer of ownership of 10% or more requires City approval; (b) transfer of franchise or control requires City approval; (c) reimbursement of City's expenses; (13) construction and performance bonds required; (14) insurance requirements; (15) indemnification requirements; (16) termination of revocation process (a) defaults listed; (b) hearing process described; (c) remedies for City; (17) penalty provisions.

One inquiry related to the annual performance evaluation and whether or not the public could be provided with the same 30 day notice as the cable company prior to the annual performance evaluation. Ms. Meldrum stated that at the time the notice is given to the cable company, we could let the public know by a notice in the newspaper.

She then reviewed another element of the proposal, which is the franchise ordinance (ordinance granting franchise to Brenmor d/b/a InterMedia): (1) non-exclusive franchise; (2) subject to regulatory ordinance; (3) term (a) 1967 franchise would expire in July of 2002 (four years and six months left); (b) twelve years and six months added; (4) franchise fee of 5%; (5) franchise area includes current and future city limits; (6) extension standards included (includes cost-sharing formula); (7) system rebuild requirements (a) 550 MHz; (b) 80 analog channels and/or capacity for digital transmission; (c) completion by December 31, 1998; (d) design standards; (e) emergency alert system requirements; (f) maintenance requirements; (g) parental control devices; (h) performance testing (subject to federal laws and regulations); and (8) construction standards.

Ms. Meldrum asked that InterMedia address the reason that a 550 MHz system is being constructed rather than a 750 MHz system.

Mr. Joe Haight, General Manager of InterMedia, explained why the franchise is for a 550 MHz rebuild and not a 750 MHz rebuild.

Ms. Meldrum then reviewed with Council the Institutional Network: (a) four fibers; (b) City of Asheville and City School sites; (c) no maintenance or use costs to City; (d) video, voice, data transmission and other telecommunications applications; and (e) completed with rebuild of cable system (cable company may elect to pass through all or portion of cost to subscribers).

Mr. Haight then addressed questions of the City Council about the Institutional Network (I-NET) and the Public, Educational and Governmental (PEG) Access Channels. He then responded to various questions from Council, some being, but are not limited to, what the benefits of the I-NET would be to the City and who bears what costs related to the I-NET, and if the I-NET is cost effective. He stated that InterMedia will absorb 40% of the cost of the Institutional Network and will only pass along to the subscriber 60% of the cost, with no interest on that 60% being passed along to the subscribers. He also discussed how future negotiations can occur, any possibility of negotiating on the length of the franchise agreement, are three PEG channels sufficient and is there an ability to negotiate for more PEG channels, the projected monthly fees in ten years and if an educational component could be built in for the public to realize the difference in rates for basic cable vs. expanded cable, are there discounts for senior citizens, and will there be an increase in the number of channels for basic cable.

Upon inquiry of Councilman Cloninger about Internet service to the elementary schools, Ms. Meldrum said that it is her understanding that as a matter of policy, InterMedia would provide Internet connections for all school sites. When she asked Mr. Haight to confirm this, he did, noting that InterMedia would provide one modum per school for the Internet.

Mr. Haight invited City Council on a tour of his facility. At the request of City Council, City Manager Westbrook said that he would be happy to work with Mr. Haight on those arrangements.

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Councilman Cloninger suggested that this worksession be continued until the next worksession, February 3, 1998, in order for Council to continue their questioning of not only these issues, but the many issues yet to be reviewed by Ms. Meldrum. It was confirmed that Ms. Rice would be available to come back to Asheville on February 3.

At the request of Mayor Sitnick, City Manager Westbrook briefed Council on the structure of the community meeting, noting that staff and the consultant would be available to answer questions. He felt it would be a dialog for the public to get the same kind of information as City Council received today. Mayor Sitnick wanted to make sure that since several groups are interested in this topic, that they be allowed to either make a presentation or be allowed to ask questions to staff and the consultant. City Manager Westbrook said that there will be some upfront discussion about the rules of the meeting and the City will have a facilitator along with visual aids and hand-outs.

It was the consensus of Council that after this worksession, the community meeting and the public hearing that each member of Council list their concerns, if any, or request additional information so that their concerns may be addressed, either by discussion in closed session, if legally appropriate, or in open session. After the February 24 public hearing, Council agreed to "digest" the information and then at the worksession on March 3, 1998, determine whether Council should proceed by voting at the March 10, 1998, meeting or determine what action to take.

City Council asked what specific issues about the franchise agreement could be discussed in closed session. City Council stressed that they want the public to know as much as possible about the negotiations. Mayor Sitnick suggested the City Attorney explain at the public hearing on February 24 what the City Council is allowed to discuss in closed session.

It was the consensus of Council to note that the City is not interested in owning it's own cable system.

It was the consensus of City Council to continue this worksession until the next worksession on February 3, 1998, in order for Council to continue their questioning of not only these issues, but the many issues yet to be reviewed by Ms. Meldrum.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:54 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - January 27, 1998 - 5:00 p.m.

DUE TO ADVERSE WEATHER CONDITIONS, THE MEETING OF THE ASHEVILLE CITY COUNCIL FOR TUESDAY, JANUARY 27, 1998, WAS CANCELLED

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - February 3, 1998 - 3:00 p.m.

Worksession

Present: Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; and Councilman Thomas G. Sellers; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman O.T. Tomes

PUBLIC RECORDS

City Attorney Oast briefed City Council on why the City of Asheville could not release certain records regarding franchise fee payments from the cable television company to the media. N.C. Gen. Stat. sec. 160A-208.1 provides that tax records which contain information about a taxpayer's income or receipts are not public records, and it prohibits officials from releasing that information. Also, N.C. Gen. Stat. sec. 160A-214 characterizes cable TV franchise fee payments as a "franchise tax." Based upon that statute and the statute prohibiting disclosure of tax records, it was his opinion that we not release the records. He noted that he has looked for a way to se if the information could be made available, however, as he reads the statutes, it is prohibited and the penalty for an improper release is severe.

Mayor Sitnick pointed out that it is her intent and the intent of this Council to have an open dialog on all issues. She also stated that besides the documents which by law cannot be released, many other documents have been provided to the media per their request.

CONSENT AGENDA:

Mayor Sitnick announced that because the formal meeting of January 27, 1998, was cancelled due to adverse weather conditions, City Council is anticipated taking action on the items that were scheduled on January 27, 1998.

Councilwoman Field moved to waive the rules and take action on the items originally scheduled for the January 27, 1998, meeting. This motion was seconded by Councilman Sellers and carried unanimously.

A. RESOLUTION NO. 98-8 - RESOLUTION DESIGNATING THE FAITH TABERNACLE CONGREGATION SIGN LOCATED AT 36 MICHIGAN AVENUE AS A LANDMARK SIGN

Summary: The consideration of a request from The Faith Tabernacle Congregation that their 40 year old hand crafted metal sign located at 36 Michigan Avenue be designated a landmark sign.

Signs may be designated historically significant or landmark signs by the Asheville City Council provided the sign satisfies one or more of the following criteria:

A. The sign is significant to the history of the City of Asheville, including but not limited to, the character of the city as a tourist attraction or cultural center.

B. The sign is unique, notably aesthetic or creative so as to make a significant contribution as a work of art.

C. The sign merits recognition as an important example of technology, craftsmanship, materials or design of the period in which it was constructed and may no longer be economically feasible to produce or manufacture the sign today.

The Historic Resources Commission found that the Faith Tabernacle sign meets criteria A, B, & C for landmark designation for the following reasons:

A. The sign is significant to the history and character of the City as a cultural center.

B. It is unique because it is part of the Church structure. The handcrafted metal sign is attached to a wrought iron porch railing.

C. It is an excellent example of self-reliant mountain craftsmanship of the 1950s.

At their regularly scheduled November 1997 meeting, the Historic Resources Commission, by a unanimous vote, recommended to City Council that the Faith Tabernacle handcrafted metal sign located at 36 Michigan Avenue be designated a landmark sign.

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B. RESOLUTION NO. 98-9 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE DISPOSAL PARCELS 1A AND 52A LOCATED AT THE INTERSECTION OF ASHELAND AND HILLIARD AVENUES

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids regarding Disposal Parcels 1A and 52A at the intersection of Asheland and Hilliard Avenues.

The bid of Price Associates in the amount of $101,000.00 for the purchase of Disposal Parcels 1A and 52A in the East Riverside Redevelopment Project is not less than the established minimum price of $101,000.00.

Disposal Parcels 1A and 52A are zoned RB-Regional Business District and located approximately 100 feet south of the intersection of Asheland and Hilliard Avenues. Comprising 25,246 square feet, the property extends from the east side of Asheland Avenue to the west side of Federal Street. The frontage along Asheland Avenue lies some 10 to 15 feet below street grade with the frontage along Federal Street being near street grade. The overall terrain is level to light sloping. Price Associates is currently leasing the property and has improved the property with a paved parking lot containing 31 parking spaces. The bid from Price Associates for Disposal Parcels 1A and 52A includes the proposal to incorporate the property into the adjoining property currently owned by Price Associates. There are no additional improvements proposed at this time. Price Associates is a partnership owned entirely by Charles R. Price.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

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C. RESOLUTION NO. 98-10 - RESOLUTION RELEASING A LIEN, IF ANY, AGAINST REAL PROPERTY LOCATED ON MOUNT CLARE AVENUE RESULTING FROM THE DEMOLITION LIEN AGAINST THE PROPERTY LOCATED ON 65 WOODROW AVENUE

Summary: The consideration of adopting a resolution releasing any interest, if any, the City may have against real property located on Mount Clare Street.

During the early part of 1997, the City of Asheville through its Housing Code Enforcement Division notified the owner of the real property located at 65 Woodrow Avenue of various housing code violations existing at said structure with a requirement that the code violations be remedied. The conditions existing constituted extremely dilapidated conditions. The property owner, Robert B. Lassiter, did not respond in any manner. Proceeding in accordance with the One Step Process set forth under the City's Housing Code, the City entered into a contract with NEO Corporation to demolish the structure located at 65 Woodrow Avenue. NEO Corporation demolished the structure at said address on the 7th day of April 1997 for a total sum of $10,500.00, the lowest responsible bidder to submit a bid for said demolition work. In accordance with the City's Housing Code, other cost were tabulated representing the cost of the title search, publication cost, etc. bringing the total cost of the demolition lien to $10,860.00. This lien was recorded in the Buncombe County Clerk of Court's Office.

Mr. Lassiter owns real property located on Mount Clare Street that he has under a pending contract of sale for approximately $6,000.00. However, the potential buyers of the Mount Clare Street property will not purchase the property unless they are assured that the City's lien against Mr. Lassiter's Woodrow Avenue Property is not a lien against his Mount Clare Street Property.

Mr. Lassiter has requested that the City release any lien the City may have against his Mount Clare Street property and in consideration thereof has agreed to pay to the City the sum of $3,000 to reduce the indebtedness of the $10,860.00 lien plus the City continues to retain its lien against the Woodrow Avenue property until same is paid in full. The $3,000 will come out of the purchase price for the property on Mount Clare Street with the remaining portion going towards closing cost and to Mr. Lassiter.

Staff recommends that Mr. Lassiter's offer be accepted.

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Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions on the Consent Agenda and they would not be read.

Vice-Mayor moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

MOTION AUTHORIZING THE MAYOR TO WRITE A LETTER IN SUPPORT FOR A BROWNFIELDS AGREEMENT APPLICATION BEING MADE FOR PROPERTY LOCATED AT 105 FARIVIEW ROAD

At the request of Planning & Development Director Julia Cogburn, Councilwoman Field moved to continue this item until the February 10, 1998, City Council meeting. This motion was seconded by Councilman Cobb and carried unanimously.

MOTION TO (1) SCHEDULE A WORKSESSION ON FEBRUARY 17, 1998, RELATIVE TO THE POSSIBLE SALE OF CITY-OWNED PROPERTY KNOWN AS MEMORIAL STADIUM AND ASSOCIATED PROPERTY; AND (2) CONTINUE THE PUBLIC HEARING UNTIL MARCH 10, 1998

Mayor Sitnick noted that the original public hearing was set for January 27, 1998, however, that meeting was cancelled due to adverse weather conditions. Because it was the consensus of City Council that a worksession on this matter might be beneficial prior to the public hearing, Councilman Cobb moved to set a worksession on this matter on February 17, 1998, and continue the public hearing until March 10, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

At the request of Council, staff was instructed to invite the appraiser and Mr. Camille to the worksession on February 17, 1998. Also, it was the consensus of City Council to tour Memorial Stadium at approximately 1:30 p.m. on Tuesday, February 17, 1998.

MOTION TABLE PUBLIC HEARING RELATIVE TO REZONING 216 SHELBURNE ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY TO INSTITUTIONAL UNTIL JULY 28, 1998

Mayor Sitnick said that this public hearing was scheduled for January 27, 1998. City Council has received a letter from Associate Pastor Jerry R. Young from Trinity Baptist Church stating that after a meeting with their neighbors on Sunday, January 27, 1998, they feel that it would be advantageous that they ask this rezoning petition be tabled for a couple of months. This will allow them an opportunity to work with their neighborhood on a conditional type zoning for their property, that it would give the neighborhood assurances that the property would never be anything other than a church, and allow the Church to continue with their planned expansion for the future ministries of the church. He also requested that City Council direct Planning & Zoning to solve the unique problems presented in the UDO for granting conditional type uses of church properties.

Planning & Development Director Julia Cogburn said that it is staff's intent to bring this matter back to City Council at a worksession in two-three months with some information on what other cities are doing with conditional type uses, etc., prior to staff drafting the ordinance as it would be an extensive ordinance amendment. After that direction from Council, Planning staff will draft an ordinance for the Planning & Zoning Commission's review prior to bringing it to City Council.

Vice-Mayor Hay moved to table this matter until July 28, 1998. This motion was seconded by Councilwoman Field and carried unanimously.

APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 13, 1998, AND THE WORKSESSION HELD ON JANUARY 20, 1998

Vice-Mayor Hay moved for the adoption of the minutes of the regular meeting held on January 13, 1998, and the worksession held on January 20, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION NO. 98-11 - RESOLUTION ADOPTING THE RIVER DISTRICT DESIGN GUIDELINES DATED FEBRUARY 3, 1998

Mr. Bruce Black, Urban Planner, said that the Unified Development Ordinance requires the River District Design Guidelines be approved by the City Council. The Guidelines have been reviewed by the Planning and Zoning Commission, and they have recommended unanimously that the Guidelines be adopted by the Council.

The River District Guidelines concentrate primarily upon the River Core Area (the area from Lyman Road north to the train trestle across the French Broad River), establishing Character Buildings upon which future design and renovation should be based. It is part of an overall attempt to create a similarity in design such that the area remains recognizable as a district.

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It is the intent of the Guidelines to be general, flexible, and constructive in nature, allowing constructive and creative dialogue between the Design Review Committee and the building or site designer.

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In addition, a number of business owners in the River Core Area were contacted individually, and the contents of the River District Design Guidelines were reviewed with them.

There were no objections to the contents of the guidelines, and there were several constructive suggestions for improving the River Core District, which will be pursued.

The UDO requires that the review by the Design Review Committee is mandatory, and that compliance is voluntary.

Mr. Black said that after the worksession on January 20, 1998, Councilwoman Field met him and suggested some revisions to the Guidelines which would allow the document to be flexible, clear and give guidance. He then reviewed the nine suggested amendments.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 98-11 with the nine amendments outlined by Mr. Black. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE

THE FOLLOWING ARE ITEMS ON THE REGULAR 2/3/98 WORKSESSION AGENDA

CONSENT AGENDA:

Portion of Iron Street and Raleigh Avenue (formerly Carolina Avenue) not part of an Adopted Street Plan

Summary: William C. Burgin and Biltmore Heights, LLC, a North Carolina Limited Liability company, have requested that City Council adopt a resolution stating the rights-of-way known as Raleigh Avenue (formerly Carolina Avenue) and a portion of Iron Street as shown in

Plat Book 5, page 27, are not part of an adopted street plan in accordance with N. C. Gen. Stat. sec. 136-66.2.

Setting a public hearing for Drhumor Building located at 48 Patton Avenue to be designated as a local historic landmark

Summary: The consideration of setting a public hearing on February 24, 1998, to designate the Drhumor Building located at 48 Patton Avenue as a local historic landmark.

Councilman Cloninger noted that he is one of the owners of the Drhumor Building and asked that this item not be placed on the Consent Agenda at the next formal meeting due to his conflict of interest.

Budget Amendment re: Transit Center Traffic Signalization Grant

This item was postponed until the worksession on February 17, 1998.

Acceptance of new propose street name - East End Place

This item was postponed until the worksession on February 17, 1998.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PRESENTATION REGARDING VANDERBILT BUILDING

Mr. Jim Sawyer, Chairman of the Board of Vanderbilt Apartments, along with Mr. Ed Smith and others, presented City Council with a request to help fund the renovation of the Vanderbilt Apartment Building located between the Civic Center and the main Library.

heir presentation included details of the building as affordable low cost housing for senior citizens: 158 units (132 studio and 26 one bedroom); rents $200-$270 for studio apartment and $230-$310 for one bedroom; rent cannot exceed 30% of income and operated as a private non-profit organization.

The age and income of residents are: 65% are 70 years old or older; 28% are 80 years old or older; 43% have incomes of less than $6,000 a year; 72% have incomes of less than $9,600 a year; and 16% have incomes of $12,000 or higher.

By use of a computer powerpoint demonstration, he showed the structural problems of the building which include: (1) exterior brick "skin" is not properly attached to the structural frame; (2) mortar joints have deteriorated, bricks have broken and some are in danger of falling; and (3) unsafe structure which must be repaired if occupancy is to continue. The effect on residents, if problem is not solved, will be 158 very elderly and very low income persons will need to find other housing options and independent living will not be an option for some. Some other possible outcomes, if the building is not repaired, include imminent severe danger to the residents and public that travel near the building, condemnation by the City or bankruptcy.

They outlined the actions taken by the Vanderbilt Apartment Board which include (1) 400 "helifix" anchors installed as a temporary fix; (2) applying for a $2,141,936 HUD 241 Preservation Loan/Insured Mortgage; (3) requesting permission from HUD to raise rents which will generate $14,307/month; and (4) after receiving bids for repairs of the building, $2,300,000 is needed to repair the building. They noted that HUD requires local participation in order to approve their loan request.

The local help needed to keep the building open and rents stable include: (1) $200,000 from local sources (applications made to Community Block Grant and Home Investment Partnership Program); and (2) need approximately $45,000/year to hold rent stable for all residents (HUD will pay the increase for 62% of the residents who are receiving rent support).

They requested a commitment of $22,500 from each the City of Asheville and Buncombe County for 5 years to hold rents stable for unsubsidized residents. The Vanderbilt Board believes that saving low cost housing will be cost effective for the entire community. They urged City Council to help this affordable housing continue to be available in Asheville.

Representatives from the Board responded to several questions from Council, some being, but not limited to, the amount requested from the HOME Program and the Community Development Block Grant Program, what other foundations have they requested money from, when they will be requesting money from Buncombe County, who actually owns the building, what the volunteer Board make-up is, has the Board looked at ways to cut the cost on the bid amount, who was the lowest bidder,

Councilwoman Field explained how the HOME Consortium has asked HUD to do a reevaluation of the Section 8 rental subsidies.

Councilwoman Field stated that she was concerned about housing in the community and very concerned about the public safety issue. However, she noted that City Council could not guarantee to HUD that every year money would be allocated to Vanderbilt Apartments because of the make-up of the different committees. She noted that the $150,000 being requested in HOME Program is almost Asheville's entire amount of money because the money is allocated out amongst nine municipalities and four counties. There are other commitments by the City and of the portion that we are allocated, a certain amount has to go to non-profits that provide housing for the community. With regard to CDBG funds, those funds have just been cut and she was unsure if the City could respond with the urgency that this request needs.

Because of the public safety issue, Mr. Sawyer explained that they are inspecting the bricks on a daily basis.

Upon inquiry of Vice-Mayor Hay, Mr. Sawyer said that it would take approximately $5.3 million to replace the units.

When Vice-Mayor noted that finding $150,000 in the CDBG funds would be next to impossible, Mr. Sawyer again stated that HUD would not act favorably on their loan application unless there was local participation and they will not proceed with any repairs until the total financing is in place.

Mayor Sitnick was very concerned about the public safety issue with regard to the falling bricks. She hoped that on the south side of the building next to the main Library, which has the most amount of pedestrian traffic, some kind of effort be made to secure that side.

Mr. Sawyer noted that before they fix just part of the building, they would probably choose to close it down because a big part of the cost is the set-up. Mayor Sitnick noted that closing the building won't stop the bricks from falling.

Councilwoman Field suggested and City Council concurred that we refer this request to the Housing and Community Development Committee and have our City staff look for some creative ways to assist with this request. Mayor Sitnick further suggested and City Council concurred that City staff see if there are any measures that can be taken to at least let people know who are walking on the sidewalk by the building of the potential danger.

BUDGET AMENDMENT RE: COUNCIL CHAMBER RENOVATION DESIGN

Mr. Lyle Willis, Contract Administrator, said that on February 25,1997, City Council passed Resolution No. 97-19 authorizing the City Manager to enter into a contract with Electronic Interiors, Inc. for professional services to design and upgrade the audio-visual and other electronic capabilities of the Council Chamber in the City Building.

In November, 1997, Electronic Interiors, Inc. completed the Phase I portion of their contract which included meetings with city staff on programming and presentations resulting in the completion of schematic design drawings and preliminary budget estimates. He then presented the design drawing to Council for their review.

Based on information obtained in the Phase I portion of Electronic Interiors, Inc.'s contract, a proposal with related costs for design services for Phases II-III was received by City staff. The proposal for Phases II-III incorporates services for the design development, complete construction documents and construction administration through out the project. This scope of services will cost an additional $19,000 currently not appropriated or approved by City Council.

The Parks and Recreation Department requests City Council appropriate an additional $19,000 and to authorize the City Manager to enter into an agreement with Electronic Interiors, Inc. for Phases II-III of the Electronic Interiors, Inc. contract.

Mayor Sitnick said that she was pleased that this will improve both audio and visual conditions in the Chamber. In the future she hoped that we can create some way that people who cannot be seated in the Council Chamber who have to stand in the hall will be able to at least hear and view the Council proceedings. Mr. Willis said that once the design drawings and specifications are in place, Council can look at audio and visual in the hallway, however, we can't take away from the fabric of the hallway.

Councilman Cloninger hoped that there would be a table reserved for the press at the front of the room.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

LOCAL PLAN APPROVAL OF WATER LINE EXTENSION CONSTRUCTION PLANS

Ms. Cathy Ball, City Engineer, asked City Council to consider adopting an ordinance to allow the Engineering Department of the City of Asheville to review and approve water line extension plans and revise the Fees and Charges Manual to include charging $200 review fee for each project.

The current process for reviewing and approving water line extension plans requires that the City of Asheville review the plans to insure that they conform with our standards specifications and details and forward the plans to the N.C. Dept. of Environment and Natural Resources (NCDENR) for final approval. This process often takes six to eight weeks. By adoption of this ordinance, the amount of plan review time will decrease to approximately two weeks. This will be a significant benefit to the development community by expediting the approval process and facilitating the construction process beginning sooner.

NCDENR has developed a program by which local governments can be delegated the responsibility of reviewing and approving water line extension plans provided they have an ordinance to enforce compliance with the approved plans and adequate staff and resources to properly review the plans. Staff has met with the local NCDENR and received approval for the latter requirement. A draft copy of the ordinance has been approved by the state office of NCDENR.

Staff is also requesting that the current Fees and Charges Manual be revised in order to allow the City of Asheville to charge $200 for the review of the water line plans. Currently there is no charge for this plan review. The amount of $200 per project was determined by looking at the actual staff time and resources that are currently required to review plans. Depending on the size of the project, the actual cost to the City to review plans ranges from $150 to $300. In the fiscal year 97-98, staff reviewed 108 projects.

Staff recommends that City Council adopt an ordinance allowing the City of Asheville to review and approve water line extension plans and revise the Fees and Charges Manual to include charging $200 per project for the review of the water line extension plans.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

AGREEMENT WITH SKYLAND FIRE DEPARTMENT

Fire Chief John Rukavina explained that this resolution would allow the City to enter into an agreement with the Skyland Fire Department that would allow use of parts of Skyland's fire station by Asheville firefighters.

In consideration of assuming 50% of the cost of utilities of Skyland's fire station, and up to 50% of repair/maintenance costs, the Skyland Fire Department is willing to let the Asheville Fire Department use Skyland facilities for housing on-duty Asheville firefighters.

Acceptance of this agreement on the part of the City of Asheville would allow avoidance of the cost of constructing living quarters for firefighters in Asheville Fire Station 4, the new Asheville fire station to be built adjoining Skyland's station. Only apparatus bays and facilities for the Asheville Police Department substation would be required at this time.

The proposed agreement provides a five-year notice for the City in the event that Skyland wishes to discontinue the agreement at some time in the future. This notice would provide time necessary to develop a funding plan as part of the City's Capital Improvement Program to add living quarters to the Fire Station 4 "shell."

At the present time, the City is using space in Skyland's fire station, and is reimbursing Skyland an amount equal to 40% of its utility costs.

The City Attorney has reviewed the proposed agreement, and notes, that, while technical changes may be required prior to execution of the agreement, the substance of the agreement is in order.

Because bids have been opened for the construction of Fire Station 4, and because execution of this agreement would significantly reduce construction costs, time is of the essence in regard to City Council action authorizing the City Manager to enter into an agreement with the Skyland Fire Department.

Upon inquiry of Councilman Cobb, Fire Chief Rukavina said that a conservative estimate of $100,000, even possibly $200,000 will be saved if the living quarters are not constructed.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

COOPERATION OF CITY DEPARTMENTS DURING WINTER STORM

Mayor Sitnick thanked the Public Works Department, Water Resources Department, Police Department, Fire Department, Parks & Recreation Department, Engineering Department, Building Safety Department and Personnel Department on how well they responded to the recent winter storm in January 27, 1998. There will be an after action review meeting to discuss how well the City did in preparing for the event, how well we did once it was underway, what we didn't do as well as we should have, and what we can improve for the future. She felt that some public education ads in the newsprint, on the television and on the radio might be beneficial to the public. She also stressed that as a community we need to find ways to address the problem of when kids are out of school, some don't eat the first two meals of the day.

On behalf of Jim McCulley, Councilwoman Field thanked the departments that assisted him during the storm.

Fire Chief John Rukavina said that they have information which they will distribute to the public of a checklist on how to be self-sufficient for 72 hours.

CABLE TV FRANCHISE REVIEW

Mayor Sitnick announced that this cable TV franchise review began at Council's worksession on January 20, 1998, and was continued until this date.

Ms. Patsy Meldrum, Assistant City Attorney, said that at the worksession on January 20, City Council asked for information regarding a brief summary of the history of the 1967 cablevision franchise, a brief summary of the renewal processes for cablevision franchises and a comparison chart of what was requested of the cablevision company in the Request for Renewal Proposal and what is included in the proposed franchise. She then reviewed the requested information with City Council.

Ms. Jean Rice, the City's consultant, then explained the comparison chart of what was requested in the Request for Renewal Proposal and why InterMedia did not agree to them.

Assistant City Attorney Patsy Meldrum continued with her review of the proposed cable television documents with City Council not only for the benefit of the new Council members, but for the benefit of the public in understanding the proposed cable television documents.

She reviewed the franchise ordinance (ordinance granting franchise to Brenmor d/b/a InterMedia): (1) system services (a) subscribers; (b) leased access channels; (c) free cable drops and monthly service to sites passed by activated cable plant and within city limits: (i) all city and county schools; (ii) city police and fire stations/facilities; (iii) all "city and county libraries"); (iv) all city buildings; (d) scrambled institutional programming - for governmental and educational access channels to all local governmental and educational locations receiving free drops and monthly service; and (2) state-of-the-art clause (a) cable systems owned by Brenmor/InterMedia in North Carolina, South Carolina, Georgia and/or Tennessee; (b) similar system (size, population, etc.); and (c) public hearing may be held by City Council.

Throughout Ms. Meldrum's presentation, she and Ms. Rice, responded to various questions from Council. Some questions were, but are not limited to, how many cities in North Carolina own their own cable system and do those cities hire employees with expertise or hire an outside company to run the system, was the information from the community needs assessment included in our Request for Renewal Proposal, what is the benefit for the City and InterMedia with regard to the state-of-the-art clause, how can the City trigger the state-of-the-art clause, what is involved in monitoring other communities regarding state-of-the-art systems, do other cities have stronger language in their state-of-the-art clauses, what the difference is between a 550 MHz rebuild and a 750 MHz rebuild, and how does the proposed franchise agreement define cities of similar size in the state-of-the-art clause.

Upon inquiry of Councilman Cloninger, Mr. Joe Haight, General Manager of InterMedia, said that InterMedia will provide Internet connections for all school sites, however, they do not want it incorporated into the agreement because it is a matter of policy. He noted that InterMedia would provide one modem per school for the Internet.

Mr. Haight responded to questions from City Council about how the state-of-the-art clause in the franchise agreement is an opportunity for dialog. He said that it is their intent to keep the costs to their customers reasonable and they expect revenue increases will come from additional services that they offer, not from the basic services they have. He then answered various other questions, some being, but not limited to, why the basic service rate payers will have to pay for a rebuild even if they don't want those extra services, and what the cost difference was between the 550 MHz rebuild and the 750 MHz rebuild.

Mr. Bruce Stewart, attorney for InterMedia, also responded to questions from Council noting that they are acutely aware of the costs and are being respectful of providing the services.

Upon inquiry of Mayor Sitnick, Ms. Rice said that they are comfortable with InterMedia providing the 550 MHz rebuild.

Ms. Meldrum reviewed the franchise ordinance (ordinance granting franchise to Brenmor d/b/a InterMedia): (1) public, educational and governmental (PEG) access channels (a) three channels required within 90 days of City's request (after rebuild completed); (b) one additional channel required when threshold met; (c) administration and management may be coordinated by city and cable company or city may assign to third party or cable company; city has sole authority to designate channels and use of channel capacity; (d) initial access equipment and facilities -- $200,000 (paid over first two years; first $50,000 may be paid by cable company "in-kind" with equipment; cable company may elect to pass through all or portion to subscribers); (e) replacement equipment, maintenance, support and facilities -- minimum of $36,000/year or 15-cent/subscriber/month, whichever is greater, during years 8-17 (cable company may elect to pass through all or portion to subscribers); (2) subscriber services and standards (subject to federal laws and regulations) (a) subscriber information; (b) customer service standards; (c) subscriber complaints; (d) downgrades and disconnects; (e) outages; (f) repair calls (four hour windows); (3) construction bond ($300,000); performance bond ($350,000); (4) insurance requirements (general liability; workers' compensation; employers liability; automobile liability); (5) indemnification requirements; (6) most favored nations (a) other cable franchises granted by City must have similar requirements, subject to exclusion of small cable systems; (b) indemnification of City by cable company; and (7) transfers, renewals and termination/revocation governed by regulatory ordinance and federal laws and regulations.

She then continued with the final element of the proposal which is the franchise fee settlement: (1) franchise fee audit for four years (January 1, 1992 - December 31, 1995); (2) payments made by basic and expanded basic service revenues; no payments made from premium channels (HBO, Cinemax, etc.), pay-per-view, home shopping channels or other revenues; (3) settlement from InterMedia and TCI (a) $150,000 - payable in three installments of $50,000 over three years; (b) additional franchise fees from new definition of "gross annual revenues" if franchise renewal completed - estimated by cable company to be $260,000 from 1997 - 2002 (rest of 1967 franchise term).

Again, throughout the presentation, Ms. Meldrum and Ms. Rice responded to questions from Council, some being, but not limited to, how may public access channels do other cities of Asheville's size have, how does the number of PEG channels relate to the needs assessment survey, will the PEG channels be in the basic service tier, do other cable companies fund the access studios, what the pros and cons are for having the access studio located in the cable company location, does InterMedia have complete discretion in what is included in the basic tier service, how the $200,000 for initial access equipment and facilities was arrived at, how was the construction bond figure obtained, what happens to the equipment, etc., if the cable company fails, and how the $260,000 figure was arrived at regarding additional franchise fees until the end of the franchise term in 2002.

Councilwoman Field suggested a regional access studio for several communities to band together at one center to do programming. Ms. Rice addressed questions about that suggestion.

Mr. Haight also responded to various comments, some being, but not limited to, a negotiated shared channel with Charter and Marcus Cable, and why the cable company paid the City 6% in franchise fees when the law only said they needed to pay 3%.

Councilwoman Field noted that the Forum in Pack Place was designed to be used for production.

Ms. Meldrum explained thoroughly why the City asked for a franchise fee audit of three years and received an audit for a four year time period and the issues regarding going back further in time.

Councilman Cloninger asked if there were any binding arbitration clauses in the agreement. Ms. Meldrum responded that we do have arbitration for one issue, however, it is not binding arbitration. Councilman Cloninger suggested we might consider it on other issues. Mr. Stewart responded that they would prefer to have full rights of appeal, even if arbitration is included.

Ms. Meldrum answered several questions from Vice-Mayor Hay about why the settlement from InterMedia and TCI should be agreed upon at the same time the franchise agreement is agreed upon.

Councilman Cloninger asked what specific issues about the franchise agreement could be discussed in closed session, noting that the City has an obligation to negotiate the best possible agreement. He stressed that they want the public to know as much as possible about the negotiations. City Attorney Oast said that there is clear authority in the Open Meetings Law to receive legal advise from an attorney and to discuss matters in litigation or headed for litigation, however, he would prefer to have an opportunity to review all facets of the question before issuing an opinion.

Mayor Sitnick noted that on Tuesday, February 10, 1998, at 7:00 p.m. in the William F. Wolcott Jr. building at 161 South Charlotte Street there will be a community meeting. On February 24, 1998, at 5:00 p.m. in the Council Chamber, 2nd Floor, City Hall Building, there will be a public hearing on the cable TV franchise renewal issue. She noted that City Council is not required to vote at the public hearing and suggested that after the hearing all the input from the public and recommendations from the City Manager and City Attorney, City Council will be in a better position to know how they wish to proceed.

At the request of Councilwoman Field, Ms. Rice responded briefly to a letter dated February 3, 1998, from Mr. Bill Fishburne, Vice-President and General Manager of Internet of Asheville, in which he felt that the Institutional Network as proposed by InterMedia was not a good deal.

Mr. Bill Fishburne reviewed his letter and suggestions to Council.

Ms. Meldrum noted that the City Council has received comments from the following individuals: Mark Rosenstein on January 15, 1998; Nelda Holder on January 19, 1998; and Wally Bowen, representing Citizens for Media Literacy, on January 16, 1998. She said that she has reviewed all of their comments and tried to address those comments during her presentation.

In addition to the cable franchise matters, Ms. Meldrum noted that the City Council had received information regarding review of the 1997 annual rate increase request of InterMedia. She said that by a letter dated March 1, 1997, InterMedia filed FCC Forms 1205 and 1240, both dated March 1, 1997, for the purpose of requesting and justifying an annual increase in its monthly rates and hourly service charges for cable services on the basic service tier. Those documents were received by the City on March 3, 1997.

The City has reviewed the FCC Forms 1205 and 1240 and attachments filed by InterMedia on March 3, 1997. The City's review concluded that InterMedia made certain errors in the Form 1240 filing, but that the Form 1205 filing was correct. The City informed InterMedia of those errors in the Form 1240 filing and attachments. InterMedia subsequently filed with the City an amended FCC Form 1240 on November 7, 1997.

Rice, Williams Associates, the City's cablevision consultant, has completed a review of the amended FCC Form 1240 filed with the City by InterMedia on November 7, 1997. Rice, Williams Associates has furnished the City with a report regarding their review of the amended FCC Form 1240. That report concludes that there were errors in the calculations of the maximum permitted rate, related to inflation factors used. A copy of that report was furnished to InterMedia.

InterMedia has asked that they have additional time to show that its rate filing was accurate, therefore, Ms. Meldrum recommended, and City Council concurred, that this issue be discussed at the worksession held on February 17, 1998, and a public hearing be scheduled for February 24, 1998. She noted that Council will need to take action on the request on February 24, 1998.

Mayor Sitnick stated that the community meeting on February 10, 1998, will be as open as possible with cross dialog.

MORATORIUM ON ADULT ESTABLISHMENTS

Councilman Sellers asked for Council's support on a resolution imposing a moratorium on adult establishments until House Bill 588 is considered and acted on by the General Assembly.

City Attorney Oast noted that this will involve a public hearing on the issue and that he would be happy to prepare a resolution to be considered at Council's worksession on February 17, 1998.

CITY COUNCIL RETREAT

Mayor Sitnick invited the public to the City Council annual retreat beginning at 1:00 p.m. on Friday, February 6, 1998, through 12:00 Noon on Sunday February 8, 1998, at Highland Lake Inn in Flat Rock, N.C.

ERSKINE STREET PLAYGROUND NAME REQUEST

Mayor Sitnick received a request from the Parks and Recreation Advisory Board asking for City Council to recommend to the Housing Authority that the Erskine Street playground be named in honor of Herb Watts.

It was the consensus of City Council to write a letter to the Housing Authority supporting the Advisory Board's recommendation.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 735 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

CITY OF ASHEVILLE

CITY COUNCIL

BOARD MINUTES

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Friday - February 6, 1998 - 1:00 p.m. -
Sunday, February 8, 1998 - 10:30 a.m.
Highland Lake Inn, Flat Rock, N.C.

City Council Annual Retreat

Present: Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; and Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

Friday, February 6, 1998

Local Thoroughfare Plan - Cathy Ball, City Engineer, reviewed with Council the request to establish a list of local (City maintained streets) transportation projects.

It was the consensus of City Council to have staff follow through with work to create a local Thoroughfare Plan which would utilize the information provide from a consultant, which the City is currently in the process of trying to retain, for a public involvement study for the Asheville area. The date from the study will be utilized to establish our goals and objectives for a local transportation improvement program.

Traffic Calming Policy - Cathy Ball, City Engineer, reviewed with Council a draft residential traffic management policy. This policy will formalize a system whereby citizens can initiate a process for the evaluation of residential streets and roads for the purpose of increasing traffic safety. The policy also provides a citizen with information necessary to understand the parameter under which both the citizens and the government must operate. The policy provides an evaluation questionnaire, petition, step-by-step procedure, traffic calming selections survey and a follow-up survey.

It was the consensus of City Council to solicit comments from the public on this policy and bring back a draft to Council in the spring. The funding will be presented to City Council in their annual budget process.

Small Area Plans - Julia Cogburn, Planning & Development Director, explained that small area plans are land use and development plans that are typically comprehensive in nature but cover a small defined area. Three plans have been adopted since 1989 - Biltmore Village Development Plan in May of 1992, the Hendersonville Road Corridor Plan in March of 1993, and the West End/Clingman Avenue Neighborhood Plan in January of 1996. The Charlotte Street Small Area Plan will be before Council in April of this year. Ms. Cogburn presented a list of small area plans that were either requested by the public, by Council, or were needed from a staff's point of view. Those plans include: the Swannanoa Corridor (from Biltmore Village to Tunnel Road), Broadway (from 19-23 to downtown), and Haywood Road (the entire corridor). Other plans to be considered are WACT 10 (Census Tract 10 - bounded by French Broad River on the east and south, I-240 on the west, and 19-23 on the north); Sweeten Creek Corridor (from Biltmore Village to Airport Road); Hospital Area - Kenilworth Area; A-B Tech; McDowell and Biltmore Avenues and surrounding neighborhoods; UNC-Asheville/Jackson Park - Woolsey - UNC-Asheville/Weaver Boulevard/Jackson Park - Woolsey neighborhood; Hill Street (area from Montford Avenue down to Hill Street around to Courtland Avenue); Overlook Road (Overlook Road corridor from Hendersonville Road to Long Shoals Road); Merrimon Avenue (corridor study); Central Avenue (Broad Street/Hillside area - area from Charlotte Street to Merrimon Avenue going back to Coleman); and Tunnel Road (corridor study). Other plans under consideration include the downtown master plan and the river core area plan.

It was the consensus of City Council to review the 2010 Plan and directed staff to recommend a priority among the plans, and to present them as part of the budget process.

Minimum Housing Code Update - Terry Summey, Director of Building Safety, updated City Council on the efforts to increase the number of rental residential properties in the City that are inspected and brought up to Minimum Housing Code. The emphasis is on having inspections made in accordance with the Minimum Housing Code schedule before July 1, 1999. Two recent major changes have occurred: (1) Effective on October 1, 1997, initial Housing Code inspections are made by one of the approved third party inspectors; and (2) Effective on January 1, 1998, before water services changes are made for new residential tenants, a verification is made that a housing inspection has been made in accordance with the Code and schedule. Increased efforts have also been made to address residential structures that negatively impact neighborhoods and need to be demolished. In addition, a systematic Inspection Program has begun in the Clingman Avenue area.

It was the consensus of Council that if we are going to review the goals set in the current Minimum Housing Code ordinance, that it be done in plenty of time before certain target dates in the current ordinance are reached.

Neighborhood Inspection Program - Terry Summey, Director of Building Safety, updated City Council on the Neighborhood Citizen Inspector Program which involves neighborhoods helping to address problem issues in their community. This is a pilot program to occur between May 1 and September 30 to involve two neighborhoods with inspecting and addressing issues in their community. The main objectives of the program will be the following: (1) to clean up the exteriors of residential buildings, grounds, and vacant lands; (2) to stem further blight of neighborhoods; and (3) to foster community involvement in the upkeep of their neighborhood. The anticipated results of the program will be: (1) increase neighborhood participation and input; (2) reduce environmental nuisance conditions and neighborhood blight; (3) allow the City staff to focus more on the problem cases; and (4) reduce the number of conversions from owner occupancy to rental. The program is still in the process of being finalized and two pilot neighborhoods have yet to be identified.

Council endorsed this concept and directed staff to conduct a pilot program and to bring back to City Council the results from the pilot program prior to full implementation.

Annexation - It was the consensus of Council to hold a worksession in early March to discuss with the consultants issues on which they need guidance in progressing with the annexation study. Said worksession is to be at 5:30 p.m. in the Public Works Facility. Some items to be discussed at the worksession should include our annexation policy, the history of annexation, what areas have been annexed, what are the services required by law that we provide and the timeframe we have within which to start those services, what is the financial impact on the people who are annexed and on the Asheville citizens who pays both City and County taxes, what some amenities are that the County residents are using but City residents are paying for, the laws regarding annexation, questions regarding if the annexed areas are being properly served, along with a van tour of development taking place outside the City limits. On a related issue, Council also wanted to discuss the extraterritorial jurisdiction areas and its relationship to annexation.

1998 Legislative Agenda - City Attorney Oast updated City Council on several legislative items. It was the consensus of Council to have the City Attorney introduce for the Short Session (1) the local act (applicable to Buncombe and Henderson Counties) requiring Dept. of Transportation reimbursement for non-betterment costs of relocation of water and sewer lines in connection with NC DOT projects; (2) legislation endorsing the proposal by the Asheville-Buncombe Community Relations Council to become a deferral agency for employment discrimination complaints; (3) and legislation to repeal some provisions of Asheville's Charter in order that our Charter not conflict with State law.

Saturday, February 7, 1998

City Council Rules of Procedure - City Attorney Oast reviewed with Council some of the issues discussed at City Council's mid-year retreat in August, 1997: (1) Roll call votes - eliminated; (2) Quorum - need to amend rules regarding quorums in order to be consistent with State law and charter. Ordinarily in cities where Mayor votes as a regular Council member, quorum is a simple majority. Our Rules provide that a quorum is a majority of Council plus the Mayor; and (3) Public Comment/Public Hearings - (a) staff has recommended that land use matters be presented to Council at worksessions in advance of the public hearings on those items. Currently they are not. In August, the Council expressed some interest in this approach, but has since expressed concern that public comment cannot be taken a worksessions for items for which a public hearing is required. Staff has hesitated to implement this practice pending further direction from Council; and (b) conditional use permit hearing process has been drafted, implemented and used once. He then reviewed the closed session processes and the open meetings law.

It was the consensus of Council to instruct the City Attorney to amend their Rules (1) regarding quorums in order to be consistent with State law and the Charter; and (2) to be consistent with State law regarding City Council has to meet at least once a month and adopt a resolution or and ordinance at the first of the year outlining their meeting schedule.

It was the consensus of City Council to ask the consultants, who are redesigning the Council Chamber, about a mechanism to alert speakers when their speaking time is up.

After discussion of the meeting time for worksessions, it was decided that this item needed further discussion and thought.

Strategic Planning Process

The strategic planning process began with City Council discussing over 153 topics.

Sunday, February 8, 1998

Strategic Planning Process

The following are the top 10 goals arrived at after discussing and combining over 153 smaller topics: (1) Encourage City/County Comprehensive Multi-Model Transportation Plan; (2) Adopt Affordable Housing Policy; (3) Adopt Parks and Recreation Master Plan; (4) Improve traffic management system; (5) Develop and fund economic development strategic plan; (6) Adopt Civic Center Master Plan; (7) Establish a neighborhood/community outreach program; (8) Celebrate cultural diversity; (9) Adopt comprehensive parking plan; and (10) Review Sign Enforcement - Resources and Efforts.

The following goals were equally important: (1) Develop policy on public art; (2) Adopt comprehensive tower ordinance; (3) Consider federal regulations regarding stormwater; (4) Maintain fiscal policy and financial health; (5) Partner with effort to establish comprehensive riverfront development plan; (6) Enhance community litter clean-up (Adopt a Street, state system streets, education); (7) Review management structure of transit system; (8) Continue to identify and fund infrastructure needs; (9) Enforce street numbering ordinance; and (10) Strengthen day care system.

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Miscellaneous Topics

Many topics were brought up and discussed during this portion of the meeting. Some being, but are not limited to, rotating seating arrangements in Council Chamber; stipends for City Council; concerns about how the process of the retreat was handled; review of the Unified Development Ordinance with guidance from staff and public; need to put all planning processes together; the need to continue community meetings; better communication with the media; look at real estate around the Civic Center when it becomes available; prohibiting of phones and pagers in Council meetings; perhaps one worksession a month devoted to boards & committee reports; forming of an Asheville Film Committee; suggestion for a City-wide bus tour to look at neighborhoods, businesses, streets, traffic, etc.; request for a Unity Statement by the City; look at all revenue producing potential that Asheville is not getting; see if All America Pins can be bought from supplier in the United States, not China; brief explanation of the composition of the Planning & Zoning Commission; need for after-event review of storms and try to remember that kids who don't go to school don't eat two meals a day; address issue of school buses not having seat belts; the need to resolve the issue regarding the Rod and Gun Club; YMI Cultural Center reorganization; and better communication with the media.

Mayor Sitnick adjourned the meeting at 10:15 a.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - February 10, 1998 - 5:00 p.m.

Regular Meeting

Present: Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Tomes gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF AWARD GIVEN TO MOUNTAIN HOUSING OPPORTUNITIES INC. AND THE CITY OF ASHEVILLE FROM THE NORTH CAROLINA FINANCE AGENCY

Mayor Sitnick said that the City of Asheville and Mountain Housing Opportunities have received an award from the North Carolina Housing Finance Agency.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities Inc. said that the Mountain Housing Opportunities' Laurel Bridge Apartments project has been selected to receive the 1997 Housing North Carolina award from the North Carolina Housing Finance Agency.

In selecting this project, the Agency noted that the project provides an innovative approach involving the City of Asheville and Mountain Housing Opportunities, Inc. (MHO) to empower renters and homeless families to become homeowners. The project competed against affordable housing projects from other cities and counties across North Carolina. The award was presented to the City and MHO representatives in Raleigh on December 11, 1997. He was asked to present the City their award on behalf of the North Carolina Housing Finance Agency.

On behalf of City Council, Mayor Sitnick thanked everyone associated with this endeavor

II. CONSENT:

A. RESOLUTION NO. 98-12 - RESOLUTION FINDING THE RIGHTS-OF-WAY KNOWN AS RALEIGH AVENUE (FORMERLY CAROLINA AVENUE) AND A PORTION OF IRON STREET ARE NOT PART OF AN ADOPTED STREET PLAN

Summary: William C. Burgin and Biltmore Heights, LLC, a North Carolina Limited Liability company, have requested that City Council adopt a resolution stating the rights-of-way known as Raleigh Avenue (formerly Carolina Avenue) and a portion of Iron Street as shown in Plat Book 5, page 27, are not part of an adopted street plan in accordance with N. C. Gen. Stat. sec. 136-66.2.

According to N. C. Gen. Stat. sec. 136-96, a right-of-way not utilized within 15 years of dedication can be abandoned through a recording of a Declaration of Withdrawal.

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To proceed with this process, William C. Burgin and Biltmore Heights, LLC owner of PIN Nos. 9647.12-85-1964, 9647.12-85-5761, 9647.12-85-1834, and 9647.12-86-3100 have requested that the City of Asheville verify if the specific rights-of-way are or are not part of the City's adopted street plan. The statute requires that the City adopt a resolution stating the right-of-way to be abandoned is or is not part of a proposed street plan. The unused rights-of-ways are not part of any such plan and are not City maintained right-of-way; therefore, the City has determined that all necessary requirements of the statute will have been met by adopting the resolution, thus allowing William C. Burgin and Biltmore Heights, LLC, to withdraw these specific rights-of-way.

The Public Works Department staff finds that the rights of way known as Raleigh Avenue (formerly Carolina Avenue) from the intersection with Reed Street and Margaret Street and a portion of Iron Street from the intersection of Raleigh Street and the Southeastern corner of PIN No. 9647.12-85-1964, in their entirety, as shown on Plat Book 5, Page 27 are not part of an adopted street plan and recommends the adoption of this resolution.

RESOLUTION BOOK NO. 24 - PAGE 337

B. RESOLUTION NO. 98-13 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE SKYLAND FIRE DEPARTMENT INC. FOR USE BY THE CITY OF ASHEVILLE FIRE DEPARTMENT OF PART OF THE SKYLAND FIRE STATION AT 9 MILLER ROAD

Summary: This resolution would allow the City to enter into an agreement with the Skyland Fire Department that would allow use of parts of Skyland's fire station by Asheville firefighters.

In consideration of assuming 50% of the cost of utilities of Skyland's fire station, and up to 50% of repair/maintenance costs, the Skyland Fire Department is willing to let the Asheville Fire Department use Skyland facilities for housing on-duty Asheville firefighters.

Acceptance of this agreement on the part of the City of Asheville would allow avoidance of the cost of constructing living quarters for firefighters in Asheville Fire Station 4, the new Asheville fire station to be built adjoining Skyland's station. Only apparatus bays and facilities for the Asheville Police Department substation would be required at this time.

The proposed agreement provides a five-year notice for the City in the event that Skyland wishes to discontinue the agreement at some time in the future. This notice would provide time necessary to develop a funding plan as part of the City's Capital Improvement Program to add living quarters to the Fire Station 4 "shell."

At the present time, the City is using space in Skyland's fire station, and is reimbursing Skyland an amount equal to 40% of its utility costs.

The City Attorney has reviewed the proposed agreement, and notes, that, while technical changes may be required prior to execution of the agreement, the substance of the agreement is in order.

Because bids have been opened for the construction of Fire Station 4, and because execution of this agreement would significantly reduce construction costs, time is of the essence in regard to City Council action authorizing the City Manager to enter into an agreement with the Skyland Fire Department.

The Fire Chief and City Manager recommend City Council adoption of a resolution authorizing the City Manager to enter into an agreement with the Skyland Fire Department, such resolution to be adopted at Council's 10 February 1998 regular meeting.

Adoption of resolution authorizing the City Manager of the City of Asheville to enter into an agreement with the Skyland Fire Department to provide for use by the City of Asheville Fire Department of living-quarters space in Skyland's fire station.

RESOLUTION BOOK NO. 24 - PAGE 338

C. ORDINANCE NO. 2447 - BUDGET AMENDMENT TO PROCEED WITH PHASES II AND III FOR THE COUNCIL CHAMBER RENOVATION PROJECT

Summary: On February 25,1997, City Council passed Resolution No. 97-19 authorizing the City Manager to enter into a contract with Electronic Interiors, Inc. for professional services to design and upgrade the audio-visual and other electronic capabilities of the Council Chamber in the City Building.

In November, 1997, Electronic Interiors, Inc. completed the phase I portion of their contract which included meetings with city staff on programming and presentations resulting in the completion of schematic design drawings and preliminary budget estimates.

Based on information obtained in the phase I portion of Electronic Interiors, Inc.'s contract, a proposal with related costs for design services for phase II-III was received by city staff. The proposal for phase II-III incorporates services for the design development, complete construction documents and construction administration through out the project. This scope of services will cost an additional $19,000 currently not appropriated or approved by City Council.

The Parks and Recreation Department requests City Council appropriate an additional $19,000 and to authorize the City Manager to enter into an agreement with Electronic Interiors, Inc. for phase II-III of the Electronic Interiors, Inc. contract.

ORDINANCE BOOK NO. 24 - PAGE 396

D. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 24, 1998, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORIDNANCE TO PROVIDE THE BOARD OF ADJUSTMENT AUTHORITY TO VARY THE REQUIREMENTS FOR LOT SIZE AND DIMENSION

E. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 24, 1998, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORIDNANCE TO AMEND THE DEFINITION OF "FAMILY CARE HOMES" TO INCLUDE CHILDREN

F. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 24, 1998, TO CONSIDER THE MANUFACTURED HOUSING OVERLAY ZONING DISTRICT TO 15 LOTS ON ROBIN LANE

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and ordinance on the consent agenda and they will not be read.

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Councilman Tomes moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

III. PUBLIC HEARINGS:

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. MOTION AUTHORIZING THE MAYOR TO WRITE A LETTER IN SUPPORT FOR A BROWNFIELDS AGREEMENT APPLICATION BEING MADE FOR PROPERTY LOCATED AT 105 FARIVIEW ROAD

Planning & Development Director Julia Cogburn said that at the worksession on January 5, 1998, the Asheville City Council directed staff to look into a request submitted to them by Reese Lasher of Western Investment Company. The request was for the City Council to provide him with a letter of support for a Brownfields Agreement Application being submitted by Western Investment Company for property located at 105 Fairview Road.

The property is located in a primarily industrial area. It is zoned CI (Commercial Industrial) and is 6.18 acres in size. The current tax value on the property is listed at $235,600.

Staff recommends that Council direct staff to draft a letter in support of the redevelopment of the property at 105 Fairview Road by Western Investment Company. The letter will of course need to indicate that all development will be done in accordance with all city regulations, etc. This appears to be a wonderful opportunity to put a piece of property back to use, to increase the City's tax base on this property and to gain additional and safe cleanup of the site.

At the City Council meeting on January 13, 1998, this matter was tabled until responses to Council's concerns could be addressed, in particular if there has been any indication of off-site substance migration and if there are any reports on ground water contamination.

Mr. Reese Lasher presented City Council with a letter from Alpha Environmental Sciences Inc. detailing their assessment report. In part the letter stated "Based on their findings, it appears that the former Celestin/Carolina Production Finishing site has been very minimally impacted by the manufacturing processes formerly operated at the facility. The detected compounds at low parts per billion levels at depths of 10 to 25 feet below existing ground surface appear to pose a minimal risk to human health or the surrounding environment."

Mr. Lasher then explained that the project costs of the rehabilitation of two existing buildings located at 105 Fairview Road. These buildings have been vacant for several years and they will sell or lease the facilities to new tenants. The basic construction plan is to fix the property for warehouse and or light manufacturing utilization. It is expected that a significant company (or companies) could use this space due to its convenience and size (approximately 23,000 square feet).

Councilman Cobb indicated that the Oakley community is very interested in finding out what is happening with this property and suggested Mr. Lasher contact area representations to inform them of this project.

Councilwoman Field moved to authorize the Mayor to write a letter in support for a Brownfields Agreement Application being made for property located at 105 Fairview Road. This motion was seconded by Councilman Cloninger and carried unanimously.

B. ORDINANCE NO. 2448 - ORDINANCE CREATING CHAPTER 21 OF THE CODE OF ORDINANCES ENTITLED "WATER DISTRIBTUION SYSTEM" TO ENABLE THE ENGINEERING DEPARTMENT TO REVIEW AND APPROVE WATER LINE EXTENSION PLANS

Ms. Cathy Ball, City Engineer, asked City Council to consider adoption of an ordinance to allow the Engineering Department of the City of Asheville to review and approve water line extension plans and revise the Fees and Charges Manual to include charging $200 review fee for each project.

The current process for reviewing and approving water line extension plans requires that the City of Asheville review the plans to insure that they conform with our standards specifications and details and forward the plans to the North Carolina Department of Environment and Natural Resources (NCDENR) for final approval. This process often takes six to eight weeks. By adoption of this ordinance, the amount of plan review time will decrease to approximately two weeks. This will be a significant benefit to the development community by expediting the approval process and facilitating the construction process beginning sooner.

NCDENR has developed a program by which local governments can be delegated the responsibility of reviewing and approving water line extension plans provided they have an ordinance to enforce compliance with the approved plans and adequate staff and resources to properly review the plans. Staff has met with the local NCDENR and received approval for the latter requirement. A draft copy of the ordinance has been approved by the state office of NCDENR.

Staff is also requesting that the current Fees and Charges Manual be revised in order to allow the City of Asheville to charge $200 for the review of the water line plans. Currently there is no charge for this plan review. The amount of $200 per project was determined by looking at the actual staff time and resources that are currently required to review plans. Depending on the size of the project, the actual cost to the City to review plans ranges from $150 to $300. In the fiscal year 97-98, staff reviewed 108 projects.

Staff recommends that City Council adopt an ordinance allowing the City of Asheville to review and approve water line extension plans and revise the Fees and Charges Manual to include charging $200 per project for the review of the water line extension plans.

Upon inquiry of Councilman Cobb, Ms. Ball explained how the $200 per project fee was arrived at, noting that NCDENR charges $400 per plan for the review of sanitary sewer plans.

When Vice-Mayor Hay asked if we anticipated a workload problem, Ms. Ball said that City staff already reviews the plans and has already received approval based on the current staff. She said that she does not anticipate the need for additional staff funding.

Ms. Ball explained that this would apply to a water line that is extended when the City of Asheville will take over the line, not for a service line to an individual building.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

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Councilman Tomes moved for the adoption of Ordinance No. 2448. This motion was seconded by Councilman Cobb and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 398

C. RESOLUTION NO. 98-14 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL TO INCLUDE A $200 REVIEW FEE FOR EACH WATER LINE EXTENSION PLAN REVIEWED BY THE ENGINEERING DEPARTMENT

Summary: See Item "B" above.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Tomes moved for the adoption of Resolution No. 98-14. This motion was seconded by Vice-Mayor Hay and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE

D. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 24, 1998, TO CONSIDER THE DRHUMOR BUILDING LOCATED AT 48 PATTON AVENUE AS A LOCAL HISTORIC LANDMARK

Councilman Cloninger asked that he be used from voting on this since he is part owner of the Drhumor Building. Therefore, Councilwoman Field moved to excuse Councilman Cloninger from voting on this matter due to a conflict of interest. This motion was seconded by Councilman Tomes and carried unanimously.

Councilman Hay moved to set a public hearing on February 24, 1998, to consider the Drhumor Building located at 48 Patton Avenue as a local historic landmark. This motion was seconded by Councilman Sellers and carried unanimously.

VI. OTHER BUSINESS:

A. YMI CULTURAL CENTER

Vice-Mayor Hay stated that the City had a request from the YMI to assist with the current reorganization and restoration efforts that are taking place at the YMI Cultural Center. Mayor Sitnick appointed a committee of Councilwoman Field, Councilman Tomes and himself to meet with Mr. Gene Ellison who is presenting heading up the reorganization effort. That meeting has taken place and as a result of the remarkable leadership of Mr. Ellison, and others on the committee, good things are happening at the YMI and the City is eager to join in those efforts and find a role for the City. He noted that the problems with the IRS have been addressed in a forthright way, they have loan approval from the Bank of Asheville to refinance the debt, and they have found a way to get the community to support their efforts.

Vice-Mayor Hay said that Parks & Recreation Director Irby Brinson reported that his Department has been interested in some time in creating a new cultural arts program and that the City would be very interested in looking into that on a long term basis. He felt the YMI might be a look location for that activity to take place. Therefore, the Committee recommends, as a long term plan, that the Council authorize Mr. Brinson to commence negotiations and discussions with the YMI Board with an eye towards placing City cultural arts programs at the YMI Cultural Center.

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He said that the Stephens-Lee Renovation Project is underway and that facility has been shut down during the renovations. The community services that have been taking place at Stephens-Lee have been spread around the City. Therefore, the Committee recommends that we take those activities, under City supervision and with City staff (perhaps Oralene Simmons), and re-center them at the YMI during the balance of the term of the Stephens-Lee Renovation Project - July 1. In addition, we recommend that Mr. Brinson be authorized to spend up to $3,000 per month to pay operating expenses (like utility bills) at the YMI.

Mr. Gene Ellison explained some of the current efforts continuing with the YMI reorganization and thanked City Council for their support of this treasure.

Mayor Sitnick thanked the YMI Reorganization Committee, the Council committee, all the volunteers, City Manager Westbrook and Mr. Brinson for working expeditiously to bring these recommendations to Council.

Councilwoman Field was pleased that the City will have this partnership with the YMI that they haven't had before and was excited about the cultural arts program.

Councilman Tomes was also pleased of this relationship with the YMI.

Councilman Cobb commended the YMI Reorganization Committee for their efforts and noted that the City invested $500,000 in the YMI Cultural Center building and the debt service is approximately $30-35,000 annually.

Vice-Mayor Hay moved to authorize the City Manager to enter into an agreement with the YMI Cultural Center for cultural programming. This motion was seconded by Councilwoman Field and carried unanimously.

Vice-Mayor Hay moved to authorize the City Manager to enter into an agreement with the YMI Cultural Center for the operation of the Stephens-Lee Community Center programs, including staffing and up to $3,000 per month for operating expenses, until the completion of the renovations of the Stephens-Lee Community Center. This motion was seconded by Councilman Cobb and carried unanimously.

B. UNITY STATEMENT

It was the consensus of City Council to adopt the following unity statement: We, the undersigned, have formed a partnership to emphasize the unity that exists among our citizens and to encourage an even stronger spirit of neighbor helping neighbor. We wish to stress that our All America City will not be affected by efforts to promote divisiveness and hatred among our people. We encourage citizens to become involved in one of the many positive activities being offered on CommUNITY Day (May 2) and to demonstrate our commitment to a unified community.

Mayor Sitnick presented the statement to a representative of the United Way.

C. APPROVAL OF THE MINUTES OF THE CANCELLED FORMAL MEETING WHICH WAS TO BE HELD ON JANUARY 27, 1998, AND THE WORKSESSION HELD ON FEBRUARY 3, 1998

Councilman Cobb moved for the minutes of the cancelled formal meeting which was to be held on January 27, 1998, and the worksession held on February 3, 1998. This motion was seconded by Councilman Cloninger and carried unanimously.

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D. CABLEVISION FRANCHISE FEES - PUBLIC RECORDS

Mr. George Benge, Executive Editor of the Asheville Citizen-Times, said "I am here before City Council today on behalf of the *Asheville Citizen-Times* to address the refusal of the City of Asheville to provide documents related to the payment of franchise fees from cablevision companies that have operated under a franchise agreement with the City since 1967. We feel strongly that these documents are not only relevant but also proper and necessary for the public to be fully informed and to be able to participate in a meaningful way at the public hearing that will be held concerning the upcoming franchise agreement.

"Our staff writer, Mark Blaine, requested these documents through the City Attorney's office and on January 27th received a one page response that simply indicated that these fees were 'tax records' and therefore could not be disclosed under certain statutory provisions and further that the same would not constitute 'public records' which would clearly be available for our inspection.

"First of all we feel that the City Attorney's office and therefore City Council is taking a legally unsound position. I will address this issue in a moment. More importantly, however, we feel that by endorsing such an approach the City Council is losing sight of the duty that it owes to the public in general to make a full disclosure of all facts related to the upcoming franchise agreement in order to allow free inquiry and dialog concerning that agreement. Our suspicions are immediately raised when the position of public trust that has been given to you as a governing body becomes subordinate to legalese and questionable legal authority.

"It is our feeling that the City Attorney's office and now City Council is losing site of the fact that the right to franchise cable companies within the City is for the public benefit and once Council loses site of that underlying premise then it is ignoring its duty to the public.

"As early as 893 the Supreme Court of the United States held that franchise fees are not taxes but essentially are a form of rent, he price paid to use the public rights-of-way. That case is *City of St. Louis v. Western Union Telegraph Company*, 148 U.S. 92 (1983). That case of course did not involve cablevision but rather the Western Union Telegraph Company but the theory is exactly the same. In 1955 the Supreme Court of California took the same position in *Pacific Telephone and Telegraph Company v. City of Los Angeles* and that same position was taken in 1988 by the Third Circuit Court of Appeals in the *Erie Telecommunications v. City of Erie, Pennsylvania*. It's clear that the Courts of our nation have uniformly adopted a rule that these franchise fees are in the nature of a rental price being paid to use the public right of way and are not taxes. Interestingly enough, the City Attorney's office even calls the charges 'franchise fees' in its response to us denying us access to the documents we have requested.

"The thought of litigation to obtain these documents is distasteful to us and it should be distasteful to City Council. You should be mindful that if we have to pursue litigation to obtain these records, then there is a specific provision within the Public Records Act which allows us to recover reasonable attorney's fees if we are successful in compelling the disclosure of these records. It is our opinion, it is unconscionable that this Council would purport to represent the people, schedule a public hearing on an important issue to the people and then deny the people access to the documents that they might need to create meaningful dialogue at that meeting. The only conclusion that we can be left with, if you refuse to disclose these documents, is that there must be something within the documents that you do not want us to know about and that you feel would have some influence on the public's perception of either the way the franchise agreement has been handled with the cablevision company over the past many years or might give credence to the way that the upcoming agreement will be drafted that would not be to the benefit of the general public.

"The power that you have as the governing board of this City is, as the courts have noted, '...the power to control for public benefit.' We only ask that you exercise that power for the public benefit and allow us the right to review these documents and to be fully informed of the action that you will be taking in the granting of this franchise."

Mr. Benge further stated that "in addition to that, I see a very distinct possibility of a conflict of interest. I question the propriety and perhaps even the ethics of Assistant City Attorney Meldrum being deeply involved in the negotiations of this contract which were done, by and large, in secret, and also being one of the signers of the document along with the City Attorney, refusing us access to this document. In effect we have a person who is both creating the document behind closed doors and also being the person who says 'no one can have it.' I think there's a glaring absence of checks and balances. And I think it's up to this group to correct that problem. Otherwise, the situation is very much like the fox guarding the hen house and denying the access to the farmer who owns it. Finally, if it weren't enough that we have all of these, Supreme Court, the Supreme Court of California and other courts citing with the legal position that we support, the General Manager of the InterMedia Cable Company himself has said himself that he has no problem with this information being released. He is on the record, published in our newspaper as saying he has no problem with it if the City wants to do it, fine, they should do it."

Councilman Cloninger said "Mr. Benge, their attorney is on record as saying we are not to release that information. He stated that last week."

Mr. Benge continued by saying that "these courts and even the company manager himself has said that we should have access to these records and in fact there is no way that fees can be construed as rent. I would say also that as elected representatives of the public, it is your sacred trust to serve that public. I would ask that you ask yourself this question 'whose interests are being served here, the publics or Patsy Meldrums?' I would like you to make a timely decision in this matter because the public hearing on this issue is only two weeks away. And I would ask you here as I stand before you, will you instruct the City Attorney's, who after all work for you, not you for they, to give this information to the public now."

Mayor Sitnick said "at the worksession last week, Mr. Haight and his lawyer were there. I asked them if they would release the documents and they refused, saying that they were, it was inappropriate to do so. So that was in conflict to what Mr. Haight has said prior to that and it was the very reason I asked it. In addition to that, you mentioned something about our power and that's true we do have some power. The negotiations that went on to my understanding, because I was not on this Council at the time, went on legally in closed session. When the former Council was presented with the document, realizing its complexity to their credit, they delayed the vote and it was returned to this Council. There were three new members on the Council and I believe I recall that all three of us expressed the desire to be brought up to speed on this very complex issue. And it was also stated in the record by a number of the members of Council that we wanted to conduct some worksessions for further explanation and exploration, that we wanted to hold a community meeting for dialog rather than just a listening process, and then that we would schedule a public hearing - all of which we have done. And that was within our power as well - for the very purpose of opening up this discussion, because we do serve the people. I don't know that our power extends to instructing the City Attorney to break the law. According to the documents I have seen and members of Council have seen, the North Carolina law dealing with cable franchise fees is within the tax statutes and it is called a tax."

City Attorney Oast said "we have told the newspaper reporters, told Mr. Benge and written him a letter and then explained to Council that the North Carolina law very clearly classifies taxes imposed on cable television companies franchised under G. S. 160A-319 as taxes and the statutes also prohibit the disclosure of that information and prescribes severe penalties for an improper disclosure. I further think that even if the cable companies authorize that disclosure that Council couldn't do it because it's a criminal statute. The only place where the information can come from, in my opinion, is from the cable companies themselves and they have refused to release them. Mr. Benge is absolutely right - the Public Records Law does provide a mechanism by which anyone who thinks that information has not be disclosed that should have been disclosed can challenge it in court."

Mayor Sitnick said "we appreciate your bringing the open government aspect of this Council's work to the fore. We are about open government. There is no denying that. The irony here, as I understand it, we would like to release it. We have nothing, no reason not to - other than the fact that we are prohibited to, by law."

Mr. Benge asked the "City Attorney to cite any case law affirming the position you're taking with regard to the opinion from a book by the Institute of Government."

City Attorney Oast said "I've just cited the statutes of North Carolina. I don't understand how it could be clearer."

Mr. Benge asked "can you cite any case law where it was ruled on in a way that you're suggesting?"

City Attorney Oast said "I can't cite a case that says it hasn't been ruled on that way. I'm having to rely on the language of the statute."

Mr. Benge said "but you also say that you're basing your interpretation upon what has been written in a book by a professor of a very fine university, but nonetheless, it's a book that is strictly his opinion and has no weight of law behind it whatsoever. Would you agree with that?"

City Attorney Oast replied "I'm not basing my opinion on David Lawrence's opinion. I'm basing my opinion on my reading of the law. I would point out that when David Lawrence agrees with the media, you have no hesitation citing him as authority."

Mr. Benge said that "I take it your answer is 'no' that you will not request for your attorney's to provide the information that we are seeking."

Mayor Sitnick said that "we have requested that the attorney, and the attorney himself, was perfectly willing to release all information. There have been reporters and members of the public pouring over documents on a daily basis in this building for weeks. The only reason these particular documents are being withheld, because of the General Statute that forbids their release. The cable company lawyer himself agreed with that. Our consultant, when we asked her at either the last worksession or the one before whether or not it is considered that the cable franchise fee is considered a tax or a rent - she said it's a tax."

Mr. Benge said "I understand your position and what you're saying is that if litigation is required to resolve this, you have no problem with that."

Mayor Sitnick said that "it would be my hope that that was not the case, but it's certainly your right to do that. Can I ask if you have seen a copy of the N.C. General Statutes?"

City Attorney Oast said that he sent him a copy and Mr. Benge said "right, and he has cited that that is his reason why it was not provided."

Councilman Cobb said that when he "became a member of Council, he had to take an Oath to swear to abide by the laws of the land. There is a penalty charge in this thing that we can't release them or we could be subject to going to jail. Are you suggesting that we should go ahead and ignore law and give you these records?"

Mr. Benge said "no, I'm suggesting to you that perhaps you are not receiving the most prudent advise from your counsel. I'm not suggesting that you violate the law. I'm suggesting that perhaps you're receiving bad advice on the law."

Councilman Cobb said "when you read a copy of the law, did you think the law was not valid? When he sent you a copy of it and told you what the law was. Are you saying that law is not valid?"

Mr. Benge said "If you would like, I can re-read all the information I have in the documentation for you. I'm citing case history from the U.S. Supreme Court as far back as the 19th Century that upholds the principle that I'm up here discussing. I see no case law whatsoever that affirms the opposite."

Councilman Cobb said that "we are trying to hold open Council meetings and open hearings and give everybody an opportunity to give input and I resent the insinuation that we are trying to hide something illegally or otherwise. I'm going to abide by the law. I don't want to go to jail to give these records out."

Mayor Sitnick said "I would only say one thing in support of the law, at least. We are sworn to uphold it. Our very existence, as a council and as a city, is created by General Statutes. I know there are penalties for Mr. Oast, for members of Council if we break that law, but there could also be the penalty that we could vote ourselves out of existence if we voted to break the law."

Councilwoman Field said "this is in no way adversarial, I'm just curious. I'm trying to understand what information could be gathered from the documents that you want. What's in it that you're looking for and how would that give you more information than we have out there already?"

Mr. Benge said "actually we have the same question. We'd like to know the answer to that question, which would probably be contained in these documents. These are documents that relate to how much the City was paid by InterMedia for the use of the public right of way in order to, as a franchise fee - the payment for the right to use the public right of way in this matter. We'd like to have the documentation that shows exactly what was paid and the yearly and the letter, and all the information that accompanies it."

When Councilwoman Field asked "is it a line item in the budget?", Mr. Benge responded "no it's not. It comes in a separate document as I understand it, that has not been included in the information that's been given to us."

City Manager Westbrook said "I'm not sure whether it's a separate item line in the budget - it may be combined with some other revenues of that type. But there's an estimate for the revenue that we will receive from the cable TV company in the budget. And then when the audit report is printed, it is printed in actual. But once again they are usually large numbers together - maybe several other revenues rolled into it. The audit report is public record."

When Mayor Sitnick asked if Mr. Benge had a copy of the audit report, he replied "I believe we do, but I think what we are lacking is the specific information - in very specific forms what's being paid as a fee and we don't have that."

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Mayor Sitnick said that "we were happy to have you have that information. It's the very reason after Mr. Haight's comment to you in the paper that he didn't mind if it was released. It was the very reason I asked his attorney to do so. Thinking surely he would say yes, of course, we will, to support Mr. Haight's comment. We were surprised, I was surprised, when he refused."

Mr. Benge said "I think we're playing semantical games here. I support what you said. Mr. Haight did indeed say that he would not release it, but he said he had no problem if the City wanted to release it, or words to that effect. He said, if they want to release it, fine with me, or words to that effect."

Councilwoman Field said "and we're saying, if he wants to release it, it's fine with us."

Mayor Sitnick said that "the law even says that we cannot release it with the permission of the cable company owner."

Mr. Benge said "you're accepting the attorney's interpretation of this as a tax record when in fact it clearly is a payment for using the public right of way."

Mayor Sitnick said "I've read it. I've read it myself, it was very clear. Cable franchise fees are a tax. That's what it says in the statutes."

Mr. Benge said "I would only ask that if you can, please take the time to carefully read the documentation. I have specific case law here cited that certainly does not support what you're saying. With all due respect."

Councilwoman Field said "I don't think I want to get into a lawsuit with the Citizen-Times over this. Could we ask our City Attorney to find out what kind of case law there is out there?"

City Attorney Oast said that he "would be glad to examine Mr. Benge's statement and see if it leads to a different conclusion. But so far I haven't seen any persuasive authority to the contrary."

Councilwoman Field said that "on the other hand, I'm not an attorney and we pay Mr. Oast good money to be our attorney and therefore we trust him, we hired him, and so I'm going to depend on him. If he tells me something that he's using his best professional knowledge to do that and certainly if we lose our confidence in him, or if we feel as though he needs help, we can get another opinion. That's where I'm coming from anyway."

Councilman Tomes said "I personally, I have had some questions throughout this entire process. However, as a Councilmember, I want to be a law abiding person. I'm not a lawyer, even in the pastoral relation. If people come in and I sense there is a legal problem, I will quickly say 'you need to see an attorney.' I'm comfortable in my role pastorally and I feel the same way as a Councilmember. I've briefly read your document here, but I would not want us to enter into a confrontation between one ... for the media and for our attorney. If they can reconcile whatever the technicality is and the information can be released, I would support that. But if the law says that it can't, then I'll have to support that."

Mayor Sitnick said "I'll have to echo that. If we can find a way to release these documents, you've got them."

Mr. Benge said "I and the public would appreciate that very much. I don't mean to seem presumptuous, I really don't, but the public hearing is two weeks away and all the information the public needs in order to adequately assess this process, I think should be forthcoming quickly. So, where does this leave us with regard to this request."

City Attorney Oast said that he "would be glad to review the information Mr. Benge has provided to see if it could possibly change my opinion. I would point out that we have given the Citizen-Times, as we always try to, the documents they've asked for unless the law legally prohibits us from doing it. I've invited Mr. Benge, if he has any problems with the way we respond to their document request, to pick up the phone and call me and let me know that there's a problem. We support full disclosure as much as possible if in fact the law requires it. In this case, the law requires the documents not to be disclosed."

Mayor Sitnick said "I think Mr. Oast will diligently look at the law and see if he can cite case law. Shall we leave it that you call Mr. Benge when you have further information?"

City Attorney Oast said that he "would get in touch with him one way or the other - either in writing or by phone."

When Mr. Benge asked when they could expect this communication, City Attorney Oast said that he would contact them "as soon as I can get it done."

Vice-Mayor Hay said "I can't stand by while you attack Patsy Meldrum. Patsy Meldrum is a dedicated public servant, she's a fine lawyer, she's a fine person and meets the highest ethical standards. You may disagree with our legal position here. But our staff is working hard and doing what they are supposed to do and I don't want to hear anymore personal attacks on Patsy Meldrum, please."

Mr. Douglas Haldane said that that he personally trusts "the elected officials of this City far more than I trust the foreign ownership and management of our, what used to be, local newspaper. I would urge the Council to stand fast and not succumb to the crude and rude and ineffective blusterings and threats of the representatives of this newspaper."

E. CLAIMS

The following claims were received by the City of Asheville during the week of: January 9-15, 1998: Phyllis Arthur (Water), Travis McClure (Police), George Lemieux Jr. (Streets), Janet Smith (Traffic Engineering) and Jewell Logan (Police).

The following claims were received during the week of January 16-22, 1998: Bob Didiego (Streets) and Greg Ellis (Streets).

The following claims were received during the week of January 23-29, 1998: Bobby Roseboro (Police); Alton Scott (Streets); Bell South (Water); and Bell South (Water).

The following claims were received during the week of January 30-February 6, 1998: Juanita Medford (Streets), Bell South (Water), Jimmy Webb (Parks & Recreation), Round About Trans. (Streets) and James C. Smith (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

F. LAWSUITS

The City was served with the following Complaint and Motion for Preliminary Injunction on January 8, 1998: Tiffany Livengood v. Robert Moore, Exalted Cyclops; The Ku Klux Klan; the City of Asheville. The nature of the proceeding is a complaint and motion for preliminary injunction to enjoin Mr. Moore and the Ku Klux Klan from obtaining permits, holding demonstrations, marches and protests/rallies; to enjoin the City from issuing said permits.

The City was served with the following Complaint; Declaratory Relief; Inverse Condemnation; Taking action on January 9, 1998: Morris Communications Corporation d/b/a Fairway Outdoor Advertising; Outdoor Communications, Inc.; and Maple Cove Inc. The nature of the proceeding is the plaintiffs complain that City of Asheville Ordinance No. 2427 dealing with nonconforming signs, is unconstitutional. Plaintiffs allege that they are entitled to just compensation for taking of their property.

The City was served with the following lawsuit on January 9, 1998: Loretta B. Terry v. John E. Bancroft and the City of Asheville. The nature of the proceeding is an automobile accident with Fire Department vehicle. Plaintiff is alleging negligence, personal injury and property damage.

The City was served with the following lawsuit on January 20, 1998: Buncombe County v. Mary Shivers, property owner; William F. Slawter, Substitute Trustee for the City of Asheville; City of Asheville, lienholder; William F. Slawter, Trustee for Neighborhood Housing Services of Asheville, N.C., Inc.; and Neighborhood Housing Services of Asheville, N.C., Inc., lienholder. The nature of the proceeding is a tax foreclosure in which the City of Asheville's interest is lienholder, by virtue of a Deed of Trust recorded in Deed of Trust Book 1599.

The City was served with the following Complaint; Declaratory Relief; Inverse Condemnation; Taking action on January 30, 1998: Morris Communications Corporation d/b/a Fairway Outdoor Advertising; Outdoor Communications, Inc.; and Maple Cove Inc. (Federal Court). The nature of the proceeding is the plaintiffs complain that City of Asheville Ordinance No. 2427 dealing with nonconforming signs, is unconstitutional. Plaintiffs allege that they are entitled to just compensation for taking of their property.

The lawsuits filed on January 8 and January 20 will be handled in-house. Both lawsuits filed on January 9 and the lawsuit filed on January 30 will be handled by outside counsel.

G. CABLE TV FRANCHISE REVIEW COMMUNITY MEETING

Mayor Sitnick invited the Council and public to the cable TV franchise review community meeting to be held later that evening at 7:00 p.m. in the William F. Wolcott Jr. Building (Public Works Facility) at 161 South Charlotte Street.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:20 p.m.

CABLE TV FRANCHISE REVIEW COMMUNITY MEETING

This community meeting was held in the William F. Wolcott Jr. Building beginning at 7:00 p.m. Mayor Sitnick and other members of the Council were present as well as City Manager Jim Westbrook, the City's cable television consultant Jean Rice, and Assistant City Attorney Patsy Meldrum.

Ms. Meldrum reviewed the proposed cable television documents. She, along with the City Manager and Ms. Rice, responded to many questions and comments raised by the public concerning the franchise agreement.

This meeting adjourned at 9:25 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - February 17, 1998- 3:00 p.m.

Worksession

Present: Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

Mayor Sitnick recognized some students from the Western Carolina University Masters of Public Administration Program.

CONSENT AGENDA:

Acceptance of new proposed street name - East End Place

Summary: The developers and owners of all lots in the East End Place Subdivision project located off Dr. Martin Luther King Jr. Drive have petitioned the City of Asheville to adopt the new street name of East End Place.

Acceptance of new proposed street name - Buttonwood Court

Summary: The City of Asheville, Community Development Division, owner of all lots in Rankin Heights Subdivision, located off of Kentucky Drive in West Asheville, have petitioned City Council to adopt the new street name of Buttonwood Court.

Acceptance of new proposed street names and changing duplicate street names in the Deerfield Episcopal Retirement Community

Summary: Deerfield Episcopal Retirement Community, located off of Hendersonville Road and Lambeth Drive, has petitioned the City of Asheville to: (1) Adopt the following street name changes: (A) Rename South Lambeth Circle to Lambeth Drive; and (B) Rename North Lambeth Circle to Sheffield Circle; and (2) Accept the following street names: (A) Wakefield Drive; (B) Highbridge Crossing; (C) St. Albans Court; and (D) St. Giles Place.

Budget Amendment re: Transit Center Traffic Signalization Grant

Summary: The consideration of a budget amendment to establish a budget for a N.C. Dept. of Transportation grant for traffic signalization improvements for the new transit center.

Lease of Antenna Facilities at White Fawn Reservoir

Summary: The consideration of a resolution authorizing the execution of lease agreement with BellSouth Mobility for City-owned antenna facilities and space for the siting of related transmission equipment at White Fawn Reservoir.

Finance Director Bill Schaefer responded to many questions from Council as they related to co-locating antennas on an existing city-owned tower.

Councilman Cloninger noted that the City is trying to encourage co-location on existing towers so we can eliminate the need to have additional towers elsewhere in the City, However, he would be interested in hearing from our consultant, who is working on the City's telecommunication tower ordinance, on this matter. He also stated that he was concerned that the lease was for nine years.

Councilwoman Field asked that Mr. Schaefer provide the Council with the names of the tenants who have antennas on our towers, the length of the leases and how much money these leases have brought to the City.

Lease of City Telephone System

Summary: The consideration of a resolution authorizing the execution of a Master Municipal Rental Agreement with Southeastern Telecom for the purpose of leasing a telephone system.

Upon inquiry of Vice-Mayor Hay, Finance Director Bill Schaefer explained that this lease has the flexibility for growth and accommodation for new technology as it comes along.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

DEMONSTRATION OF COMMUNITY IMAGE SURVEY

Mr. Jerry Brown explained the Community Image Survey ("CIS") Road Show project which is a proactive, field-tested program which has great potential for healing thorny issues like residential density. The CIS is one of the best tools they've seen to give all residents a chance to visualize choices for how to build on the best of what they already have and make their communities even better for land use and transportation options. Some communities that have used the CIS or visual tools like it, are Portland, Oregon; Helena, Montana; Chattanooga, Tennessee; and Fort Collins, Colorado, as well as rural areas like Madison County and Comer, both in Georgia. People in these places have said that their CIS identified latent common ground already in their community on how to encourage development of: (1) more lively, successful retail districts; (2) more and better affordable housing; (3) more neighborly neighborhoods; (4) safer, more convenient transportation options; and (5) more preserved greenspace.

Ms. MacLeod explained how the CIS could be used in Asheville/Buncombe County: (1) make the Unified Development Ordinance ("UDO") updating match the preferences of a statistically reliable, broad-based segment of the community; (2) make the UDO updating process user-friendly and fun while building trust in the land planning; (3) provide key information on community preferences needed for the 2010 Plan update; (4) show how key goals of the Asheville-Buncombe Vision can be realized by better land use and transportation decisions; and (5) provide a visual document for developers on preferred development patterns.

Ms. MacLeod said that they would like City Council to support this process and support the planning staff in hiring a person who has done this process. She said that she will be meeting with the County Planning Department in the near future to discuss this concept with them.

Councilwoman Field felt this would be useful in the 2010 Plan update.

Upon inquiry of City Manager Westbrook, Ms. MacLeod said that the cost could range anywhere from $5,000 to $100,000 depending on the size of the community for the survey. Mr. Brown noted, however, that they will be asking the County and others for funding to help offset the cost. Mayor Sitnick felt that we should get an estimate of the cost for doing the survey for Asheville alone and then a cost for doing the survey for all of Buncombe County.

City Manager Westbrook said that City Council will be looking at the funding of the 2010 Plan update during their budget negotiations.

On behalf of City Council, Mayor Sitnick said that the City is interested in exploring how we can work together with the County, the Land-of-Sky Regional Council and/or the Chamber of Commerce on this new technology.

CHATHAM ROAD ZONING STUDY

Mr. Mike Matteson, Urban Planner, said that the Planning and Development Department has received a petition for a zoning study which includes ten properties in the Chatham Road/Weaver Boulevard area.

The ten properties total approximately 5.29 acres. The petition included signatures of individuals who own nine of the ten properties. These nine properties total approximately 3.39 acres or approximately 64% of the total acreage of the requested study area.

Section 7-7-2 of the Unified Development Ordinance states that "a zoning study of a defined area may be requested upon submittal to the planning and development department of a petition signed by 51 percent of the property owners in the defined area for which the zoning study is requested who own at least 51 percent of the property (acreage) in the defined area for which the zoning study is requested". The petition does meet the above referenced criteria.

Council is asked to determine whether a zoning study should be initiated for this defined area or for a portion thereof. The City Council may initiate the zoning study, elect not to initiate the zoning study, or reduce the size of the area to be included in the zoning study and initiate a zoning study of the reduced area.

Mr. Matteson responded to various questions from Council as they related to staff resources, the procedures involved in a zoning study, and how the properties were zoned prior to adoption of the Unified Development Ordinance.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

FIRE STATION 4/POLICE RESOURCE CENTER

Fire Chief John Rukavina said that in July, 1997, the City Council authorized commencement of the bidding process for construction of a new fire station—Fire Station 4—for the south Asheville area. The low bid, of nearly $800,000, exceeded available funds, so City Council authorized a rewrite of the specifications by Barney Woodard, AIA, with the intent of soliciting and receiving new bids within the range of funds available (a total of $600,000).

Based on City Council's recent authorization of the City Manager to enter into an agreement with the Skyland Fire Department for use of firefighter living quarters in Skyland's station (which will immediately adjoin Fire Station 4), Barney Woodard recommends award of the bid for Fire Station 4 to Cooper Construction Company of Hendersonville, N.C., for Construction Option 2, Alternate 1, in an amount not to exceed $596,060. The Fire Chief concurs in this recommendation. The resolution provides for award of the bid to Cooper Construction, and authorizes the City Manager to enter into an agreement with Cooper Construction for this work.

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Option 2, Alternate 1 provides for construction of a police substation, a fire station with two fire apparatus bays, a storage room, and a structural enclosure for the space originally proposed for firefighter living quarters, so those quarters could be built at a later date.

Barney Woodard is working with—and continues to work with—Cooper Construction on identifying opportunities for cost reduction. To date, over $20,000 in such opportunities have been identified. Barney Woodard advises that actual construction cost is expected to be below the low-bid amount of $596,060.

In order to provide a sufficient funding package for Fire Station 4, the Finance Director and Budget Director recommend transferring funds from general fund un-appropriated fund balance in the present fiscal year to cover construction costs of Fire 4. Given the priority that Council has placed on this station, use of general fund un-appropriated fund balance is a viable option.

The Budget Director, Finance Director and Fire Chief recommend adoption of the budget amendment ordinance for Fire Station 4 and the Asheville Police Department substation. The Fire Chief recommends City Council adoption of architect Barney Woodard's recommendation of bid award to Cooper Construction Company for Construction Option 2, Alternate 1 of the City of Asheville specifications for construction of Fire Station 4 and an Asheville Police Department substation in south Asheville in an amount not to exceed $596,060 through adoption of the resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PURCHASE OF LAND LEASED BY THE CITY UPON WHICH THE CIVIC CENTER PARKING GARAGE IS BUILT

Mr. Bill Schaefer, Finance Director, said that the City of Asheville entered into a lease agreement with George E. and Edith A. Parker Dawson on January 1, 1974, for the parcel of property described as "all of Lots 6,7,8,9 and 10 as shown on a plat recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, in Plat Book 198, at Page 212," and upon which the Civic Center parking garage was constructed. The terms of the lease were such that the lease period would end the earlier of December 31, 1998, or upon the date of death of the lessor. The lessor died on February 4, 1998. Upon termination of the lease, the City may exercise an option to purchase the property for $65,000 within 90 days of the date of death. Staff believes that it is in the best interest of the City of Asheville to acquire the property.

Funds for this purchase will be provided by transfer of $65,000 from the Fiscal Year 1997-98 Fund Capital Contingency to the Parking Capital Fund.

Staff recommends the City Council approve the budget amendment and resolution authorizing the City Manager to purchase the property upon which the Civic Center Parking Garage is built.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

MOTION SETTING A PUBLIC HEARING ON FEBRUARY 24, 1998, RELATIVE TO REQUEST OF BRENMOR CABLE PARTNERS, L.P. (D/B/A INTERMEDIA) FOR AN ANNUAL INCREASE IN ITS MONTHLY RATES FOR THE BASIC SERVICE TIER

Ms. Patsy Meldrum, Assistant City Attorney, said that a request has been received from Brenmor Cable Partners, L.P. (d/b/a/ InterMedia) for an Annual Increase for its Monthly Rates for the Basic Service Tier for the time period from June 1, 1997 to May 31, 1998

Pursuant to federal law and the regulations of the Federal Communications Commission ("FCC"), the City of Asheville ("City") is certified to regulate basic service rates and charges of Brenmor Cable Partners, L.P. ("InterMedia") in the franchise area of InterMedia within the corporate limits of the City.

By letter dated March 1, 1997, InterMedia filed FCC Forms 1205 and 1240, both dated March 1, 1997, for the purpose of requesting and justifying an annual increase in its monthly rates and hourly service charges for cable services on the basic service tier. Those documents were received by the City on March 3, 1997.

Rice, Williams Associates, the City's cablevision consultant, reviewed the FCC Forms 1205 and 1240 and attachments filed by InterMedia on March 3, 1997. They furnished the City with a report that concluded that InterMedia made certain errors in the Form 1240 filing, but that the Form 1205 filing was correct. The City provided InterMedia with a copy of that report.

InterMedia subsequently filed with the City an amended FCC Form 1240 on November 7, 1997. On November 11, 1997, the City Council of the City of Asheville adopted Resolution No. 97-212, which resolution postponed a decision on the request of InterMedia for an annual increase for its monthly rates for the basic service tier until review of the amended FCC Form 1240 could be completed within the time period and according to the regulations of the FCC.

Rice, Williams Associates reviewed the amended FCC Form 1240 filed with the City by InterMedia on November 7, 1997. They furnished the City with a report regarding their review of the amended FCC Form 1240. That report concluded that InterMedia made certain errors in the amended Form 1240 filing. A copy of that report was furnished to InterMedia.

InterMedia filed a revised Form 1240 with the City on February 12, 1998. A copy of that revised Form 1240 has been provided to Rice, Williams Associates for their review. Their review finds that after all the change in the inflation factor and errors, the rate put into effect last year of $10.91 per month is within the maximum permitted rates of the FCC.

Subsection 76.933(g) of the Code of Federal Regulations authorizes the City to issue a rate order based upon its review of the FCC Form 1240 filing. Any rate order which the City may enter in this rate filing must be made by March 2, 1998.

When Councilman Tomes expressed his concern about the number of errors made by InterMedia, Ms. Meldrum agreed noting that's why Asheville has chosen to continue to monitor as much as they can of InterMedia's rate filings.

Mayor Sitnick noted that the City had to pay a consultant to review those filings, along with City staff, and wondered how much that cost the City.

It was the consensus of Council to set a public hearing on February 24, 1998, relative to a request of Brenmor Cable Partners, L.P. (d/b/a InterMedia) for an annual increase in its monthly rates for the basic service tier.

Ms. Meldrum responded to questions from Councilman Cobb relative to the rates for basic cable service in prior years. She said it was her understanding that the overall rates of cable television are increasing faster than the cost of living.

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It was the consensus of Council to set a public hearing on February 24, 1998, relative to a request of Brenmor Cable Partners, L.P. (d/b/a InterMedia) for an annual increase in its monthly rates for the basic service tier.

SIX-MONTH REPORT RELATIVE TO DOGS IN RIVERSIDE CEMETERY

Mr. Irby Brinson, Director of Parks & Recreation, updated City Council on the decision to control animals in Riverside Cemetery.

Asheville City Council, in July of 1997, adopted an ordinance revision dealing with animals in Riverside Cemetery. This revision requires dogs to be leashed, remain on paved roads, be cleaned up after by their owners, and be prohibited from the facility during funeral services. Per City Council's direction, a six-month evaluation of the ordinance changes were required in order to evaluate the effectiveness of these revisions. Over this period of time, the Cemetery Manager and the Park Warden have been documenting occurrences of violations of the ordinance. He summarized the problems that have occurred. In addition to addressing these particular issues, the Department has initiated a Dog Park Task Force which has been meeting since January of 1998. The purpose of this task force is to determine an appropriate location for development of a dog park within the City. This group is very active and is planning to present their report to City Council in the near future. The Parks and Recreation Department has been assisting this group in trying to address the provision of a dog park within the City.

The Parks and Recreation Department is providing this information to City Council per their original request for a six-month review. The Parks and Recreation Department recommends continuing the work with the Dog Park Task Force to address these concerns for a designated area for animals within the Park system.

When Mayor Sitnick asked why the violators were not fined, Mr. Brinson explained that during this six-month period, staff was trying to educate the owners of the ordinance and the next step will be the fining of violators. The major problem encountered is enforcement of the ordinance. In August of 1997, Buncombe County Friends for Animals took over animal control enforcement in the City of Asheville and calls from the cemetery about dogs take a low priority with response time being anywhere from 20 minutes to 4 hours.

Councilman Sellers felt that dogs should be banned from the cemetery.

Mayor Sitnick instructed staff to immediately begin working with the Buncombe County Friends for Animals regarding fines to violators. She suggested some kind of citizens on patrol program that actually gives authority to members of the public to make observations and report them to the appropriate person.

It was the consensus of Council to discuss an ordinance amendment prohibiting dogs in Riverside Cemetery at their next regular worksession.

DISCUSSION OF POSSIBLE SALE OF MEMORIAL STADIUM AND ASSOCIATED PROPERTY

Mr. Irby Brinson, Director of Parks & Recreation, said that the Parks and Recreation Department has been working for several months on the possibility of selling Memorial Stadium to Robert Camille in the amount of $1.4 million and using the revenue to further develop and enhance recreation facilities in the community.

Recognizing that approximately $20 million is necessary over the next 15 years in order to enhance recreation facilities in the community, the Parks and Recreation Department has been exploring alternative financing to meet these needs without a tax increase. The revenue generated from the sale of Memorial Stadium will be used to develop and renovate other recreation facilities within Asheville. These include development of a multi-field youth baseball complex at Richmond Hill for use by the North Asheville Little League - a need which has been recognized since 1967 . In addition, a youth football field would be constructed to be used by the West Asheville Youth Football and the Asheville Rugby Club. The sale of Memorial Stadium also includes $75,000 the purchase of approximately 100 feet of right-of-way at the end of Richmond Hill Drive into the Richmond Hill property. Over $3,000 will also be used to renovate the existing Mountainside Park to include new playground equipment and play area.

On November 25, 1997, and pursuant to N. C. Gen. Stat. sec. 160A-269, City Council authorized the City Clerk to advertise an offer to purchase City-owned property known as Memorial Stadium. No upset bids have been received.

With the use of an overhead projector, Mr. Brinson showed the different slope grades on the 21 acres of property, which only seven acres are relatively flat. He explained the rock and soil testing that was done on the Richmond Hill site and showed a comparison which showed that central Asheville has 45 parks encompassing 267 acres while north Asheville has 13 parks totaling 76 acres. The consultants who are working on a new master parks and recreation plan are not recommending any new parks in the central area for the next 15 years. He then showed a map outlining the 181 acres of Richmond Hill and a conceptual design of what is planned there. He showed a conceptual plan overlay of what the renovation of Mountainside Park will look like.

Mr. Brinson responded to various questions and comments from Council, some being, but are not limited to: why the City has not done a rock and soil test at Memorial Stadium, similar to the one done at Richmond Hill; is there a possibility of forming a central district league; how did the offer to purchase come to Parks & Recreation's attention; what were the plans for Memorial Stadium if the offer to purchase had not been received; why is the stadium gated; why are the boundaries of Memorial Stadium unclear; and various questions regarding different provisions in the draft contract.

At the request of Council members, Mr. Ben Beasley, appraiser who did the appraisal report on this property, summarized his assignment, described the area and the subject property and explained the techniques and reasoning leading to the final estimate of value. He said the sales comparison approach to value was determined to be the most applicable approach for estimation of the market value of the subject property. He reviewed the sites which were analyzed in the valuation process. Mr. Beasley then answered various questions from Council regarding his appraisal. He also agreed that if the tract was divided up into lots, it might be tougher to market the property, but the City could receive more money.

Mayor Sitnick asked that a copy of a topographical map of Town Mountain and Sunset Mountain be furnished to Council prior to the March 10, 1998, public hearing on this matter.

Upon inquiry of Councilman Cloninger, Planning & Development Director Julia Cogburn explained that the tract is zoned Institutional and is not subject to the hillside regulations. However, City Attorney Oast noted that there may be other ways to accomplish the intent of the hillside regulations on that tract.

Mr. Brinson stated that he is not in the business of selling park property. In fact, he wants to acquire park property. However, he finds that this is an opportunity to address the needs necessary to enhance recreation facilities in the community.

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Councilman Cloninger was concerned that the 10 day advertisement period for the sale of property was not enough time to put together a proposal if someone was interested in buying the property. He also expressed concern about the appraisal price stressing that the City needed to try to get maximum dollar for the property.

Upon inquiry of Vice-Mayor Hay, Mr. Brinson said that the consultant who has been preparing the Parks and Recreation Department's Master Plan has been involved and aware of this process. They have agreed that selling the property was the right thing to do and the Master Plan which will be coming before City Council in April, has taken into account that the City has sold the property.

Mr. Brinson then responded to questions from the following individuals: Mr. Alan Kirkpatrick, Ms. Susan Andrew, and Mr. Briggs Sherwood.

Mayor Sitnick encouraged the public to attend the public hearing concerning this matter on March 10, 1998.

RESOLUTION FOR CONSIDERATION OF A TEMPORARY MORATORIUM ON ADULT ESTABLISHMENTS

Councilman Sellers explained that he has heard rumors to the effect that three different "adult" businesses are interested in located in Asheville. He asked for Council's support of a resolution that would begin the process of establishing a moratorium on the businesses. The moratorium should stay in effect until the General Assembly has had a chance to consider legislation that would increase the City's ability to regulate the businesses. He asked for Council's support of this resolution.

City Attorney Oast further explained that in October, the Council adopted a resolution endorsing Senate Bill 452 that, as currently drafted, would return a measure of regulatory control over adult establishments to municipalities. Currently, such regulation is largely preempted by State law.

It is unclear at this time exactly what the new law, if adopted, would provide, but the fact that the law is pending is sufficient justification for the City taking action to preserve the status quo by imposing a limited-duration moratorium on the issuance of zoning approvals for such uses.

Because the proposed moratorium is technically a zoning ordinance, it must be considered pursuant to the same procedures that apply to zoning ordinances, generally; that is, it must go through the Planning and Zoning Commission, and a public hearing must be advertised and held in accordance with the law.

If Council desires to initiate the process for getting the moratorium question considered, adoption of the resolution is recommended.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

IMPLIED CONFLICT OF INTEREST - CABLEVISION FRANCHISE FEES

City Attorney Oast said that on February 10, 1998, an issue was raised about a possible conflict of interest regarding Assistant City Attorney Patsy Meldrum with respect to the City's position on disclosure of cable television franchise fee payments. He stated that there is no conflict of interest.

CLOSED SESSION

At 6:25 p.m., Councilwoman Field moved to go into closed session (1) to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney - G.S. 143-318.11 (a) (3); and (2) to prevent the disclosure of information that is privileged or confidential pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that renders the information to be discussed privileged or confidential is G.S. 160A-168, the Personnel Privacy Act - G.S. 143-318.11 (a) (1). This motion was seconded by Councilman Sellers and carried unanimously.

At 7:20 p.m., Vice-Mayor Hay moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:20 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - February 24, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Cobb gave the invocation.

I. PROCLAMATIONS:

A. DEDICATION OF THE BICENTENNIAL TIME CAPSULE AND PLAQUE

Ms. Mitzi Tessier noted that the original dedication date was January 27, 1998, however, due to the weather, it had to be postponed. She explained that in November 1797 the village of Asheville (formerly Morristown) was incorporated as the Town of Asheville by an act of the General Assembly of North Carolina. At that same session of the legislature, five commissioners were appointed to carry into effect the plan of the town and to distribute the 63 acres of land among the population as they thought advisable. On January 27, 1798, the commissioners held their first meeting for the purpose of appointing a treasurer from among their own body. When chosen, he was considered their chairman. There were no records of the proceedings of the City until 1845, but we do know that Isaac Sawyer was the first Mayor of the City of Asheville.

Ms. Tessier recognized the members of the Urban Trail Board and the members of the Bicentennial Committee present in the audience.

She said that Mr. Phillip Palmer, Chair of the Bicentennial Legacy Committee, was instrumental in working on the time capsule while members of the Urban Trail Board were instrumental in having the plaque prepared.

Mr. Phillip Palmer said that their intention of the time capsule was to create a snapshot of the bicentennial year and there were a number of organizations and individuals involved in submitting items that are now inside the time capsule. He reviewed some of the items in the capsule which will be opened in 2047. Items ranged from a 1997 phone book to information from various organizations about programs, reports, and activities.

Mr. Grace Pless, Co-Chair of the Urban Trail Board introduced the donor of the plaque honoring his grandfather Charles A. Webb, Robert S. Webb Jr., Chief Executive Officer of Webb Insurance Company.

Mr. Charles A. Webb praised the Urban Trail Board and read the plaque as follows: "Time Remembered. A time capsule honoring Asheville's people was buried beneath this plaque to commemorate the city's bicentennial, observed in 1997-1998. Our citizens' accomplishments over the first two hundred years form the foundation upon which we continue to build tomorrow. The stored keepsakes will be revealed in 2047. Placed by the Webb family in memory of Charles A. Webb, 1866-1949, teacher, attorney, and newspaper publisher dedicated to the upbuilding of Asheville/WNC. " Mr. Webb proudly briefed Council on his grandfather's biographical sketch.

Mr. John C. Young Jr., member of the Urban Trail Board, stated that the site for the plaque and time capsule will be on the sidewalk on Spruce Street at the City/County Plaza.

Mayor Sitnick thanked the members of the Bicentennial Committee, the Urban Trail Board, the Webb family and the Parks and Recreation Department for their efforts. On behalf of City Council, Mayor Sitnick approved and accepted the gift.

B. BICENTENNIAL FINAL REPORT

Mr. Richard Nantelle, Co-Chair of the Bicentennial Committee, thanked several people, in particular Mayor Sitnick who was his Co-Chair on the Bicentennial Committee, associated with the Bicentennial and said that the dedication of the bicentennial time capsule will officially close out the bicentennial events.

C. PROCLAMATION PROCLAIMING MARCH 2, 1998, AS "READ ACROSS AMERICA DAY"

Mayor Sitnick proclaimed March 2, 1998, as "Read Across America Day" in the City of Asheville and presented the proclamation to Ms. Lettie Polite who briefed Council on some planned activities taking place on March 2.

D. PROCLAMATION PROCLAIMING THE MONTH OF MARCH AS "BLACK HISTORY MONTH"

Councilman Tomes read the proclamation proclaiming the month of March, 1998, as "Black History Month" in the City of Asheville.

E. STUDENT RECOGNITION

Mayor Sitnick recognized some students from the Masters of Public Administration Program at Western Carolina University.

II. CONSENT:

At the request of Councilman Sellers, Item J. was removed from the Consent Agenda for discussion.

A. RESOLUTION NO. 98-15 - RESOLUTION AUTHORIZING THE SALE OF DISPOSAL PARCELS 1A AND 52A LOCATED AT THE INTERSECTION OF ASHELAND AND HILLIARD AVENUES TO PRICE ASSOCIATES IN THE AMOUNT OF $101,000

Summary: The bid of Price Associates in the amount of $101,000.00 for the purchase of Disposal Parcels 1A and 52A in the East Riverside Redevelopment Project is not less than the established minimum price of $101,000.00.

Disposal Parcels 1A and 52A are zoned RB-Regional Business District and located approximately 100 feet south of the intersection of Asheland and Hilliard Avenues. Comprising 25,246 square feet, the property extends from the east side of Asheland Avenue to the west side of Federal Street. The frontage along Asheland Avenue lies some 10 to 15 feet below street grade with the frontage along Federal Street being near street grade. The overall terrain is level to light sloping. Price Associates is currently leasing the property and has improved the property with a paved parking lot containing 31 parking spaces. The bid from Price Associates for

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Disposal Parcels 1A and 52A includes the proposal to incorporate the property into the adjoining property currently owned by Price Associates. There are no additional improvements proposed at this time. Price Associates is a partnership owned entirely by Charles R. Price.

There being no upset bid, the Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 24 - PAGE 340

B. RESOLUTION NO. 98-16 - RESOLUTION ACCEPTING THE STREET NAME "EAST END PLACE" LOCATED IN THE EAST END PLACE SUBDIVISION LOCATED OFF DR. MARTIN LUTHER KING JR. DRIVE

Summary: The developers and owners of all lots in the East End Place Subdivision project located off Dr. Martin Luther King Jr. Drive have petitioned the City of Asheville to adopt the new street name of East End Place.

RESOLUTION BOOK NO. 24 - PAGE 341

C. RESOLUTION NO. 98-17 - RESOLUTION ACCEPTING THE STREET NAME "BUTTONWOOD COURT" LOCATED IN RANKIN HEIGHTS SUBDIVISION LOCATED OFF OF KENTUCKY DRIVE IN WEST ASHEVILLE

Summary: The City of Asheville, Community Development Division, owner of all lots in Rankin Heights Subdivision, located off of Kentucky Drive in West Asheville, have petitioned City Council to adopt the new street name of Buttonwood Court.

RESOLUTION BOOK NO. 24 - PAGE 342

D. RESOLUTION NO. 98-18 - RESOLUTION CHANGING NAMES OF CERTAIN STREETS IN THE DEERFIELD EPISCOPAL RETIREMENT COMMUNITY

Summary: The City of Asheville, Community Development Division, owner of all lots in Rankin Heights Subdivision, located off of Kentucky Drive in West Asheville, have petitioned City Council to adopt the new street name of Buttonwood Court.

RESOLUTION BOOK NO. 24 - PAGE 343

E. RESOLUTION NO. 98-19 - RESOLUTION ESTABLISHING MINIMUM PRICES FOR CERTAIN CITY-OWNED PARCELS OF REAL PROPERTY

Summary: The Planning & Development Department after a review of the inventory of City owned property as instructed by City Council in February, 1995, has recommended that certain parcels of surplus real property be offered for sale. Each of the parcels recommended for sale have undergone extensive interdepartmental review to insure that the property is not currently being utilized by the City and does not have an identifiable potential for future use by the City. The parcels recommended for sale are identified in the list Surplus Real Property Recommended for Sale prepared by the Planning & Development Department and dated February 19, 1998 .

Each parcel has been assigned a tax value by the Buncombe County Tax Assessor's Office and that value is the recommended minimum price for each parcel.

In 1995, the Planning Department solicited proposals from a number of real estate brokers in the area, and based on the qualifications of Russell G. Wood of Beverly Hanks & Associates, City Council adopted Resolution No. 95-134 which authorized the City Manager to execute an agreement with Russell G. Wood of Beverly Hanks and Associates to market and sell certain City owned properties. The Planning & Development Department recommends listing the subject parcels for sale as part of said agreement.

Approval of the resolution will establish a minimum price for each of the parcels and authorize offering the parcels for sale by and through an agreement with Beverly Hanks and Associates.

RESOLUTION BOOK NO. 24 - PAGE 344

F. ORDINANCE NO. 2449 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR FUNDS RECEIVED FROM THE N.C. DEPT. OF TRANSPORTATION FOR TRANSIT CENTER TRAFFIC SIGNALIZATION

Summary: In July ,1997 City Council appropriated $70,000 from General Fund Contingency to fund traffic signalization changes needed as a result of construction of the new Transit Center. At that time, it was indicated that grant funding would be requested and, if approved, could be used in place of a portion of funds from the General Fund. This grant request totaling $70,000 has been approved. This grant revenue as well as the original General Fund appropriation is needed to fund the traffic signal improvements and complete the project. In addition, water line improvements with a total cost of $10,000 have been made and the cost of which will be reimbursed by the Water Authority. This amendment incorporates these changes totaling $150,000 into the existing Project Budget of $915,000 making the revised project total $1,065,000.

Staff recommends that the budget for the Transit Center Project be amended to incorporate the additional $150,000 in funding which will result in a revised Project Budget totaling $1,065,000.

ORDINANCE BOOK NO. 16 - PAGE 408

G. MOTION SETTING A PUBLIC HEARING FOR MARCH 10, 1998, TO CONSIDER REZONING PROPERTY ON OLD HAYWOOD ROAD FROM RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY

H. RESOLUTION NO. 98-20 - RESOLUTION AWARDING THE BID TO COOPER CONSTRUCTION COMPANY FOR CONSTRUCTION OF FIRE STATION 4/POLICE RESOURCE SUBSTATION

Summary: In July, 1997, the City Council authorized commencement of the bidding process for construction of a new fire station—Fire Station 4—for the south Asheville area. The low bid, of nearly $800,000, exceeded available funds, so City Council authorized a rewrite of the specifications by Barney Woodard, AIA, with the intent of soliciting and receiving new bids within the range of funds available (a total of $600,000).

Based on City Council's recent authorization of the City Manager to enter into an agreement with the Skyland Fire Department for use of firefighter living quarters in Skyland's station (which will immediately adjoin Fire Station 4), Barney Woodard recommends award of the bid for Fire Station 4 to Cooper Construction Company of Hendersonville, North Carolina for Construction Option 2, Alternate 1, in an amount not to exceed $596,060. The Fire Chief concurs in this recommendation. The resolution provides for award of the bid to Cooper Construction, and authorizes the City Manager to enter into an agreement with Cooper Construction for this work.

Option 2, Alternate 1 provides for construction of a police substation, a fire station with two fire apparatus bays, a storage room, and a structural enclosure for the space originally proposed for firefighter living quarters, so those quarters could be built at a later date.

Barney Woodard is working with—and continues to work with—Cooper Construction on identifying opportunities for cost reduction. To date, over $20,000 in such opportunities have been identified. Barney Woodard advises that actual construction cost is expected to be below the low-bid amount of $596,060.

In order to provide a sufficient funding package for Fire Station 4, the Finance Director and Budget Director recommend transferring funds from general fund un-appropriated fund balance in the present fiscal year to cover construction costs of Fire 4. Given the priority that Council has placed on this station, use of general fund un-appropriated fund balance is a viable option.

The Budget Director, Finance Director and Fire Chief recommend adoption of the budget amendment ordinance for Fire Station 4 and the Asheville Police Department substation. The Fire Chief recommends City Council adoption of architect Barney Woodard's recommendation of bid award to Cooper Construction Company for Construction Option 2, Alternate 1 of the City of Asheville specifications for construction of Fire Station 4 and an Asheville Police Department substation in south Asheville in an amount not to exceed $596,060 through adoption of the resolution.

RESOLUTION BOOK NO. 24 - PAGE 345

I. ORDINANCE NO. 2450 - BUDGET AMENDMENT TO CONSTRUCT FIRE STATION 4/POLICE RESOURCE SUBSTATION

Summary: See Item "I" above.

ORDINANCE BOOK NO. 16 - PAGE 410

J. RESOLUTION AUTHORIZING THE CITY MANAGER TO XECUTE A MASTER MUNICIPAL RENTAL AGREEMENT WITH NEC AMERICA INC. FOR LEASING A TELEPHONE SYSTEM

This item was removed from the Consent Agenda for discussion.

K. RESOLUTION NO. 98-21 - RESOLUTION AUTHORIZING THE PURCHASE OF LEASED LAND ON WHICH THE CIVIC CENTER PARKING DECK IS BUILT

Summary: The consideration of a resolution authorizing the purchase of land currently leased by the City for the Civic Center Parking Deck and a budget amendment reallocating a portion of the Fiscal Year 97-98 capital contingency appropriation to the Parking Capital Fund to fund the purchase.

The City of Asheville entered into a lease agreement with George E. and Edith A. Parker Dawson on January 1, 1974, for the parcel of property described as "all of Lots 6,7,8,9 and 10 as shown on a plat recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, in Plat Book 198, at Page 212," and upon which the Civic Center parking garage was constructed. The terms of the lease were such that the lease period would end the earlier of December 31, 1998, or upon the date of death of the lessor. The lessor died on February 4, 1998. Upon termination of the lease, the City may exercise an option to purchase the property for $65,000 within 90 days of the date of death. Staff believes that it is in the best interest of the City of Asheville to acquire the property.

Funds for this purchase will be provided by transfer of $65,000 from the Fiscal Year 1997-98 Fund Capital Contingency to the Parking Capital Fund.

Staff recommends the City Council approve the budget amendment and resolution authorizing the City Manager to purchase the property upon which the Civic Center Parking Garage is built.

RESOLUTION BOOK NO. 24 - PAGE 348

L. ORDINANCE NO. 2451 - BUDGET AMENDMENT TO PURCHASE LEASED LAND ON WHICH THE CIVIC CENTER PARKING DECK IS BUILT

Summary: See Item "M" above.

ORDINANCE BOOK NO. 16 - PAGE 412

M. RESOLUTION NO. 98-22 - RESOLUTION FOR CONSIDERATION OF A TEMPORARY MORATORIUM ON ADULT ESTABLISHMENTS

Summary: In October, the Council adopted a resolution endorsing Senate Bill 452 that, as currently drafted, would return a measure of regulatory control over adult establishments to municipalities. Currently, such regulation is largely preempted by State law.

It is unclear at this time exactly what the new law, if adopted, would provide, but the fact that the law is pending is sufficient justification for the City taking action to preserve the status quo by imposing a limited-duration moratorium on the issuance of zoning approvals for such uses.

Because the proposed moratorium is technically a zoning ordinance, it must be considered pursuant to the same procedures that apply to zoning ordinances, generally; that is, it must go through the Planning and Zoning Commission, and a public hearing must be advertised and held in accordance with the law.

Consideration was given to proposing an interim ordinance, pursuant to the general police power, prohibiting the issuance of licenses under Article IV of Chapter 9 pending Council's consideration of the moratorium ordinance (about a six-week window). While this is a possibility, there are some legal considerations that may affect the validity of such an ordinance. Moreover, the pendency of the moratorium question may be legally sufficient to prevent the establishment of a zoning vested right.

If Council desires to initiate the process for getting the moratorium question considered, adoption of the resolution is recommended.

Mr. Daniel Breen spoke against the adoption of the resolution in that he felt that the issue is a freedom of speech issue and a right to assemble issue.

Mayor Sitnick noted the resolution is only to direct staff to consider a temporary moratorium pending the outcome of State legislation.

RESOLUTION BOOK NO. 23 - PAGE 349

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and ordinances on the Consent Agenda and they will not be read.

Councilman Tomes moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

ITEM PULLED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MASTER MUNICIPAL RENTAL AGREEMENT WITH NEC AMERICA INC. FOR LEASING A TELEPHONE SYSTEM

Mr. Bill Schaefer, Finance Director, said that the City government's present telephone system is made up of several small switches which have limited capabilities and do not provide the functionality and growth capabilities the City needs to handle essential communications requirements. Additionally, the mix of old and newer technologies has caused considerable interoperability problems in attempting to get the various segments of the current system to function together and many components are nearing the end of their service life expectancy. As a result, in June of this year, the City initiated a Request for Proposal process to select a provider of a single, fully-integrated telephone system for the City government which has the functionality and anticipated expansion capabilities the City requires. Newspaper ads announcing the solicitation resulted in six companies responding that they would like to participate. Of those, four actually submitted proposals. A team made up of representatives from several departments evaluated the responses and selected the Southeastern Telecom proposal as offering the best solution to the City's telephone requirements.

The Southeastern Telecom proposal incorporates state-of-the-art functionality, fully-integrated compatibility throughout the City (including such locations as City Development, the new Mills River Water Plant, and with the addition of a supporting T-1 line in next year's budget for the North Fork Water Plant), expansion capability to accommodate both anticipated growth in communications needs and the addition of future functionality developments. For example, if needed, the system will be able to handle the increased communications requirements of the Civic Center future transition to a convention center/hotel complex with little or no modification of the telephone system.

Under their proposal, Southeastern Telecom will be the local provider of equipment, installation and maintenance of the system. However, as has been the City's policy with other areas in which technology is changing rapidly, such as computer hardware and software, the system will be leased rather than purchased outright. The Master Municipal Rental Agreement, between the City and NEC, requires monthly payments of $6,457.50 for a term of seven years .

Funds for this lease are provided in the Fiscal Year 97-98 budget.

Discussion surrounded Request for Proposal and selection processes. Mr. Schaefer stressed that our focus was clearly on the capabilities, flexibility, present potential and future growth.

Mr. Bill Arledge, President of Telephone Systems of Asheville ("TSA"), outlined his reasons why he felt City Council would be spending significantly more if they contracted with Southeastern Telecom than with TSA. He felt he process was flawed and urged Council to postpone this action until further evaluation of the differences can be evaluated.

Mr. Dale Gilstrap, Operations Manager for Southeastern Telecom in Asheville, spoke in support of the recommendation by staff .

After further discussion on several issues, Councilman Sellers moved to table this matter until March 10, 1998, in order to give TSA the opportunity to see if they have had a fair chance to bid for the lease. Staff was instructed to meet with both companies and see if their recommendation will change or remain the same. This motion was seconded by Councilman Tomes.

Mr. Schaefer reminded Council of the financing behind the NEC America Inc. lease.

Upon inquiry of Councilwoman Field about the companies bidding on the lease, Mr. Schaefer explained that City staff does not have the capabilities of writing technical specifications and that is why this process was used. He stated the City would probably have to hire an engineer to write the specifications.

The motion made by Councilman Sellers and seconded by Councilman Tomes to table this issue until March 10, 1998, carried unanimously.

Upon concurrence of City Council, the new business items were moved ahead of the public hearings.

III. NEW BUSINESS:

A. RESOLUTION NO. 98-23- RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH BELLSOUTH MOBILITY FOR ANTENNA FACILITIES AND SPACE AT WHITE FAWN RESERVOIR

Mr. Bill Schaefer, Finance Director, said that in 1997, BellSouth Mobility put in a request to lease space from the City of Asheville and co-locate antennas and DCS transmission equipment on an existing, city-owned tower. The location of this tower is on Reservoir Road, behind St. Joseph's hospital at the White Fawn Reservoir site.

In anticipation of this lease, BellSouth Mobility has conducted an extensive structural analysis of the tower and provided City staff with copies of the results of their findings. BellSouth Mobility conducted this analysis with the complete understanding that negotiations would proceed pending any decision by City Council to the contrary and at no charge to the City.

The lease itself is for a period of nine years, with quarterly payments of $3000 to the City of Asheville. This lease would allow BellSouth Mobility to install their equipment near the base of the existing tower, erect a fence for the protection of the equipment and co-locate their antennas on the city-owned tower.

Staff recommends City Council adopt the resolution authorizing the City Manager to sign the lease agreement with BellSouth Mobility.

Mr. Schaefer said that during the worksession on February 17, 1998, Council requested that staff provide additional information related to the proposal to lease antenna tower space at White Fawn to BellSouth Mobility. He reviewed a listing of all the present tenants on the two active towers at White Fawn, the length and termination date of their present lease along with their monthly rent.

Council also requested that staff contact the City's communications consultant to obtain their comments/recommendations regarding the terms of the proposed lease (to include duration and monthly rent). Staff has discussed the specific terms of the lease with Mr. Al Jenkins of Jenkins Reed & Madison. Mr. Jenkins is of the opinion that the lease is appropriate in all respects. The proposed initial quarterly rent of $3,000 is more than twice what the next highest tenant is currently paying and is more in line with what the Asheville market should be. The lease also includes a rent increase to $3,450 per quarter for the sixth through ninth years. The nine-year duration of the lease is justified to permit BellSouth to recoup its up-front expenditures to conduct the structural and frequency analysis of the tower and the approximately $20,000 of enhancements to the tower's structure that they will make. The enhancements to the structure will not only accommodate BellSouth's needs but will also be to the benefit of the City and other current and future tenants.

Upon inquiry of Councilman Cloninger, Larry Friedhoff, BellSouth Mobility representative, explained why Tower No. 1 was chosen instead of Tower No. 2, pointing out that Tower No. 1 sets closer to their objective which is coverage to the medical community.

Councilman Cloninger noted that this lease accomplishes three objectives - (1) co-locating the antenna which means that we will have one less tower in the City; (2) there will be no antennas taller than what we currently have at that site; and (3) we will get revenue for the City.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

After some brief discussion about the lease term, Councilman Cloninger moved to adopt Resolution No. 98-23. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 350

B. MOTION RELATIVE TO A ZONING STUDY IN THE CHATHAM ROAD/WEAVER BOULEVARD AREA

Ms. Julia Cogburn, Director of Planning & Development, said that their Department has received a petition for a zoning study which includes ten properties in the Chatham Road/Weaver Boulevard area.

The ten properties total approximately 5.29 acres. The petition included signatures of individuals who own nine of the ten properties. These nine properties total approximately 3.39 acres or approximately 64% of the total acreage of the requested study area.

Section 7-7-2 of the Unified Development Ordinance states that "a zoning study of a defined area may be requested upon submittal to the planning and development department of a petition signed by 51 percent of the property owners in the defined area for which the zoning study is requested who own at least 51 percent of the property (acreage) in the defined area for which the zoning study is requested". The petition does meet the above referenced criteria.

Council is asked to determine whether a zoning study should be initiated for this defined area or for a portion thereof. The City Council may initiate the zoning study, elect not to initiate the zoning study, or reduce the size of the area to be included in the zoning study and initiate a zoning study of the reduced area.

Ms. Cogburn said her staff doesn't feels that this zoning study would take a considerable amount of staff time because of the size of the area - probably no more than 30 days. She did clarify a misstatement at the worksession on February 17, 1998, noting that the neighborhood had requested RS-8 during the UDO process, however, Council did not act on that request.

Vice-Mayor Hay moved to instruct the Planning & Development Department to initiate a zoning study which includes ten properties in the Chatham Road/Weaver Boulevard area. This motion was seconded by Councilman Cobb and carried unanimously.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE DRHUMOR BUILDING LOCATED AT 48 PATTON AVENUE AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. 2452 - ORDINANCE TO DESIGNATE THE DRHUMOR BUILDING LOCATED AT 48 PATTON AVENUE AS A LOCAL HISTORIC LANDMARK

Mayor Sitnick opened the public hearing at 6:46 p.m.

Councilman Cloninger asked to be excused from voting because he is one of the owners of the building. Councilman Sellers moved to execute Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Maggie O'Connor, HRC Director, said that the owners of the Drhumor Building are seeking local historic landmark designation.

On January 14, 1998, the Historic Resources Commission of Asheville and Buncombe County ("HRC") held a public hearing regarding the designation of the Drhumor Building as a local historic landmark. Notice of the public hearing for this local landmark designation was published in the Asheville Citizen-Times on January 4, 1998, and that all owners of real property situated within 400 feet were notified of this hearing by mail on December 31, 1997. At the public hearing, comments from the public were received in writing and orally and all comments supported landmark designation.

When a property is designated historic, restrictions are placed on the property and to any exterior improvements. Any modification to the structures or land must receive a Certificate of Appropriateness from the HRC and all improvements must follow the Secretary of the Interior's Standards for Rehabilitation Illustrated Guidelines for Rehabilitating Historic Buildings.

Designation of this building as a local historic landmark makes the property owner eligible for a 50% reduction in property taxes. Currently the assessed value of the property is $1,082,400 and the total taxes paid for this year were $16, 344.24. If the Drhumor building is designated historic, the taxes would be reduced by half to $8,172.12.

At their January 14, 1998, regular meeting the HRC found the Drhumor Building to have integrity of design, setting, workmanship, materials, feeling, and to have architectural significance. Therefore, by a unanimous vote, the HRC recommends to City Council that they adopt an ordinance designating the Drhumor Building a local historic landmark.

Since Asheville is a Certified Local Government, the N.C. Dept. of Cultural Resources, State Historic Preservation Office ("SHPO"), has the right to comment on any nomination for Local Landmark designation. The SHPO concurs with HRC's recommendation.

Mayor Sitnick closed the public hearing at 6:50 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2452. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 414

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE THE BOARD OF ADJUSTMENT AUTHORITY TO VARY THE REQUIREMENTS FOR LOT SIZE AND DIMENSION

ORDINANCE NO. 2453 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE THE BOARD OF ADJUSTMENT AUTHORITY TO VARY THE REQUIREMENTS FOR LOT SIZE AND DIMENSION

Mayor Sitnick opened the public hearing at 6:55 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, said that this is consideration of a request from the Planning and Zoning Commission for approval of an amendment to the Unified Development Ordinance ("UDO") providing the Board of Adjustment with the authority to vary the required lot area and dimensional standards for lots located in residential districts.

Section 7-6-1.B. of Chapter 7 of the Code of Ordinances of the City of Asheville (UDO) places limits on the provisions which can be varied by the Board of Adjustment. Among these limits is the restriction on the granting of any variance which would permit the creation of a non-conforming lot. This restriction has created hardship in cases where a property owner lacks only a few square feet in being able to create an additional lot. The proposed amendment would provide the Board of Adjustment with the authority to grant variances to lot area and dimensional standards, for an individual lot in residential districts, with the following limitations:

The variance shall not permit a reduction of greater than 10% in the required lot area and dimensional standards;

An application for such variance may be made for only one lot at a time; and

Application for such variance for an additional lot under common ownership or in the same development shall not be submitted within three years of submittal of the previous application.

If the proposed amendment is adopted, the Board of Adjustment would hear such requests and would base their decision upon the unique circumstances of each case. Adoption of the proposed amendment would permit the creation of new lots in cases where such lots are not currently permitted, possibly reducing the cost of housing.

The proposed ordinance amendment has been recommended for approval by the Asheville Planning and Zoning Commission by a 6-0 vote. The staff of the Planning and Development Department recommends approval of the amendment.

Mayor Sitnick asked what would be the difference in making the UDO standard more flexible rather than giving the Board of Adjustment this authority? Mr. Green responded that within the standard zoning ordinance within residential districts you set a certain size for lots within that residential district and we can probably do it with some type of performance standards. That would require re-writing the entire UDO, whereas this provides some flexibility on a case by case basis.

City Attorney Oast said that having the Board of Adjustment being the body that grants this variance is a good idea, because it allows the board the ability to impose some conditions on this variance that will protect the neighboring property owner.

City Manager Westbrook said that staff still feels that's an appropriate standard and that what they seek to do is to have a way to vary that within a very narrow range.

Ms. Janet Hart, 60 Baird Street, President of Charlotte Street Neighbors, said that given the Board of Adjustment's history in granting the great majority of requests they hear, she opposed this proposal. She said one problem is with small lots in a residential neighborhoods - 10% variation in a lot dimension or a size can make a difference. The other problem is where commercial office, office business, highway business or any other non-residential lot abuts a residential lot - a lot size requirement is meant to prevent encroachment on residential buffer areas. Variances could mean that a buffer becomes less effective. She offered a compromise: Lot size and dimension should not be allowed variances in a residential area, nor should variances be allowed where office or commercial areas abut residential property. Her position is to protect the residential areas from any detrimental effects of such a variance.

Mr. Brian Peterson, 42 Vance Crescent in West Asheville, also spoke against the proposed ordinance.

Upon inquiry of Councilman Cloninger, Mr. Green said that this applies only to residential lots and therefore would not have an impact on buffering for any type of development, setback requirements, lighting requirements or parking requirements.

Mayor Sitnick closed the public hearing at 7:06 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2453. This motion was seconded by Councilman Sellers.

Vice-Mayor Hay shared concerns about our experience with the Board of Adjustment but felt that there is a point at which we need to trust that they will do their job correctly. He suggested that their authority be monitored and if we are getting complaints back that the authority is being abused or if the Board of Adjustment is not fulfilling the will of Council as far as the implementation of the UDO goes, that Council review it again.

Councilman Tomes agreed with Vice-Mayor Hay in that this authority be monitored.

Upon inquiry of Councilman Cobb, City Attorney Oast said that the Board of Adjustment is required to schedule and hold a public hearing every time one of these items comes up. They have the same notices that apply to public hearings before the City Council, so the public does have an opportunity to appear and make their points of view known. Also, it would require a 4/5's vote of the Board of Adjustment to grant any one of these variances.

Mayor Sitnick felt that even though we have good members sitting on the Board of Adjustment now, she is not sure how future Board members will rule on variances and there could be the opportunity for abuse of this authority. Also, the UDO came up with standards that were pretty clear and stringent.

The motion made by Councilwoman Field and seconded by Councilman Sellers carried on a 5-2 vote, with Mayor Sitnick and Councilman Cobb voting "no".

ORDINANCE BOOK NO. 16 - PAGE 416

At 7:10 p.m., Mayor Sitnick announced a ten minute break.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO AMEND THE DEFINITION OF "FAMILY CARE HOMES" TO INCLUDE CHILDREN

ORDINANCE NO. 2454 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO AMEND THE DEFINITION OF "FAMILY CARE HOMES" TO INCLUDE CHILDREN

Mayor Sitnick opened the public hearing at 7:17 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, said that this is consideration of a request from the Planning and Zoning Commission for approval of an amendment to the Unified Development Ordinance which deals with the definition of Family Care Homes.

The following is the current definition of Family Care Homes: "FAMILY CARE HOMES: an adult care home with support and supervisory personnel that provides room and board, personal care and habitation services in a family environment for resident handicapped persons, as handicapped persons are defined in N. C. Gen. Stat. sec. 168-21 (or its successor)."

The current definition limits the use "Family Care Homes" to adults only. It is recommended that the definition be expanded to include children as well.

In order to clarify this to the user of the Unified Development Ordinance, it is proposed that the definition be edited as follows (new language in *italic* print): "FAMILY CARE HOMES: *a facility for adults or children* with support and supervisory personnel that provides room and board, personal care and habitation services in a family environment for resident handicapped persons, as handicapped persons are defined in N. C. Gen. Stat. sec. 168-21 (or its successor)."

The Planning staff has reviewed this request and recommends approval of the amendment. At the Planning & Zoning Commission meeting held on February 4, 1998, the Commission voted unanimously to recommend this amendment to City Council.

Councilwoman Field suggested an amendment to the wording as follows: "a facility for adults and/or children ...."

Mr. Green responded to general questions from Council relative to family care homes.

Mayor Sitnick closed the public hearing at 7:26 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2454, with the wording amendment suggested by Councilwoman Field. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 418

D. PUBLIC HEARING TO CONSIDER THE MANUFACTURED HOUSING OVERLY ZONING DISTRICT TO 15 LOTS ON ROBIN LANE ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

ORDINANCE NO. 2455 - PUBLIC HEARING TO APPLY THE MANUFACTURED HOUSING OVERLY ZONING DISTRICT TO 15 LOTS ON ROBIN LANE ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 7:27 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is consideration of applying the Manufactured Home Overlay District to 15 lots on Robin Lane zoned RM-6.

The composition of this residential neighborhood has several manufactured homes scattered throughout the surrounding area. The 2010 Plan indicates the surrounding area to be low density residential which the current zoning (RM-6) permits.

The UDO requirements for establishing a "Manufactured Home Overlay" district:

- the homes should be architecturally compatible with the existing residential structures;
- manufactured homes should comprise at least 20% of the homes in this area (there are 8 existing residents of which 2 or more are manufactured homes);

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- vacant land should be available for location of manufactured homes (of the 15 lots, 7 are currently vacant with the applicant's lot being one); and
- the area must be a minimum of 5 acres.

This property is outside the city limits of Asheville.

The Planning staff reviewed this request and recommended approval of the application of the overlay district. At their February 4, 1998, meeting, the Planning & Zoning Commission voted unanimously to approve the application of the overlay district to this RM-6 Multi-Family Residential area (PIN Nos. 9639.07-59-3579, 3697, 3767, 3867, 3969, 4420, 4438, 5883, 5699, 5945, 6357, 6447, 6546 and 9730.19-50-3183 and 4192).

Ms. Lisa Benbow spoke in support of the ordinance.

Mayor Sitnick closed the public hearing at 7:32 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cobb moved for the adoption of Ordinance No. 2455. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 419

E. PUBLIC HEARING RELATIVE TO THE REQUEST OF BRENMOR CABLE PARTNERS, L.P. (D/B/A INTERMEDIA) FOR AN ANNUAL INCREASE FOR ITS MONTHLY RATES FOR THE BASIC SERVICE TIER

RESOLUTION NO. 98-24 - RESOLUTION ISSUING A WRITTEN DECISION REGARDING THE REQUEST OF BRENMOR CABLE PARTNERS, L.P. (D/B/A INTERMEDIA) FOR AN ANNUAL INCREASE FOR ITS MONTHLY RATES FOR THE BASIC SERVICE TIER FOR THE TIME PERIOD OF JUNE 1, 1997, TO MAY 31, 1998

Mayor Sitnick opened the public hearing at 7:35 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Patsy Meldrum, Assistant City Attorney, said that the City has received a request of Brenmor Cable Partners, L.P. (d/b/a/ InterMedia) for an Annual Increase for its Monthly Rates for the Basic Service Tier for the time period from June 1, 1997 to May 31, 1998

Pursuant to federal law and the regulations of the Federal Communications Commission ("FCC"), the City of Asheville ("City") is certified to regulate basic service rates and charges of Brenmor Cable Partners, L.P. ("InterMedia") in the franchise area of InterMedia within the corporate limits of the City.

By letter dated March 1, 1997, InterMedia filed FCC Forms 1205 and 1240, both dated March 1, 1997, for the purpose of requesting and justifying an annual increase in its monthly rates and hourly service charges for cable services on the basic service tier. Those documents were received by the City on March 3, 1997.

Rice, Williams Associates, the City's cablevision consultant, reviewed the FCC Forms 1205 and 1240 and attachments filed by InterMedia on March 3, 1997. They furnished the City with a report that concluded that InterMedia made certain errors in the Form 1240 filing regarding the monthly rate, but that the Form 1205 filing was correct. The City provided InterMedia with a copy of that report.

InterMedia subsequently filed with the City an amended FCC Form 1240 on November 7, 1997. On November 11, 1997, the City Council of the City of Asheville adopted Resolution No. 97-212, which resolution postponed a decision on the request of InterMedia for an annual increase for its monthly rates for the basic service tier until review of the amended FCC Form 1240 could be completed within the time period and according to the regulations of the FCC.

Rice, Williams Associates reviewed the amended FCC Form 1240 filed with the City by InterMedia on November 7, 1997. They furnished the City with a report regarding their review of the amended FCC Form 1240. That report concluded that InterMedia made certain errors in the amended Form 1240 filing. A copy of that report was furnished to InterMedia.

InterMedia filed a revised Form 1240 with the City on February 12, 1998. Rice, Williams Associates has reviewed the revised Form 1240 and noted that InterMedia acknowledged errors pointed out by Rice, Williams Associates and made appropriate corrections in the revised Form 1240. They further noted that InterMedia made additional adjustments which resulted in a slightly incorrect result. InterMedia has conceded that correction to this result should be made.

After all of these corrections and adjustments have been made, the maximum permitted rate for the basic service tier is $10.9786 per month per subscriber for the time period of June 1, 1997, to May 31, 1998. As allowed by federal laws and regulations, InterMedia began charging a rate of $10.91 per month per subscriber for the time period of June 1, 1997, to May 31, 1998. That rate does not exceed the maximum permitted rate. No approval of the rate of $10.91 is required, but it is advisable to establish the maximum permitted rate for the basic service tier for the time period of June 1, 1997, to May 31, 1998.

Mayor Sitnick noted that this is the City's only ability to protect the subscriber by establishing the maximum permitted rate for this annual rate increase for the basic service tier.

Ms. Meldrum noted that the City can look at other types of rate increases for the basic service tier, one of which we are continuing to do and that is for the rebuild of the system. They are recovering some of their capital expenditures and that's a separate rate increase. We are continuing to review that request and our time period for that review has not yet expired.

Councilman Cloninger asked what would the effect be if we did not pass this resolution. Ms. Meldrum said that their rate would still be in effect but it would be advisable to set the maximum permitted rate, because that does set the ceiling - without that, there is no ceiling set.

Councilman Tomes stated that we must communicate to the public that the City Council has very limited authority to regulate certain cable rates. Ms. Meldrum said that we communicate that to the public by these public hearings where we review rates and we go over what our authority is. In addition, when she receives calls in her office about rate increases, she discusses with those individuals what limited authority the City has.

Mayor Sitnick noted the number of calls and letters she receives and agreed with Councilman Tomes that something needs to be done to inform the public about why the cable rates increase and what limited authority the City has to protect our subscriber. A better job needs to be made clear to the public what they have, what things cost, what they are going to get, how packages are offered, what it obligates them to, and what they're paying for.

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Upon inquiry of Councilman Cobb, Ms. Meldrum said that the basic rate can be adjusted only once a year, but they can also adjust it for other reasons other than an annual inflationary request.

Mr. Joe Haight, General Manager of InterMedia, said that there are many, many parts to the packaging and a lot of times we have difficulty in explaining that to the customer. He said that he would be happy to talk with customers who have complaints and that they may reach him at 274-7500 or 274-7801. He said that the would be happy to work with the City on how to better inform the public.

Mayor Sitnick closed the public hearing at 7:57 p.m.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved to adopt Resolution No. 98-24 setting 10.91 as the maximum permitted rate. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 351

F. CABLE TV FRANCHISE RENEWAL

Mayor Sitnick opened the public hearing at 8:00 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mayor Sitnick said that because of the complexity of this issue, she explained that Council is considering a three part package. The package involves a regulatory ordinance, a franchise agreement and a fee settlement. The franchise agreement only will require two votes, each one at a separate formal Council meeting, no matter what the vote is (unless the vote is for denial, in which case the first vote would be final). The regulatory ordinance can pass with one vote, unless it receives less than a 5-2 vote by Council - then it would require a second reading at a separate formal Council meeting. She said several courses of action can be taken at this time: (a) approve the three part package as presented; (b) approved part of the three part package; (c) deny the package; (d) ask staff to negotiate parts of the package (specifically parts of the franchise renewal agreement); or (e) continue the public hearing and have further discussion on any or all parts of the package. If Council decides to ask staff to further negotiate any portions of the franchise renewal agreement, Council would have to be specific on what exactly the want re-negotiated and would have to establish a deadline for staff to report back to Council. The renewal of the franchise agreement depends on the regulatory ordinance being in place so unless we adopt the ordinance we would probably not want to act on the renewal.

City Attorney Oast said that if Council wants time to digest some of the information, they can continue this item to the worksession and that might be at the point in time in which they would want to give further negotiating instructions to staff.

Councilwoman Field asked if the fee settlement could be considered separately. City Attorney Oast responded that it is somewhat tied up in the renewal and settling the franchise fee issue may affect our negotiating position on the renewal question. If Council is inclined to consider pursuing further negotiation on the franchise renewal, he recommended that the vote on all three items be continued. Assistant City Attorney Patsy Meldrum further stated that in looking at the franchise renewal and also at the regulatory ordinance, part of that was making clear that we had a definition of "gross annual revenues" which is the basis on which the franchise fees would be paid. And as part of that, we would be getting additional revenues for the remainder of the term, so that's part of the consideration in the settlement amount. If that's not in place, then it would be recommended that another look be taken at the settlement agreement.

City Attorney Oast said that even though Council will be voting on all three documents separately, he recommended that public comment be taken on all three documents at the same time.

Ms. Meldrum reviewed the proposed cable television documents for the benefit of the public in understanding the proposed cable television documents.

She reviewed the history of the renewal process: (A) TCI requested renewal discussions and City agreed; (B) City did Request for Request for Proposals ("RFP") for consultant; (1) list of consultants (a) N.C. League of Municipalities; (b) National Association of Telecommunications Officers and Advisors (NATOA); (c) seminars; (d) certified minority business list; (2) contacted three consultants and requested proposals; (3) comparison chart done; references checked; (4) presentation to City Council; (6) Rice, Williams Associates selected; agreement for services; (C) renewal process outlined by the consultant (not in formal renewal window/process): (1) initial consultation; (2) community needs assessment; (3) compliance evaluation; (4) technical analysis; (5) prepare request for proposals; (6) response to RFP from cable company; (7) evaluate RFP; (8) negotiate documents; (9) prepare documents; and (10) present documents for consideration by city council; and (D) collateral issues which affected process/negotiations: (1) transfer of TCI to InterMedia (Nov. 1995 to Sept. 1996); (2) franchise fee issue; (3) City's authority limited by federal laws and regulations.

She then outlined one element of the proposal which is the regulatory ordinance (ordinance regulating cable service providers): (1) establishes definitions - most importantly = "gross annual revenues" and "transfer"); (2) registration and franchise required; (3) application and approval standards for franchise; (4) franchise fees required; right to audit; (5) right to inspect records and cable system; (6) access channels, access equipment and institutional network required; (7) customer service standards (subject to federal laws and regulations): (a) standard installation = not less than 150 feet; (b) no fee for disconnection unless agreed to by subscriber; (c) credit for outages; (d) business office; (e) telephone answering; (f) complaint handling; (g) subscriber information; (h) response to service complaints and outages; (i) subscriber privacy) and (j) rate regulation; (8) performance evaluation/annually/public; (9) construction and technical standards; (10) technical performance testing; (11) removal or abandonment of cable plant; (12) transfer of franchise, ownership or control (a) transfer of ownership of 10% or more requires City approval; (b) transfer of franchise or control requires City approval; (c) reimbursement of City's expenses; (13) construction and performance bonds required; (14) insurance requirements; (15) indemnification requirements; (16) termination of revocation process (a) defaults listed; (b) hearing process described; (c) remedies for City; (17) penalty provisions.

She then reviewed another element of the proposal, which is the franchise ordinance (ordinance granting franchise to Brenmor d/b/a InterMedia): (1) non-exclusive franchise; (2) subject to regulatory ordinance; (3) term (a) 1967 franchise would expire in July of 2002 (four years and six months left); (b) twelve years and six months added; (4) franchise fee of 5%; (5) franchise area includes current and future city limits; (6) extension standards included (includes cost-sharing formula); (7) system rebuild requirements (a) 550 MHz; (b) 80 analog channels and/or capacity for digital transmission; (c) completion by December 31, 1998; (d) design standards; (e) emergency alert system requirements; (f) maintenance requirements; (g) parental control devices; (h) performance testing (subject to federal laws and regulations); (8) construction standards; (9) system services (a) subscribers; (b) leased access channels; (c) free cable drops and monthly service to sites passed by activated cable plant and within city limits: (i) all city and county schools; (ii) city police and fire stations/facilities; (iii) all "city and county libraries"); (iv) all city buildings; (d) scrambled institutional programming - for governmental and educational access channels to all local governmental and educational locations receiving free drops and monthly service; (10) state-of-the-art clause (a) cable systems owned by Brenmor/InterMedia in North Carolina, South Carolina, Georgia and/or Tennessee; (b) similar system (size, population, etc.); and (c) public hearing may be held by City Council; (11) public, educational and governmental (PEG) access channels (a) three channels required within 90 days of City's request (after rebuild completed); (b) one additional channel required when threshold met; (c) administration and management may be coordinated by city and cable company or city may assign to third party or cable company; city has sole authority to designate channels and use of channel capacity; (d) initial access equipment and facilities -- $200,000 (paid over first two years; first $50,000 may be paid by cable company "in-kind" with equipment; cable company may elect to pass through all or portion to subscribers); (e) replacement equipment, maintenance, support and facilities -- minimum of $36,000/year or 15-cent/subscriber/month, whichever is greater, during years 8-17 (cable company may elect to pass through all or portion to subscribers); (12) Institutional Network: (a) four fibers; (b) City of Asheville and City School sites; (c) no maintenance or use costs to City; (d) video, voice, data transmission and other telecommunications applications; and (e) completed with rebuild of cable system (cable company may elect to pass through all or portion of cost to subscribers; (13) subscriber services and standards (subject to federal laws and regulations) (a) subscriber information; (b) customer service standards; (c) subscriber complaints; (d) downgrades and disconnects; (e) outages; (f) repair calls (four hour windows); (14) construction bond ($300,000); performance bond ($350,000); (15) insurance requirements (general liability; workers' compensation; employers liability; automobile liability); (16) indemnification requirements; (17) most favored nations (a) other cable franchises granted by City must have similar requirements, subject to exclusion of small cable systems; (b) indemnification of City by cable company; and (18) transfers, renewals and termination/revocation governed by regulatory ordinance and federal laws and regulations.

She then continued with the final element of the proposal which is the franchise fee settlement: (1) franchise fee audit for four years (January 1, 1992 - December 31, 1995); (2) payments made by basic and expanded basic service revenues; no payments made from premium channels (HBO, Cinemax, etc.), pay-per-view, home shopping channels or other revenues; (3) settlement from InterMedia and TCI (a) $150,000 - payable in three installments of $50,000 over three years; (b) additional franchise fees from new definition of "gross annual revenues" if franchise renewal completed - estimated by cable company to be $260,000 from 1997 - 2002 (rest of 1967 franchise term).

Throughout Ms. Meldrum's presentation, she and the City's consultant Jean Rice, responded to various questions from Council. Some questions and comments were, but are not limited to, if the regulatory ordinance had previously been in place, would the City be struggling with figures now; how can the public be informed that they have to call the cable company in order to receive an outage refund; are the penalty provisions high enough; how the franchise area will include current and future City limits; does this allow the City and the County cable companies to be linked for emergency services; what are the types of equipment for the PEG channels; who controls and regulates PEG channels for pornography, no commercials, no libelous, no obscenity; what does "most favored nations" mean; state-of-the-art clause; is the Morganton franchise competing with a private franchise; and the definition of "obscene".

Upon inquiry of Mayor Sitnick about the Institutional Network, Ms. Meldrum said that the statement that reads "no maintenance or use costs to the City" refers to the fiber that runs in the network and that runs up to the building. The internal wiring of the building and the equipment in the building would be paid for by the City or the City school system. She explained the request was made to include all of the elementary schools, the administrative office, the Accelerated

Learning Center, Asheville High School, Asheville Middle School, and a number of other City sites that are not included in the list in this proposal. However, in looking at the cost which can be passed along to subscribers, the instructions staff received were to try to consider the impact on those subscribers. Therefore, certain sites were picked which were based upon discussions with the former City Council and also with the City's Information Services Division which would be the key sites. That's why not all of the schools were included in the list that is proposed. She did note, however, that there is an opportunity to add other sites in the proposal.

Ms. Meldrum explained why the City asked for a franchise fee audit of three years and received an audit for a four year time period and the issues regarding going back further in time.

The following individual's read statements, or portions thereof, and submitted them for the record. Those comments are attached hereto as Exhibit "A".

(1) Letter from Tim Amos read by Ms. Meldrum dated February 11, 1998.
(2) Letter dated February 18, 1998, along with addendum dated February 24, 1998, from Ms. June Lamb
(3) Letter dated February 24, 1998, from Mark Rosenstein, concerned citizen
(4) Letter from Mary Ellen Brown, Ph.D., dated February 24, 1998
(5) Statement from Wally Bowen, representing Citizens for Media Literacy
(6) Statement from Geoffrey Willett, representing Mountain Area Information Network
(7) Letter from Hazel and John Fobes dated February 24, 1998
(8) Statement from Steve Burleson dated February 24, 1998
(9) Information from Margaret Shook, resident on Crowfields Lane, dated February 24, 1998
(10) Letter from Bonnie Pickartz dated February 24, 1998

Mr. Bill Wald urged Council to delay action on these items.

Mr. Charlie Patton, resident of Ballentree, spoke in support of Council moving forward and adopting the documents.

Mr. George Benge, Executive Editor of the Asheville Citizen Times, said that two weeks ago he asked for "your support in obtaining the release to the public of records of franchise fee payments made to the City of Asheville by the City's cable TV provider in exchange for use of the public right of way for broadcast purposes. Unfortunately the response to our request was a resounding and unequivocal 'no' from the City Attorney. Because our request was refused, we have filed suit today to obtain the franchise fee records in order to fully inform the public about all aspects of the Asheville cable TV agreement and records. As I told you two weeks ago, we were desirous of an outcome that did not include litigation. We have attempted to approach this matter in a reasonable and public spirited manner and were hopeful that the City would consider this issue in the same manner. There is no animosity on our part. We simply believe that the public deserves to have this information. We were hopeful that the City would have been willing to work with us and the public to find a way to make the information we requested available to all, not just a select few. However, our attempts to resolve this issue in a spirit of openness and broad access to public records were rebuffed, forcing us to ask the courts to make this decision. I have copies of that lawsuit for members of the Council and for the City's own counsel. If I may give that to the .... (Mr. Benge gave copies to the City Attorney). Finally, on behalf of all members of the public who have a deep interest in seeing complete public records to guide their thinking in this matter, I request Council to postpone any vote on any aspect of the cable TV agreement or agreements until after the court has rendered its decision in our lawsuit."

Ms. Rebecca Campbell urged the City Council to delay until they understand all the ramifications of this and get with some people that are doing public access, like Austin, Texas.

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Mr. Jerry Rice, County resident, felt that the Citizen-Times newspaper is "not doing their job" in covering several serious issues in Asheville and hoped that something could be done to improve communication. He felt that the cable company should take it upon themselves to give credits when major outages occur, not wait for the subscriber to call.

Ms. Sonya Burleson encouraged City Council to take the advise of City staff and the consultant the City hired that what they have come up with is right for the City of Asheville.

Mr. Jeremy Gibson, Asheville resident, urged Council to think about the amount of profit this one company will make over 17 years and the amount they can pass through to the citizens.

Mr. Hunt Brown, Associate General Counsel in the Corporate Office of InterMedia, spoke about the investment InterMedia is making in the City of Asheville. He talked about the objective survey conducted by an outside group which results were used to try to get a document which was sensitive to the needs and interest of the community.

Upon inquiry of Vice-Mayor Hay on why InterMedia won't make part of the franchise agreement its commitment to put modems into schools, Mr. Brown said that part of the commitment to provide modems to the schools depends upon the kind of deals that InterMedia can get with a manufacturer. That equipment does cost money and to provide it to schools InterMedia has to look at and analyze the needs of this community, because some of that cost could be passed onto subscribers if it is franchise imposed. But in terms of putting that cable modem access in the schools, that is something we want to do in the future and InterMedia is committed to getting accomplished. The basis for not putting it in as part of a franchise agreement is because we want to allow the market to drive us to that. At that point in time, then we can provide that service because it becomes financially possible and is not an over-burden on our subscribers. During the negotiation process, that wasn't what InterMedia understood to be the express needs of the community.

When Vice-Mayor Hay asked if InterMedia was backing away from their firm commitment to put modems in the schools, Mr. Hunt said that he did not wish to detract from any commitments made in the past whatsoever.

Mayor Sitnick asked for a report from Ms. Meldrum in the near future on how the needs assessment study performed by the City compares to the survey that was done by InterMedia.

At the request of Councilman Cloninger, Mr. Brown said that he would be happy to furnish Council with the survey they had performed.

Ms. Cary Bowls urged Council to proceed with adoption of these agreements.

Ms. Stephanie Brigman, resident of the Asheville area, hoped that Council would approve the agreements as they stand now.

Mr. Scott Barber, representative of the North Carolina Alliance for Democracy and representative of the Local Coalition for Campaign Finance Reform, West Asheville resident and owner of an independent video production business, lobbied for good, quality, well staffed, video production facilities at little or no cost to the citizens. He questioned how objective the survey was which was performed for InterMedia. He asked Council to establish a citizen task force that is representative of the community. He felt the charge of the task force should be to evaluate the current agreement, conduct a supplemental needs assessment to address the flaws in the previous study, conduct a thorough and open review of other recent franchises signed both by InterMedia and also by other cable companies, should explore options for mobilizing local financial and other resources that would support and ideally increase the City's bargaining leverage, should explore models for public access around the country, should examine options for the establishment of a representative community based organization to oversee these operations, examine issues related to the I-Net, and should be given at least six months to do this evaluation and come back and make a recommendation.

Ms. Nelda Holder, West Asheville resident, said that from her experience in running a public access station, you are not allowed to show obscenity, libelous material or commercial material.

Mr. Steve Curtis, representative of TCI Media Services, advised Council of some facts about the local origination channel program they running here in Asheville for a couple of the cable operators. He noted that the delay from the November time period to now has cost the City $30,000 in additional franchise fees and if Council delays for another six months it will be up to $100,000 in lost revenue. He said the City could use that revenue for I-net and toward getting the service to more schools. He urged Council to proceed with execution of the documents.

Mayor Sitnick said that while it's true the City is losing money, there was a transition in administration and Council did not feel confident to vote on this kind of complex issue until they were fully informed. Any kind of contract that spans a 17-year timeline deserves as much time to understand it as possible.

Mr. Joe Haight, General Manager of InterMedia Cable, said that "on the Internet access, if in fact we're going to be in the business, then the policy of this company is to provide a modem that would connect to the drop which is already covered in the franchise. We are already wiring the schools, the libraries, and all the other things with a cable outlet. As part of that cable outlet, if we provide Internet service, which puts me in directly competition with that man back there, and other providers of Internet access, then we will provide as a company policy a modem to the schools, and libraries which would allow them to have free access to the Internet. That is the policy of this company. I hope that clears the issue on the Internet access."

Upon inquiry of Vice-Mayor Hay on why they will not put that in the franchise agreement, Mr. Haight said that "because it's not a cable TV thing. It's an Internet access, it's a data thing, that is over and beyond this franchise. This franchise is for cable TV. If we're going to get into telecommunications, are we going to go back and re-do all this? What if I do phone service tomorrow? Am I going to be required also to provide phone service for all the City? Again, this is not a cable TV issue. If the company is going to be involved in data, in Internet access, then as a policy of this company we will provide a modem, which will all the schools access to the Internet. Again, I don't want to be redundant here, but does that explain it? Is there any question about it? It doesn't have anything to do with the I-Net - it has only to do with cable TV and what we would be providing over that single wire, that is already in the schools and the libraries and the fire stations and City Hall."

Mr. Haight said that "the second issue is overbuild of the annexed areas. There is approximately 10 miles of area that was annexed by the City over a long period of time. It didn't happen yesterday, it's over several years. It has to do with Marcus Cable on the east side, it has to do with Charter Cable on the west side. Again, approximately 10 miles of area that already was providing, or already had a cable TV provider when it was annexed. This company, as well as the company prior to this, as well as the company prior to this, chose not to overbuild those existing cable companies. This franchise addresses that. This franchise says that I will provide service to all the citizens of Asheville, whether it be annexed or not. So, in the very near future, fact is had to already completed this I probably would have already had it done, we will be providing cable TV service to those annexed areas that we have previously not served. I hope that clarifies it. Again, there's approximately 10 miles of that."

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Mr. Haight then went on to note the awards they have received for customer service. He said that they do not owe the City, by law, anything, including delinquent fees. He noted InterMedia (in a year and a half) has invested more in this community than any other company he is aware of. They have over $14 Million invested in this community in providing what their customers ask them for. They have made a concerted effort to settle the franchise fee issue and urged Council to proceed with adoption of the documents.

Councilman Cloninger moved to close the public hearing and continue Council's consideration of the three part package until their next worksession on March 3, 1998, at which time each Council member would have an opportunity to raise issues they feel need to be negotiated further with InterMedia or perhaps vote up or down on the agreement. This motion was seconded by Councilman Tomes.

When Councilwoman Field asked if the public hearing could be re-opened, City Attorney Oast said that it's not a public hearing City Council is required by law to have, so if wnat Council wants to do at their next meeting is take additional public comment, he felt Council was free to do that.

The motion made by Councilman Cloninger and seconded by Councilman Tomes carried unanimously.

Mayor Sitnick then closed the public hearing at 11:05 p.m.

V. UNFINISHED BUSINESS:

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE CITY COUNCIL RETREAT HELD ON FEBRUARY 6, 1998, THE FORMAL MEETING HELD ON FEBRUARY 10, 1998, AND THE WORKSESSION HELD ON FEBRUARY 17, 1998

Councilman Cloninger moved for the adoption of the minutes of the City Council retreat held on February 6, 1998, the formal meeting held on February 10, 1998, and the worksession held on February 17, 1998. This motion was seconded by Councilwoman Field and carried unanimously.

B. COLLECTIVE DIRECTIONAL SIGNS

Councilman Sellers read a letter from Mr. Chris Pelly, President of the Haw Creek Community Association, as follows: "At the entrance to Haw Creek at the intersection of Tunnel and New Haw Creek Roads is a sign listing six churches in the Haw Creek community. This sign, which sits on private property but is in a road right-of-way, is badly in need of painting and renovation. The Haw Creek Community Association (HCCA) has undertaken the task of repairing this sign. HCCA has solicited and received donations from most of the churches listed to help pay for these repairs. In the course of planning these repairs we've learned this sign no longer complies with the sign ordinance. It is the hope of th HCCA that City Council consider and support the enclosed request.

"Haw Creek Community Association respectfully requests City Council direct city Planning staff to draft an ordinance revision for their review addressing church signs in the right-of-way. Specifically, the provision would allow larger church signs in right-of-ways when such signs contain more than one church listing or directional. We believe this type sign, rather than several individual signs, will be more attractive to our community."

Councilwoman Field said that the issue of flag lots needs to be revisited by Council as well.

Councilman Tomes urged Council to be sensitive when dealing with individual kinds of personalities or congregations. He felt there did not need to be a hasty resolve stressing again that Council needs to be sensitive as it relates to the various faith community.

It was the consensus of City Council to put these items on the next worksession agenda for discussion when Planning staff is present.

C. LAWSUITS

The City was served with the following lawsuit on January 9, 1998: Helen Waneski v. City of Asheville - negligence concerning unpainted seven-inch high curb. This matter will be handled by an attorney outside of the City Attorney's Office and recommends that it be handled through Asheville Claims Corporation.

The City was served with the following lawsuit on January 9, 1998: Alma Jean Bowman v. City of Asheville - negligence arising from uncovered water meter box and broken curb. This matter will be handled by an attorney outside of the City Attorney's Office and recommends that it be handled through Asheville Claims Corporation.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 11:12 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

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Exhibit "A"

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Asheville City Schools

Administrative Offices • PO Box 7347 • 85 Mountain Street • Asheville, North Carolina 28802

FEB 12 199

CITY ATTORNEY

MEMORANDUM

To: Mr. Jim Westbrook, City Manager
City of Asheville

From: Timothy F. Amos, Assistant Superintendent Jim

Date: February 11, 1998

Subject: **Follow-Up to Comments at Cable TV Meeting**

Jim, this is a written follow-up to my comments at the cable TV meeting last night.

First, thank you for all your efforts to get the best deal possible on behalf of the school system. We do hope it will be possible to extend the institutional network to all nine (9) of our schools, plus the School Board's Administrative Offices. If we only get two connections, as is currently proposed, then our priorities would be (1) the Administrative Offices (85 Mountain Street) and (2) Asheville High School. These are the two sites with the highest amount of telephone and data traffic, plus it is more likely that we would want to originate cable TV programming from these two sites than from any others.

Also, since we use advertising (national and local commercial spots) to support our video productions, I would like additional clarification as to what specifically is allowed and not allowed by federal regulations on PEG channels. Any information on this would be appreciated.

Please let us know if you need any additional information from us and please notify us of any changes in the proposed contract, particularly as it related to schools. If the Council elects to extend the process and appoints a committee to further study this issue, we would like to be represented if it is appropriate.

Thank you.

cc: Dr. Karen Campbell, Superintendent

TIMOTHY F. AMOS, MBA, CPA
Assistant Superintendent for Business & Support Services
Telephone: (704) 255-5355 - Facsimile: (704) 255-5131
e-mail: tamos@ashevillecityschools.edu

February 18, 1998 ✓
To: Mayor L. Sitnick, Council Members, City Manager
From: June Lamb, 16 Carrier St., Asheville, Ph. 252-3077

Please vote to delay Franchise Agreement with Intermedia for a minimum of six months in order to allow time for a subscriber (market-type) survey; to establish a special commission to arbitrate between City Manager's office and Intermedia; and to do the subscriber survey with focus on program quality and quantity.

At present the ordinance does not indicate any provision by the City for an ombudsman-type office to arbitrate disputes on behalf of the subscriber. (See section related to subscriber in the ordinance.) When I asked Attorney Meldrum if I could (have the right to) ask Intermedia to show me results of their last survey regarding program preferences, she replied, "No." When I inquired of Mr. Clonninger about the possibility of subscriber input for programming he replied, "We cannot dictate to the company."

Inquiries were made to Intermedia by another subscriber about the results of the last programming survey. The inquirer was told that the results were not in the local office--i.e., not available.

I asked Attorney Meldrum for a copy of the FCC regulations regarding subscribers used in drawing up the ordinance. I was told that was material used two years ago and that she would have to look for it. I received no response to a follow-up call on Feb. 17.

My conclusion is that under the negotiating process which has been going on for four years under Mr. Westbrook's management there has been no intention of including subscriber (consumer) protection--unless requested by City Council.

Quite frankly, it appears to be another money-making "scheme" for the City: big business versus consumer (tax payer).

The argument by Attorney Oast that "This is a tax," not a fee, is ludicrous. The language in the ordinance seems to use "tax" and "fee" words frequently. On my cable bill the charges are identified as Expanded Basic (service), Local usage fee, and Regulatory fee. Is that a tax? If so, who gets it?

While, hopefully, you go back to the drawing board, I am discontinuing my Intermedia cable and buying into DDS equipment available at Circuit City. For the same $30/month I will be receiving the channels I prefer out of a selection of 50 channels. I will subscribe to a monthly DDS viewing guide at a cost of 77¢/week and will not need to buy the Sunday newspaper at $1.50 in order to have the TV guide. The franchise does not pay the newspaper to publish the TV guide.

Feb 24, 1998
Addendum to Feb 18 statement
City council and City manager
June Lamb - 252-3097

On further review of information regarding the proposed Franchise agreement being put forward by the City manager, I note that he has spent $105,000 for a Legal Consultant, and has prepared a settlement of $150,000 to be paid to the City. In return the City would relinquish claims on past uncollected franchise fees, which are reported as about $528,000. A ludicrous no gainer.

I earlier referred to the franchise deal as a money making 'scheme', but now I am seeing it as another boondoggle. It is not unlike the City managers proposal for the City to buy the French Broad Golf Course (a loosing business) in order to make money for the City.

Mark Rosenstein
2/24/98
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Tuesday, February 24, 1998

Statement to Asheville City Council regarding the proposed cable franchise agreement.

Mark Rosenstein
20 Wall Street
Asheville, North Carolina 28801

Madam Mayor, Members of Council:

I am speaking as a concerned citizen, a business owner of 19 years and a community volunteer.

There are important issues that need to be underscored regarding this proposed agreement.

- Unlike any other utility, a cable company, operating in the public right-of-way is granted a unique privilege to enter our homes, schools and businesses. The privilege they are granted is to provide information, news and entertainment at profit to themselves.
- We are in an information age. It is clear and obvious that our future is intimately linked to the acquisition, processing, exchange and sale of information.
- The privilege you will grant with this agreement will go far beyond the mere delivery of entertaining TV images. You will grant the ability of a private company to interface at the most intimate level with our community. This company, with its technological advantage of fiber optics and digital technology, will be able to provide commerce, information, telephone, TV, and digital services. You will be granting a competitive advantage to one business, the cable industry.
- This agreement grants the privilege to decide the type of information, images, and unconscious influences on a private company, without any public input.
- Intermedia have publicly stated it intends to extend its business beyond analog television images. It plans to provide digital services and to link it's own cable network with those of other cable companies.
- It is a fact that our community, like every other community in this nation, has ever increasing demands on its people, it's resources and it's spiritual and cultural identity.
- It is a fact that our community has already emphatically stated the need for education, training and exchange of information.
- It is a fact that every community, every major industry, every government agency is trying to wire itself, in preparation for the future.

Council has been reviewing this proposal for two months. Many complex and often conflicting issues have been discussed. Fortunately, this discussion has been taking place. But, this discussion has been by no means complete.

Under separate cover, I have reviewed the information presented by the City, the City's consultant and by Intermedia, as it relates to the questions I raised in November and January. There are still major issues not answered. The term of the contract, up stream capacity, modems for the schools, state of the art, PEG organization and funding, legal fees to audit the cable company, rate control, senior citizen discounts, prorating capital expenses for other services the cable operator will be providing outside the franchise. All these issues still remain unresolved.

My hope is that this discussion will allow the City to obtain a stronger contract for the subscriber and the City. I appreciate the time all of you have taken to listen to these issues and concerns.

You have asked the question, If there are flaws with this agreement, what is a better solution.

I am prepared to answer it in this fashion.

I suggest that a six month delay be imposed any action. The council should appoint a task force to review and discuss these unresolved issues.

The task force should include representatives from those community organizations originally assessed, members of Council, a cable representative and at large members.

The real issue is what is the best way to use this important technological tool to do the most good for our community. Of all changes affecting our lives, the digital information age is shaping a future that none of us can predict, but we all know it is going to big, very big. It is worth taking a carefully considered decision. This cable franchise is not just "another revenue stream", it has become one of the fundamental ways in which we think and come to believe.

February 22, 1998

On January 15, 1998, I submitted a letter to Council with 20 questions regarding the renewal of the cable franchise. Over the past 6 weeks, most of these issues have been discussed.

During that time, I have also heard the question asked, if this agreement isn't as good as it should be, what is better.

- COMMUNITY NEEDS ASSESSMENT

  22 of 26 organizations responded. Of those that did, there is an overwhelming need for cable access and funding. Jean Rice confirms that those indications would be true today.

  The report also underscores inadequate funding for equipment, training and operations.

  The current proposal provides $17,000.00 a year for PEG, which can be passed through to the subscriber.

- ORDINANCE REGULATING CABLE SERVICE PROVIDERS

  A new definition of gross revenues has been proposed. The issue is to insure that all services are subject to the 5% franchise fee.

  According to both Jean Rice and Joe Haight, all services, including Internet, telephone and all other electronic services will be subject to this fee.

- TERM OF CONTRACT

  A seventeen-year term is proposed. Testimony has indicated that the industry average is shorter. Other recent renewals have been longer, such as Chapel Hill.

  The unanswered issue is will this contract provide the best service for the community, and is it flexible enough to allow for expanded service as well as control of cost over the lifetime of the contract.

  If such a lengthy franchise is granted, will the cable provider address the long-term issues of access in manner more favorable to the community?

- SYSTEM AND CAPACITY

  The cable company has opted to build a 550 MHz cable system, after agreeing to construct a 750 MHz system.

  The cable company has announced plans to expand their services. They have also indicated that their system is flexible enough to meet demands for expanded capacity and have build into their system additional fiber. Expansion can be localized instead of system wide.

  Jean Rice has stated that the "up stream" capacity of the system is an important issue and that this will be activated under the current proposal.

  With cable modems, the cable company is planning to provide digital services this year.

- CABLE DROPS AND CABLE MODEMS FOR SCHOOLS

The cable company has stated in public that they will provide a cable modem capable of 8 connections to all the schools.

This provision is not in the contract.

Considering the history of this negotiation, if it is not in the contract, the City is at risk.

Is one cable modem per school sufficient to meet the needs of the schools?

- STATE OF THE ART

The state of the art clause requires six conditions to be met. Jean Rice has stated that many contracts do not contain any language on the state of the art. Jim Westbrook has stated that this language will not restrict the community in the future and that the other benchmark communities will provide a fair comparison.

State of the Art should reflect the needs and the market demands of our community.

The proposed agreement says the Council "may" hold a public hearing. The agreement should say the Council "will" hold a public hearing.

Binding arbitration might be a better way to resolve conflicts.

- PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS CHANNELS

The City has the authority to control or assign the control of these channels.

Joe Haight has stated that he is not interested in running the channels. He has stated that a non-profit 501-©3 organization is the appropriate vehicle.

It is clear from the Community Needs Assessment of 1995; sufficient funding does not exist.

Steve Burleson prepared an outline of operational needs for an access channel. He states an annual need of $111,380.00. He also includes a figure of $36,000.00 per year for "cable contribution". Is the cable company providing a contribution of $36,000.00 per year in this contract?

Other communities have access support from the cable operator and the City. Is there a provision for funding from the City?

- INSTITUTIONAL NETWORK

The City has negotiated a fiber optic network for it's own purposes.

The cable operator is going to build the fiber system at below market cost and absorb 40% of the cost. Is the remaining cost going to be passed through to the subscriber? Is this a tax?

Ownership of the system remains with the cable operator. The fiber is bundled with other cable company fibers, making separation of the two not possible. Are there other options for inter-connectivity for the City?

- SETTLEMENT OF FRANCHISE FEES

After review of all the options, 5% vs. 6% fees, 3 years vs. 10 years of review, legal costs and so forth, shouldn't the City also collect the cost of the audit?

- IF IT IS NOT IN THE CONTRACT, IT PROBABLY WON'T HAPPEN

Based on the past history and the difficulties the City has faced with the current negotiations, it seems unlikely that if it isn't written in the contract, the likelihood of those of items outside the contract happening is at risk.

All elements, modems, grants, discounts, etc. should be written into the agreement.

- RATE CONTROL

What about Senior Citizen Discounts?

Late fee for subscribers should be a percentage of the unpaid amount, as are similar fees for other utilities.

Intermedia has announced plans to provide other types of services, such as Internet connectivity and connecting to other cable systems. Shouldn't these other services bear a prorated share of the capital investment? If so, shouldn't this reduce the fees for cable services?

There is an anti-trust statute prohibiting the linking of having to purchase one service in order to receive another. Does this law apply to services and programming for a cable franchise?

- PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS

The community needs assessment of 1995 clearly indicates a need and interest on the part of 22 key community organizations.

The fact that the City negotiated an Institutional Network for it's own needs, underscores the importance of this accessibility.

Even though the rules governing what is required of a cable company have changed, this does not alter the fact that the cable company is in a very unique position to influence the quality of life in our community. As well, the cable company is in a position to make great profit through the use of public right of way.

Funding for community accesses should be based on a combination of grants from the cable franchisee, City, public grants & underwriting and volunteer contributions.

- VISION

Cable access can be a vital component of our community. The need for training, education, local culture and public information is clear.

Every community is different. Some communities have used cable access successfully for many years. Our community has not even looked at the possibilities.

The first step is to appoint a task force to initiate a community dialogue. A six-month period is reasonable. Most communities organize a 501-©3 corporation for the operation of local access.

Seed money and a funding mechanism need to be reviewed. Funding should be realistic and reflect the actual community interest and need.

Council needs to support and direct these efforts, leading to a long-range vision.

- SOLUTION

Delay any action on this contract.

Appoint a task force, 6 month time period.

Establish a 501-©3 corporation.

Funding mechanism: grants from franchisee, City budget, public underwriting, volunteer contributions.

Mark Rosenstein
20 Wall Street
Asheville, North Carolina 28801

Monday, February 09, 1998

Thank you, for the opportunity to express the views of the Public Access Coalition. We appreciate the time and effort taken to organize this public meeting.

First, I would like to make a few comments, then offer our suggestions and finally ask the panel a few questions.

The discussion we are having this evening is one about the impact and management of technology on our community. It might be similar to one held thousands of years ago when metal technology began to replace stone technology, or when oil safety lamps began to replace candles and animal fat lanterns. Of more significance are the impact of electromagnetic phenomena and the Telecommunications Act of 1934.

Before that congressional act, this country was populated with thousands of local radio stations, essentially commercial free, broadcasting an uncensored message to communities like our own. Those act in 1934 virtually ended local content and access to free speech over those public airways. Our current technological revolution, becoming digital and wired, now presents a similar situation.

What does this have to do with the renewal of a local cable franchise?

We are at a confluence of many forces. The opportunity to openly express individual views and opinions, the opportunity to fund community growth, the opportunity for a private company to make great profit through the use of a public right-of-way and the opportunity to educate our children. Wired and digital technology is not the panacea for our needs; instead it is a tool to be used constructively.

What do we believe?

- We believe that the healthiest community is one where free and open access to information is the community standard.
- We believe that the exchange of information should be free of censorship and protected by First Amendment rights.
- We believe total community involvement is superior to any other form of decision making.
- We believe that granting a private company the right to make profit through the use of the public right-of-way entitles the City and the Citizen to a fair return on their investment in that right-of-way.
- We believe that return should take at least two forms. First, through monetary payment to the City on all activities that takes place in that right-of-way. Second, through direct support of public access, in the form of direct grant, in-kind contribution, and other appropriate means.
- We believe that a wired community will benefit our children's education. It is essential that these new tools be incorporated into our educational system, from top to bottom.

Beyond the needs of the community, there is another reason we are standing here. Cable companies are in a tremendously powerful position. They are also in a very unique position. While not granted a monopoly like most essential utilities, in our community, one must consider this franchise a monopoly. The monopoly that this franchise grants is the delivery of ideas and information.

It is our obligation as citizens and parents to seek ways to provide our children with ideas and images that are positive and constructive. We would argue that the availability of quality programming for our children has all but disappeared. We would argue that the violent nature of much of the programming is destructive. This community must command part of the power of this franchise for our children and their future.

I will refer you to the comments of former FCC Chairmen Reed Hundt, which is provided as part of our package to you.

Before I end these opening comments, I have two final thoughts. First, Henry James wrote, "Civilization begins at home". This cable franchise IS our home. It sits in our living rooms, at our kitchen table and in our bedrooms everyday. This community must have a daily hand in providing an alternative and an addition to those ideas and images.

My second thought comes from Rene Dubois. Dubois discovered the first anti-biotic, which was eventually over shadowed by penicillin, but more importantly, is recognized as a founder of the modern ecological movement. He said, " Think globally, act locally". It is from this thought, which we would like to spring to the second part of our comments. What are other communities doing, what should we do.

Public access is a viable, important piece of many communities around the nation.

Section 611 of the Communications Act of 1994 provides for the following channels:

- Public access channels available for the use of the general public
- Educational access channels for the use of educational institutions for educational programming
- Governmental access channels for the use of programming by local governmental officials

This right is granted to the local franchising authority to exercise in its requirements of the cable operator.

Over the past two months, we have held public meetings and private conversations with the City Council, the City Manager, the City attorney's office and many members of the public. We have tried to highlight our concerns about the proposed franchise. We believe that these concerns have been heard, and are the main reason this meeting is being held tonight. We are grateful for this dialog.

We have also been asked to propose a solution. That is a fair question. Taking Rene Dubois' advice, we have been seeking globally for local answers. In our packet of information, we have provided some examples of the agreements from other communities.

First, we would like to refer to the Community Needs Assessment for the City of Asheville, prepared in October 1995 by Rice, Williams Associates.

- 86% of the respondents said "Goals could be improved by obtaining, producing and distributing programming over the cable access channels
- 82% already have staff available to take training and have already identified those individuals in anticipation of such training
- 77% indicated a need to have access to video production equipment
- 94.7% said "YES" to educational and information programs
- 63.2% said "YES" to meetings and public hearings
- 78% said they were interested in a community BB
- 64% said they were interested in cable delivered in-service training

The conclusion of that assessment states, " IF EXPANDED UTILIZATION OF THE CABLE SYSTEM IS TO BE ACHIEVED...(they) WOULD NEED RESOURCES AVAILABLE TO THEM BEYOND THOSE THAT THEY ALREADY POSSESS."

Second, we suggest that a task force be appointed to review and recommend additions and amendments to proposed cable franchise agreement, especially in it's application to PEG access.

At this juncture in the discussion, it is impossible to intelligently comment on the full scope of a public access station. In many communities, initial funding exceeds one million dollars. In other communities, the annual budget is sixty thousand dollars. This community is somewhere in-between, but where, we don't know.

There is a demonstrated need for this task force. We recommend a definite time frame and immediate formation of this group.

We have submitted a version of a Mission Statement. It is freely borrowed from the City of Greensboro. It is similar in scope to the nearly 2,500 other access stations around the country. From what we have learned from these other organizations, our cable franchise contract should include these recommendations:

- Public Access is managed by a 501-c3 non-profit organization. Initially the board should be appointed from a representative cross-section of the community.
- Programming be protected by the First Amendment and that the Franchisee not exercise any editorial control over programming, except as permitted by federal law.
- Funding come in part from a grant provided by the franchisee. This grant should not be considered part of the franchise fee nor should it be considered an external cost, passed through to the subscriber.
- Volunteer efforts be recognized as "in-kind" contribution and be part of the funding scheme.
- The 501-c3 seeks community grants as part of the funding scheme.
- The City provides on-going funding for operations.
- PEG access be part of the basic tier of cable service
- Interconnectivity to all the schools be provided and that it be clearly spelled out in the contract

We also believe that the process of building an access station is organic in nature. We must match our needs with our assets, we must build a unified, community supported organization. Most importantly, we must provide the community with leadership in this building process. Over two years ago, the needs were identified, and certainly not all the needs. It is not a question of should we; it is a question of what is the best way and how?

Presentation to the City Council of the City of Asheville, February 24, 1998

by
Mary Ellen Brown, Ph.D.
124 Montford Avenue
Asheville, North Carolina 28801
704/252-5709
mebrown1@mindspring.com

Mayor Sitnick and City Council Members:

I come before you tonight to request that the City Council delay the approval of the proposed new cable television franchise ordinance, the franchise itself and the City's settlement agreement with InterMedia for about 6 months. I request that the Council appoint a task force composed of citizens from all aspects of the community to provide community input in a systematic and organized way on the pending cable television agreement. After all, if we are going to enter into an agreement for 17 years, we should be absolutely sure we are getting what we want for our community.

I'm a relatively new member of the Asheville community. I have a Ph.D. in mass communication and I have worked in all aspects of television production including cable television franchising. In the early 1980s when the top 100 television markets were released for franchising, my job was to write that part of the franchise which covered public, educational, and government access for the cities we were franchising. Naturally, when the Asheville cable television franchise was released to the public in late November, I took great interest in what would be available to the community through this agreement.

The proposed new franchise, as it stands, does not offer the public all that I would like to see offered. However, we, as citizens of the community, along with the City Council and it's staff, have a wonderful opportunity to work together to sculpt the agreement to the community's needs.

One member of the Council has said to me that no one in the community has stepped forth in the past to say that public access is important enough that they will volunteer to help guide such an entity to fruition in this community. However, the group of people who have come together out of an interest in seeing the community enriched by PEG access, in just the short time between November and now, has shown the civic mindedness and dedication to make such a possibility happen.

Well, you may say, in the 1980s many cities were getting elaborate franchise packages, but this is now. However, I happened to be in Greensboro, North Carolina the other weekend. I went by their public access facility, which has been in operation a year and a half, and I was amazed at what they were doing. I was so impressed that I subsequently obtained a copy of their franchise proposal to find that their franchise required the franchisee to adequately fund access equipment and salaries for staff to such an extent that their access channels are guaranteed success, just as ours, I'm afraid, are guaranteed failure because of inadequate funding.

Here's a comparison:

Greensboro Community Television Funding

Access
Start-up Equipment
$750,000*
Staff & Operating:

Year 1	$125,000 (100,000*)
Year 2	$175,000 (100,000*)
Year 3	$175,000 (100,000*)
Year 4-15	$125,000 (100,000*)

*Grant i.e. As stated in the franchise these moneys
1) will be increased quarterly for inflation
2) will not be deducted from the franchise fee
3) will not be treated as an external cost pursuant to FCC rules (that is, this expense will **not** be passed on to the subscriber)

There is more, but these are the basics.

Asheville Community Television Funding

Start Up equipment

Year 1/2	$50,000 (or their old equipment)
Year 1	$50,000
Year 1 & 1/2	$50,000

Year 2		$50,000
Years	2 through 7	0
Years	8 through 17	$36,000 per year

Staff & Operating: 0

As one letter to the editor in the *Mountain Express* said, "Thirty-six thousand dollars won't even pay the utilities bills!"

In North Carolina, cities as large as Raleigh and towns as small as Greenville have successful public, educational and government access facilities in their communities.

Between the Community Needs Assessment done by the City and the informal survey we have done, we have heard from A-B Tech's Distance Learning, theater educators, filmmakers, health educators, Thoms Rehab., St. Joseph's Hospital, the Council of Independent Business Owners, the Chamber of Commerce, the Central Labor Council, Memorial Mission Hospital, Pack Place, Pack Library, Shaw University, Cecil's College, UNC-Asheville, the Civic Center, the Arts Alliance, HandMade in America, and the Optimist Club. All are enthusiastic about contributing to the success of cable television access in this community.

As HandMade in America's representative said:

> Perhaps the best use of PEG access would be to develop a sense of community...

or as put by the representative of the Optimist Club:

> Don't believe the public has no interest.
> Don't believe we cannot learn to use these resources.
> As our forefathers did over two hundred years ago, empower the citizens to use the available resources to create and re-create democracy...."

Thank you for your attention and, hopefully, for your support in giving the citizens of Asheville the time and the venue to make wise community decisions about this matter.

Wally Bowen
2-24-98
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Thank you for this opportunity. My name is Wally Bowen and I am representing Citizens for Media Literacy, an Asheville-based nonprofit organization founded in 1991. CML has two primary goals: to promote critical thinking about media and advertising, especially in the K-12 age groups; and to promote the principles and practices of citizenship and civic participation by empowering citizen speech and citizen access to the media.

This second goal of citizen access to the media is especially critical in today's media environment, which is increasingly dominated by a handful of media companies more focused on global marketing schemes than on providing local news and information. In this new media world, our children know more about Michael Jordan and Cindy Crawford than they do about home-grown, local heroes and role models.

This loss of local content has been well-documented by media scholars. We can see it right here in our own community. Twenty years ago, for example, nearly every radio station in the greater Asheville area had a local news department. Today, only one radio station -- WWNC -- has a local news staff. The other stations either take a national news feed from Washington or New York, or they "rip and read" from wire services such as Associated Press or UPI. Local news has virtually disappeared on local radio.

This is very unhealthy for our community for two reasons: one, it radically decreases the number and variety of voices heard in our public conversation, while relegating the vast majority of citizens to the status of passive spectators; and second, it allows one or two media voices to dominate the public dialogue and to shape the public agenda. This state of affairs is completely at odds with constitutional democracy in general, and with the First Amendment in particular.

The necessity of citizen speech and multiple points of view is reflected in a comment from Justice Hugo Black, who noted that "The First Amendment rests on the assumption tha the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."

Likewise, Justice Louis Brandeis noted that "Those who won our independence believed that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government."

And historian Christopher Lasch, commenting in 1990 about the reduction of citizens to passive spectators, said "What democracy requires is public debate, not information . . . It is only by subjecting our preferences and projects to the test of debate that we come to understand what we know and what we still need to learn. Until we have to defend our opinions in public, they remain opinions . . . half-formed convictions based on random impressions and unexamined assumptions."

By looking to our democratic heritage, we know that citizen speech and civic participation are vital ingredients in creating and maintaining a healthy civic life and democratic community. And this is not just some academic, ivory-tower talk.

Four years ago, the Kettering Foundation conducted a major study entitled "Citizens and Politics: A View from Main Street America." This study was based on extensive, in-depth surveys and focus group discussions with average citizens across America. The study found that:

* "Citizens think many avenues for expressing their views are window dressings, not serious attempts to hear the public.

* "Citizens want more than 'clean' public officials. They want an ongoing relationship, especially in between elections, in which there is 'straight talk' and give-and-take between public officials and citizens.

* "Civic duty is alive and well, but dormant. It is waiting to be tapped; only the right political conditions must first exist."

Indeed, it seems self-evident that citizens have a deep hunger and need to have their voices heard. The popularity of call-in programs such as those found on C-SPAN, or the incredible explosion of talk radio programs, are powerful examples of citizens' need to be heard. In short, our traditions of self-government -- as well as contemporary evidence -- underscore a vital need for more citizen access to the media. We hope Council will not let a self-serving phone survey conducted by the cable company convince you otherwise.

In fact, we may pay a very high price by ignoring or downplaying the need for public access. The "Citizen and Politics" study mentioned a moment ago found that citizens' desire to be included in the public dialogue and the political process can quickly turn to cynicism and hostility when they feel their voices are heard only at election time. When citizens feel shut out of the public conversation, the Kettering study concluded, their suspicion and contempt for politicians and public officials grows dramatically. Therefore, we urge you to consider strong financial support for public access as an important investment in good government and a healthy civic life for our community.

The background I just covered explains why in 1991 Citizens for Media Literacy dusted off the 1967 cable agreement and launched our first task force to promote public access via cable TV. Over the last six years, we have researched how public access works, we have visited successful access operations in other communities, we have published articles in local media, held several community meetings, and we have spoken before council and the city school board.

And in 1992, we helped the town of Black Mountain -- at the request of CML board member Gaye Fox -- negotiate for public access channels. But it was a hollow victory. Because the Black Mountain Town Council did not press for adequate funding for public access, the channel never materialized. Today, the town government can truthfully say it successfully negotiated for public access channels; but, in reality, it's only words on paper.

Citizens for Media Literacy is deeply concerned that the City of Asheville may settle for a similar hollow victory in this proposed franchise. Anyone who has looked at the costs of a viable public access operation knows that $150,000 over two years for public access -- with additional funding of $36,000 a year beginning in the year 2007 -- is grossly inadequate.

Morever, we believe that most -- if not all -- of the $150,000 set aside for public access will be used for the government access channel. The city manager has said the allocation of this money is a policy decision for the city council. If I were sitting where you are, I would ensure that programming on the government access channel -- such as council meetings, public hearings, and public information campaigns such as the Big Flush -- gets first priority. $150,000 spread out over two years is not much. This money will be quickly consumed by the needs of the government access channel. If this reasoning is accurate, it's clear that there is no money in this agreement for true public access -- that is, programming produced by average citizens or nonprofit social and cultural organizations. The way I read it, this agreement is nothing less than a death sentence for public access.

This would be a tragedy of historic proportions, because I can't imagine a community more ready for public access than Asheville. At this moment in our history, Asheville has all the ingredients -- except funding -- for a first-rate public access operation. We have a wealth of talented and articulate local citizens -- artists and craftspeople, poets and entrepreneurs, young people and retirees, health educators and early childhood specialists, gardeners and nursery experts, auto mechanics and computers fanatics, as well as nonprofit agencies of all stripes -- all with important and interesting stories to tell.

In addition, we have a growing community of local film and video professionals who are already making important contributions to the local economy, but could always use more work in between major film and video productions. And we have media arts students in the city schools who need internships and other career development opportunities. But the handful of internships now available at WLOS are woefully inadequate for the number of available students.

In short, we have loads of local talent, and, in addition, we have empty studio spaces designed for video production at both Pack Place and at Asheville-Buncombe Community College. We have all the ingredients except adequate funding.

Now the cable company would have us believe that federal law mandates that any financial support for public access must be passed on to subscribers. This is not true. The pass-through of public access funding is completely negotiable. But we have a very unique opportunity here in Asheville. We have a ready-made trust fund for public access -- if we want it -- that would eliminate any need to pass costs on to subscribers. That trust fund can be found in the hundreds of thousands of dollars of unpaid franchise fees owed the city by Intermedia. But Intermedia says they've only been in town two or three years, and therefore they shouldn't be responsible for what other companies did in the past.

Unless the rules of business have been repealed, when you buy a company, you buy not only their assets -- you also buy their liabilities. If you take the four-year estimate of unpaid franchise fees calculated by the city's consultant, Jean Rice -- which total $528,000 -- and average it out over the last 10 years, you come up with a figure well over $1 million. If we go after the money that's owed us, we can fund a first-class public access operation without adding a nickle to subscribers' rates.

I urge the council to consider giving Intermedia a 30-day notice to come back with a substantially higher offer to settle their franchise fee delinquency. If they don't, then let's hire some attorneys on contingency and take them to court, or open formal negotiations in 1999 when the option of denying the franchise is real.

I would like to make one final observation about public access. A few years ago, Citizens for Media Literacy brought George Gerbner to Asheville to speak at Pack Place. Dr. Gerbner is dean emeritus of the Annenberg School for Communications at the University of Pennsylvania. In his talk, which was broadcast on public radio, Dr. Gerbner described how -- for the first time in human history -- the stories that shape the dreams and aspirations of our children are no longer told by parents and grandparents, ministers and teachers, and other community role models.

Instead, the stories that shape our children's view of reality are told by a handful of media conglomerates with something to sell rather than something to tell.

As the father of an 11-year old son at Claxton Elementary, and as the coach of a YMCA youth basketball team, I know very well what Dr. Gerbner is talking about. I see it everyday. The authority figures our children look up to are sports heroes and Hollywood celebrities.

Parent and teachers I talk to see it as well. They see the self-esteem of otherwise healthy young girls plummet as they struggle to achieve the impossible dream of Hollywood thinness and sex appeal. They see young boys neglect their studies and flaunt the rules because they are convinced they will become the next Michael Jordan or Dennis Rodman.

And when the obvious paths to stardom and notoriety are ultimately closed to these youngsters as they grow up, the more cynical and maladjusted turn to other avenues of notoriety, as we have seen in the lives and criminal behavior of people like Timothy McVeigh or Theodore Kaczinski.

It is time for the children of Asheville to see that you don't have to jump like Michael Jordan or look like Cindy Crawford to be recognized as a valuable member of society. One of the greatest benefits of a well-funded public access operation is that our children get to see real people -- people they know -- doing real things. They get to see local role models and local heroes instead of an uninterrupted diet of shallow, self-absorbed celebrities concocted by Hollywood marketing machines.

Now Intermedia claims to know what kind of programming our community wants and needs. Please remember that this is the same company that two years ago pulled the plug on the Lifetime channel -- a favorite among women viewers locally -- and replaced it with professional wrestling and "shock talk" shows like Jerry Springer and Montel Williams.

There are many other problems with the proposed contract:

* a 17-year term that is much too long for the fast-changing world of telecommunications
* a "state of the art" clause that, to be activated, requires the city to find an Intermedia franchise in the Carolinas or Georgia that is a virtual clone of Asheville
* Intermedia's refusal to write into the contract their promise of free Internet access to schools and libraries

* no mention of eliminating or reducing the $5 late fee, which hits low-income families the hardest
* no mention of senior citizens discounts
* and a performance penalty of only $100 a day, which led a cable expert we consulted to exclaim, "This contract has no teeth in it!"

In closing, we respectfully ask City Council to re-open negotiations with Intermedia for the remainder of 1998 -- and to appoint a citizens task force to assist with the process -- with the hope that an agreement can be reached this year. If no agreement is forthcoming, then the city will be well-prepared to open formal negotiations in 1999. Thank you.

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The Board of Directors of the Mountain Area Information Network (MAIN) appreciates this opportunity to address City Council on its negotiations of a new cable TV franchise agreement. MAIN is a non-profit community network which provides dial-up access to the Internet to more than 700 residents of Asheville and Buncombe County, and more than 2,000 residents of WNC.

MAIN also provides Internet access to countless other citizens via our free public access terminals in libraries and community centers. For many low-income citizens, MAIN is the only affordable means of using the power of the Internet. In the greater Asheville area, MAIN provides free Internet access at six public access terminals in the Asheville-Buncombe Library System.

In addition, with a recent grant from the Governor's Smart Start Initiative, MAIN is placing 16 public access terminals in community and family resource centers in Asheville and Buncombe County to provide Internet access to low-income neighborhoods. In cooperation with Community Resource Network, United Way's First Call for the Help and the Buncombe County Child Development Center, this project will include an online childcare referral service for low-income parents.

With its strong emphasis on public access, MAIN is very encouraged to learn that many communities nationwide have used cable franchise negotiations to secure free, high-speed Internet access via cable modems for local schools, libraries and community centers. This benefit could save thousands of taxpayer dollars while providing a powerful educational and community development tool.

Public-access sites linked by cable modems to the Internet would also provide a very direct benefit for city government. In cooperation with the City Planning Department, MAIN will soon make city zoning maps available over the Internet. This community service will benefit citizens, while lessening the burden on city staff handling routine requests for zoning information.

But delivering maps over the Internet can be a very slow process using a standard telephone line connection. With cable modem connections, however, citizens can quickly access and examine city zoning maps and other public information based in Geographic Information Systems, better known as GIS.

The Board of Directors of the Mountain Area Information Network is pleased to support the Asheville City Council in its negotiation of a new cable TV franchise, and we appreciate this opportunity to place, in the public record, comments on how a new cable franchise would benefit our community network and our partner libraries and community centers. END

Geoffrey Willett
251-6914

February 24, 1998
City Council Meeting

TO:
The Mayor and Members of the City Council

FROM: Hazel and John Fobes

SUBJECT: Cable Franchise Agreement/ Intermedia

Don't make the decision today. Get more views of the public. Study these.

Do not make an agreement for 15-17 years. When agreement is finalized make it for shorter period, as seven years.

There will be radical changes in technological development
and
possible corporate structure

Hazel J. Fobes

passed out by
Sonya Burleson
2-24-98
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Statement For The Public Hearing On February 24th. 1998

Reference::	Cable Television Franchise
Topic:	Renewal Of Contract To Operate A Cable Television System Utilizing City Easements.
Proposed Resolve:	Establish Certain Canons That Would Embody Essential Contractional Points In Serving The Public's Interest As It Relates To A Mutually Beneficial Cable Franchise.
To:	Honorable Madam Mayor Leni Sitnick. Esteemed City Council. Concerned Citizens.

After having attended several meetings on the issue of Cable Franchise Renewal I have come to the understanding that the more we talk the more we need to resolve this open issue.

Here are a few of the reasons why:

- The opportunity for Access to Individual Cable Channels for government, education and public programming is not available in the 1967 agreement.
- The revenues due the City are ambiguously spelled out in the 1967 agreement.
- The technical responsibilities of the Cable Company to the City for their use of public easements is years behind in the 1967 agreement.
- The technical requirements for cable system upgrade were lacking in the 1967 agreement.
- There is little to nothing in the 1967 agreement regarding the Cable Company's responsibility to make available to the City and/or Public technological enhancements such as the Institutional Network.

These points and others are the encouragement needed to resolve this issue and now is the proper time.

This past November the citizens of Asheville went to the polls and made their confidence clear as to who they wanted to contract with in the service of this City.

You are their choice of confidence. Your exhaustive approach to become well informed in this matter is part of the proof that their confidence was well placed. However the remainder of the proof of the citizens well placed confidence lies in your resolve in this ill fitted 1967 Cable Agreement.

I heard the cry of procrastination from the ousted member of City Council and realized that in part that is why he no longer is in the service of the City.

For Asheville to stay on the cutting edge of recruitment of industry and business we need a Government that takes charge and makes decisions. The citizens by their vote of confidence has declared you that government sounding a clear NO to 'put off style governing'.

Although my interest is in the entirety of the Cable Franchise Agreement, my contribution of information will have to be restricted to the area I have expertise in.

That area being; Public Access Channels on Cable.

The proposed P.E.G. Cable Access Channels offers a wonderful and exciting opportunities for the Citizens of Asheville. Use of these channels can develop a highway of information and entertainment to and from the Citizens by and about the Citizens.

City Government can become personally interactive with their constituents far beyond the ~~peep-show style~~ City Council Programs seen on the present one channel.

Public meetings are a part of our heritage that dates back to the earliest settlements and have played a critical part in the gathering of the will of the people.

Until recently we have been restricted to the old system of personal gatherings. Today Public Meetings can take on 21st. Century technology interacting by cable. Thus developing a cross-section of the publics will with greater participation than the present involvement.

The program possibilities of presenting issues for public response or presenting candidates for public evaluation is to many to include however the scheduling, promotion, and development of these programs should be handled by professionals that knows how to make them effective.

Educational Access Cable is the most readily available reservoir of programming source in our community. Present programming by Asheville High is a tribute to the professionalism and creativity that our educational system is capable of producing.

However the present opportunity leaves a vas void in the total capability of using this reservoir.

Once again, properly produced and promoted programs can bridge gaps between our Government School System and the Public, especially between parents and teachers.

Cable dialoguing between teachers and parents of students about school policy and procedure can arrest present ignorances and help facilitate solutions.

It is time we hear about all the good things with our educational system and students instead of just the bad. The Educational Cable Access Channel can be that stage for good news.

Please hold to the confidence intrusted to you and negotiate a strong financial support for the P.E.G. Cable Access portion of the Cable Franchise Agreement.

The Public Access Cable Channel is the 21st. Century's likeness to the old community theatres. Offering a modern day stage for the presentation of local talent and interests.

Yet unlike the old community theatre today's stage of diverse and local presentations competes with as many as 150 other stagings at any one time.

Historically Public Access Cable Channels have evolved into two specific categories of performance.

1. Indisciplined and erratic presentations that have very little to none in viewer participation. Often compared in program quality as being the same as your neighbors home movies of their summer vacation. Generally the only one interested in those home movies is the one that took them.
2. The alternative to these boring presentations are well produced technically supported presentations that are properly scheduled and promoted for viewership.

It is not the content but rather the delivery of the content that make the difference in public participation and support.

The future financial support of this channel depends on the same public support that Public Television and Public Radio depends on and the code of program production should hold similar standards to those of Public Broadcasting.

This ends my sales pitch for the much desired P.E.G. Cable Channels. Now allow me to offer a possible resolve concerning financing the P.E.G. Cable Channels.

All the concern over past franchise fee payments is little more than media hype over an issue that in truth is still open to the interpretation of the City or the Cable Company.

The Cable Company claims proper complience The City claims non-complience. Who knows ? Because of this ill fitted 1967 Agreement only the courts know. Yet your resolve by the gathering of reasonable persons that reasoned together is a tribute to solutions by negotiations.

I believe the current proposed settlement is grounded in reason and prudence. As a citizen of Buncombe and a property owner in the City of Asheville I thank you for this negation. It seems to me it is far more profitable to the citizens of Asheville than a law suit that could result in a lose of the 1% revenue over Federal limits we have enjoyed since 1985.

Speaking of the 1% above the Federal limit for franchise fee we had been enjoying let me propose a few questions.

1. Has past cable subscriber rates been set with the 6% City Franchise Fee inclusive? Answer YES.
2. Will the new City Franchise Fee comply with the Federal guidelines of 5%? Answer YES
3. Did the past cable companies set their rates to subscriber calculated with the 6% City Franchise Fee inclu-

sive? Answer YES

4. Why can't we negotiate a 1% of revenue P.E.G. grant? Answer WE CAN.

Why can we? It's already inclusive in the Cable Subscriber Rates. We are not asking for additional monies, nor will we have to pass additional cost on to already complaining cable subscriber. Again the monies have always been part of the Cable Companies Profit & Loss equation. Don't let it get lost in the negotiation shuffle.

In conclusion allow me to share with you a personal observation.

Reasonable persons can gather and reason together. I have witnessed the passion of those that have attended these meetings. I have witnessed their attempts to approach concerns that fare out weigh their experience. Concerns such as; 550 MHz v. 750Mhz., State OF The Art Clauses, Supporting P.E.G. Access Channel. and etcetera.. Voices from the public that maybe founded on lack of understanding but certainly not on lack of concern.

In wisdom the City Council of past hired the firm of Rice WIlliams and Associates, for the purpose of evaluating past and present Cable Contracts and Cable Public Relations as well as other matters. The recommendation of this firm and the on going council of Jean Rice, Partner is a valuable resource for your decision making.

In addition under the directions of the resourceful City Attorneys Office and most capable City Managers Department the gathering and defining of this technical and contractional information can be reduced to processable terms. So once again decision making is possible.

Finally, unlike many of those that criticized the Cable Company and are nay-sayers to this negotiation I wish to offer a different perspective concerning the present Cable Company and Asheville's present negotiation posture.

This perspective is based on almost 9 years of contractional arrangement as a Cable Station Operator with Asheville's Cablevision and predecessors.

The last two years was a nightmare but the first seven years was a successful service to this community. Those first years were under the management that you have the ability to negotiate with now.

I, by experience evaluate this management as being sensitive to customer concerns.

Example: By the use of customer luncheons they gathered opinions and information that became part of their decision making process. As a matter of policy they invited customers that had problems with cable service or complaints of some sort. That is a practice of a public sensitive company not a self serving company.

I by experience evaluate this management as being fair and honest to deal with. In seven years there was countless time that our interest and opinions differed yet beyond the letter of the contract many time this management yielded to our position. Proving that they best made contract still leaves those unanswered questions to be reasoned by reasonable persons.

Joseph Haight and his management team has above all been reasonable to do business with, I know from experience. Therefore I submit that gambling on future negational posture is a gamble in futility.

My prayers and thoughts are with each of you often, in as much as I recognize that almost daily you have to balance the interest of your public in long-term decisions.

Except please these simple words of encouragement, Decisions reaching into the future are best based on 1/3 past experience, 1/3 present information and 1/3 best guess.

The real responsibility for a good Cable Franchise Agreement was on the backs of the Citizens and they made their best guess when the collectively voted and said yes to you for their future.

Steve "Burgie" Burleson, IHS
P.O. Bos 777
Asheville, N.C. 28802

(704) 658-9239

Margaret Shook 02/24/98

To: Mayor Sitnick and the Asheville City Council members:

Imagine the importance and availability of today's Internet incredible free offerings of INFORMATION, any information, any time, any where. Imagine *how much* the consumer will be willing to pay a Cable TV company to receive all this and much more in the very *near* future; ***(music, movies, home videos, e-mail, telephony, video conferencing for families, companies, and institutions***. All this combined with the future ease of accessibility and use, just by clicking on our living room TV. Cable TV and the Internet will become top priority for Americans. With NO competition and NO Federal regulation, how much do you think the Cable TV industry be tempted to charge for these soon to be, 'got-to-have', fantastic services?

These are the **Red Flag - Facts:**

1. **The Internet's ease of use within TV sets is very near** (see Bill Gates news article)
2. **Our Federal mandate to TV Broadcasting Stations now allows standard broadcast programming use of the new digital signal** (Plus our present analog broadcast signal, side by side which will be phased out in a few years) (see The French TV news article)
3. **Cable TV companies enjoy obvious advantage of carrying the largest 'pipeline' for speedy transmission of digital information. SPEED is the key.** (see article)
4. **Any Cable company that holds the city contract AND the fastest Internet transmission, wins the game.**

That's why Cable Companies are sitting in the cat bird seat. Citizens do not want council to sign a 17 year Cable agreement. Rapid change in technology requires city governments to have a stronger role in the cable fee structure. The necessity of the fast Internet transmission *will soon become* the average American's top priority.

The following ZD magazine article is merely a small example of the Internet.

Down loaded from the Internet February 24, 1998 through PointCast.com (interactive Desktop - free service):

PCs help take a byte out of crime

By Stephanie Wilkinson **February24,1998**

ZDNN 'With any serious crime, we now have a pretty good chance of solving it.'
-- Detective Sergeant Bill Conley

Detective Sergeant Bill Conley could only chuckle on his way out of the theater after seeing the movie "No Way Out," a film in which a gee-whiz photo enhancement gizmo helps solve a crime. At the time, the outlandish technology was far removed from the gear cops could use in day-to-day work.

Conley's still laughing. In fact, he's getting the last laugh -- and criminals aren't smiling.

Conley, an officer with the Los Angeles County Sheriff's Department, is using affordable new PC software similar to what he saw in the movie to anticipate, prevent and solve crimes.

PC crime fighters

"With any serious crime, we now have a pretty good chance of solving it," thanks to the new software for enhancing images and pinpointing geographic locations, Conley said.

Products from such companies as ImageWare Software Co., Sirchie Finger Print Laboratories Inc., and MapInfo Corp. are rapidly helping to hold the thin blue line.

They're not Sculley and Mulder. Meet the FBI's high-tech crime busters.

Although recent government figures show crime rates across the country continuing to decline, the demand for advanced law enforcement technology is on the rise. According to G2 Research Inc., a market analysis company in Mountain View, Calif., the U.S. market for criminal justice information systems will reach $2 billion by the year 2000, about double the size of the market in 1995.

Cheaper is better

Better technology at lower cost accounts for much of that growth, said Christine Edwards, an analyst at G2R. "And buyers are becoming aware of the value of integrated and networked systems. Law enforcement and criminal justice agencies realize that sharing data among themselves cuts errors and costs less overall," Edwards said.

Many of the technologies being adopted by crime fighters are crossover hits in corporate environments. GIS (geographic information systems) software used by police to track criminal activity, for instance, is helping restaurant chains plan new outlets and aiding marketers in distributing coupons more effectively. Imaging software is being used in security applications incorporations.

Sonny Austin, identification specialist with the Chapel Hill, N.C., Police Department, relies on composite image software for PCs that has advanced the art of reconstructing the likeness of a suspect. In place of acetate sheets of facial features that were layered on top of one another to form a composite image similar to an artist's sketch, new programs use digitized photographs to produce more realistic images.

Austin and the Chapel Hill police are using ComPhotofit, created by Sirchie Fingerprint Labs Inc., of Youngsville, N.C. Employing a database of features and accessories such as eyeglasses, headgear, and jewelry, composites can be put together to form far more precise pictures.

Software in action

"When these images are printed out, they look so much more like real photos than the old sketches did," Austin said.

Austin recalls a recent rape case in which the victim, a young woman who had artistic training, spent several hours creating a likeness with the ComPhotofit software. When the suspect was then rounded up, the composite -- along with DNA and fingerprint evidence -- quickly prompted a confession.

The basic ComPhotofit package includes image databases of features for white or black males and females.

The male Caucasian database, for instance, comprises 143 different hairstyles, 92 sets of eyes, 115 mouth types, 85 chins, and numerous mustaches, beards, and eyeglasses. Other databases, such as for Latin American males, are extra.

Select a Search Option
Search for Sort by Relevance Date

For magazine subscription savings, risk-free trial issues, newsletters, and more, click here! <Picture>

3. Cable is the fastest kid on the block. - 0.8 seconds

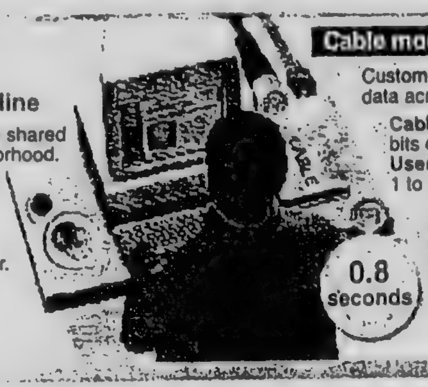
Cable is much faster than phone lines. ASDL lines. ISDN MODEMS. 56k & 33.6 MODEMS

Asheville Citizen Times, Wednesday February 11, 1998

Neighbors share the line

Cable modem data must be shared by all the users in a neighborhood.

Though data stays private for each user, hundreds or thousands of users could be sharing a line and performance may suffer.



Cable modem fast in one direction

Customer receives (and may send) data across cable television lines.

Cable capacity: 25 million bits of data per second

User modem capacity: 1 to 10 million bits per second.

Current cables can't support two-way communication, so interactive cable systems may have to use telephone lines to allow user to send data

2. Travel the Internet on the Tube?

Digital-TV Firms Try New Niches

February 10, 1998

CANNES, France -- Digital broadcasters in Europe are increasingly able to offer services that make watching television seem more like surfing the Internet and surfing the Internet more like watching TV.

The question remains: How much do people really want to interact with their televisions?

France's Canal Plus SA, one of Europe's largest digital broadcasters, announced at Milia, the multimedia industry's annual showcase here, that it will use its digital platform to broadcast Internet data to personal computers later this year.

European satellite operator Eutelsat and Luxembourg-based Societe Europeene des Satellites SA, which operates the Astra satellite, have recently begun selling similar data services.

"What's happening is that you used to have expensive, proprietary technology that was used for satellite-based data," says Christien Waldvogel, broadband-content manager for Europe at Intel Corp. "But now you can use consumer technology that costs $250, not $3,000."

The full text of this article is available for subscribers to The Wall Street Journal Interactive Edition.

<Picture>

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1. The Black Box TV Companion
Asheville Citizen Times

SUNDAY, JAN. 11, 1998 A3

provide operating system TCI digital set-top boxes

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tes on- af- Sun mi- CI, ny. TV g it out

1,700 people at the trade show.

Bill Gates

The Sun deal, in which TCI will include the company's Java programming language in the boxes, is considered a coup in its battle with Microsoft for the fast-growing market of electronic devices for the consumer.

Gates said the winner in the electronic device market will be decided by software developers, who can choose to use either Windows CE or Java.

"We'll just have to see," he said. "People will pick."

No terms were announced for either the Microsoft or Sun agreement.

TCI plans to provide up to 10 million of the set-top boxes over the next three years for delivering advanced entertainment and information to U.S. homes, including hundreds of TV channels, Internet access and on-line banking.

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February 24, 1998

Mayor Sitnick and Members of the Council:

Thank you for the opportunity to address this meeting.

As elected officials, you have been given the arduous task of finalizing the cable franchise agreement. This task is neither easy, nor can it quickly be solved and then disappear. The decisions you make today will take Asheville far into the twentieth century. And yet you must make the decision based on the information you have at hand. Your choice will not affect only city finances. It will influence the education of our young, the accessibility of the public to municipal meetings, the marketability of Asheville as a home for businesses seeking to locate their offices in a "technologically friendly" city and the quality of cable service supplied to subscribers.

I have read and reviewed the proposed ordinance. It is an agreement with promise, but it needs some work. An agreement this important must work for all concerned. The cable operator can't be shackled by rules and regulations at every turn, but the public and the city must be protected. This can be a win-win agreement.

Franchises were created initially, not to produce additional revenue for the city, not to create a burden for the cable operator, but to protect the cable subscriber. The consumer pays his dime and expects to get his money's worth. Please consider all of these facts. And remember, the franchise fee is not a fee imposed upon the cable company. The franchise fee is a fee paid by the subscriber and remitted to the City by the cable operator. The City is charged by the FCC with seeing that standards set and maintained.

- Customer Service Issues

16. SUBSCRIBER INFORMATION AND POLICY

G. …A refund of unused service charge, if any, shall be paid to the Subscriber within forty-five (45) days from the date of termination of service, or Subscriber's request, whichever is later. Does this mean if they don't refund in 45 days and I don't call that I don't get a refund? Where does the money go?

The refund policy does not meet FCC standards. The FCC requires that "refunds must be issued no later than either the customer's next billing cycle or 30 days following resolution of the request, whichever is earlier, or upon the return of equipment when service is terminated".

H. Outages. Franchisee, upon Subscriber's request, shall credit or issue a refund to the Subscriber for verifiable outages of six (6) hours or more in duration for the levels of service affected by such outages. Why upon request? This should be automatic. Again, where do these refunds go if I don't request a refund?

L. Repair Calls. Franchisee shall offer Subscribers repair service appointments in four-hour windows. The Franchisee shall telephone the Subscriber prior to arriving for a repair call. Franchisee will conduct repair calls on weekdays, a minimum of one weekday evening, and Saturdays, as requested by Subscribers. If my cable goes out on Sunday and I need to be home to let them in, am I without cable until Thursday evening or Saturday?

These standards are far below standards for other systems of this size.

- State of the Art

Why should Asheville citizens be denied services because of the size of the system? They are not second class citizens. The cost to upgrade the service is incremental and can be recouped by the operator. Instead we are held to InterMedia's standards.

- Penalties are not enough to discourage "slacking". Could the penalties read "not less than $100 or more than $1000 per day"?

- Shouldn't the City have the option to purchase the system if it becomes feasible?

- Should other cable companies be encouraged to operate in Asheville? A recent FCC report stated that "subscribers in noncompetitive areas pay 5.8% more on average than subscribers in competitive areas".

- Cable modems and other services to be provided by InterMedia should be part of the franchise agreement. The cable industry has made a commitment through the "Cable in the Classroom" initiative to do this. Asheville could be a part of this program and could be afforded this commitment through the franchise. This is an important step in bringing the children of Asheville more tools with which to learn.

- PEG channels should be located below channel 13. Many people, particularly older people, still have older televisions. They often purchase cable to receive better reception. This will give them access to the quality programming and bulletins that public, education and government channels can provide.

I understand that the city is losing revenue from the franchise fees because of the interpretation of the language in the existing franchise. In "cutting the losses" are we giving up service standards and many more future dollars that we cannot afford to give up?

Maybe it is time to step back from the franchise. Maybe it is tiresome and the pressure is on to sign. I ask that you consider carefully your options and their impact upon the City and the citizens. I ask that you delay the implementation of this ordinance and further investigate your options.

Thank you once more for your time.

Bonnie Pickartz

Bonnie Pickartz

Pickartz & Associates
125 Wykle Road
Franklin, NC
(800) 765-8668

Tuesday - March 3, 1998- 3:00 p.m.

Worksession

Present: Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Approval of Festivals & Special Events for 1998

Summary: The Parks and Recreation Department request City Council approval of the 1998 festival and special events schedule.

Councilman Sellers noted that the Citizens/Police Advisory Committee has concerns regarding the sale of alcohol at all festivals. They will have a recommendation forthcoming to City Council.

Contract Award for Purchase and Installation of Two Traffic Signals for Transit Center

Summary: The consideration of entering into an contract with Haynes Electric Utility Corporation in the amount of $96.995 to install traffic signals for the New Asheville Transit Center at Aston Street and Coxe Avenue and at Aston Street and Asheland Avenue.

Acceptance of Funds from the Governor's Highway Safety Program relative to a Police Impaired Driving Enforcement and Training Project

Summary: The consideration of a budget amendment, in the amount of $14,250, to fund a Police Impaired Driving Enforcement and Training Project and a resolution authorizing the City Manager to accept funding from the Governor's Highway Safety Program relative to this project.

Employees Health Benefit Plan

Summary: The consideration of a resolution authorizing the City Manager to execute appropriate Health Benefit Plan documents to allow the City to amend its benefit plan to 1) allow for the voluntary participation of Council Members, and 2) change the "plan year" as it is defined for purposes of keeping the plan qualified for tax exempt status with the IRS.

City of Asheville 1998 Strategic Plan

Summary: At the recent Council/Staff Retreat, City Council determined the ten goals listed below were to be City staff's top priority for the coming fiscal year. Staff has reworded some of the goals to try to better explain the intent of Council from the raw data we discussed at the retreat. As a part of the upcoming budget process, staff will add action steps under each of the goals for presentation as a part of the annual budget.

At the retreat, Council directed staff to bring the goals back to them for one final review. This report requires no action.

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1. Encourage a City/County comprehensive transportation study designed to identify the most effective ways to provide transportation services.
2. Adopt a Parks and Recreation Master Plan which will identify active and passive recreation facility and programmatic needs and identify funding mechanisms to meet needs.
3. Adopt an Affordable Housing policy designed to ensure an adequate stock of quality affordable housing and to eliminate substandard housing and living conditions.
4. Emphasize continuing traffic management efforts to provide safe and efficient vehicular and pedestrian transportation.
5. Promote growth in Asheville's tax base through the establishment of a comprehensive economic development strategic plan.
6. Adopt and begin implementation of Civic Center Master Plan in order to maximize utilization and reduce funding requirements of the facility.
7. Establish a neighborhood/community outreach program designed to inform citizens of City issues and activities and provide a forum to seek citizen input into issues facing the community and planning and developing neighborhoods.
8. Develop and/or support activities and events which celebrate our cultural diversity.
9. Adopt and implement a comprehensive parking plan to address parking needs in the downtown, Biltmore and West Asheville business areas.
10. Review sign ordinance implementation and enforcement efforts.

City Manager Westbrook said that staff is still working on the entire list to add work steps and that list will be brought back to Council during the budget process.

City Council noted that the final list contained actually 20 goals and the other ten goals were of equal importance.

City Manager Westbrook said that staff will proceed working on the top ten goals with resources and will try to do as much as they can on the other 10 goals.

Mayor Sitnick suggested that as the projects were completed, the entire list could be revisited.

There was some discussion about the wording of goal #3 and Councilwoman Field stressed that City Council needs to adopt an affordable housing policy that is consistent with the goals of the Housing & Community Development Committee and the HOME Program.

Councilman Cobb suggested that all ten goals be measurable.

Upon inquiry of Mayor Sitnick, Urban Planner Carl Ownbey explained the different roles of the different boards regarding the multi-model transportation study, noting that they will work together.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

STATUS OF THE CITY'S DISEASE MANAGEMENT INITIATIVE

Mr. John Miall, Director of Risk Management, and Mr. Dan Garrett, Director of Pharmacy for Mission-St. Joseph's Health Center, made a presentation to the Council on the status of the City's disease management initiative, particularly the 10 month result of the diabetes trial.

John Miall and Dan Garrett recently were the invited guests of the American Pharmaceutical Association in Washington, D.C., for the purpose of making this same presentation to Health Care Financing Administration for Social Security in hopes that the innovations of the "Asheville Program" will be adopted nationwide for all recipients of Medicare.

In April of 1997 at the recommendation of the hospital system, and with input from the School of Pharmacy at UNC-Chapel Hill, the City began an unprecedented program for management of diabetes patients under its health plan. The plan design involved area pharmacists undergoing extensive training without reimbursement to begin regular, and on-going counseling and intervention with diabetes patients. The program also included an in depth patient training component from the hospitals for high-risk patients.

It was anticipated that by actively managing the disease process, and bringing to the attention of physicians early and accurate information on patient health and behaviors that long-term costly medical expenses associated with the disease could be averted. After only 10 months of trials, the medical costs for the patients with diabetes under the City's self-funded program for health benefits were reduced by nearly $30,000.00.

A companion program for Asthma patients has recently been launched with the active support of Dr. Spencer Atwater.

Councilman Cloninger was impressed the way the medical community, doctors, hospitals, etc. have worked together on this program.

Mayor Sitnick thanked Mr. Miall and Mr. Garrett for bringing the Council up-to-date on this very important and successful program.

EXCHANGE OF PROPERTY WITH THE OPPORTUNITY CORPORATION

Mr. Irby Brinson, Director of Parks & Recreation, said that the Parks and Recreation Department and the Advisory Board have worked with the Opportunity Corporation of Buncombe and Madison County concerning a piece of property located behind Reid Center which would serve as a community services building along with administrative offices for their operations. The approximate size of this purchase would be approximately 1.3 acres. The Opportunity Corporation of Buncombe and Madison County would be making a financial contribution of $20,000 to the Parks and Recreation Department to fund a mini park in the West End section of Asheville. In addition, the Opportunity Corporation would be donating materials and administrative costs up to $16,000 to construct a bridge across the creek at the base of the property as well as providing an easement across their property for greenway development.

The Parks and Recreation Department recommends City Council direct the City Clerk to advertise the exchange of the property between the City of Asheville and the Opportunity Corporation of Buncombe and Madison County Center.

City Council expressed support for this exchange.

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After some brief discussion, Councilman Cloninger asked if the Opportunity Corporation would consider agreeing committing $16,000 to construct the bridge across the creek, instead of "up to $16,000".

Ms. Vicki Heidinger, Executive Director of the Opportunity Corporation of Madison-Buncombe Counties, spoke in support of the exchange and felt that her Board of Directors would have no problem with the language suggested by Councilman Cloninger.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

PROHIBITION OF DOGS AT RIVERSIDE CEMETERY

Mr. Irby Brinson, Director of Parks & Recreation, said that based upon City Council's request from the worksession on February 17, 1998, the Parks and Recreation Department is proposing a revision to Code of Ordinances Section 3-27(3)regarding control of animals in Riverside Cemetery.

Asheville City Council, in July of 1997, adopted an ordinance revision dealing with animals in Riverside Cemetery. This revision required dogs to be leashed, remain on paved roads, be cleaned up after by their owners, and be prohibited from the facility during funeral services. Per City Council's direction, a six-month evaluation of the ordinance changes were required in order to evaluate the effectiveness of these revisions. Over this period of time, the Cemetery Manager and the Park Warden have been documenting occurrences of violations of the ordinance. This information was presented to City Council at a work session on February 17, 1998. Based upon a request by City Council the Parks and Recreation Department and Legal staff is proposing a revision to Section 3-27 (e) of the Code of Ordinances of the City of Asheville. This change represents prohibiting animals at Riverside Cemetery with the exception of allowing dogs or domestic animals which assist persons with sight disabilities. The Department has initiated a Dog Park Task Force which has been meeting since January of 1998. The purpose of this task force is to determine an appropriate location for development of a dog park within the City. This group is very active and is planning to present their report to City Council in the near future. The Parks and Recreation Department has been assisting this group in trying to address the provision of a dog park within the City.

The Parks and Recreation Department is recommending holding a public hearing on April 14, 1998, to solicit input on revising Section 3-27 (e) of the Code of Ordinances of the City of Asheville prohibiting animals in Riverside Cemetery.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

FORMING AN ASHEVILLE FILM COMMISSION

Mayor Sitnick explained that Asheville is growing economically and one way Asheville is growing is by hosting more and more filming of major movies, commercials and still shot photo layouts for national magazines. Our area is becoming more and more popular in the film industry. While there is a State Commission and WNC Regional Film Commission, through Advantage West, it was her feeling that a local film commission, for a number of purposes, would be a benefit to Asheville. Those people could perhaps meet one or twice year, or when necessary, to be able to respond to the needs of the film community. So, when a film crew comes into Asheville, they can cooperate with the State Commission and the Regional Film Commission to act as a diplomatic group to welcome and let them know we appreciate their business. She suggested that City Council members act as ex officio members to the local film commission.

Vice-Mayor Hay noted that the local film commission should not compete with the State Commission or the Regional Film Commission, but should compliment them.

She also said that there is wonderful opportunity for our community to begin hosting a film festival. Gene and Jim D'Onofrio from Brevard are putting together this film festival at no cost to the City. She felt that the local film commission could be of benefit to the film festival as it grows and evolves.

It was the consensus of City Council to proceed and asked staff to bring back a report with pertinent information to Council at a worksession.

CABLE TV FRANCHISE REVIEW

At 4:20 p.m., Councilman Cloninger moved to go into closed session for the following reasons: (1) to prevent the disclosure of information that is privileged or confidential pursuant to the laws of North Carolina or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that renders the information to be discussed confidential is G.S. 160A-208.1 - statutory authority is G.S. 143-318.11 (a) (1); and (2) to consult with an attorney employed by the City Council in order to preserve the attorney-client privilege between the attorney and the City Council. The parties to the lawsuit about which the Council expects to receive advice is Multimedia Publications of North Carolina, Inc., d/b/a Asheville Citizen-Times Publishing Company, and the City of Asheville - statutory authority is G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Sellers and carried unanimously.

At 5:00 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

Assistant City Attorney Patsy Meldrum said that City Council has three options at this time: (1) approve the proposed documents; (2) renegotiate certain issues; or (3) postpone the renewal until 1999-2002, noting that 1999 would be the beginning of the process. She then presented Council with a document with staff's perceptions of the issues which have come out of discussions with City Council during the worksessions and during the public hearing. The following is the list presented: (1) Term of franchise; (2) Public, Educational and/or Governmental Channels - (a) number of channels; (b) initial equipment (3) on-going support; (3) Institutional Network - (a) list of sites; (b) Internet access for schools and libraries; (4) state-of-the-art clause; (5) 550 MHz vs. 750 MHz system; (6) customer service standards; (7) senior citizen discounts; (8) franchise fee; and (9) time period for renegotiation. She asked for Council to add to the issue list, which list will be ranked, and suggested there be a time period for renegotiation. She suggested Council give staff instructions on how long that time period should be, noting that they request a shorter period rather than a longer period.

Upon inquiry of Councilwoman Field using the comparison chart of what was in the City's Request for Renewal Proposal and the proposed franchise, Ms. Meldrum and Mr. Joe Haight, General Manager of InterMedia, responded to questions and comments on why InterMedia did not agree to or partially agreed to the following: BTSC stereo pass-through for all stereo channels; status monitoring; one independent upstream channel shall be designated for the City for municipal and public sector use; the standard drop allowance for cable installation shall be 250 feet; cable service to new developments is required to be extended into new developments concurrently with electric and telephone lines; allocate five channels for access; access studio; video production equipment for Asheville City Schools; remote production van; modulation and demodulation video equipment for all required institutional network sites; origination capability from the City Building, Asheville High School and two additional sites; such drops shall be capable of supporting multiple reception points; and internal wiring to be provided at no cost.

Mayor Sitnick asked that the refund by request issue and the pass through to subscribers for the pay channels issue be added to the list. Councilman Cloninger requested that the issue of binding arbitration also be added.

Mr. Haight responded to various questions from Council as they related to the rebuilt and the difference between cable TV outlets and I-Net locations.

Councilwoman Field requested that Charter Schools have a cable outlet.

Mr. Haight responded to a questions from Ms. Mary Ellen Brown, Montford resident, on how many fiber optic cables are in the system and where are they located.

Ms. Lexie Ross stressed that public access really benefits the community.

Mr. Scott Barber felt that the City needed to ensure adequate funding and language for public access television production resources. He pointed out several weaknesses in the current agreement. He encouraged the City to talk to Mr. Andy Romanet, Attorney with the N.C. League of Municipalities, who might have additional information on the statute of limitations issue regarding franchise fees. He reiterated his comments from the February 24, 1998, public hearing in that the City should appoint a citizens task force and what the purpose of that task force should be. He felt Council should delay taking action on this contract which he believed was a better deal for the cable company than for the City of Asheville and its citizens. He encouraged council not to separate the public access deliberations from the franchise deliberations because the community will lose it's bargaining leverage.

Mayor Sitnick supported the idea of an advisory committee, especially one that is primarily focused on the PEG channels and working with the community to make sure that they are state of the art and that they provide the proper educational and public access opportunities. She asked that Council consider this as we move along in the process.

Upon inquiry of Mr. Bill Wald, Ms. Meldrum explained how the figures were arrived at regarding the franchise fees.

Vice-Mayor Hay said that the cable company doesn't agree that it owes the City any money and if we litigate, it is possible that we will recover nothing from them. This is a settlement of a true dispute between the parties, not a settlement of a bill.

Mr. Wally Bowen briefed Council with some background information on the 1967 franchise agreement. Mr. Bowen requested (1) that community centers have Internet access as well as schools and libraries and that it be written into the agreement; (2) the $5 late fee is too high; (3) the performance penalty of $100 a day is too low; and (4) a viable public access operation.

Councilman Cobb questioned what the budget would be to operate a public access channel.

Councilwoman Field noted that the Pack Place Forum was designed to be a television studio, but it is privately owned.

City Manager Westbrook said that sometime after this process is over with and we have a franchise, staff will come back with a process for Council to use to determine how they want to do access as well as oversight of those public access channels.

Upon inquiry of Mayor Sitnick about the process, City Attorney Oast said that this matter has been continued from meeting to meeting and if no action is taken, and he thought that Council had previously indicated they don't intend to take any action today, then it would have to be continued to some later time. As far as the process for going through this, it may be some items could be eliminated as items that don't need to be negotiated.

Mayor Sitnick said that she is absolutely opposed to taking any straw votes or votes of intent at worksessions and by adopting a list of priority items, Council is saying, in effect, that they are requesting a renegotiation of a franchise. That is a vote in her mind and that should be taken at a formal meeting and not a worksession.

City Manager Westbrook understood that Council gave staff direction months ago to negotiate the franchise and we are still in that process. From the staff's standpoint of the issues that Council has brought up, they are trying to determine which ones are the most important so if staff is to continue to negotiate then they would know that information.

City Attorney Oast said that however Council approaches a consensus on any one of these issues, it would not be a vote to approve or disapprove the franchise. It would only be giving staff direction on certain items of the franchise that Council felt they needed additional information.

Discussion took place on how the ranking process would best be accomplished.

Upon inquiry of Councilwoman Field on whether the cable company is willing to negotiate any further, City Manager Westbrook said that he has talked with Mr. Haight recently and asked if he was willing to continue negotiations and he said that they were but not knowing any specifics.

Mayor Sitnick said that she would bow to the wishes of Council, even though she was not comfortable with this process, and suggested each Council member rank the list of issues with "1" being the most crucial, "1" being fairly crucial and "3" being items they would like to have, but could live without. She asked Council put their names on the top of the paper when they through and she would ask each Council member to read out their ratings and then pass them to the City Attorney so he can make a chart accordingly.

Each Council member then read out their ratings for the 14 issues and the City Attorney said that he would have a chart of the ratings available for Council next week.

City Manager Westbrook suggested staff be allowed the limited time period of 8 weeks within which to bring a report back to Council on these items.

Councilman Cloninger moved to table this matter for 8 weeks pending a report from staff. This motion was seconded by Councilman Sellers and carried unanimously.

Mayor Sitnick said that in the future she would like to have a brief discussion and determination on whether or not City Council wants to appoint a Cable Task Force.

DISCUSSION OF COLLECTIVE DIRECTIONAL SIGNS

Ms. Julia Cogburn, Planning & Development Director, said she has researched the request made by the Haw Creek Community in which they requested an ordinance be drafted which would allow larger church signs in the rights-of-way when such signs contain more than one church listing or directional. She said that she has recently learned that the N.C. Dept. of Transportation ("NC DOT") prohibits those signs in their rights-of-way. She said that she will explore NC DOT's prohibition and report back to Council.

Councilman Cloninger suggested Ms. Cogburn look into logo signs and what potential we have working with the NC DOT on this issue.

City Attorney Oast noted a problem the Board of Adjustment has run into with issuing sign variances for businesses that are not located on the main streets. Perhaps the logo type sign at the intersections might help resolve some of their problems.

Councilwoman Field said that the City used to allow flag lots which allowed people to have a little strip of land which went down the main road and they could put your sign there. But in the Unified Development Ordinance we can no longer have flag lots but people were still allowed to have off-premise signs so they could get their signs on the road. Now, we don't allow off-premise signs and there is no way for someone who has a lot off the road to identify their business. She asked Ms. Cogburn to see if she could come up with some solution.

NEXT COMMUNITY MEETING AND APRIL 7, 1998, WORKSESSION

Mayor Sitnick announced that because of the Chamber of Commerce retreat, the worksession scheduled for Tuesday, April 7, 1998, will need to be rescheduled until Wednesday, April 8, 1998, at 3:00 p.m. in the First Floor North Conference Room in the City Hall Building. It was the consensus of City Council to have the worksession rescheduled as outlined by Mayor Sitnick.

It was the consensus of City Council to host the next community meeting on March 31, 1998, at 7:00 p.m. in the William F. Wolcott Jr. Building (Public Works Building) located at 161 South Charlotte Street.

SIGNS ON POLES

Mayor Sitnick stated that every Friday City staff goes out and pulls down the illegal advertising signs on the City's right-of-way structures and calls the people who placed the sign on the structures noting that it is illegal to do so. Every major thorough has illegal signs on them. They are a visual blight, they are unfair to people who pay for legal signs and erect them properly, they add to the litter and clearly it's illegal to post them. She wanted to make sure that the public knows that the City is going to be taking them down, calling the people and letting them know that if they are not taken down in a certain period of time they will be fined according to the ordinance. Asheville will not tolerate these illegal advertising signs on the City's right-of-way structures in our City anymore.

Mayor Sitnick said that we recognize the need to provide citizens s a place to advertise yard sales, and those sorts of things, and perhaps we can come up with some suggestions, like neighborhood funded and maintained kiosks.

PLANNING & ZONING COMMISSION MEMBERSHIP

Councilwoman Field Barbara said that the statutes require the City to have a certain percentage of representation from the extraterritorial jurisdiction ("ETJ"). She believed the representation is 10% for the Planning & Zoning Commission, which would be one person. Right now the Commission has two people from the ETJ. She certainly believes that we need ETJ representation but the amount of representation seems to be disproportionate.

It was the consensus of City Council to have staff bring back a recommendation regarding this issue to a worksession very soon.

CLOSED SESSION

At 7:41 p.m., Councilman Cloninger moved to go into closed session for the following reason: to consult with an attorney employed by the City Council in order to preserve the attorney-client privilege between the attorney and the City Council. The parties to the lawsuit about which the Council expects to receive advice is Morris Communications Corporation, d/b/a Fairway Outdoor Advertising, Outdoor Communications, Inc., and Maple Cove Inc., and the City of Asheville - statutory authority is G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Sellers and carried unanimously.

At 7:55 p.m., Councilwoman Field moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:55 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

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Tuesday - March 10, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field (arrived at 5:40 p.m.); Councilman Thomas G. Sellers; and Councilman O.T. Tomes (arrived at 6:57 p.m.); City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MARCH 8-14, 1998, AS "DENTAL ASSISTANTS RECOGNITION WEEK"

Mayor Sitnick read the proclamation proclaiming the week of March 8-14, 1998, as "Dental Assistants Recognition Week " in the City of Asheville and presented the proclamation to Ms. Betty Finnegan.

B. PROCLAMATION PROCLAIMING MARCH 15-21, 1998, AS "UNITY IN DIVERSITY WEEK"

Mayor Sitnick read the proclamation proclaiming the week of March 15-21, 1998, as "Unity in Diversity Week " in the City of Asheville and presented the proclamation to Ms. Raphael Peter who briefed Council on some planned activities taking place during the week.

C. PROCLAMATION PROCLAIMING MARCH 16-22, 1998, AS "HI NEIGHBOR AND FRANK SCOTT WEEK"

Mayor Sitnick read the proclamation proclaiming the week of March 16-22, 1998, as "Hi Neighbor and Frank Scott Week " in the City of Asheville and presented a proclamation to Mr. Keith Murless, President of the Asheville Volleyball Club, who briefed Council on some planned activities taking place during the week. She also presented proclamations to Ms. Teresa Scott, daughter of Frank Scott, and Ms. Diane Mugnai, who was Frank Scott's fiancee.

II. CONSENT:

A. RESOLUTION NO. 98-25 - RESOLUTION AWARDING CONTRACT TO HAYNES ELECTRIC UTILITY CORPORATION FOR THE PURCHASE AND INSTALLATION OF TWO TRAFFIC SIGNALS AT THE TRANSIT CENTER

Summary: In an effort to provide adequate vehicular and pedestrian access at the new transit center, the City's Traffic Engineer and the Asheville Transit Authority (ATA) have formulated a traffic signal system that addresses these needs. The City received a transit grant in the amount of $70,000 for this project and the City has allocated another $35,000 toward this effort.

The City, through the Engineering Department, solicited formal bids for the above stated project. This bid process engaged in November, 1997; whereas a total of 18 advertisement for bid letters and bid packages were sent out, including five to certified minority businesses registered with the City. Advertisement letters were also sent to the Association of General Contractors, F. W. Dodge and the Buncombe County Minority Affairs' office. We did not receive enough bids at our initial bid opening on December 3, 1997. The project was re-advertised and two bid proposals were received, none of which were from certified minority businesses.

The lowest most reasonable bid that met the City's and ATA's requirements was from Haynes Electric Utility Corporation of Asheville, North Carolina, for a bid price of $119,619. After negotiations by the Traffic Engineer with Haynes Electric, Haynes Electric reduced their bid to $96,995.

Staff recommends that the City Manager be authorized to enter into a contract with Haynes Electric Utility Corporation for the bid price of $96.995, for the project known as Purchase and Installation of Two Traffic Signals for the New Asheville Transit Center.

RESOLUTION BOOK NO. 24 - PAGE 353

B. RESOLUTION NO. 98-26 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN PLAN DOCUMENTS TO ALLOW FOR THE PARTICIPATION OF THE CITY COUNCIL IN THE CITY'S EMPLOYEE BENEFIT PROGRAM

Summary: The consideration of a resolution authorizing the City Manager to execute appropriate Health Benefit Plan documents to allow the City to amend its benefit plan to 1) allow for the voluntary participation of Council Members, and 2) change the "plan year" as it is defined for purposes of keeping the plan qualified for tax exempt status with the IRS.

Since 1983 when the City first began self-funding its benefit program various members of the City Council have asked about their own participation in the plan. Unfortunately, no Council to date ever reached consensus on whether or not to participate.

To avoid the problems inherent with some members wanting to participate, and others perhaps not wanting to participate the plan amendments as drafted will allow for individual members of the City Council now, and in the future to decide to participate, or not on an individual, and voluntary basis.

Also, due to a change in the stop-loss renewal contract date it is necessary to redefine the "plan year" so that the IRS can accurately track the tax exempt contributions of employees to the health plan, and qualified reimbursement accounts.

This action requires no new outlay of funds.

Staff recommends adoption of the resolution authorizing the City Manager to execute plan documents to allow the City to amend its benefit plan to 1) allow for the voluntary participation of Council Members, and 2) change the "plan year" as it is defined for purposes of keeping the plan qualified for tax exempt status with the IRS.

RESOLUTION BOOK NO. 24 - PAGE 355

C. RESOLUTION NO. 98-27 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE THE EXCHANGE OF PROPERTY BETWEEN THE CITY OF ASHEVILLE AND THE OPPORTUNITY CORPORATION OF MADISON-BUNCOMBE COUNTIES

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Summary: The consideration of a resolution directing the City Clerk to advertise the exchange of property located behind the W.C. Reid Community Center Annex Building with the Opportunity Corporation of Buncombe-Madison County.

The Parks and Recreation Department and the Advisory Board have worked with the Opportunity Corporation of Buncombe and Madison County concerning a piece of property located behind Reid Center which would serve as administrative offices for their operations. The approximate size of this purchase would be approximately 1.3 acres. The survey shows the exact location for this purchase. The Opportunity Corporation of Buncombe and Madison County would be making a financial contribution of $20,000 to the Parks and Recreation Department to fund a mini park in the West End section of Asheville. In addition, the Opportunity Corporation would be donating materials and administrative costs up to $16,000 to construct a bridge across the creek at the base of the property as well as providing an easement across their property for greenway development.

The Parks and Recreation Department recommends adoption of the resolution directing the City Clerk to advertise the exchange of property located behind the W.C. Reid Community Center Annex Building with the Opportunity Corporation of Buncombe-Madison County.

RESOLUTION BOOK NO. 24 - PAGE 356

D. RESOLUTION NO. 98-28 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT FUNDING FROM THE GOVERNOR'S HIGHWAY SAFETY PROGRAM TO FUND DRIVER'S SAFETY PROJECTS

Summary: The consideration of a budget amendment, in the amount of $14,250, to fund a Police Impaired Driving Enforcement and Training Project and a resolution authorizing the City Manager to accept funding from the Governor's Highway Safety Program relative to this project.

The Governor's Highway Safety Program (GHSP) has made $14,250 available to reimburse the police department for costs associated with Impaired Driving Enforcement and Training. Specifically the funds are for the purchase of five (5) in-car video cameras, miscellaneous supplies, and public information materials. The GHSP will fund $2,250 per video camera. The cameras cost approximately $4,800 each. The City will therefore have to provide the balance of the cost of the five video cameras in the amount of $12,750. No other local funds are required for the project. The police department has sufficient funds available to commit $12,750 from its operating budget. Total project cost is estimated at $27,000.

City staff recommends adoption of a resolution authorizing the Police Department to accept the reimbursement of funds from the GHSP and adoption of a budget ordinance amendment to appropriate the revenue and expenditures.

RESOLUTION BOOK NO. 24 - PAGE 358

E. ORDINANCE NO. 2456 - BUDGET AMENDMENT TO FUND A POLICE IMPAIRED DRIVING ENFORCEMENT TRAINING PROJECT

Summary: See Item "D" above.

ORDINANCE BOOK NO. 16 - PAGE 421

F. MOTION SETTING A PUBLIC HEARING FOR MARCH 24, 1998, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE AS IT RELATES TO THE DEFINITION OF ANTENNAS AND TELECOMMUNICATION TOWERS

G. MOTION SETTING A PUBLIC HEARING FOR MARCH 24, 1998, TO REZONE A PORTION OF A LOT LOCATED ON 488 HENDERSONVILLE ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY TO HB HIGHWAY BUSINESS

I. MOTION SETTING A PUBLIC HEARING FOR APRIL 14, 1998, RELATIVE TO PROHIBITING DOGS IN RIVERSIDE CEMETERY

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and ordinances on the Consent Agenda and they will not be read.

Councilman Sellers moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Cobb and carried unanimously.

III. UNFINISHED BUSINESS:

A. RESOLUTION NO. 98-29 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MASTER MUNICIPAL RENTAL AGREEMENT WITH NEC AMERICA INC. FOR LEASING A TELEPHONE SYSTEM

Finance Director Bill Schaefer briefed City Council on the information he presented at their meeting on February 24, 1998, which was that the City government's present telephone system is made up of several small switches which have limited capabilities and do not provide the functionality and growth capabilities the City needs to handle essential communications requirements. Additionally, the mix of old and newer technologies has caused considerable interoperability problems in attempting to get the various segments of the current system to function together and many components are nearing the end of their service life expectancy. As a result, in June of this year, the City initiated a Request for Proposal process to select a provider of a single, fully-integrated telephone system for the City government which has the functionality and anticipated expansion capabilities the City requires. Newspaper ads announcing the solicitation resulted in six companies responding that they would like to participate. Of those, four actually submitted proposals. A team made up of representatives from several departments evaluated the responses and selected the Southeastern Telecom proposal as offering the best solution to the City's telephone requirements.

The Southeastern Telecom proposal incorporates state-of-the-art functionality, fully-integrated compatibility throughout the City (including such locations as City Development, the new Mills River Water Plant, and with the addition of a supporting T-1 line in next year's budget for the North Fork Water Plant), expansion capability to accommodate both anticipated growth in communications needs and the addition of future functionality developments. For example, if needed, the system will be able to handle the increased communications requirements of the Civic Center future transition to a convention center/hotel complex with little or no modification of the telephone system.

Under their proposal, Southeastern Telecom will be the local provider of equipment, installation and maintenance of the system. However, as has been the City's policy with other areas in which technology is changing rapidly, such as computer hardware and software, the system will be leased rather than purchased outright. The Master Municipal Rental Agreement, between the City and NEC, requires monthly payments of $6,457.50 for a term of seven years .

Funds for this lease are provided in the Fiscal Year 97-98 budget.

On February 24, 1998, City Council directed staff meet with personnel from Telephone Systems of Asheville (TSA) to discuss their proposal to provide a leased telephone system to the City of Asheville and, in light of any additional information provided during those meetings, that staff reconsider its recommendation that City Council adopt a resolution authorizing execution of a lease of the system proposed by Southeastern Telecom.

On March 3, a team of staff members consisting of representatives from Fire, Police, Water Resources, Building Safety, Civic Center, Planning, Finance, Parks and Recreation, Risk Management, Information Services, and Administration met with representatives of TSA. The TSA representatives outlined their proposed system, explained its current and future capabilities, demonstrated some of the equipment they have proposed and answered questions from staff.

On March 4 staff representatives met with representatives from Southeastern Telecom for a similar presentation.

Following those face-to-face meetings and a re-review of portions of the proposals submitted by TSA and Southeastern Telecom, staff members were unanimous in their belief that the Southeastern Telecom proposal represents the best solution to the City's telephone system needs and was unanimous in their recommendation that Council approve the proposed resolution authorizing the lease of the system proposed by Southeastern Telecom.

At the request of Councilman Cloninger, Mr. Schaefer went through TSA's deficiencies in the Request for Proposals as follows: (1) requested features - no response 33 of 389; (2) ACD requested applications software features -- no response 25 of 52 and -- no multiple-split capability (available release 29); (3) no itemized pricing list (provided 12/27/97); (4) no enhanced 911 (provided information on 11/5/97 at added cost); (5) no centralized billing; (6) emergency response -- lost 50% of stations or lines or no station-to-station; (7) system size - need immediate expansion (60 vs. 80 trunks); (8) year 2000 certification (verbal but not written); and (9) no integrated call processing platform - (ACD, IVR, etc.).

Councilman Sellers said that Mr. Kennedy, owner of M.B. Haynes, informed him and Vice-Mayor Hay that they would withdraw from the proposal process.

At 5:40 p.m., Councilwoman Field arrived at the meeting from the Congressional Cities Conference in Washington, D.C.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 98-29. This motion was seconded by Vice-Mayor Hay, in light of TSA withdrawing their proposal.

Mr. John Pierce, Chief Financial Officer of M.B. Haynes, said that they are withdrawing their proposal. He said that as community members and in the future, they would like, as a vendor, to have the City come back to them earlier in the process so they wouldn't feel compelled to come to City Council and discuss these normal matters in a public forum.

The motion made by Councilman Cloninger and seconded by Vice-Mayor Hay carried unanimously.

RESOLUTION BOOK NO. 23 - PAGE 359

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO CONSIDERING THE REZONING OF PROPERTY ON OLD HAYWOOD ROAD FROM RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY

Mayor Sitnick said that on March 6, 1998, Mr. Charles Worley, attorney for the petitioners, requested this public hearing be continued until March 24, 1998. His letter read in part: "A protest petition has been filed with respect to this appeal thereby requiring the affirmative vote of at least six members of City Council in order to be successful in the appeal. I understand that two members of City Council will be attending the Congressional Cities Conference in Washington, D.C., and will not be returning until Tuesday evening. This obviously creates a substantial risk that only five members of Council will be present for the hearing."

City Attorney Oast said that there appears to be a valid protest petition, so when this matter is voted on, it will require six affirmative votes from Council.

Councilman Sellers moved to continue this public hearing until March 24, 1998, without further advertisement. This motion was seconded by Councilman Cobb and carried unanimously.

B. PUBLIC HEARING RELATIVE TO THE SALE OF PROPERTY OWNED BY THE CITY OF ASHEVILLE KNOWN AS MEMORIAL STADIUM AND ASSOCIATED PROPERTY TO ROBERT CAMILLE JR. IN THE AMOUNT OF $1,400,000

The original public hearing was set for January 27, 1998, however, that meeting was cancelled due to adverse weather conditions. On February 3, 1998, City Council moved to set a worksession on this matter on February 17, 1998, and then continue the public hearing until this date.

Mayor Sitnick said that Councilman O.T. Tomes has not yet arrived from the Congressional Cities Conference in Washington, D.C. His plane will not arrive under 5:45 p.m., which means that he would not get to this hearing until at least 6:15 p.m. She said that if Council doesn't vote tonight on this issue that a tape of the proceedings be made available to Councilman Tomes so that he can listen to whatever comments are made prior to his arrival, otherwise, it would mean holding everyone up for another half an hour. She said that unless she receives a 100% affirmation by the entire audience, she would proceed with the hearing.

Councilman Cloninger asked if by opening the hearing without Councilman Tomes being present, would that prevent him from voting if he were to come in during the course of the hearing? City Attorney Oast replied that it would not prevent Councilman Tomes from voting.

Councilwoman Field suggested that City Council not vote tonight so that Councilman Tomes has an opportunity to hear the whole tape of the hearing.

Mr. Irby Brinson, Director of Parks & Recreation, said that recognizing that approximately $30 million is necessary over the next 15 years in order to enhance recreation facilities in the community, the Parks and Recreation Department has been exploring alternative financing to meet these needs without a tax increase. Their current Capital Improvement Plan is over $5 million and generally his department receives about $500,000 per year and the majority of that going to maintaining the existing facilities we currently have. The revenue received is not meeting the demand for services. Based upon City Council's Strategic Plan in Fiscal Year 1997-

98, direction was given to his department to look for alternative ways to finance their needs. There has been a concerted effort by his department through grants, sponsorships and other means to reach that particular goal. For example, the Parks and Recreation Trust Fund grant in the amount of $250,000 which they received for the renovation of Stephens-Lee Recreation Center. Their sponsorship for other activities such as First Night and Bele Chere have exceeded almost a 400% increase. They have applied to FEMA for a mitigation grant of $1.2 million. The sale of Memorial Stadium represents one alternative. If he had the money, he would not be talking about this issue. In February of 1997 he was approached about the sale of Memorial Stadium and immediately approached City Council with this item. The Parks & Recreation Advisory Board was given authority to proceed with the proposal. The Advisory Board reaffirmed their position at the February 1998 meeting. They prioritized their needs over the past several years and Stephens-Lee renovation was the number one concern which is now under renovation. The second prioritized need was ballfields in North Asheville. Researching back through the Advisory Board minutes, in 1967 this issue was first discussed. Currently the little league program for North Asheville has grown to almost 300 children. This issue is not just about the 300 children in the North Asheville Little League, it is also about an area of the City that has no recreation facilities and serves a large number of the tax payers of the City as well - Richmond Hill. Memorial Stadium currently is a 21 acre tract zoned institutional with only about seven acres that are relatively flat. The rest of the property slopes between 10-35%. It is currently used by the West Asheville Sports Program for football, Asheville Volleyball Club, the Asheville Ultimate Frisbee, Asheville Rugby Club, Youth Flag Football, the North Asheville Little League and the Martin Luther King Youth League. If the stadium is sold, all of these groups will be accommodated. The sale of the stadium will take a seven acre tract and develop a 20 acre site which will serve the needs of the previous users as well as provide needed recreation for the residents of the northwest area. The sale price includes $1.4 million and also an additional $75,000 to purchase the access across the right-of-way into the Richmond Hill property off of Richmond Hill Drive. The funds will be used to develop the ballfields at Richmond Hill and also renovate the playground and park at Mountainside Park. We have two cost estimates of the ballfields at Richmond Hill which have come in under this amount however he cannot state that the figure will be the total amount because a lot depends on the final outcome of what we want to put in the park and when they actually start construction. An appraisal in the amount of $1,161,000 was done. This has been a very difficult decision both personally and professionally for him because it is totally against what he believes. He pledged to continue to work towards the expansion and enhancement of recreation services to the citizens and visitors. They are facing an even greater problem and that is the lack of money to meet these needs. Therefore, the Parks and Recreation Department and the Parks and Recreation Advisory Board recommend proceeding with the sale of Memorial Stadium to Robert Camille.

Upon inquiry of Councilman Cloninger, Mr. Brinson said that the three acre Mountainside Park will remain with improvements of new playground accessible equipment, access parking for the disabled, walking trail around the park, a green area kept and maintained, and also a picnic shelter with other facilities.

Upon inquiry of Councilman Cloninger, Mr. Brinson explained that the North Asheville Little League's jurisdiction comes into the central area so those children would be served in the North Asheville Program. There is another program that was started by the Martin Luther King Youth Committee that has participation at Martin Luther King Park. There is sometime conflicts with those groups and with the ballfields in Richmond Hill, that would allow for more use of Martin Luther King Park by the Martin Luther King League.

When Councilman Sellers asked if Mountainside Park would be renovated if the sale of Memorial Stadium doesn't go through, Mr. Brinson said that eventually it would be renovated.

However, they have 26 playgrounds they are trying to renovate and they have only renovated four. They do two a year and they are planning to do one in Shiloh and one in Kenilworth this year.

Councilman Cobb stated that he was not anti-recreation but was reluctant to sell any property. He stressed the need to find other ways to fund recreation.

Vice-Mayor Hay stated that regardless of what action Council takes on this issue, he commended Mr. Brinson for trying to find new and creative ways to meet the needs of this community.

Mr. Brinson responded to various questions from Council regarding how the price of $1.4 million was arrived at, if staff reviewed the options that were available in selling off portions of Memorial Stadium and associated properties, how the money will be committed to the Richmond Hill ballfields and renovation of Mountainside Park, and when would the completion of the Richmond Hill ballfields take place.

Mayor Sitnick said that City Council has received multiple letters, phone calls, postcards, personal visits from members of the public regarding this issue and they are grateful for that. She believed that everyone involved in this, including City Council, believe in investing in our children, believe in recreation and believe in the fact that we need the proper and appropriate resources to provide that investment in our children in this community. It would be her hope that those of us who chose to sell Memorial Stadium are not seen as anti-parks and those of us who chose not to sell Memorial Stadium are not seen as being anti-kids.

The following persons spoke in support of selling Memorial Stadium and associated property. Some reasons being, but are not limited to: North Asheville is the most recreationally-deprived area of the City; this proposal is a great opportunity to develop ballfields at Richmond Hill; intentions are to redraw some of the little league lines to take into account children playing closer to home; there are two unused pieces of property because there is not any recreation going on them; City has owned Richmond Hill property for 60 years with the purpose of developing it into a recreational site but that has never been done; Asheville needs recreational facilities for our children; Asheville does not need any intercity greenways or suburban greenways because we have a million acres of federal greenway surrounding the City; Memorial Stadium is a largely-abandoned used and unwanted recreational facility; the price offered by Robert Camille is more than what it's worth; seems like alternatives only come up when North Asheville is being told no for recreational facilities; those groups that use Memorial Stadium have supported this proposal to sell; this is no expenditure from the public purse; this will in not affect the neighborhood; the arch will remain so we will not forget the veterans; Mountainside Park will be improved; children's needs are immediate and this is the only plan to bring about the needs now; unable to have girls softball due to lack of fields; North Asheville Little League has transported kids to other facilities; and the recreational facility is not only for North Asheville Little League.

Mr. Tom Asick, President of the North Asheville Little League
Mr. Jim Drummond, Asheville resident, member of the West Asheville Sports Program for football and cheerleading, member of the Asheville-Buncombe Fair Housing Commission
Mr. Samuel Camp, member of the Parks & Recreation Advisory Board
Mr. Ed Backe, former PTO President of Claxton Elementary School and former Little League Basement Coach
Mr. Bill Estes, Chairman of the Parks & Recreation Advisory Board
Ms. Mary Kathryn Asick

Mr. David Parker, Vice-President of the North Asheville Little League
Ms. Barbara Weinkle

Mayor Sitnick asked if the North Asheville Little League has ever approached the County, since City residents are also County residents, and asked for their help in coming up with some funding for this need. Mr. Asick said that he has not approached the County because North Asheville is entirely in the City of Asheville's jurisdiction and the County has it's own leagues.

The following persons were not opposed to the development of ballfields in North Asheville, but with the selling of Memorial Stadium and associated property to build those ballfields. Some comments and questions were, but are not limited to: goals should be to find equitable solutions to our parks and recreation needs - not taking from one part of the community and putting it in another part of the community; Parks and Recreation Department has been traditionally under-funded and the community needs to come up with methods for a sustainable funding source; it goes against any fundamental planning principle to go about funding parks and recreation development this way; the selling of Memorial Stadium will not meet the $30 million need to enhance our recreation facilities; the City needs the Parks and Recreation Master Plan and the Greenway Plan prior to making any decisions; Asheville is in desperate need for good quality open space in the City; there are a lot of other real recreation demands in Asheville beyond a baseball facility, like the needs of the soccer community and other youth and adult sports groups; Asheville needs to look beyond this one single opportunity because all of our facilities are aging, and need maintenance; the City needs to look at the potential of Memorial Stadium as a recreational space; don't give up the quality of open space in downtown because it's very important to protect the space we have; if we sell Memorial Stadium we give up a tremendous opportunity to bring different social classes from coming together; Asheville needs to develop civic leadership, the leadership of City government, the leadership of community organizations and corporate sponsorships to make parks happen; do not put the burden of funding a park in North Asheville on the backs of people in Central Asheville; over 495 children live in public housing within walking distance of Memorial Stadium; don't think of this one singular issue but of long range funding sources like a parks and recreation bond referendum; Memorial Stadium is being used by the neighborhood; Memorial Stadium is used by the elderly as a safe, secure place to walk and exercise; parents allow their children to play at Memorial Stadium because it is a safe structure; not all kids belong to an organized little league and they need a safe, structured place to play; the neighborhood will change; this could be a link to a walkable community; Memorial Stadium should remain for the historic value; difficulty to transport kids out of their neighborhoods; don't put a price on a veteran's memorial park; this is an excellent site for the community to hold large, controversial meetings; need to save the land not only for ourselves, but for future generations; find other ways to meet recreation needs other than selling parks; do not sell Memorials; if Memorial Stadium is sold, the Land-of-Sky Veterans Memorial proposes that the alternative site for a veterans memorial be in Pritchard Park, that some of the funds from the sale of that land be devoted to a veterans memorial, (currently propose a statute of a Minute Man surrounding by 3,000 bricks that would be sold to raise $150,000), and that City Council change the name of Pritchard Park to Veterans Memorial Park; Memorial Stadium may be worth more than $2 million; instruct Parks & Recreation staff to find ways to develop both properties; a bond referendum may be the only solution; ideal time to work cooperatively with Buncombe County; the community is being left out; if Memorial Stadium is upgraded, programs will use it; maybe someone in North Asheville can donate land for a field; a large number of acres so close to downtown should be worth more than $1.4 million; wrong to take a park from the poor and build a replacement that most of them can no longer access; do not sell the Memorial Stadium but work to rehabilitate the facility and increase its availability to all; we should promote a Parks Bond; Memorial Stadium is being used; much of the land in the predominantly African American communities have been sacrificed for development over the years by urban renewal; we need to protect the downtown central open public space that we have rather than to give it up to private development; the community will be damaged when offices come into the area; this proposal is divisive and short-sighted; parents of children on ballteams should help make ballfields better and not rely on the City; veterans didn't decide that America was something they could trade in because it was a profit; it is a long way for the kids to walk to Martin Luther King Jr. Park; the area will continue to be developed and take the neighborhood homes; stop redeveloping in that area; concern about potential loss of neighborhoods; development will displace several multi-generation families; work with The Trust for Public Land on building trails on this property; what is the cost to the City to provide for the contingencies in the contract and would the money come out of the contract proceeds; proposal is short-sited, based on poor planning principles, is exclusionary and not consistent with current community-wide planning efforts; the sale is counter to sustainable viability of downtown neighborhoods; the sale will drastically change the make-up of the neighborhood by increasing the amount of non-permeable asphalt and office building; the sale will drive up rents and make some residents of the community look for alternative housing; the youth that will be losing a park are predominantly minority and low income; an issue this divisive can't be the right thing to do; there are racial and class bias undertones that should be taken into account; Memorial Park is near the bus lines and the land on Richmond Hill is far away from public transportation, making it less appealing to the children and youth without transportation; Memorial Park is graded for sports activities and Richmond Hill is woody and hilly meaning costs of grading must be considered; why not get estimates on the costs of bringing Memorial Stadium into line for a recreational facility; consider selling the Richmond Hill property; an easement would have to be granted by someone owning nearby land and easements can cause trouble; adjoining residential owners have given no public discord on being near Memorial Stadium if it remains a recreational facility; restore old landmarks; Memorial Stadium is beneficial to low income people; area residents don't want their neighborhood disrupted; and commercial business will start to intrude into the neighborhoods.

Mr. Tom House, representative of Memorial Stadium Coalition (Presented Council with a packet of information from the Master Plan document along with 1990 census data information for the central and north areas)l

Ms. Willie Mae Brown, resident of the White Fawn/Buchanan community

Mr. Briggs Sherwood, Director of Development for the Asheville-Buncombe Youth Soccer Association (Presented petition from Board opposed to sale and to master planning for parks that does not include accessible public field spaces for youth soccer in all of our neighborhoods. Also presented 17 form letters which note the opposition of selling Memorial Stadium)

Mr. Bill Cravener, representative of the Buncombe County Veterans Council

Mr. Steve Rasmussen, High Priest of Coven Oldenwilde

Ms. Erin McLoughlin, Asheville resident

Ms. Susan Andrew, President of the Kenilworth Residents Association

Mr. Larry Owen, representative of the Veterans of Foreign Wars, member of Disabled Veterans of America, AMVET 333, American Legion

Mr. Richard Griffin (presented drawings of proposed veterans memorial statute)

Ms. Eleanor Earle, Director of a Housing Authority Program

Ms. Elizabeth Brank, 952 West Chapel

Mr. Bob Smith, Asheville-Buncombe Community Relations Council

Mr. Michael Fan

Mr. Rusty Sivils (presented newspaper articles dating back to 1949 regarding Memorial Stadium)

Ms. June Lamb

Ms. Laura Whitley

Mr. Charles McClary Small, Mental Health Tech with the Cooperative Learning Center in Enka-Candler and basketball official

Ms. Janet Hart, resident on Baird Street
Rev. John Grant, Pastor of Mt. Zion Missionary Baptist Church
Mr. John Dean
Mr. Hugh Kelley
Ms. Jan Howard
Mr. Tom Rogers
Ms. Nicki Thurston, veteran
Mr. Benny Lake, Asheville resident and property area in area
Mr. James Geter, President and Chairman of the Eagle/Market Street Redevelopment Corporation
Ms. Jane Mathews
Asheville citizens and former resident of the White Fawn neighborhood
Mr. Ken Fulford, North Asheville resident
Ms. Caroline Tingle, former employee of the County Commissioners Office and former Chairman of the Parks and Recreation Advisory Board
Mr. Tom Wilson, North Asheville resident and served on the North Asheville Little League Board for two years previous to now
Mr. George McConnell, Asheville resident
Mr. Alan Kirkpatrick, representative of the Asheville Ultimate Frisbee Club (Presented Council with a petition containing 502 signatures encouraging City Council to consider other funding options for new recreational resources for the community and not sell Memorial Stadium. Also presented 137 form letters which note the opposition of selling Memorial Stadium)
Mr. Brian Peterson, President of the Coalition of Asheville Neighborhoods
Ms. Marilyn Muccio
Ms. Minnie Jones
Ms. Hazel Fobes (Mayor Sitnick read her letter dated March 10, 1998, into the record)
Mr. John Legerton (Councilman O.T. Tomes was requested to voice opposition)

At 6:57 p.m., Councilman Tomes arrived at the meeting from the Congressional Cities Conference in Washington, D.C.

Upon inquiry of Councilwoman Field, Mr. Brinson said that there is a person in Parks and Recreation who is dedicated to writing grants and who has a 75% success rate on obtaining those grants. He stressed that they are very active in applying for grant money.

Councilwoman Field spoke recently with County Commissioner Chairman Tom Sobol who told her that there was kind of an agreement that the County would deal with soccer facilities and the City would deal with the Little League facilities. She suggested that persons who comment on the need for soccer facilities take their comments to the County Commissioners as well. Mr. Brinson said that the soccer program is actually run by the County Parks & Recreation Services. The City of Asheville has been a player for some time in providing facilities even though on a limited basis. Our competition comes from the programs that we sponsor which happens to be five or six little league organizations and the over 150 adult softball teams that we have that are competing with the same fields. There has been a concentrated effort to try to address the particular needs of all, and the comprehensive Master Plan will do some of that, but as far as the soccer facilities themselves, it has been the direction of the County to address those on a neighborhood level.

Mayor Sitnick noted that the City resident pays 3 and 1/2 times as much for recreation as does the resident outside the City even though the parks are available to everyone equally.

City Manager Westbrook pointed out that it was reported in the newspaper that the City had asked the County to cooperate on a soccer area in the purchase of the property to do that and the County declined to do so. So, the City staff is at this point unilaterally moving forward to try to acquire some property for soccer. That has not come back to City Council for any decision because we haven't come up with a solution yet but we are moving forward on that.

Mr. Robert Camille said that when this issue was first being talked about, it was never intended to do anything negative to anyone. They saw this viable field but our need was greater than a single field - we needed a lot of fields. He originally approached the City first about an easement to the adjoining 29 acres and after talking with Mr. Brinson they saw it as a win-win proposition for everyone. Since this particular field is within the North Asheville District that we would not be taking away from those children but rather giving them more than what they currently have. To expand that facility would require significant grading and taking away the trees - things that people want to save. Only one person has called to ask him to ask about what his plans were for the property. The way he sees it, they were going to add a substantial amount of money to the tax base which would benefit all residents. They were going to provide four baseball fields and two football/soccer fields in place of one. There really is no comparison in terms of usage. The people in Richmond Hill area have nowhere to play and there are some in downtown. Some people talked negatively about redevelopment, but Martin Luther King Park was a product of a redevelopment effort. He thought what they were doing was a good thing for everyone in the City of Asheville by providing privately funded fields. He has no interest in a bond referendum but he would support one for the right purpose. They specifically made this contract requirement to build a new park in exchange for this park - it was not just a matter of giving money to the City.

Upon inquiry of Mayor Sitnick, Mr. Camille said that he is no longer working with the original group of doctors regarding this purchase - he is working alone. He said at this point he has no concrete plans but he does have somewhat of a vision for the area - and he does not see it as something like the Asheville Mall. It is really set up to be developed in smaller parcels. He sees a much greater area to walk. Right now a lot of that property is inaccessible - it's too steep and couldn't be developed for any use. The 29 acres that he's looking at buying is primarily a buffer. What would probably happen is to be split up into five residential lots and sell them off as that with deed restrictions that would require them not to be subdivided and restrict them to single-family.

Mayor Sitnick noted that Mr. Beasley, who performed the appraisal, called the City's 21 acres as prime downtown land and said that if it was divided up it would bring in a lot more money. Mr. Camille responded that it would be worth more, but you would have to pay to bring in the infrastructure, the roads, etc. at a substantial cost.

Mayor Sitnick closed the public hearing at 9:29 p.m. and called for a short recess.

Councilman Tomes stated that he was very comfortable in making a decision regarding this issue at this time as a result of the mail, phone calls and comments made at this hearing.

City Attorney Oast advised City Council the motions available. City Attorney advised them that they can accept Mr. Camille's bid as it is offered, or you can reject Mr. Camille's bid. If what Council wants to do is keep Mr. Camille's bid out there, they can establish another ten day period for making upset bids and that way they wouldn't be forced to reject his offer. However, if Council wants to re-open the process and consider selling part of the property or somehow deed restrict it, he suggested that Council take some action on Mr. Camille's bid.

Vice-Mayor Hay felt that we should start with the basic premise of if Council wants to sell under any circumstances. If the answer is no, then we can just stop and reject the bid. If the answer is yes, then we can decide under what circumstances and under what term.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast said that it would be appropriate for Council to consider a motion to direct staff to discontinue efforts to sell Memorial Stadium at this time.

Councilman Tomes thanked all of citizens for their comments on this issue. He said that he has struggled with this issue from its very inception. He has come to a clear resolve in his own mind that he cannot support the sale of Memorial Stadium. He believed that if we had the Comprehensive Master Plan of parks and recreation needs of this City along with cost estimates, it would help me have some thorough feeling and perception as to what the needs are. He felt that the sale of Memorial Stadium is just a fraction of the finance that's needed for the recreational needs of this City. He didn't think Council would be good stewards to piece-meal the process that needs to be thought through thoroughly and needs to have some vision and depth to it. He could not support the sale of Memorial Stadium because he didn't have the whole picture.

Mayor Sitnick also felt that we should wait for the Master Plan. She was concerned about a lot of the issues brought up, i.e., the impact on the neighborhood, not knowing exactly what the development would be, and certainly the argument posed to Council by the veterans. She was concerned about setting a precedent. She felt that everyone agree with the fact that we need ballfields in North Asheville. She believed that this Council is committed to achieving that, at least with great diligence during their term. She has been on the phone for the last two weeks with people in Raleigh, with local corporations and developers, and with some people who provide foundation grants, looking for that money. She noted that she has a couple of potential things happening. She agreed that we need to look at the bigger picture of parks and recreation needs. If we don't begin to invest in our children at the front end, then the cost down the line will be much greater than the parks and recreation needs. And, according to Mr. Brinson, $30 million is the least amount needed and that figure could exceed $50 million to provide adequate soccer fields, little league fields, skateboard parks, passive parks, etc. that this community needs and deserves. She didn't know whether a bond is the way to proceed but certainly she would support a referendum to let the people decided on whether a bond was the way to proceed. But, for now, the thought of selling Memorial Stadium for all of the reasons that have been stated is not something that she is comfortable with.

Councilman Cobb felt that after City Council reviews the Master Plan, then Council can decide if they want to proceed.

Councilman Cloninger said that Mr. Brinson has already told Council that although the Master Plan has not been released yet that the sale of this property and using the money to build the fields at Richmond Hill is consistent with what the Master Plan would say, in that we currently have more playing fields and recreational opportunities in the center of the City than we do in other areas, including North Asheville. He has always been a part of organized sports and he felt it is one of the most important things we can do for our youth. Some concerns he had have been satisfied like the effect it would have on the people in the area of Memorial Stadium. He noted we will continue to have a three acre park and it will be greatly improved and give people a place to go. In addition, there are ways we can reconfigure the boundaries of the different little league areas so that the kids in the center city will not have to travel out to these other places and they'll have more playing time available on these fields because the North Asheville group won't require as much use of those fields. He has heard a lot of examples of where parents have gotten together to carpool and transport kids to playing fields and he was confident that the little league groups would help along those lines as well. The concern he has about accepting Mr. Camille's proposal is that he doesn't think we have done a good enough job of finding out if that is the top dollar that we can get for the property or whether we can perhaps sell a smaller portion of that property rather than all of it. Also, as the proposal stands now, there are not adequate protections as to limitations on what the steep slope could be back behind the flat area where

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Memorial Stadium is. At the worksession he believed Council reached generally a consensus that if we decide to sell, we would want to have some kind of restrictions so that would be protected. Also, Council wanted right-of-way easements for greenways and that sort of thing. He felt that when the City received the offer from Mr. Camille there was only a ten day upset bid period. Frankly he didn't feel that was enough time for the other real estate agents and developers to try to perhaps put together a package to offer more than what Mr. Camille had offered. Therefore, he would like to see the City come up with a way to put the property back on the market, noting that Council can always not accept the offer. But, at least we can explore what the value of it is. He suggested that we do it in a way that doesn't involve simply putting it out for another 10 day bid period. He also suggested Council should decide whether to list it with a Realtor or market it ourselves through advertising. In any event, if the City is going to sell it, they need to be assured that they are getting the most money they can. He supported putting every penny of it back into parks and recreation - not only Richmond Hill but other areas where it may be used as well.

Councilwoman Field said that the possibility of a parks and recreation bond comes slimmer and slimmer when you look at the responsibility that the City will have for stormwater. Asheville will be mandated to meet the requirements of Phase II of the Clean Water Act, which means that we are going to have to treat stormwater. That means we are going to have to capture stormwater and that means a $40 million investment. We cannot do that without some kind of bond funding. Also, there is a bill that has passed the House and is going into the Senate (the InterNet Sales Tax Bill) which is going to prevent the charging of sales taxes on the InterNet for items that are sold in our communities. What that means is local retail merchants will have to compete with the InterNet for selling of items. The InterNet is currently doubling the volume of business that it does every four weeks. What that does is put tremendous competition to local small businesses and it also puts us globally in the position of if we charge sales taxes at all, we are not in the global market. The N.C. League of Municipalities sees that sales tax will cease to be a viable tax in any community is this country. Sales taxes usually amount to between 30-50% of a city's revenues. The point is we will see our revenues going down, we will see our businesses getting smaller - at least for the short term. All those businesses that take advantage of the InterNet will also get larger. She understood that the President, the Vice-President, the Senate and the House all are in support of this bill. Therefore, we will be looking at less resources rather than more resources coming into our City and she really didn't see that we are going to be able to go forward with a $30 million parks and recreation bond, once all of these things start coming forward. She didn't think Council should make their decisions based on the fact that there will be a parks and recreation bond.

Councilman Tomes added a footnote to Councilwoman Field's comments in that after Councilwoman Field left Washington, Senator Lauch Faircloth was in a meeting and he made it clear to them that he would not support the bill before the Senate. Senator Faircloth asked that the local business people send their comments because they have not heard from anyone in the local communities.

Councilman Cobb moved to reject Mr. Camille's bid. This motion was seconded by Councilman Tomes.

Vice-Mayor Hay said that he was committed in finding the money for North Asheville parks. However, he felt the present proposal was a mistake for us. He would like for Council to take a step back. He shared Councilman Cloninger's concern that we are not getting top dollar for it. He is particularly taken with the arguments in favor of keeping greenspace, the acreage behind the stadium itself, the connection to the top of the mountain, and the greenways. The appraiser told us that the portion of the sales price, which is attributable to that acreage, is relatively small. He wanted to preserve the part that is wooded behind which goes up the mountain and not putt that up for sale at all. He also felt we could take advantage of the portion from the gate over, towards Mountainside Park, by retaining it and developing it into a very functional neighborhood park so that the people who live in the neighborhood will have expanded opportunities for parks. He wanted Council to take a step back and suggested staff see what we can do about selling just that portion of the gated Memorial Stadium property. That is the part where the offices are proposed to be built, that is least used by the public, and that is the part that we can easiest replace with facilities at Richmond Hill. He would vote in favor of the motion, but would follow it with his proposal.

Mayor Sitnick noted that the gated portion of Memorial Stadium that Vice-Mayor Hay was talking about is zoned Institutional, which allows many uses in that district.

The motion made by Councilman Cobb to reject Mr. Camille's bid and seconded by Councilman Tomes carried unanimously.

Vice-Mayor Hay moved that we direct staff to report back to Council on the feasibility of selling the gated portion (approximately 7 acres) of Memorial Stadium property. This motion was seconded by Councilwoman Field.

Mayor Sitnick said that she had a problem with selling a memorial anything. Given the institutional zoning for that portion of the property, the neighborhood will be impacted severely because there are extensive uses permitted in that district. She also felt that we are setting a precedent and in 20 years we would look back on the sale like we are looking back now on other things that the City has given away including our water and sewer systems - the only revenue sources any municipality really has. Even though she understands we would be looking at a smaller portion of Memorial Stadium, she has a problem with the fact that parks and recreation is not getting better funding and that we are not looking in every possible place for revenues. She applauded that there has been this effort to create new ways to create revenues and she hoped that continues. However, selling Memorial Stadium, or any portion of it, is not the way to do it.

Vice-Mayor Hay said that the City can put whatever restrictions on the property that want. Regarding the memorial issue, he would like to hear more from the veterans about the possibility of replacing that memorial piece with something that the veterans find every bit as acceptable.

Mayor Sitnick asked if there was a possibility for the Parks and Recreation Department to create two or three little league ballfields at Memorial Stadium.

Councilman Cobb was opposed to selling any of Memorial Stadium. After hearing comments and by the number of phone calls and letters he's received, in his mind, there is no question that the majority of the people in Asheville don't want it sold.

Councilman Tomes stressed from his point of view, the City needs to have the broad picture of the master plan before making any decisions.

The motion made by Vice-Mayor Hay and seconded by Councilwoman Field carried on a 4-3 vote, with Mayor Sitnick and Councilmen Cobb and Tomes voting "no".

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 24, 1998, AND THE WORKSESSION HELD ON MARCH 3, 1998

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on February 24, 1998, and the worksession held on March 3, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

B. REQUEST FOR FUNDING ECOTOURISM SUMMIT

Mr. Ian Booth, Project Manager for the Mountain Area Ecotourism Project, requested a one time commitment of $5,000 in support from the City of Asheville for the upcoming Ecotourism Summit for July 24 and 25, 1998. The County Commissioners have voted unanimously on February 17, 1998, to provide $5,000 support, contingent upon confirmation of the City's commitment to match.

After a brief discussion, it was the consensus of Council to have the Outside Agency Committee meet on Tuesday, March 17, 1998, at 2:30 p.m. in Room 209 of the City Hall Building to discuss the request and report back to Council at their worksession later that day.

C. CLAIMS

The following claims were received by the City of Asheville during the period of February 6-26, 1998: Scott G. Buchanan (Fire), Dr. Leo Potts (Sanitation), CP&L (Water), Monte Frank Roper (Sanitation), Amanda Vance (Streets), David Cornwell (Water), Michelle Evans (Water), Hank Miller (Water), Amy Vinca (Water), Janet Desloges (Water), Adam Boone (Water), Steven Brown (Water), James & Mary Seward (Water), Ray Denny (Inspections), Mindy Hughes (Water), Bill Mitchell (Sanitation), Randy Smith (Water) and Lenior Swicegood (Sanitation).

The following claims were received during the week of February 27 - March 3, 1988: Mike Byer (Fire), Sheryl Hill (Parks & Recreation), Lisa McFee (Water), Travis Owen (Parks & Recreation), Patty Lyda (Sanitation) and Dianna Gricus (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

D. LAWSUITS

The following complaint was served on February 25, 1998: Multimedia Publications of North Carolina, Inc., d/b/a Asheville Citizen-Times Publishing Company v. City of Asheville. The nature of the proceeding is release and disclosure of certain documents related to the payment of franchise fees by the cablevision company to the City of Asheville.

The following complaint was served on March 6, 1998: Richard A. Black, individually and in his capacity as Administrator of the Estate of Dorcas Faye Black, deceased, v. City of Asheville. The nature of the proceeding is wrongful death and personal injury.

These lawsuits will be handled by attorneys outside of the City Attorney's Office.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:40 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - March 17, 1998- 3:00 p.m.

Worksession

Present: Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Contract Award for Biltmore Village Street Lights & Fixtures

Summary: The consideration of entering into a contract with Haynes Electric Construction Company in the amount of $20,200 to install 42 decorative street light poles and fixtures in the Biltmore Village Historic District of Asheville.

Change Order for Additional Repairs to Civic Center Parking Deck

This item was pulled from the agenda.

Pilot Program relative to 70 Hanging Flower Baskets in Downtown

Summary: The Potpourri Garden Club desires to sponsor a pilot program to place 70 baskets containing flowers which will hang from street light poles in the Downtown District.

Mayor Sitnick hoped that whatever efforts are made in the downtown area, like mini-kiosks, that we apply some of those solutions to other areas in the City as well.

Summertime Kids Program Grant Application with WNC Community Foundation

Summary: The consideration of the City applying for a $2,000 grant through the Community Foundation of Western North Carolina for enrichment activities for the Summer Teen Program.

Approval of Regional Water Authority's recommendation to award construction contracts for Newfound Mountain Reservoir & Water System Improvements Project

Summary: The consideration of a resolution awarding construction contracts to Cooper Construction Company, General Contractor, in the amount of $825,831, and M.B. Haynes Electric Company, Electrical Contractor, in the amount of $$87,945, for the Newfound Mountain Reservoir and Water System Improvements project. The bid summary is as follows:

GENERAL CONTRACT
Engineer's Estimate: $ 1,190,000

COMPANY	BID
Cooper Construction Company, Hendersonville, N.C.	$ 825,831
Buckeye Construction Company, Canton, N.C.	$ 922,424
Steppe Construction Company, Mill Spring, N.C.	$ 984,985
Hobson Construction Company, Arden, N.C.	$ 1,009,675

ELECTRICAL CONTRACT
Engineer's Estimate: $ 80,000

M.B. Haynes Electric Company, Asheville, N.C.	$ 87,945
Hayes & Lunsford Electric Company, Asheville, N.C.	$ 98,200
Brevard Electric Company, Brevard, N.C.	$ 99,600

Approval of Regional Water Authority's recommendation to purchase approximately two acres on Candler Knob Road from Buncombe County for West Asheville Reservoir

Summary: Consideration of recommendation to purchase approximately two acres on Candler Knob Road from Buncombe County in the amount of $21,000 for the construction of a new 5 million gallon West Asheville Reservoir.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PRESENTATION BY GREENWAYS INC. REGARDING GREENWAY MASTER PLAN

Mr. Mike Matteson, Urban Planner, said that The Trust for Public Land is a private nonprofit organization that acquires land for the use and benefit of the public. They have an ongoing working relationship with the City of Asheville with respect to greenway planning.

Greenways, Inc. is one of the nation's foremost landscape architecture and greenway planning and design firms. The Trust for Public Land has subcontracted with Greenways, Inc. on the greenway master plan.

Mr. Matteson then introduced Mr. Will Abberger, representative from The Trust for Public Land, and Mr. Chuck Flink, representative from Greenways Inc., who briefed City Council about the greenway master planning process, the Broadway/Reed Creek Greenway and about the benefits of greenways in general.

Mr. Abberger and Mr. Flink responded to various questions from Council relative to greenways.

Upon inquiry of Councilman Cloninger, Mr. Flink said that the greenway master plan will be completed in June of 1998 and before City Council for approval shortly thereafter.

On behalf of City Council, Mayor Sitnick expressed Council's full support of the greening of Asheville.

1998 BELE CHERE BUDGET REQUEST

Mr. Irby Brinson, Director of Parks & Recreation, said that over the past several months, various committees of the Bele Chere Board and staff liaisons have been working to complete a balanced budget for the 1998 Bele Chere Festival. The budget ordinance, in the amount of $506,000, establishes this budget for anticipated expenditures and revenues for the upcoming festival. He noted that from an economic impact, Bele Chere generates $12 Million in three days.

Mr. Brinson responded to several questions from Council, some being, but are not limited to: how much overtime is spent in the Public Works, Police and Parks and Recreation Departments, and what items are associated with logistics.

Upon inquiry of Councilman Cobb, Mr. Brinson said that they strive to have 2/3 of the entertainment being from local entertainers in this region. The majority of the other dollars goes to headliners.

Mayor Sitnick suggested the Bele Chere Committee consider the idea of charging to participate in Bele Chere, possibly by selling buttons to show support. Those buttons could be sold at movie theaters, gas stations, check-out counters, etc., for maybe 50-cents to $1 with the proceeds going to the City to help with expenses. If this would prove to have a negative impact, then she felt the City should not proceed in that direction. However, she hoped that the Bele Chere Committee and the Parks and Recreation staff continue to look at creative, innovative way to bring in money for parks and recreation needs for this community. She also suggested that staff bring back a report to Council at some later appropriate time with some ideas in the direction of additional revenue sources that will help benefit Bele Chere.

Councilwoman Field was not comfortable in using Bele Chere as a money-making festival for the City. She suggested if Bele Chere makes money, the City should put it back into the Bele Chere Festival for better events and paying local performers a little more money because local acts can't afford to perform at Bele Chere.

Upon inquiry of Councilman Cloninger, Mr. Brinson said that staff will look at festivals that have been established for 10-15 years and then see how the reactions were when they started charging to attend the festivals.

It was the consensus of City Council to ask Mr. Brinson to review the information already accumulated relative to additional revenue at Bele Chere and look for other possibilities for revenue for the 1999 festival.

Mayor Sitnick asked that the record show that City Council has received this budget amendment information and instructs the City Manager to place this item on the next formal City Council agenda.

REPORTS FROM BOARDS & COMMITTEES

Outside Agency Review Committee

At the request of City Council on March 10, 1998, the City's Outside Agency Committee met with Mr. Ian Booth relative to the Mountain Area Ecotourism Project to consider his request for a one-time contribution of $5,000 to match the County's contribution of $5,000. As a result of that meeting, the Committee recommended an appropriation of $2,500 to come out of this fiscal year's budget.

It was the consensus of City Council to instruct the City Manager to place this item on the next formal City Council agenda.

Housing & Community Development Committee

Councilwoman Field reported that the Housing and Community Development Committee has met and reviewed applications totaling $3.75 million. Because the City has only $1.83 million to appropriate, tough decision will have to be made on which projects to fund at what amounts. She also commented on the HOME Consortium's application process as well.

Recreation Board

Councilman Cobb invited City Council to the Parks and Recreation Master Plan meeting on Wednesday, March 18, 1998, at 7:00 p.m. in the Civic Center Banquet Room.

OTHER BUSINESS

Hillcrest

Councilman Tomes asked for Council's support relative to the pedestrian bridge issue at Hillcrest along with some better access for the Hillcrest residents.

Discussion surrounded why the pedestrian bridge was closed, noting that the Housing Authority, at the request of the Hillcrest Residents Association, asked City Council to request the N.C. Dept. of Transportation ("NC DOT") to close the bridge. At the City's request, NC DOT did close the bridge with the community's interest at heart.

It was the consensus of City Council for staff to report back to City Council at their next worksession with a history of the pedestrian bridge issue, and then hold a community meeting at Hillcrest and invite a representative from NC DOT, the Hillcrest Residents Association, the Asheville Transit Authority, and members of the Housing Authority to the meeting.

Litter

Due to the inordinate amount of litter in and around Asheville, it was the consensus of City Council to hold the Mayor's first roundtable on litter to educate the citizens and tourists to not only clean up Asheville, but not to trash it. Staff was instructed to begin the process with an oral report at a worksession from the Public Works Director as to what they are already doing to help combat litter. Thereafter, a date will be set for the roundtable, along with a press release to be prepared inviting the public, along with Quality Forward, Adopt a Street Program, representatives from business organizations, representatives from schools, and Chamber of Commerce representatives.

Mayor Sitnick suggested an overall theme be developed with some sort of recognition of people going the extra mile in helping control litter.

City Manager Westbrook noted that there is a problem along major thoroughfares with trash from fast food restaurants and construction projects. Mayor Sitnick responded that she would encourage fast food restaurants to do something in-house so their customers are educated on litter control.

Councilman Cloninger said that he would be happy to talk to the Chamber of Commerce about this issue because litter is a tourism issue too.

Towing of Vehicles from Private Parking Lots

At the request of Vice-Mayor Hay, City Attorney Oast said that he would investigate if the City can regulate the $100 towing charge to people who are towed out of privately operated parking lots. Also, the City Attorney was instructed to see if the City can require all parking lots to have consistent signage in a prominent place concerning the towing.

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CLOSED SESSION

At 5:03 p.m., Vice-Mayor Hay moved to go into closed session to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the price and other material terms of a contract or proposed contract for the purchase of land - statutory authority is G.S. 143-318.11 (a) (5). This motion was seconded by Councilman Sellers and carried unanimously.

At 6:20 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:20 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - March 24, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Vice-Mayor Hay gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF EXCHANGE STUDENTS FROM ASHEVILLE HIGH SCHOOL'S SISTER SCHOOL IN KOFU-NISHI HIGH SCHOOL IN KOFU, JAPAN

On behalf of the City of Asheville, Vice-Mayor Hay welcomed the exchange students from Asheville High School's sister school in Kofu-Nishi High School in Kofu, Japan, and presented each student with a proclamation welcoming them to Asheville.

B. PROCLAMATION PROCLAIMING MARCH 24, 1998, AS "DIABETES ALERT DAY "

Councilman Tomes read the proclamation proclaiming Tuesday, March 24, 1998, as "Diabetes Alert Day" in the City of Asheville and presented the proclamation to Mr. Clayton Harmon who briefed Council on some planned activities taking place during the day.

C. PROCLAMATION PROCLAIMING APRIL 2, 1998, AS "CANCER FATIGUE AWARENESS DAY "

Councilman Cobb read the proclamation proclaiming Thursday, April 2, 1998, as "Cancer Fatigue Awareness Day" in the City of Asheville and presented the proclamation to Ms. Dawn Neuhauser, President of the Carolina Blue Ridge Chapter of the Oncology Nursing Society and Ms. Pat Johnston who briefed Council on some planned activities taking place during the day.

D. PROCLAMATION PROCLAIMING APRIL 6-12, 1998, AS "COMMUNITY DEVELOPMENT WEEK"

Councilman Cloninger read the proclamation proclaiming the week of April 6-12, 1998, as "Community Development Week" in the City of Asheville and presented the proclamation to Mr. Marvin Vierra, Community Development Director, who briefed Council on some planned activities taking place during the week.

E. PROCLAMATION PROCLAIMING SATURDAY, APRIL 11, 1998, AS "PARKINSON DISEASE AWARENESS DAY "

Mayor Sitnick read the proclamation proclaiming Saturday, April 11, 1998, as "Parkinson Disease Awareness Day" in the City of Asheville and presented the proclamation to Ms. Jane

Bingham, President of the Parkinson Support Group of Asheville, who briefed Council on some planned activities taking place during the day.

F. PROCLAMATION PROCLAIMING THE MONTH OF APRIL, 1998, AS "ALCOHOL AWARENESS MONTH"

Councilman Sellers read the proclamation proclaiming the month of April, 1998, as "Alcohol Awareness Month" in the City of Asheville and presented the proclamation to Ms. Bonnie Rose, Executive Director of the Buncombe County Drug Commission, who briefed Council on some planned activities taking place during the month.

II. CONSENT:

A. RESOLUTION NO. 98-30 - RESOLUTION RE-SCHEDULING CITY COUNCIL WORKSESSION ON APRIL 7, 1998, UNTIL APRIL 8, 1998

Summary: The majority of City Council members will be out of town on Tuesday, April 7, 1998.

RESOLUTION BOOK NO. 24 - PAGE 360

B. RESOLUTION NO. 98-31 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH POTPOURRI GARDEN CLUB FOR A PILOT PROGRAM TO PLACE 70 HANGING BASKETS CONTAINING FLOWERS IN DOWNTOWN ASHEVILLE

Summary: The Potpourri Garden Club desires to sponsor a pilot program to place 70 baskets containing flowers which will hang from street light poles in the Downtown District.

Last fall, representatives from the Potpourri Garden Club proposed to staff to sponsor a pilot program to place 'hanging' flower baskets on selected downtown streets. This program is modeled after a successful downtown flora beautification program in Roanoke, Virginia, which has maintained 331 baskets during the past decade.

The Streetscape Committee (Downtown Commission) has reviewed the proposal for both aesthetic consistency and location, and has approved this pilot program.

The Parks and Recreation Department proposes to maintain, water and fertilize the plants throughout the growing season. The Public Works Department agrees to construct brackets (using Streetscape funding of approximately $2,500) and attach them to poles at agreed-upon locations.

An agreement has been drafted by staff and agreed to by the Potpourri Garden Club which clearly outlines each partner's responsibilities.

Additionally, the City only commits to a two-year pilot program for the purpose of gauging public sentiment and aesthetic appeal. Any program continuance or expansion will be contingent on private funding and public participation only as approved by City Council.

The Parks and Recreation and Public Works Departments are poised to participate in this pilot program with the Potpourri Garden Club and recommends that City Council authorize the City Manager, on behalf of the City of Asheville, to enter into an agreement with the Potpourri Garden Club for a 2-year pilot program for 70 hanging baskets in downtown Asheville.

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RESOLUTION BOOK NO. 24 - PAGE 361

C. RESOLUTION NO. 98-32 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH HAYNES ELECTRIC CONSTRUCTION COMPANY FOR THE INSTALLATION OF 42 DECORATIVE STREET LIGHTS AND FIXTURES IN BILTMORE VILLAGE

Summary: The consideration of entering into a contract with Haynes Electric Construction Company to install 42 decorative street light poles and fixtures in the Biltmore Village Historic District of Asheville.

The Asheville City Council entered into an agreement with the Biltmore Village Historic Museum Commission, Inc., as representatives of the Biltmore Village property owners concerning the purchase and installation of decorative street lighting for 42 locations within the Biltmore Village Historic District.

The City of Asheville has received $20,000 from the Biltmore Village Museum toward the purchase and installation of these decorative fixtures. The City 's Traffic Engineering Division has budgeted an additional $36,548 for this project.

The City, through the Engineering Department, solicited formal bids for the above stated project. This bid process engaged in February, 1998; whereas a total of 25 advertisement for bid letters and bid packages were sent out, including five to certified minority businesses registered with the City. Advertisement letters were also sent to the Association of General Contractors, F. W. Dodge and the Buncombe County Minority Affairs' office. We did not receive enough bids at our initial bid opening on February 4, 1998. The project was re-advertised and one bid proposal was received on March 2, 1998, none of which were from certified minority businesses.

The lowest, responsible bid that met the City's and Biltmore Village's requirements was from Haynes Electric Construction Company of Asheville, N.C., for a bid price of $20,200.

Staff recommends that the City Manager be authorized to enter into a contract with Haynes Electric Construction Company for the bid price of $20,200, for the project known as Installation of 42 Decorative Street Lights and fixtures in the Biltmore Village Area.

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D. RESOLUTION NO. 98-33 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE COMMUNITY FOUNDATION OF WESTERN NORTH CAROLINA FOR A GRANT TO DEVELOP AND IMPLEMENT THE ENRICHMENT ACTIVITIES IN THE PARKS AND RECREATION SUMMER TEEN PROGRAM

Summary: The consideration of the City applying for a $2,000 grant through the Community Foundation of Western North Carolina for enrichment activities for the Summer Teen Program.

Funds are available through the Community Foundation of Western North Carolina in the Summertime Kids 1998 program to provide fun and safe summer activities for youth.

The Summer Teen Program is designed to provide recreation activities for teens ages 12-16 for eight weeks during the summer. The program is located at six locations throughout the

City in community centers. The Teen Program will offer a wide variety of recreation activities and hands-on job training. Grant funds will be used to implement the enrichment activities. The amount of the grant request is $2,000. The Parks and Recreation Department's match of $27,000 will be in labor, administration, transportation, supplies, and training for the overall Summer Teen Program. The funds are budgeted in the Recreation Division.

The Parks and Recreation Department recommends the approval of the application for the grant funds through the Community Foundation of Western North Carolina through the Summertime Kids 1998 program.

RESOLUTION BOOK NO. 24 - PAGE 363

E. RESOLUTION NO. 98-34 - RESOLUTION AWARDING CONSTRUCTION CONTRACTS TO COOPER CONSTRUCTION COMPANY, GENERAL CONTRACTOR, AND M.B. HAYNES ELECTRIC COMPANY, ELECTRICAL CONTRACTOR, FOR THE NEWFOUND MOUNTAIN RESERVOIR AND WATER SYSTEM IMPROVEMENTS PROJECT

Summary: The consideration of a resolution awarding construction contracts to Cooper Construction Company, General Contractor, and M.B. Haynes Electric Company, Electrical Contractor, for the Newfound Mountain Reservoir and Water System Improvements project.

Sealed bids were received and opened on Thursday, March 5, 1998. for the Regional Water Authority's Newfound Mountain Reservoir and Water System Improvements Project. Four bids were received for the General Contract which includes the installation of approximately 20,000 linear feet of 12-inch waterline and the construction of a water booster pumping station. Cooper Construction Company submitted the low bid of $ 825,831 for this contract. Three bids were received for the electrical component of the project, with M.B. Haynes Electric Company submitting the low bid of $87,945.00. The engineer's estimates for these projects are $1,190,000 and $80,000 respectively. Sufficient funds exist in the budget for these construction contracts plus contingencies. Remaining funds are earmarked for the proposed construction of a 1 million gallon reservoir which is also part of this Master Plan Project. This project will improve water service to customers in the Leicester and West Buncombe areas. Construction on this project is scheduled to begin in late April, 1998 with 180 days allocated for construction. There is a liquidated damages clause in the contract of $ 500.00 per day if the project is not completed on time. These bids were received in accordance with N. C. Gen. Stat. sec. 143-129 and in accordance with the City of Asheville's Minority Business Plan. All the bids that were received are listed below in order of bid amount:

GENERAL CONTRACT
Engineer's Estimate: $ 1,190,000

COMPANY	**BID**
Cooper Construction Company, Hendersonville, N.C.	$ 825,831
Buckeye Construction Company, Canton, N.C.	$ 922,424
Steppe Construction Company, Mill Spring, N.C.	$ 984,985
Hobson Construction Company, Arden, N.C.	$ 1,009,675

ELECTRICAL CONTRACT
Engineer's Estimate: $ 80,000

M.B. Haynes Electric Company, Asheville, N.C.	$ 87,945
Hayes & Lunsford Electric Company, Asheville, N.C.	$ 98,200
Brevard Electric Company, Brevard, N.C.	$ 99,600

The Regional Water Authority approved award of these contracts to Cooper Construction Company and M.B. Haynes Electric Company on March 17, 1998, and staff recommends City Council's concurrence with the Authority's action.

RESOLUTION BOOK NO. 24 PAGE 364

F. RESOLUTION NO. 98-35 - RESOLUTION APPROVING THE REGIONAL WATER AUTHORITY'S RECOMMENDATION TO PURCHASE APPROXIMATELY TWO ACRES ON CANDLER KNOB ROAD FROM BUNCOMBE COUNTY FOR THE CONSTRUCTION OF A NEW FIVE MILLION GALLON WEST ASHEVILLE RESERVOIR

Summary: Consideration of recommendation to purchase property from Buncombe County for the construction of a new 5 million gallon West Asheville Reservoir.

The Regional Water Authority and City Council have awarded a contract for the construction of a new 5 million gallon reservoir in West Asheville. The property on which the reservoir is proposed, approximately 2 acres on Candler Knob Road adjacent to an existing 3 million gallon reservoir, is owned by Buncombe County. The City of Asheville has had a license agreement with Buncombe County for the use of this property since the early 1980's. However, prior to the construction of the reservoir the land must be owned by the City of Asheville and the County has offered to sell it to the Authority, for the City, at its appraised value. The Authority had the property appraised at a value of $21,000. The County Commissioners at their meeting on March 10, 1998, agreed to sell the property to the City at this price.

The Regional Water Authority approved the purchase of this property for the City of Asheville at its February 1998 meeting and staff recommends City Council's concurrence with the Authority's action to purchase said property from the County in the amount of $ 21,000.

RESOLUTION BOOK NO. 24 - PAGE 365

G. RESOLUTION NO. 98-36 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE FINAL DOCUMENTS TO EXCHANGE PROPERTY BETWEEN THE CITY OF ASHEVILLE AND THE OPPORTUNITY CORPORATION OF MADISON-BUNCOMBE COUNTIES

Summary: The consideration of a resolution authorizing the Mayor to execute final documents to exchange property located behind the W.C. Reid Community Center Annex Building with the Opportunity Corporation of Buncombe-Madison County.

The Parks and Recreation Department and the Advisory Board have worked with the Opportunity Corporation of Buncombe and Madison County concerning a piece of property located behind Reid Center which would serve as administrative offices for their operations. The approximate size of this purchase would be approximately 1.3 acres. The survey shows the exact location for this purchase. The Opportunity Corporation of Buncombe and Madison County would be making a financial contribution of $20,000 to the Parks and Recreation Department to fund a mini park in the West End section of Asheville. In addition, the Opportunity Corporation would be donating materials and administrative costs up to $16,000 to construct a bridge across the creek at the base of the property as well as providing an easement across their property for greenway development.

The Parks and Recreation Department recommends adoption of the resolution authorizing the Mayor to execute final documents to exchange property located behind the W.C. Reid Community Center Annex Building with the Opportunity Corporation of Buncombe-Madison County.

RESOLUTION BOOK NO. 24 - PAGE 366

H. ORDINANCE NO. 2457 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FOR THE 1998 BELE CHERE PROJECT

Summary: The consideration of a budget amendment, in the amount of $506,000 for the 1998 Bele Chere Festival.

Over the past several months, various committees of the Bele Chere Board and staff liaisons have been working to complete a balanced budget for the 1998 Bele Chere Festival. The budget ordinance establishes this budget for anticipated expenditures and revenues for the upcoming festival.

The Parks and Recreation Advisory Board, the Bele Chere Board, and the Parks and Recreation staff request approval by City Council of the budget ordinance for the 1998 Bele Chere budget.

ORDINANCE BOOK NO. 16 - PAGE 423

I. ORDINANCE NO. 2458 - BUDGET AMENDMENT TO HELP SUPPORT THE MOUNTAIN AREA ECOTOURISM SUMMIT

Summary: The consideration of a budget amendment, in the amount of $2,500, to supplement support for a two-day regional Ecotourism Summit on July 24 and 25 at the North Carolina Arboretum.

ORDINANCE BOOK NO. 16 - PAGE 428

J. MOTION SETTING A PUBLIC HEARING ON APRIL 14, 1998, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CHANGE ADULT ESTABLISHMENTS FROM USES BY RIGHT SUBJECT TO SPECIAL REQUIREMENTS TO CONDITIONAL USES

K. MOTION SETTING A PUBLIC HEARING ON APRIL 14, 1998, TO REZONE TWO LOTS ON 16 BEAR CREEK DRIVE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO HB HIGHWAY BUSINESS

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and ordinances on the Consent Agenda and they will not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO CONSIDERING THE REZONING OF PROPERTY ON OLD HAYWOOD ROAD FROM RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY

Mayor Sitnick opened the public hearing at 5:37 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, said that David and Connie Evans and Max and Flora Wilson are the owners of 3 lots (PIN Nos. 9628.13-12-1961, 9628.17-02-6431, and 9618.16-93-6038), containing approximately 42 acres, located on Old Haywood Road near its intersection with Patton Avenue. The property is wooded with two homes located on it. The area adjacent t Lakeside Drive is wet and marshy. The property is served by a 6-inch water line and an 8-inch sewer line. There is adequate capacity in the 6-inch water line and the 8-inch sewer line for additional development. One of the sewer lines that has been serving this property has been recently rehabilitated. The property which is requested to be rezoned was R-3 under the old zoning ordinance but with the adoption of the Unified Development Ordinance, the property was designated RS-4. The R-3 designation of the property under the previous zoning ordinance permitted a development density of 16 units per acre, both single family and multi-family development. The owners of this property have petitioned for its rezoning from its current single family designation to a multi-family designation. The original rezoning request, submitted in October, 1997, was for 13 lots, comprising approximately 68 acres, to be rezoned from RS-4 to RM-16. Owners of 10 of the 13 lots subsequently withdrew their property from the rezoning request. Due to the withdrawal of most of the petitioners, this request was tabled by the Planning and Zoning Commission at their October meeting. Prior to the review of this request by the Planning and Zoning Commission, it was received by the City's Technical Review Committee ("TRC"). The initial review was for the original rezoning request of 13 lots to be rezoned from RS-4 to RM-16. At that time, the TRC agreed by consensus that infrastructure was not available in this area to serve 16 units per acre development on approximately 60 acres. They did recognize that density of approximately 8 units per acre could be served by the existing infrastructure. A revised rezoning petition, requesting the rezoning of the 3 lots owned by the Wilsons and Evanses from RS-4 to RM-8, was submitted in December, 1998.and reviewed by the Planning and Zoning Commission at their January 7, 1998, meeting. The Planning staff reviewed the 2010 Plan to determine if this rezoning would be in compliance with the recommendations of that Plan. It appears in looking at the land use maps in the 2010 Plan that most of the property is recommended for low density residential development and a small portion of the property appears to be recommended for medium density residential development. The staff of the Planning and Development Department did recommend approval of the rezoning request. Their basis for recommending approval was that infrastructure is available to serve a density of 8 units per acre, the property is served by a road capable of accommodating additional traffic, the property is less than one mile from a controlled intersection with a major highway, the property is close to retail service and employment centers, clustering of buildings in a multi-family development on the property could protect environmentally sensitive areas and there is a need for appropriately located service to areas for multi-family development within the City in this jurisdiction. A number of residents of the surrounding area attended the Planning and Zoning Commission meeting to voice their opposition to the rezoning request. Following their review of the request and consideration of the public comments, the Planning and Zoning Commission voted 4 - 3 to recommend denial of the rezoning request. Reasons for the denial by the Commission are that the 2010 Plan appears to call for low density residential in that area, the existing neighborhoods are single-family in character, and the adverse impact on the street system in the area.

The petitioners appealed the Planning & Zoning Commission to the City Council.

On March 5, 1998, a valid protest petition was filed so as to invoke the 3/4's affirmative vote requirement.

Mr. Green then responded to various questions from Council concerning the properties, the 2010 Plan and the protest petition.

Mr. William F. Slawter, attorney representing Hazel Evans, her son David and his wife Connie, and also Max and Flora Wilson, petitioners, said that this rezoning request petition is not intended to be for any kind of housing project. Mrs. Hazel Evans initiated this request, through her son, simply to try to get back to the position she was in before the UDO was adopted. Prior to the UDO, this property was zoned R-3 which would allow 16 units per acre if it were developed. The rezoning of the property to RS-4 reduces that to 4 units per acre and the requested rezoning to RM-8 would get it back half way to where it was before the UDO. This property was listed for sale before the UDO was adopted and remains listed for sale. Even though Mrs. Hazel Evans is in a nursing home in Greensboro, she did live on the property for in excess of 20 years and the property has been in her family since 1947. Mr. David Evans also lives in Greensboro now but had lived on the property for several years. The Evans' do have an attachment and fondness to the neighborhood and it is not their intent or purpose to try to impose anything that would not be best for the neighborhood. However, they do request this rezoning to try to develop the property in accordance with, what would appear to them, to be compatible with the best use of the property. The property to the north and east is RM-8 and RS-4 is to the south and west, which leaves the question of, where is the cut-off line in the 2010 Plan? The access to the property goes onto Old Haywood Road which is at the portion of property that is already zoned RM-8. Traffic Engineer has already determined that there would be no significant traffic impact from development of the site. Regarding preservation of the environment, eventually this property will be developed in some fashion but buffering and other requirements of the UDO will ensure that the neighbors are adequately protected.

Mr. Slawter understood that City Council cannot consider specific uses for the site in that they must base their decision on whether to rezone or not based on all uses available in that district, however, one use that has been given consideration that is not appropriate and not legal with the RS-4 is a bed and breakfast. The Wilsons (who live in the Oakley area) have no immediate plans to sell or develop their property.

Upon inquiry of Councilman Cobb, Mr. Green said that a good portion of the property currently zoned RM-8 is already developed with residential single-family units.

The following persons spoke in opposition to the rezoning request for several reason, some being, but are not limited to: present road congestion; Sand Hill Venable School is currently at its maximum; every home on the west side is a single family unit; increased density would substantially increase traffic on already congested streets with no sidewalks; there will be an increase of noise from the traffic; preservation of the natural environment could not be maintained; the petitioners do not live in the neighborhood and would not be affected by any adverse results of the rezoning; the rezoning would make available other land uses that would not be compatible with higher and better land uses outlined in the current RS-4 district; property values would be adversely affected; petitioners have not demonstrated that the rezoning would promote health, safety or general welfare of the community; the rezoning would only serve the interest of the two petitioners versus overwhelming opposition by the surrounding neighborhood; the 2010 Plan shows the area to be low in density; sewer system needs to be upgraded; increased density in the area will require increased infrastructure costs; the property is posted as commercial; and there are enough multi-family units in their area:

Mr. David J. Woody, adjoining property owner
Mr. David Livingston, 9 Starnes Cove Place
Mr. Jim Fagan, area property owner
Mr. Herman Hipps, 9 Starnes Cove Drive
Mr. David Peifer, resident on east Starnes Cove Road
Mr. Joseph Kane, 1777 Old Haywood Road
Mr. Jerry Anderson, 9 Homeway Road
Ms. Betty Fagan, area property owner
Ms. Carol Anne Kane, 1777 Old Haywood Road
Mr. Mike Blankenship
Ms. Laurel Eide
Mr. Tim Warren

Mr. Max Wilson, petitioner, spoke in support of rezoning the property, He said that his property is exactly the same as the other two properties which currently adjoin his and they are zoned RM-8. He reiterated that if anything is built on the property, the City will have final authority to review it.

Upon inquiry of Councilwoman Field, some property owners felt that they were mislead into signing the original rezoning petition in that they were told if they did not sign the petition, it would bring the value of their property down.

Mr. David Evans, petitioner, spoke in support of the rezoning asking that it be brought back to the use which was available prior to adoption of the UDO. He noted that no one has approached them about building a housing project on the property.

Mr. Russell Wood, employee of Beverly-Hanks & Associates, presented City Council with a copy of a letter sent to the ten property owners (8 of which withdrew their names) which included the zoning change petition request form, the pre-UDO R-3 classification, the R-S-4 classification, and the RM-16 classification. He currently has the Evans' property listed . He stated that he told the property owners that their property had been adversely affected. He said that the Evans and the Wilsons have already made concessions in that their original petition was for RM-16 and now their request is RM-8. Staff hosted a neighborhood meeting in October. He felt that the UDO is a very comprehensive document that provides for buffering and landscaping and it will preserve and protect the integrity of the neighborhood.

There was discussion about the property being posted as commercial. Councilwoman Field noted that the ad in September is under "Lots and Acreage" and it doesn't say anything about commercial, it just says multi-family site. The other ad says land development under "Commercial and Investments" and it says clearly "rezoning petition in process." Mr. Wood noted that the property was posted in error in October. City Council noted that even though there is a commercial sign on the property, the property cannot be used for commercial development, only what is allowed in the actual zoning designation.

Mayor Sitnick closed the public hearing at 7:26 p.m.

Councilman Tomes felt that the neighborhood was asking for a collaborative partnership effort to make their neighborhood a very viable one.

Councilwoman Field felt that there has not been a lot of communication between the neighborhood and the petitioners and there has been a lot of misinformation on both sides. She felt that the City does need affordable housing in our community and the neighborhood does look like a single family neighborhood. She sees this as a single family neighborhood but certainly at a higher density. She also agrees with Councilman Tomes in that the neighborhood should meet with the petitioners and come back to City Council with something that everyone can agreed on.

When Councilman Sellers asked if the community would be willing to meet with the petitioners and Realtor, Ms. Fagan said that the community has already tried.

Mayor Sitnick said that the 2010 Plan does give guidance and she holds it in high regard because it was created through the work of a major community-wide collaborative effort. The current zoning designations and the 2010 Plan recommend low density and/or medium density - low density is actually RS-2 and medium density is RS-4. So if the 2010 Plan recommends medium density, then RS-4 complies with the 2010 Plan. She felt that the development of that property can have beneficial effects on the neighborhood and she hasn't heard that anyone was opposed to development of that property. But, when 8 of 10 people withdraw their names from a petition, there was something that made them uncomfortable enough to withdraw their names.

Mr. Green explained that there are two directions Council can proceed. One is a zoning route, which would increase the density immediately and a planned unit development route which allows for input and review of the development plan by the neighboring property owners and provides some density bonuses for the property owner.

Upon inquiry of Councilwoman Field if the rezoning petition was denied, City Attorney Oast said that could not come back for one year on their rezoning application, however, Council has the authority, by a 3/4's vote if conditions have changed, to allow them to come back at anytime. To the extent that a planned unit development would involve an overlay zone, he felt it would probably be a rezoning which means they would have to wait a year. However, he said he would be happy to investigate that and report back to Planning staff.

City Attorney Slawter said that the petitioners would be happy to cooperate in anyway that might work toward a total resolution of this with the neighborhood. He did not that they first asked for RM-16 and they reduced it voluntarily to RM-8 for the purpose of making Planning staff and hopefully the neighborhood feel better about the request they were making. If agreeable and permittable, the petitioners would like to modify their request for an RM-6 designation which would allow a bed and breakfast. If that is not in the purview of what Council might do, the other alternatives would be to either remand the matter back to the Planning & Zoning Commission for further consideration of some other alternative zoning in between the RM-8 and RS-4 or if the petitioner were withdrawn, they could come back and file a new petition for RM-6 or other zoning in the middle.

Councilman Sellers moved to continue consideration of this matter until April 28, 1998 and directed the City Clerk to re-advertise. This motion was seconded by Councilman Cloninger and carried on a 5-2 vote, with Mayor Sitnick and Councilman Cobb voting "no".

B. PUBLIC HEARING RELATIVE TO REZONING A PORTION OF A LOT LOCATED ON 488 HENDERSONVILLE ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY TO HB HIGHWAY BUSINESS

ORDINANCE NO. 2459 - AN ORDINANCE TO REZONE A PORTION OF A LOT LOCATED ON 488 HENDERSONVILLE ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY TO HB HIGHWAY BUSINESS

Mayor Sitnick opened the public hearing at 7:53 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that this is the consideration of an ordinance to rezone a portion of a lot located on 488 Hendersonville Road from RS-8 Residential Single Family High Density to HB Highway Business and an amendment to the Comprehensive Plan to reflect this rezoning.

If rezoned to HB, the current use would be a conforming use under the category of Repair and Service Business. The latter is subject to special requirements, which are met by the current use.

The property backs on Reed Street, and is located directly behind several properties fronting on Hendersonville Road. The property is accessed from Hendersonville Road. It would not be accessible from Reed Street. The proposed zoning involves about one half the lot, (approximately ½ acre would be rezoned). The area involved is on the same level as is the property in the immediate vicinity fronting on Hendersonville. The back half of the property, not proposed to be rezoned, is well treed, and is of steep slope down to Reed Street. Any future modification of the land would require additional buffer between the neighboring residential and the proposed use. The proposed rezoning does not conform to the Comprehensive Plan.

The City Planning and Development staff recommends approval of the rezoning request to rezone a portion of PIN No. 9647-12-75-9049 from RS-8 to HB.

At their meeting of March 4, 1998, the Planning and Zoning Commission recommended 4-2 to approve the proposed rezoning. They also voted 5-1 to amend the Comprehensive Plan to reflect this rezoning.

Mr. William F. Slawter, attorney for the petitioner, passed out photographs of the property and spoke in support of the rezoning.

Mr. Loyd Kirk, area property owner, spoke in support of the rezoning request.

Mayor Sitnick closed the public hearing at 8:12 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2459 and to amend the Comprehensive Plan to reflect this rezoning change. This motion was seconded by Councilman Sellers and carried unanimously.

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C. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE AS IT RELATES TO THE DEFINITION OF ANTENNAS AND TELECOMMUNICATION TOWERS

At the request of City staff, Councilwoman Field moved to continue this public hearing, without further advertisement, until May 26, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 10, 1998, AND THE WORKSESSION HELD ON MARCH 17, 1998

Councilman Cloninger moved for the adoption of the minutes of the regular meeting held on March 10, 1998, and the worksession held on March 17, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

B. RESPORT ON USE OF NORTH FORK FACILITY BY ROD AND GUN CLUB

City Attorney Oast said that in August the issue of the North Fork Facility by the Rod and Gun Club ("Club") was raised and he was asked to look into it. There were many records, most of which were not well organized and scattered at different places in the City and at the Buncombe County Courthouse, which go back over 100 years. He noted his report will cover the history of the North Fork property, a history of the Club, a description of the relationship of the Club and the City, and a description of the property. He also touched on the legal conclusions based on these issues. The report is not is a commentary judgment on the propriety of membership in the Club or a recommendation as to a City policy regarding membership in any particular club or organization.

The Club has existed formally since 1894, meeting at North Fork regularly since that time and it was incorporated in 1907. The purposes, paraphrasing from its Charter, is promote hunting, fishing and other outdoor sports that were popular at the time. It also specifies in their Charter that they may take no action contrary to North Carolina and United States law. The Charter was suspended in about 1930. As of 1907, there was a lease with the owners of the property and then there was another lease in 1921. In 1925 the City began the process of acquiring the North Fork property and in 1927 the City finally did acquire the property by condemnation. The resolution of condemnation notes that the Club was losing the property at the time and he didn't find anything that indicating that the Club received any kind of consideration for their lease hold interest. In 1928, the Club appeared before the Asheville City Council and sought permission from the Council to continue using the property. Then in 1934, the City Council again, upon request of the Club, approved a lease for a period of six months. After that, there was a long gap in the records and then in 1951 the City began the construction of the Burnette Dam. Filling in of the reservoir involved the relocation of several structures and the Club actually had the use of two cottages in that area. One of the buildings that was moved was the old Club meeting cottage. In 1952, there was a letter from then City Manager Weldon Weir to then President of the Club Holmes Brison indicated that the Club would be allowed to continue using the shed at the North Fork facility and indicated that a lease would be prepared and sent to him. We never found a lease, however, that doesn't mean that one didn't exist. Nevertheless, even though no lease was found, the use of the North Fork facility by the Club continued regularly with the City's knowledge and with the City's apparent acquiesce. Historically, the Water Resources Director and the City Manager have been members of the Club in a more or less ex official capacity. Despite reports to the contrary, the Club has had female members, beginning with the first lease in 1907. The owners of the property were women (they were one of the lessors) and one of the terms of the lease was that they secured themselves two full memberships to the Club and that conditioned until the next lessor in 1921. The Club does not have any current female members, but that has not always been the case. This chronological set of facts gives rise to several legal assumptions. The bottom line is, based on incomplete information, that the use of the North Fork facility by the Club has been permissive, in that it has occurred with the City's knowledge and with the City's acquiesce. Legally, they have a tenancy at-will. The use of the property by the Club for their meetings is not illegal or trespassary, however, it may be irregular in that it does not appear to follow any procedures that City Council would ordinarily follow to lease property.

City Attorney Oast said that one of the other issues Council asked him to look into was the consumption of alcoholic beverages on the property. As far as he knows, they are talking about personal consumption and not about all night drunks or binges. Many of the members, he's told, that go there don't consume any alcohol and some don't drink even when they're not there. As far as whether that's illegal or improper, you have to mesh City ordinances and the ABC laws. The ABC laws provide that no permit is required for personal consumption provided that the owner of the premises said that it's okay and provided the consumption is otherwise legal, like no moonshine and you are 21 years or older. In order to consume alcoholic beverages on City property, the City ordinance provides that you have to have the City's permission, and that permission comes from the City Manager, the Civic Center Director or the Parks and Recreation Director. Since City officials have been members, he felt it was reasonable to infer that that permission existed, and in fact it may have been an understood term of whatever lease followed the 1952 letter. He was not prepared to say, at this time, that consumption of alcoholic beverages at the North Fork facility was a violation of any City ordinance or state law. The bottom line is that the activity the Rod and Gun Club engages at the North Fork facility is not illegal and they don't illegally discriminate against members. Again, those activities are irregular in that to the extent they were approved, they were approved a long time ago and the processes then may be different that those now. He did note that the Club is no longer meeting there and has not met there since September of 1997.

Upon inquiry of Councilman Tomes, City Attorney Oast said that City Council has used the facility for their mid-year retreat and he assumed the Regional Water Authority has used it for the same kind of function. He said that it has been occasionally used as a gathering place for departing department heads.

City Attorney Oast said the City Council needs to consider whether the City wants to allow continued use of the North Fork property by the Club or by anyone else. If not, Council should, at some point in time, vote to terminate the current tenancy at-will. If the Club wanted to petition to use the property they would need to go through normal channels to do it. If Council does discontinue the use, then Council needs to decide what level of use is appropriate, how that use is determined, how it is regulated and what, if anything, to charge, if Council wants to do that. These things might require input from other departments from the City like the Water Resources Department and possibly the Planning & Development Department. Due to the transition in the Water Resources directorship, it may be appropriate to suspend whatever activity is occurring there to allow the new Director to be briefed on the matter and bring his report back to Council.

Mr. Keith Thompson encouraged City Council to do the right thing and make a stand for putting everyone on a more equal footing on civic affairs in Asheville and putting them on a more normal basis. He felt there was legitimate reasons to restrict assess to the watershed.

Mr. Monroe Gilmour, Coordinator of Western North Carolina Citizens for an End to Institutional Bigotry, and he has a great renewed admiration for City Council carrying out the process of democracy. "We didn't drum up people to come tonight because we really do feel you will do the right thing. I didn't quite hear what you were saying, Mr. Oast, but I do think that probably giving the Water Resources person an opportunity to come up with some comprehensive policies and rules for more than just this Rod and Gun Club, but for access to the watershed. Certainly one thing that we would like to see is that there be a public log of who goes

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in and out of there. We hear stories, even since all of this broke, of a club member driving right through, not stopping even at the thing, driving up with a friend, up behind the lake, to show them around. I'd like to do that too. So, I think if we had policies and we had a public log, and I would volunteer to be on a committee, if you have a citizens committee, with the Water Resources person, to work on those policies. I know that many of you did not even know this club existed and in some respects if it kept going for another 50 years, probably nobody would notice either. In another respect, I think what you decide to do is very important because I think it tells what we are and who we are and what kind of City we want to have. It's important to the citizens of this community. I have worked on a lot of issues, frankly a lot more important than this issue, but I have never ever gotten as many calls from people that didn't know me from Adam to say how disgusted they were and to thank our organization for bringing it to the public notice. And so it is important to the citizens what you do tonight and in the future on this issue. It's important, I think to the employees. I don't mean to focus on you, Mr. Westbrook, but I think that the memo that you sent out on what City employee ethics should be is a very good one. And, I think that something needs to be done to show that what happened out there was a real sort of unconscious lapse of judgment. I know that when you come into a new situation and something has been going on for a hundred years, it's hard to question. But, I went to management graduate school just like you did, and I really do feel that a professional manager should see that such activities are inappropriate, certainly in the modern day. And I also think you need to take into account the fact that despite the legal things that you said in the tenancy at-will and all of that, it was the people in power making the rules to suit themselves. From the beginning, it was Asheville power brokers that were out there. And these people didn't even own the land that was taken. That house that was used is to build the other one, that wasn't even their house. They were leasing it. We have people that I could have brought tonight who had a rooming house out there and they feel really upset that they were never asked to continue some form of usage of the watershed. There are a lot of people in North Fork who were run out of there and to see this being done, it really sends a very bad message to the people. We, since last August, we have sent several letters as we learned more information with additional questions and to some degree you've answered them, but to some degree I think they've been glossed over a little bit. And nothing was said about the fact that if they do have this lease at will, how much was the lease for. If we take the 1934 rates of $60 for six months, maybe $120 a year, let's ask them for 50 times $120 for a year. That would be a pretty good rate given that was 1934 dollars. I'm not really asking them to do that, but I think that if we're going to look and deal with it legally, then we ought to be firm about that and they should pay retroactively because you can also claim, and I'm not a lawyer, but I think you could also point that it was a conspiracy of public officials to misuse public policy. And I think you could make a good case for that. I'm not saying that we want to go that route - I think we want to look to the future on it. But, I do think that if we don't look at this thoroughly, looking at the connections - nothing was in the report about who were the members and whether they did any business with the City of Asheville - that was another question that we asked in our letters. To gloss over it and not address it leaves the question, well, you know if an employee does something, we're going to rake him over the coals. But if the upper reaches of management do something, let's just forget it and move on. That is not a message that any of you-all want to send. So I hope you will take what I've said into consideration when you decide what to do and that the investigation and that the communication with the workers - you know I've worked with the public workers here and I think that we really owe the public workers in Asheville a great deal of appreciation for the many times that they have at times risked something by bringing something to people's attention or as they did in the Water Department several years ago that resulted in a much better Water Department. And yet, when they see this happen, this is the kind of thing that was pervasive back then and it lowers morale and it says there's different rules for me and there's different rules for the different people at the top. I think we need to find a way to send that message that the people at the top really are going to be examples of how we want the City run, just as that memo said. Where it said it depends, however, on us understanding and respecting each other so that we can set an example for others to follow. And I think that is all that we are really asking tonight."

Ms. Sylvia Montgomery echoed Mr. Gilmour's thoughts. She said that based on this issue, she knew of one person, and wondered how many others, who changed their vote in the election after finding out that Charles Worley was a member in the Rod and Gun Club.

Mr. Gilmour said that "a lot of people had said that this was just a political thing. I just want to make it clear for the public that when we filed that complaint on August 21, we did not know that Charles Worley was a member of the Rod and Gun Club. But I think that you should know that on that same day, the Director of the Water Department at that time, and it makes me really upset to have to say this, but gave some friendly advice to a worker to keep his distance from me. And that really hurts. And that's not right of free association and that worker's right of free association. And he also said that there were powerful political people involved in this and there would be political repercussions when this was over. Well I have gotten assurances from Club members that they're not going to do anything and I take confidence from the City that they're not going to do anything - so I hope we don't have to worry about that. But the other thing was that this was a smear campaign. The other thing that the Director said, Mike Holcombe said, was that this was probably a smear campaign to hurt Charles Worley's candidacy. Well, that worker called me and recounted this and I have a sworn affidavit about this conversation. And he said I have another name of a Club member. We didn't know until that threat that Charles Worley was a member. So, this was not politically motivated. It was motivated - well, you're smirking Barbara. Do you think that, are you saying that I'm not saying the truth that we knew before we did it? Is that what that meant? I wasn't going to even bring that up, but since that was pointed out, I think you-all need to know that."

Vice-Mayor Hay felt it was time to terminate the tenancy at-will of the Club at the North Fork Facility and also direct staff to report back on possible uses by the public of the facilities out there. He said it is a really nice place and if there is some way to share that with the citizens of Asheville, he felt we should be doing that.

City Attorney Oast said that in a memorandum dated January 30, 1998, Mr. Doug Spell, the Assistant City Manager, recommended to Mr. Westbrook that any access to the watershed property be strictly controlled.

Mayor Sitnick felt it should not be used for anything by anyone from this point forward. It is a pristine watershed and it's very fragile and delicate environmentally. If we set a precedent and start a process that allows even limited use she felt it will send a wrong message that it is for some and not all. She didn't even think City Council should hold their retreats there. She also felt that the comment made by Mr. Gilmour is a very serious one. If there was a threat made, she asked that it be investigated and a report be prepared for City Council.

Councilwoman Field agreed that the Club's tenancy at-well should be terminated. She felt that Council should form a committee of the appropriate people to take a look at the uses. It would be a real shame to not take advantage of that for whatever is appropriate and for whatever the community feels is appropriate. It has been used for the last 50 years and it has not damaged the watershed, for the limited use it has been used for. She told Mr. Gilmour what she was smiling about was that she knows that he has been working on this project for a very long time - back when Doug Bean was City Manager, and he raised it with him. She finds it interesting that this Council, which is basically a new Council, is getting blamed for and charged with things that happened 100 years ago.

Councilman Cloninger shared the Mayor's desire to keep the watershed protected and as pristine as possible, noting that he co-wrote the conservation easement that will protect that watershed in perpetuity and that was unanimously passed by the former City Council. Having said that, he would like to see Council appoint a committee that would explore the possibility of whether the North Fork facility could be used in some fashion without hurting the water quality, etc. He also felt that if it is opened up for use, it needs to be pretty much an all or nothing proposition in the sense of either opened to everyone or no one.

Mayor Sitnick questioned the condition of the flush toilet at the North Fork facility. She also felt that the question brought up about Mr. Westbrook needs to be addressed. Mr. Westbrook came to Asheville and was asked to join the Club because all City Manager's joined it and I think it was one of those things when you're new in town, "you want to play with all the kids on the block" and that's why he joined it. He attended it one or two evenings up there and that was the beginning and end of it. She doesn't read anything else into Jim Westbrook's membership in that Club. She did feel that there is a question about the whole issue that the City Attorney brought up about alcoholic beverages on City property. Again, whatever the truth is, we may never know, but the fact is that perception is reality in politics and when you are a political, elected official, when you are a high appointed official in a city government, you should not be doing things that even smack of impropriety. If there was alcoholic consumption up there on public property, knowing what other groups go through to get permits to do the same, it's more than bothersome that that activity was going on. She didn't know whether Council needed to conduct deep, intensive investigations but she did feel we needed to close the door on this issue. She felt Council should terminate the tenancy at-will for the Club to use the North Fork Facility and that that the property should not be used by anyone for any reason. If there is a need by this Council to discuss this further with committees, then that is the majority of the Council's right.

Councilman Cobb agreed that this issue should be closed. He felt the Council should terminate the tenancy at-will for the Club to use the facility. He would also like to see the new Water Resources Director come back to Council with a report on what options are available to use the property and then Council can decide how to proceed.

Councilman Tomes agreed that this issue should be closed.

Vice-Mayor moved to terminate the tenancy at-will for the Rod and Gun Club at the North Fork facility. This motion was seconded by Councilwoman Field and carried unanimously.

Vice-Mayor Hay moved to ask staff to investigate the possibility of use by the public of the facility and report back to Council with the current policy of not allowing public use remaining in effect. This motion was seconded by Councilman Sellers, and carried on a 6-1 vote, with Mayor Sitnick voting "no".

Upon inquiry of City Manager Westbrook, it was the consensus of Council that no time limit be set for the report back to Council.

Mayor Sitnick said that the threat made, as Mr. Gilmour stated, should be investigated. Councilwoman Field said that since Mr. Holcombe is no longer the Water Resources Director, perhaps Mr. Gilmour could give the information to the new Water Resources Director for him to investigate. Mr. Gilmour said that he would ask the employee if it would be okay for him to give his name to the City Manager.

C. BOARD OF ADJUSTMENT

Mr. Keith Thompson brought to Council's attention what he felt was a very inappropriate granting of a variance by the Board of Adjustment at the corner of Merrimon Avenue and Edgewood Road.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:08 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - March 24, 1998 - 9:30 .m.
Public Works Facility

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Because the 5:00 p.m. City Council meeting ran late, City Council arrived at the scheduled 7:00 p.m. education worksession on annexation at 9:30 p.m.

It was agreeable to the City Council and the audience members (approximately 15) to reschedule the worksession.

Councilwoman Field moved to continue the education worksession on annexation until Tuesday, March 31, 1998, at 2:00 p.m. in the William F. Wolcott Jr. Building at 161 South Charlotte Street, and to schedule the tour of the urban areas on May 12, 1998, at 1:30 p.m. This motion was seconded by Councilman Sellers and carried unanimously.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - March 31, 1998
William F. Wolcott Jr. Building
161 S. Charlotte Street

2:00 p.m. - Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

Planning and Development Director Julia Cogburn; along with Mr. Richard Flowe from the Benchmark Inc., the City's consultant on the annexation study; Mr. Ellis Hankins, N. C. League of Municipalities and Mr. Bob Wurst, Administrative Assistant in the Planning & Development Department, held an educational worksession on annexation. Mr. Flowe gave a brief overview of the annexation purposes, a general history of annexation and the annexation laws. Ms. Cogburn then reviewed the annexation history of the City of Asheville from 1797 - 1998 and the issues surrounding past annexations in Asheville. Mr. Flowe then reviewed the strategies for and types of annexation. Mr. Hankins reviewed with Council the N. C. League of Municipalities' views on annexation. Mr. Wurst then reviewed the budgetary impact issues on the City while Mr. Flowe reviewed the impact on the citizens.

Mayor Sitnick adjourned the meeting at 5:25 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

7:00 p.m. Community Meeting

The following topics were raised by residents and addressed by City Council and City staff: a recent Board of Adjustment decision to grant a variance for an accessory structure; appreciation for the stabilization and rebuilding of the stone wall on Cherokee Road; lack of attendance at this meeting does not mean citizens are not interested; interest in traffic calming policy; suggestion of hiring truant officers in the community; community reinvestment banking; need for volunteers in the school system; litter control throughout the City; praise on roundtable ideas; and the need for more affordable housing.

Mayor Sitnick was pleased to report that the City has received a Section 108 $1.5 million loan guarantee from the U.S. Dept. of Housing and Urban Development, to be leveraged for another $1.5 million for rental rehabilitation.

Mayor Sitnick adjourned the meeting at 7:52 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Wednesday - April 8, 1998 - 3:00 p.m.

Worksession

Present: Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Joint Cooperation Agreement with the Asheville Regional Housing Consortium

Summary: The consideration of a resolution authorizing the Mayor to enter into a joint cooperation agreement with the Asheville Regional Housing Consortium.

Award of Annual Audit Contract

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Crisp Hughes Evans LLP, Certified Public Accountants, for auditing services for Fiscal Year 1997-98.

Designation of the Public Service Building Sign at 89-93 Patton Avenue as a Landmark Sign

Summary: The consideration of a resolution designating the Public Service Building sign, located at 89-93 Patton Avenue be designated as a landmark sign.

Amendment of Regional Water Authority Capital Project Ordinance (35 Fund)

Summary: The consideration of a budget amendment to the Water Major Capital Project Ordinance 82-25 (35 Fund) to reflect the transfer of revenue bond related projects to the 29 Fund, to reimburse the 30 Fund for 97/98 Distribution System Improvements, to fund the Glendale Water Line (NC DOT), and to provide funding for future NC DOT projects through future "Contributions From Other Funds".

Amendment of Regional Water Authority Capital Project Ordinance (29 Fund)

Summary: The consideration of a budget amendment to provide funding for Change Order No. 2 to the Pipeline Replacement Phase II Program Contract A - South Asheville/South Buncombe Water Line Project.

Request for Release of Lien of Property on Richie Street

Summary: The consideration of a resolution to release the City's lien on dilapidated property on Richie Street.

Resolution naming the City of Asheville as a Host Town for the 1999 Special Olympics World Summer Games

Summary: The consideration of a resolution naming the City of Asheville as a Host Town for the 1999 Special Olympics World Summer Games.

Transfer of City of Asheville Easement (CTS Reservoir Site)

Summary: The consideration of the abandonment of an easement belonging to the City of Asheville for operation of a water reservoir, together with the associated underground pipes and other property, at the abandoned CTS Reservoir site.

City Attorney Oast said that there is a possibility that the City will not need to abandon the entire easement and that he would have the appropriate documentation available at the next formal meeting.

Agreement with N.C. Dept. of Transportation for Improvements to Sweeten Creek Road, Rock Hill Road and Roberts Road

Summary: The consideration of a resolution to authorize the Mayor to sign a municipal agreement with the N. C. Dept. of Transportation for improvements of US 25A (Sweeten Creek Road), SR 3081 (Rock Hill Road) and SR 3079 (Roberts Road.)

Agreement with N.C. Dept. of Transportation for Improvements to US 74, Reed Circle and Cane Creek Road

Summary: The consideration of a resolution to authorize the Mayor to sign a municipal agreement with the N. C. Dept. of Transportation for improvements to the US 74, SR 2775 (Reed Circle) and SR 3136 (Cane Creek Road) for the relocation and upgrade of a water line that will be in conflict with highway construction.

Agreement with N.C. Dept. of Transportation for Improvements at NC 151/Pisgah Highway from south of Fowler Mountain Road to south of US 19-23-74

Summary: The consideration of a resolution to authorize the Mayor to sign a municipal agreement with the N. C. Dept. of Transportation for improvements at NC 151/Pisgah Highway from south of SR 1117 (Fowler Mountain Road) to 0.2 miles south of US 19-23-74 to relocate water lines that will be in conflict with highway construction.

Agreement with N.C. Dept. of Transportation for Improvements at US 74 from I-40 Interchange southwest to SR 2775, which includes Mine Hole Gap

Summary: The consideration of a resolution to authorize the Mayor to sign a municipal agreement with the N. C. Dept. of Transportation for improvements at US 74 from I-40 Interchange southwest to SR 2775, which includes Mine Hole Gap, for the relocation and upgrade of a 6-inch and 8-inch water line that will be in conflict with highway construction.

Agreement with N.C. Dept. of Transportation for Improvements at the Intersection of US 70-74 (Tunnel Road) and Haw Creek Lane

Summary: The consideration of a resolution to authorize the Mayor to sign a municipal agreement with the N. C. Dept. of Transportation for improvements to the intersection of US 70-74 (Tunnel Road) and SR 2863 (Haw Creek Lane) for the relocation and upgrade of a water line that will be in conflict with highway construction.

Agreement with N.C. Dept. of Transportation for Improvements at I-40 at US 25A (Sweeten Creek Road)

Summary: The consideration of a resolution to authorize the Mayor to sign a municipal agreement with the N. C. Dept. of Transportation for improvements at I-40 at US 25A (Sweeten Creek Road) for the relocation and upgrade of water lines that will be in conflict with highway construction.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

HILLCREST APARTMENTS PEDESTRIAN WALKOVER BRIDGE

Police Chief Will Annarino said that on February 20, 1998, a pedestrian was struck and killed while attempting to cross I-240 at the Hillcrest walkover bridge and as a result concern has been raised as to the accessibility of Hillcrest with the closure of the walkover.

City Council has requested background information on the closure of the pedestrian tunnel across I-240 and what, if any, Council activity is needed in the matter. Chief Annarino passed out pictures of the bridge and then reviewed the following overview of events and supporting information in response to this request.

- On November 28, 1994, at the request of the residents of Hillcrest, the Asheville Housing Authority and City of Asheville, the Hillcrest pedestrian walkover bridge was closed by the North Carolina Department of Transportation. At the time drug buyers were using the walkover to enter Hillcrest and purchase illegal drugs.

- Residents, at the time, felt there would be no major consequence in closing the bridge as most pedestrian traffic chose not to use the main entrance but utilized breaks in the security fencing east of the bridge.

- With the closure of the walkover, walk-in street level drug transactions, on the south end of the complex, were all but eliminated. In the assessment of many the closure played a large part in helping to stem the flow of drug sales in the development.

- With the recent pedestrian fatality, as a result of an individual attempting to cross I-240 going into Hillcrest, the Asheville Housing Authority and the Asheville Police Department have met with the Residents Association of Hillcrest Apts. to revisit the bridge closing. The Residents Association agreed to survey residents of the community to determine their position on a recommendation for re-opening the walkover bridge or allowing it to remain closed. The survey was approximately 100 to 79 in re-opening the bridge.

- A pedestrian accident survey for the area in and around the Hillcrest development noted there have been two pedestrian fatalities since the bridge was closed; one was adjacent to the bridge and the other was in the area east of the bridge near the 19-23 overpass (which is the area where most of the pedestrian traffic coming out of the complex is located).

Chief Annarino also stressed that the bridge closing was only one of several issues raised by the Residents Association that helped reduce crime in the area. He said that at a recent community meeting, the residents in Hillcrest were split about keeping the bridge closed or re-opening the bridge. He said that most of the new residents wanted the bridge re-opened, whereas, the residents who have lived there longer wanted the bridge to remain closed.

Discussion surrounded if there was an alternate route for the residents of Hillcrest.

City Transportation Planner Ron Fuller said that the N.C. Dept. of Transportation ("NC DOT") owns the bridge and the fence, however, it is not being maintained at this time. He also noted that the bridge is not ADA compatible, missing guardrails need to be replaced, the lighting needs to be improved, the fence repaired, the stormwater runoff issue addressed, and there needs to be some type of regular maintenance schedule for trash and overgrowth. Safety, he felt, was a big issue on the bridge. He said that he would be happy to work with the NC DOT on a collaborative effort to see if grant money can be used to at least bring the bridge into ADA compliance.

Councilwoman Field felt one issue is how do we safely get the residents from the Hillcrest community to where they want to go.

Mayor Sitnick felt that we need to discover a solution for people not to be "ghettoized" and still maintain a peace of mind for those who want to maintain the security that has come from the closure. She suggested the residents might want to apply for a grant through the City's Neighborhood Grant Program.

Councilman Tomes felt that not only is there an environmental factor to consider, but the traffic factor as well.

Executive Director of the Housing Authority David Jones passed out to Council a letter he wrote to the Citizen-Times which he hoped would clear up any misconceptions regarding recent articles relating to Hillcrest. He then reviewed with Council the history of Hillcrest and how the courageous and caring people and their efforts saved the Hillcrest community. He ended by saying that the Housing Authority will totally support whatever position the residents of Hillcrest choose.

Police Sgt. Crawford reported on the recent community meeting and said that the residents would like to re-open the bridge but only on a temporary basis. The primary concern of the group who wanted the bridge re-opened was access to town and the primary concern of the group who wanted to keep the bridge closed as the crime issue. She noted that out of the approximately 40 people who attended the meeting, there were maybe 20-25 actual residents. She suggested that if the bridge were re-opened that better lighting be installed on the bridge.

The Pedestrian Coordinator for Quality Forward was pleased that the vote to temporary re-open the bridge was the result of the survey. She, too, pointed out the items that need to be addressed relative to bridge repair, etc.

Mr. Lonnie Blair, representative of the Asheville Transit Authority, responded to questions from Council as it related to bus transportation in the Hillcrest community.

Ms. Dee Williams felt that the whole issue at Hillcrest was an economic development issue, not just a transportation problem.

Three residents from Hillcrest spoke in support of keeping the bridge closed stressing that children can get out doors and play, bus transportation is available and the closure helps curb the drug problem. One resident noted that people will cross the interstate where they want, whether or not the bridge is open or closed.

It was the consensus of Council to instruct staff to come back to Council with some possible dates for a tour of the area and a community meeting at Hillcrest. Some issues to be considered are to re-open the bridge, keep it closed, open the bridge up daily during certain time periods or, open the bridge up entirely for a couple of months and then evaluate it.

BUDGET WORKSESSION DATE

It was the consensus of City Council to hold the budget worksession on Thursday, May 21, 1998, at 1:00 p.m. in the 1st Floor North Conference Room in the City Hall Building.

MARKETING STAFF FOR THE CIVIC CENTER

It was the consensus of City Council to instruct the City Manager to ask the Tourism Development Authority if they would move one of their current marketing staff to the Civic Center for the purpose of marketing the Civic Center in Asheville as a convention site.

FIRE CODE

Mr. George Morosani, developer, said that he is required, pursuant to the Fire Code, to put in a fire hydrant on a piece of property he is developing on Shiloh Road. He asked Council to investigate why he is being required to comply with that requirement when a building on Seminole Street which was recently constructed did not have to comply. He felt City government should give new businesses some kind of consideration for basic infrastructure.

The City Manager said that there is an economic development policy for the City and he would investigate the incident on Seminole Street and report back to Mr. Morosani.

OPEN MEETINGS LAW

Mayor Sitnick cleared up some inaccuracies that the Asheville Citizen-Times reported on in their articles on Tuesday, April 7 and Wednesday, April 8 concerning the Chamber of Commerce retreat in South Carolina in which six of seven City Council members attended. The inaccuracies included (1) who attended and did not attend the retreat, (2) the quote from the City Attorney was accurate, however, it was in answer to a different question, (3) a quote from the Mayor was incorrect regarding Council's concern over the cost of the retreat; and (4) the inaccurate and sexist statement that her husband was a psychiatrist. She then read G.S. 143-318.10 relative to the Open Meetings Law and also an excerpt from a book published by David M. Lawrence from the Institute of Government concerning retreats and whether the Chamber recent was concerned an official meeting. Mayor Sitnick also noted that on March 24, 1998, the City Council mentioned that the meeting being held today was being rescheduled because the majority of Council would be attending the Chamber retreat.

Each member of Council who attended the Chamber retreat spoke about the productivity of the meeting and how beneficial and important it was for City Council to attend. A budget is prepared every year for Council's training and the money spent for this retreat was well worth it and was within that budgeted amount.

It was the consensus of Council to have the City Attorney report back with how the City Council will proceed in the future regarding notification to the public regarding these kind of meetings.

Mayor Sitnick said that she was glad to have the interest of the paper rather than apathy but did hope that the reporting was accurate.

When asked if City Council would be willing to pay for their own expenses, as did Mayor Sitnick, City Council members who attended the retreat replied that they would not pay for the trip out of their own pockets, in that they were within the budgeted training amount and on City business.

REPORTS FROM BOARDS & COMMISSIONS

Vice-Mayor Edward Hay reviewed the upcoming vacancies on various boards and commissions. He said that the City Council Boards and Commissions Committee met and noted that there is a need to appoint a member to the Metropolitan Sewerage District Board. This appointment will be to fill the unexpired term of Mr. Mike Holcombe who resigned the position earlier this year.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint S. Douglas Spell, Assistant City Manager, to fill the unexpired term of Mike Holcombe, term to expire January 19, 2000, or until his successor has been appointed.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Ben Durant, Budget Director, to Victoria of Asheville to serve a three year term, term to expire November 29, 2000.

There is a need to create the River District Design Review Committee. Until such time as that Committee is appointed, it was the consensus of City Council to let staff review any major work projects.

Councilman Sellers moved to adjourn this meeting to the Council Chamber. This motion was seconded by Councilwoman Field and carried unanimously.

PRESENTATION BY ELECTRONIC INTERIORS INC. RELATIVE TO COUNCIL CHAMBER RENOVATIONS

Mr. Dickson Stewart from Electronic Interiors, Inc., and Ms. Jane Mathews from Mathews & Glazer Architects, presented City Council on the conceptual design layouts in the Council Chamber.

On February 25,1997, City Council passed Resolution No. 97-19 authorizing the City Manager to enter into a contract with Electronic Interiors, Inc. for professional services to design and upgrade the audio-visual and other electronic capabilities of the Council Chamber in the City Building.

In November, 1997, Electronic Interiors, Inc. completed the Phase I portion of their contract which included meetings with city staff on programming and presentations resulting in the completion of schematic design drawings and preliminary budget estimates.

Based on information obtained in the Phase I portion of Electronic Interiors, Inc.'s contract, a proposal with related costs for design services for phase II-III was received by city staff. City Council approved a proposal for Phase II-III which incorporates services for the design development, complete construction documents and construction administration through out the project.

City Council provided additional information on the conceptual design layouts in the Council Chamber for incorporation into the final construction drawings.

CLOSED SESSION

At 7:00 p.m., Vice-Mayor Hay moved to go into closed session for the following reasons: (1) to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties involved in the matters about which the

City Council expects to receive advice are: Multimedia Publications Inc. d/b/a Asheville Citizen-Times, Brenmor Cable Partners d/b/a InterMedia, Elijah U. Jones d/b/a Jones Convenience Store, State of North Carolina and the City of Asheville - the statutory authorization is G.S. 143-318.11 (a) (3); and (2) to discuss matters relating to the expansion of business or industry in the City the statutory authority is G.S. 143-318.11 (a) (5). This motion was seconded by Councilman Sellers and carried unanimously.

At 8:20 p.m. Vice-Mayor Hay moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:20 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - April 14, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and Deputy City Clerk Phyllis Corns

Absent: City Clerk Magdalen Burleson

INVOCATION

Councilman Sellers gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION OF INTERNATIONAL FIRE CODE INSTITUTE ANNIVERSARY COVER

Mayor Sitnick presented Fire Chief John Rukavina with the International Fire Code Institute's 10th Edition Anniversary Cover of the Urban Wildland Interface Code. She noted that Fire Chief Rukavina has served as a member of the Board of Directors of the Institute for three years and his work on the Board has included participation in the development of this Code and in development of education and certification programs for fire inspectors throughout the United States.

B. PROCLAMATION PROCLAIMING APRIL 17-30, 1998, AS "LITTER SWEEP DAYS"

Mayor Sitnick read the proclamation proclaiming April 17-30, 1998, as "Litter Sweep Days" in the City of Asheville and presented a proclamation to Mr. Bob Tinkler, Adopt-A-Highway Program. She asked Mr. Tinkler to present a duplicate proclamation to Ms. Susan Roderick with Quality Forward. Mr. Tinkler then briefed Council on some planned activities taking place during the month.

C. PROCLAMATION PROCLAIMING FRIDAY, APRIL 17, 1998, AS "EARTH DAY "

Vice-Mayor Hay read the proclamation proclaiming Friday, April 17, 1998, as "Earth Day" in the City of Asheville and presented the proclamation to Mr. Mort Jonas who briefed Council on some planned activities taking place during the day.

D. PROCLAMATION PROCLAIMING SUNDAY, APRIL 19, 1998, AS "CANDLELIGHT VIGIL FOR VICTIMS OF CRIME DAY "

Councilwoman Field read the proclamation proclaiming Sunday, April 19, 1998, as "Candlelight Vigil for Victims of Crime Day" in the City of Asheville and presented the proclamation to Ron Brown who briefed Council on some planned activities taking place during the day.

E. PROCLAMATION PROCLAIMING THE WEEK OF APRIL 19-26, 1998, AS "DAYS OF REMEMBRANCE" OF THE VICTIMS OF THE HOLOCAUST

Mayor Sitnick read the proclamation proclaiming the week of April 19-26, 1998, as "Days of Remembrance" of the victims of the Holocaust and presented the proclamation to Rabbi Ratner who briefed Council on some planned activities taking place during the week.

II. CONSENT:

At the request of City Manager Westbrook, Item "D" was removed from the agenda.

A. RESOLUTION NO. 98-37 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A JOINT COOPERATION AGREEMENT WITH THE ASHEVILLE REGIONAL HOUSING CONSORTIUM

Summary: The consideration of a resolution authorizing the Mayor to enter into a joint cooperation agreement with the Asheville Regional Housing Consortium.

HUD regulations require execution of a new Cooperation Agreement for the Asheville Regional Housing Consortium to continue receiving formula allocations under the HOME grant program. The deadline for submission of fully executed Cooperation Agreement to HUD is June 30, 1998. The City of Asheville serves as Lead Entity for the Consortium.

The City entered into a Joint Cooperation Agreement with twelve governmental units within Region B and formed the Asheville Regional Housing Consortium on March 31, 1992. The City received a letter from HUD recently stating that a new Cooperation Agreement and authorizing resolutions must be submitted to HUD by June 30, 1998 to continue to receive an annual formula allocation as required in HUD Notice CPD 97-05.

This Agreement states in section 14 that: "The Lead Entity and the Cooperating Units agree to remain in the Consortium at least through September 30, 2001. Thereafter, each party shall continue to participate in the Consortium to the extent required by HUD regulations or other applicable law."

Since formation of the Consortium in 1992 the region has received formula allocations totaling $6,876,837. The City of Asheville has received an allocation of $2,230,172 for its affordable housing program and administrative cost as Lead Entity since inception of the program.

Community Development staff recommends adoption of the Resolution.

RESOLUTION BOOK NO. 24 - PAGE 368

B. RESOLUTION NO. 98-38 - RESOLUTION DESIGNATING THE PUBLIC SERVICE BUILDING SIGN LOCATED AT 89-93 PATTON AVENUE AS A LANDMARK SIGN

Summary: The consideration of a resolution designating the Public Service Building sign located at 89-93 Patton Avenue as a landmark sign.

Signs may be designated historically significant or landmark signs by the Asheville City Council provided the sign satisfies one or more of the following criteria:

A. The sign is significant to the history of the City of Asheville, including but not limited to, the character of the city as a tourist attraction or cultural center.

B. The sign is unique, notably aesthetic or creative so as to make a significant contribution as a work of art.

C. The sign merits recognition as an important example of technology, craftsmanship, materials or design of the period in which it was constructed and may no longer be economically feasible to produce or manufacture the sign today.

The Asheville-Buncombe Historic Resources Commission ("HRC") finds that the *Public Service Building* sign meets criteria A for landmark designation for the following reasons:

1. The sign is an icon for the City of Asheville and is a part of our collective memory. "Historic signs give continuity to public spaces, becoming part of the community memory. They sometimes become landmarks in themselves, almost without regard for the building to which they are attached, or property on which they stand. Furthermore, in an age of uniform franchise signs and generic plastic "box" signs, historic signs often attract by their individuality: by a clever detail, a daring use of color and motion, or reference to particular people, shops, or events." Preservation Brief #25

At their regularly scheduled March 11, 1998 meeting, HRC, by a unanimous vote, recommends to City Council that the *Public Service Building* sign be designated as a landmark sign.

RESOLUTION BOOK NO. 24 - PAGE 369

C. ORDINANCE NO. 2460 - BUDGET AMENDMENT TO PROVIDE FUNDING FOR CHANGE ORDER NO. 2 TO THE PIPELINE REPLACEMENT PHASE II PROGRAM, CONTRACT A - SOUTH ASHEVILLE/SOUTH BUNCOMBE WATER LINE PROJECT (29 FUND)

Summary: The consideration of a budget amendment to provide funding for Change Order No. 2 to the Pipeline Replacement Phase II Program Contract A - South Asheville/South Buncombe Water Line Project.

By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds in the 29 Fund.

Change Order No. 2 for the Pipeline Replacement Program Phase II Contract A with Wheeler Construction Company is needed for the following reasons:

- Installation problems with pavement removal and bad weather conditions on Kenilworth Road;
- Additional stone and binder was required due to bad weather on the other streets along this project.

Cathy Ball, P.E., City Engineer, recommends approval of Change Order No. 2 in the amount of $126,105.11. This will increase the total contract cost to $1,078,389.11.

Funds for this Change Order are available in the Water Distribution Master Plan Downtown Water Line Replacement Project due to the decision by the Authority to delay the Haywood Street Water Line Replacement Project.

The Regional Water Authority approved a resolution amending and restating Capital Project Ordinance 92-17 on March 17, 1998.

Staff recommends adoption of the budget amendment to provide funding for Change Order No. 2 to the Pipeline Replacement Phase II Program Contract A - South Asheville/South Buncombe Water Line Project.

ORDINANCE BOOK NO. 16 - PAGE 432

D. BUDGET AMENDMENT TO THE WATER MAJOR CAPITAL PROJECT ORIDNANCE (35 FUND) TO REFLECT THE TRANSFER OF REVENUE BOND RELATED PROJECTS TO THE 29 FUND, TO REIMBURSE THE 30 FUND FOR 1998-98 DISTRIBUTION SYSTEM IMPROVEMENTS, TO FUND THE GLENDALE WATER LINE (NC DEPT. OF TRANSPORTATION PROJECT), AND TO PROVIDE FUNDING FUR FUTURE N.C. DEPT. OF TRANSPORTATION PROJECTS THROUGH FUTURE "CONTRIBUTIONS FROM OTHER FUNDS"

This item was removed from the agenda at the request of staff.

E. RESOLUTION NO. 98-39 - RESOLUTION AUTHORIZING A RELEASE OF LIEN ON REAL PROPERTY ON RICHIE STREET

Summary: In 1984, the Housing Authority of the City of Asheville provided a Rental Rehabilitation loan to George B. Herndon in the amount of $35,000.00 secured by a third deed of trust recorded in Book 1088, Page 79 on property owned by Herndon on Richie Street comprising four structures with a total of seven units on contiguous parcels. The terms of the loan included zero interest, deferment and forgiveness of the loan over a 10 year period on the condition that the units be rented to low income tenants. Herndon rehabilitated the property and rented to low income tenants but subsequently moved to Florida and failed to keep the property in good repair. The property was eventually vacated and finally foreclosed by the first mortgagee. The property currently is dilapidated and a source of blight in the neighborhood.

Myc Klepper recently acquired the properties with the intent of renovating them for affordable housing and discovered that the first mortgagee's foreclosure had not been completed on the property at 10 Richie Street. Therefore the deed of trust in Book 1088, Page 79 is still a lien of record on that one parcel. Klepper has requested a release of the property at 10 Richie Street from the lien in order to facilitate the renovation of the property. He has demonstrated good faith by his investment of considerable time and money in cleaning up the title to the property as well as the property itself.

Approval of the resolution will release the property from the lien in Book 1088, Page 79 making it possible for Klepper to obtain private financing necessary to renovate the properties. The end result will be the elimination of a blighting influence in the Montford community, the production of seven units of decent, safe, sanitary and affordable housing and an increase in the tax base.

Community Development staff recommends adoption of the resolution.

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F. RESOLUTION NO. 98-40 - RESOLUTION NAMING THE CITY OF ASHEVILLE AS A HOST TOWN FOR THE 1999 SPECIAL OLYMPICS WORLD SUMMER GAMES

Summary: The consideration of a resolution naming the City of Asheville as a Host Town for the 1999 Special Olympics World Summer Games.

North Carolina will be hosting over 7,000 athletes from over 150 countries for the 1999 Special Olympics World Summer Games which will be held in the Research Triangle area. The City of Asheville has been asked to serve as a Host Town which will allow athletes an opportunity to practice, adjust to the North Carolina climate, and to meet and visit the citizens of North Carolina in order to exchange and learn about each others' culture. It is anticipated that international civic groups will take the lead in providing services for this special opportunity along with some possible logistic coordination with the City's Parks and Recreation Department and Buncombe County Recreation Services. These games will be held on June 21 - July 4, 1999, and is an excellent opportunity for the City of Asheville to participate in such a worthwhile event.

The Parks and Recreation recommends City Council approval of the resolution to name Asheville as a Host Town.

RESOLUTION BOOK NO. 24 - PAGE 372

G. RESOLUTION NO. 98-41- RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CRISP, HUGHES EVANS LLP FOR AUDITING SERVICES FOR FISCAL YEAR 1997-98

Summary: The consideration of a resolution to authorize the Mayor to sign a municipal The consideration of a resolution authorizing the Mayor to execute a contract with Crisp Hughes Evans LLP, Certified Public Accountants, for auditing services for Fiscal Year 1997-98.

N. C. Gen. Stat. sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In January of 1998, the City Finance Department sent letters to 36 local CPA firms, including three minorities, soliciting proposals from qualified firms of certified public accountants to audit the City of Asheville's financial statements for the fiscal year ending June 30, 1998, with the option of auditing the City of Asheville's financial statements for the two subsequent fiscal years. Four firms expressed interest and were provided a copy of the request for proposals. Only one firm, Crisp Hughes Evans LLP, submitted a complete proposal. Crisp Hughes Evans LLP is also the City's current external audit firm. The proposal received from Crisp Hughes Evans LLP proposes a fee of $ 47,500 for the 1997/98 fiscal year. This fee is a reduction of the firm's fee for the 1996/97 fiscal year of $52,000. Funds are appropriated in the budget of the Accounting Division of the Finance Department. The fee includes an audit in accordance with generally accepted auditing standards which includes an assessment of the City's internal control procedures, testing for compliance with N. C. General Statutes, testing for compliance with pronouncements of the Governmental Accounting Standards Board, Standards for Audit of Governmental Organizations, Programs, Activities and Functions, the Guidelines for Financial and Compliance Audits of Federally Assisted Programs and the Federal Office of Management and Budget's Compliance Supplement for Single Audits of State and Local Governments.

Staff recommends adoption of the resolution and re-appointment of the audit firm Crisp Hughes Evans LLP.

RESOLUTION BOOK NO. 24 - PAGE 373

H. RESOLUTION NO. 98-42 - RESOLUTION ABANDONING RESERVOIR EASEMENT AND AUTHORIZING AGREEMENT FOR REMOVAL

Summary: Consideration of the abandonment of an easement belonging to the City of Asheville for operation of a water reservoir, together with the associated underground pipes and other property, at the abandoned CTS Reservoir site.

Due to recently completed water system improvements project in the South Asheville/South Buncombe area, the Water Resources Department has ceased to utilize the CTS Reservoir. In accordance with the Water Distribution System Master Plan, the Water Resources Department wishes to dispose of this reservoir and has no future use for the reservoir site, for which the City was granted an easement by CTS. This reservoir is located off Mills Gap Road at the site of the former CTS Plant. A developer has purchased the remainder of the CTS property and has plans for its development. The abandoned CTS Reservoir and the City's easement on which it is located are restricting his development and he desires to acquire the property and demolish the reservoir.

The Deed of Easement from CTS to the City (and Buncombe County) provides that the easement terminates when the reservoir and pipes cease to be used for water supply purposes. In consideration for recording an instrument abandoning the easement, the developer will demolish and remove the reservoir structure at no cost to the City. Since the reservoir was apparently in place when the easement was created, it is not clear that the City would have an obligation to remove the reservoir, but such an agreement would resolve the issue. Because the City needs to retain use of part of one of the waterlines on the property, an easement will be reserved over part of the property.

Staff recommends that City Council authorize the abandonment of the subject easement in accordance with the terms of the conveyance, subject to the above-described reservation, as recorded in the Buncombe County Register of Deeds Office, and a letter agreement with the owner that the reservoir structure will be removed by the owner.

RESOLUTION BOOK NO. 24 - PAGE 374

I. MOTION SETTING A PUBLIC HEARING FOR APRIL 28, 1998, TO REZONE 1201 PATTON AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO HB HIGHWAY BUSINESS

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and ordinances on the Consent Agenda and they will not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO PROHIBITING DOGS IN RIVERSIDE CEMETERY

ORDINANCE NO. 2461 - ORDINANCE PROHIBITING DOGS IN RIVERSIDE CEMETERY

Mayor Sitnick opened the public hearing at 5:18 p.m.

Deputy City Clerk Corns presented the notice to the public setting the time and date of the public hearing.

Mr. Irby Brinson, Director of Parks & Recreation, said that based upon City Council's request from the worksession on February 17, 1998, the Parks and Recreation Department is proposing a revision to Code of Ordinances Section 3-27 (3) regarding control of animals in Riverside Cemetery.

Asheville City Council, in July of 1997, adopted an ordinance revision dealing with animals in Riverside Cemetery. This revision required dogs to be leashed, remain on paved roads, be cleaned up after by their owners, and be prohibited from the facility during funeral services. Per City Council's direction, a six-month evaluation of the ordinance changes were required in order to evaluate the effectiveness of these revisions. Over this period of time, the Cemetery Manager and the Park Warden have been documenting occurrences of violations of the ordinance. This information was presented to City Council at a work session on February 17, 1998. Based upon a request by City Council the Parks and Recreation Department and Legal staff is proposing a revision to Section 3-27 (e) of the Code of Ordinances of the City of Asheville. This change represents prohibiting animals at Riverside Cemetery with the exception of allowing dogs or domestic animals which assist persons with sight disabilities. The Department has initiated a Dog Park Task Force which has been meeting since January of 1998. The purpose of this task force is to determine an appropriate location for development of a dog park within the City. This group is very active and is planning to present their report to City Council on May 19, 1998. The Parks and Recreation Department has been assisting this group in trying to address the provision of a dog park within the City.

Upon inquiry of Vice-Mayor Hay about the penalties, City Attorney Oast said that our standard civil penalty is a $50 fine for every violation. If a violation becomes severe enough then the Police would get involved and issue a criminal citation, which could be a fine or imprisonment of up to two years.

Councilwoman Field said that she was disappointed that the trial period did not work and applauded the Parks and Recreation Department for trying.

Mayor Sitnick felt it was important to pursue the Dog Park Task Force. Even though she was opposed to having dogs in Riverside Cemetery, she sympathized with dog owners who need places to walk their dogs. She suggested a grace period of ten days for posting of signs and educating the public of the change.

Mayor Sitnick closed the public hearing at 5:28 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2461 with a ten day grace period. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 434

B. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO CHANGE ADULT ESTABLISHMETNS FROM USES BY RIGHT SUBJECT TO SPECIAL REQUIREMENTS TO CONDITIONAL USES

ORDINANCE NO. 2462 - ORDINANCE AMENDING CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) OF THE CITY OF ASHEVILLE TO CHANGE ADULT ESTABLISHMETNS FROM USES BY RIGHT SUBJECT TO SPECIAL REQUIREMENTS TO CONDITIONAL USES

Mayor Sitnick opened the public hearing at 5:30 p.m.

Deputy City Clerk Corns presented the notice to the public setting the time and date of the public hearing.

City Attorney Oast said that City Council requested that staff look at establishing a moratorium on or adopting other resolutions for any new adult establishments within the city limits while the North Carolina General Assembly considers new legislation allowing local governments to have additional regulatory control over adult businesses.

City Council at its formal meeting on February 28, 1998, directed staff to initiate the process to consider a temporary moratorium on or other regulations for new adult establishments in the City of Asheville. The purpose of this process is to provide the City with an opportunity to determine whether additional or different regulations will be appropriate in the event that new authority is granted to North Carolina's local governments by the General Assembly. Senate Bill 452 was introduced in the 1997 Regular Session of the North Carolina General Assembly, and if adopted, would potentially return a measure of regulatory control over adult businesses to local governments.

In reviewing this issue, staff felt that the best was to insure strict review of any potential new locations for adult establishments, while preserving the constitutionality of our ordinance, would be to amend the current zoning regulations pertaining to adult establishments. Specifically, the proposed ordinance provides that adult establishments, currently a Use by Right Subject to Special Requirements (staff review only if all conditions are met; no additional conditions can be placed on the permit), be treated during the period of time stated in the ordinance as a Conditional Use (review by Council; additional conditions may be placed on a permit).

The Planning and Zoning Commission at its meeting on March 4, 1998, voted unanimously to approve the ordinance amendment. The Commission did express a concern for the time being spent on this issue in that they felt the amendment really made very little change as to how adult establishments are handled under the ordinance at present.

Staff recommends City Council consider the adoption of an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville to change adult establishments from Uses by Right Subject to Special Requirements to Conditional Uses.

Upon inquiry of Mayor Sitnick, City Attorney Oast said that adult establishments do cover adult book stores and we currently do not have any adult book stores in Asheville.

Councilwoman Field confirmed that there are only four districts that allow adult establishments now, those being the Commercial Industrial, Highway Business, Regional Business and they are not prohibited in the River District.

When Councilman Tomes asked if the City Attorney has heard anything about pending legislation regarding adult entertainment on the Internet, City Attorney Oast said that he's heard legislation discussed at the federal level, however, nothing at the state level.

Mayor Sitnick closed the public hearing at 5:49 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2462. This motion was seconded by Councilman Cloninger and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 436

C. PUBLIC HEARING TO CONSIDER REZONING TWO LOTS AT 16 BEAR CREEK DRIVE DROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO HB HIGHWAY BUSINESS

ORDINANCE NO. 2463 - ORDINANCE TO REZONE TWO LOTS AT 16 BEAR CREEK DRIVE DROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO HB HIGHWAY BUSINESS

Mayor Sitnick opened the public hearing at 5:50 p.m.

Deputy City Clerk Corns presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, said that this is consideration of an ordinance to rezone three lots located at 16 North Bear Creek Road from RM-8 Residential Multi-Family Medium Density to HB Highway Business.

The three lots at 16 N. Bear Creek (PIN Nos. 9628.15-54-7654, 7721, and 8515) are approximately 1.5 acres with one residential structure that is currently vacant. The 2010 Plan shows this area to be low density residential which the current RM-8 zoning permits. The property is within the city limits of Asheville. Possible access to this property would cause intrusion through an existing residential neighborhood and street and have traffic impacts on the existing single family neighborhood.

The Planning staff reviewed the rezoning request and recommended denial from RM-8 Multi-Family Residential to HB Highway Business. However, at their March 4, 1998, Planning & Zoning Commission meeting, the Commissioners voted 4- 2 to deny the rezoning of 9628.15-54-7721 but approve the rezoning request for lots 9628.15-54-7654 and 8515 except for a ten foot strip around the right-of-way of Bear Creek Drive which is to remain RM-8.

Upon inquiry of Councilman Cloninger, Mr. Green explained to what extent the recommendation of the Planning & Zoning Commission addressed the concerns that the Planning staff had in recommending denial.

At the request of Councilman Cobb, Mr. Green explained the difference between the Commercial Industrial District and the Highway Business District.

Mr. Ed Brandle, 6000 Castlebrook Drive in Raleigh, N.C., petitioner, spoke in support of the rezoning request.

Mayor Sitnick closed the public hearing at 6:03 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2463. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 438

D. PUBLIC HEARING TO CONSIDER A MODIFICATION REQUEST OF STREET DESIGN STANDARDS FOR CARDINAL PARK SUBDIVISION

Mayor Sitnick opened the public hearing at 6: 04 p.m.

Deputy City Clerk Corns presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, said that this is consideration of a modification to the subdivision street design standards for Cardinal Park Subdivision.

The Planning and Development Department received a request to approve a nine lot subdivision known as Cardinal Park on approximately 1.75 acres off Shannon Drive in Oakley. The staff reviewed the request and presented it to the Technical Review Committee ("TRC"). The TRC reviewed the request and required the developer to make several changes to the preliminary plat prior to any approval by the TRC.

The major concern with the preliminary plat was the design at the end of the street where the developer wanted to construct a "T" turnaround instead of the required cul-de-sac. After review by the appropriate departments, the developer was approved to submit the preliminary plat, with conditions, to the Planning and Zoning Commission ("Commission") for review of the street design modification. After review by Commission, the preliminary plat with the "T" turnaround street design modification was recommended for approved by City Council.

The staff presented the preliminary plat to TRC at their meeting on February 16, 1998, and then to the Commission at their meeting on March 4, 1998. Both TRC and the Commission voted unanimously to recommend approval of the preliminary plat with the street design modification.

Mayor Sitnick closed the public hearing at 6:09 p.m.

Councilman Tomes moved to approve the modification request of street design standards for Cardinal Subdivision. This motion was seconded by Councilman Sellers and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 98-43 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD

Vice-Mayor Hay said that Mike Holcombe has resigned as one of the City's representatives on the Metropolitan Sewerage District Board, thus leaving a vacancy until January 19, 2000. The Boards and Commissions Committee recommends that the position be immediately filled with another City staff person. Therefore, this resolution will appoint Mr. S. Douglas Spell, Assistant City Manager, to fill Mr. Holcombe's unexpired term, or until his successor has been duly appointed.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Hay moved for the adoption of Resolution No. 98-43. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 375

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 24, 1998, THE COMMUNITY MEETING HELD ON MARCH 31, 1998, AND THE WORKSESSION HELD ON APRIL 8, 1998

Vice-Mayor Hay moved for the adoption of the minutes of the regular meeting held on March 24, 1998, the community meeting held on March 31, 1998, and the worksession held on April 8, 1998. This motion was seconded by Councilman Cobb and carried unanimously.

B. COMMENTS BY JERRY RICE

Mr. Jerry Rice said that he has investigated Genette's holdings and feels that our community deserves better than what the Asheville Citizen-Times newspaper is promoting which is mistrust in how they are printing their material. Mr. Rice also commented that he had contacted several cities in the eastern part of the state that had cable franchises with Multi-Media and requested public records from those cities and was refused.

C. CLAIMS

The following claims were received by the City of Asheville during the week of: March 6-26, 1998: Hobson Construction (Water), Kathy Sprouse (Sanitation), Jim Reato (Civic Center), Debbie Ledford, and William L. Pearcy (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

D. CLOSED SESSION

At 6:25 p.m., Councilwoman Field moved to go into closed session for the following reasons: (1) to consult with an attorney employed by the City of Asheville in order to preserve the attorney-client privilege between the City and its attorney - the parties in the matter about which the Council expects to receive advice are: Multi-Media Publications of North Carolina, Inc., d/b/a Asheville Citizen-Times; Brenmor Cable Partners, d/b/a InterMedia, and the City of Asheville - the statutory authority is G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Sellers and carried unanimously.

At 7:50 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Vice-Mayor Hay and carried unanimously.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:50 p.m.

CITY CLERK

Leni Sitnick
MAYOR

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Tuesday - April 21, 1998 - 3:00 p.m.

Worksession

Present: Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Summer Food Services Grant Application

Summary: The consideration of the City applying for funding to provide food service as a part of the Summer Day Camp Program.

Funds are available through the North Carolina Department of Environment, Health and Natural Resources, Division of Maternal and Child Health, Child and Adult Care Food Program to provide breakfast, lunch, and snacks. The City of Asheville wishes to apply for funding to provide food service in the Summer Day Camp Program.

The Summer Day Camp Program will provide supervised licensed child care, recreation, enrichment activities, and food service for children in kindergarten through 5th grade, June 4 through August 7, 1998, Monday through Friday, 7:30 am to 6 p.m. at a cost of $72 per week for city residents, $82 per week for non-city residents. Sites will be located at Claxton, Hall Fletcher, Jones, Dickson, and Vance Elementary Schools; and Reid Community Center. Breakfast, lunch and snacks will be provided daily at no extra cost. The number of meals and amount of reimbursement will vary based on the total meals actually served each month.

The Parks and Recreation Department recommends the City of Asheville apply for the Summer Food Service Program for Children through the North Carolina Department of Environment, Health and Natural Resources.

Budget Amendment to Appropriate Section 108 Loan Guarantee Funds

Summary: The consideration of a budget amendment to appropriate $1,500,000 from the U.S. Dept. of Housing and Urban Development ("HUD") in Section 108 Loan Guarantee Funds for rehabilitation of substandard affordable rental properties.

City Council approved submittal of the Section 108 Loan application on November 11, 1997. The City submitted an application to HUD on December 16, 1997, for $1,500,000 in Section 108 Loan Guarantee funds. Approval of the loan application by HUD was received by the City on March 31, 1998. This action will appropriate the funds into the General Ledger. These funds will be loaned to investor-owners of substandard affordable rental properties. The investor-owners must agree to rehabilitate the structure with loan proceeds and rent the units at affordable rents, to low and moderate income persons. The goal is to rehabilitate 100 - 150 rental units over the next three years.

Community Development staff recommends adoption of the budget amendment.

Renaming Ballfield to Honor Charlie Bullman

Summary: The Parks and Recreation Advisory Board recommends erecting a sign at the ballfields to rename this athletic facility in honor of Charlie Bullman.

In 1994, the Parks and Recreation Advisory Board unanimously approved renaming the ballfields in the Haw Creek community in honor of Charlie Bullman. Charlie Bullman has dedicated over 40 years of his life to the youth of Asheville. He has been very instrumental in developing the program for the East Asheville Youth Activities Association and has served as President for the league for all but three of the past 40 years. He has not only served as the President but as a role model for many children who have grown up learning the value of wholesome recreation. Charlie has proven himself as an invaluable asset to the community and the recognition of naming the ballfields in honor of Charlie is only fitting. A ceremony will be held on April 27 prior to the opening game of the season where a sign will be erected officially renaming the park the Charlie Bullman Park.

The Parks and Recreation Advisory Board recommends that City Council approve erecting a sign renaming this athletic facility in honor of Charlie Bullman.

Milling Contract for Hilliard Avenue

Summary: The consideration of a resolution authorizing the City to enter into a milling contract with APAC-Carolina, Inc.

The City plans to repave a portion of Hilliard Avenue beginning in June. In connection with that repaving, the existing street surface needs to be "milled" in order to lower the paving surface, and to provide a good adhesion base for the new surface.

The City cannot perform this milling work and must have it done by contract. The estimated cost of this work was low enough that formal bidding was not required.

Using the informal bidding process, the City contacted three local firms about doing the work. Only one of the firms, APAC-Carolina, Inc., has the ability to do it, and they submitted a proposal that was within the City's budget for this work.

The proposed cost of the work exceeds the City Manager's contracting authority. Accordingly, the resolution authorizes the City Manager to execute the contract with APAC on behalf of the City.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

REPORT ON PARKS AND RECREATION COMPREHENSIVE MASTER PLAN

Mr. Irby Brinson, Director of Parks and Recreation, said that in June of 1997, City Council approved entering into a contract with Woolpert LLP from Charlotte, North Carolina, to develop a comprehensive Master Plan for Parks and Recreation. In addition, in order to help facilitate the development of this plan and to ensure that input from the community occurred in the process, a Master Plan Steering Committee was developed of 20 members of the community. This Steering Committee represented the diverse interests in our area. The comprehensive master planning process was divided into several steps. These included compiling demographic information, analysis of existing facilities and programs, community needs assessment, development of Master Plan proposals and recommendations, action plan implementation and presentation to City Council. The development of this Master Plan included an extensive public input process which included the six meetings with the Master Plan Steering Committee, sixteen focus group meetings and five community input sessions. This plan represents the recommendations from the community which will assist the City in developing the future of parks and recreation services and facilities for this community.

The Parks and Recreation Advisory Board, the Steering Committee and staff recommend adoption of the Parks and Recreation Comprehensive Master Plan through the year 2015.

Mr. Gary Stewart and Mr. Leon Younger, consultants from Woolpert, LLP., outlined the project overview which consisted of (1) long range plan - 17 years; (2) living document needing to be updated every five years; (3) planning area encompasses the extraterritorial jurisdiction; (4) community driven; (5) balance vision with realism; and (6) recognizes budget issues. He then used a flow chart to describe the planning process that took place.

The demographic information they reviewed contained (1) total population growth and projections; (2) age distribution and median age; (3) race; (4) sex and gender; (5) households; (6) income; and (7) economy. Physical factors reviewed were (1) growth trends, land use, and growth factors; (2) neighborhood and historic preservation; (3) transportation and roads; (4) water and sewer services; (5) soils and topography; (6) environment, open space, and watersheds; and (7) unique natural areas. Additional information included (1) 1996 planning area population was 98,202; (2) 2015 planning area population projection is 109,417; (3) the population is becoming more culturally diverse and aging; (4) more corporations are moving into the area; (5) topography presents major limitations; and (6) several major natural areas surround the City.

An analysis of facilities include: (1) the planning area has 112 recreation sites; (2) the Department operates 54 facilities including over 547 acres, 11 recreation centers, 40 parks, 2 swimming pools, 22 tennis courts and one cemetery; and (3) the Department also responsible for other City buildings. Further analysis shows (1) most park sites are used extensively and were generally rated good; (2) many facilities have aged and are at the end of their life cycle; (3) maintenance is stretched; and (4) pools and recreation centers need major upgrades. An analysis of recreation programs include (1) national trends for 21 program areas were overlaid and a strengths, weaknesses, opportunities and threats analysis was completed; (2) the Department is ahead of national trends in special events/festivals, daycare/preschool, and after school/day camp programs. National trends for the Department to consider are (1) wellness and fitness programming; (2) earned income opportunities; (3) program standards with measurable outcomes; (4) market plans for facilities/programs; (5) partnership development; (6) core program development; and (7) intergenerational programming of recreation centers.

The community needs assessment consisted of five techniques which were used to gather input: (1) project advisory team meetings; (2) focus group meetings; (3) community workshop meetings; (4) recreation standards; and (5) citizen survey. The project advisory team meetings consisted of (1) six meetings to review work in progress; (2) ranged from 25-40 people in each meeting; and (3) individuals representing various community viewpoints throughout the planning area. The focus group meetings (16 meetings from Oct. 2-23, 1997) was with (1) adult sports; (2) alternative transportation; (3) business community; (4) City Officials - 2 meetings; (5) co-sponsored groups; (6) cultural groups; (7) environmental groups; (8) festivals; (9) health services; (10) neighborhoods; (11) other recreation providers; (12) schools; (13) special populations; (14) youth services; and (15) youth sports. The community workshop meetings were in (1) East Asheville Center on October 2, 1997; (2) Montford Center on October 9, 1997; (3) West Asheville Center on October 16, 1997; (4) Shiloh Center on October 23, 1997; and (5) Civic Center on March 19, 1998. Recreation standards included (1) review state and national standards; (2) develop individual standards for City; (3) quantitative comparison for park land and facilities; and (4) comparison of individual programs based upon natural trends. The citizen survey consisted of (1) 3,500 surveys were distributed with 481 returned; (2) assessment of attitudes and awareness; (3) perceived importance of Parks and Recreation Department; (4) identify additional services desired; and (5) confirmed findings from other techniques. Facilities statements: (1) need greenways, bikeways and safe walks; (2) need larger centers for multipurpose use; (3) need a sports complex, (4) need larger park sites; (5) purchase property for new parks; and (6) improve and upgrade existing parks. Program statements: (1) create joint ventures and partnerships; (2) coordinate city and county programs; (3) more senior, teen and female programs; (4) eliminate high cost and low attended programs; and (5) use centers for social events. Policy statements: (1) improve existing facilities and commit to maintenance; (2) make parks accessible to neighborhoods; (3) provide facilities throughout the community; (4) keep fees low for kids and seniors; and (5) don't let the center city sites get lost in the shuffle.

Proposals and recommendations included the following roles of providers: (1) federal; (2) state of N.C.; (3) Buncombe County; (4) City of Asheville; (5) other municipalities; (6) schools; (7) quasi-public sector; and (8) private sector. Buncombe County's role should be (1) more focused on County-wide facilities; and (2) provide district parks and special use facilities. The City of Asheville's role should be (1) more focused on serving Asheville citizens; and (2) provide community, neighborhood, mini, and special-use parks along with greenways. Both agencies' progress should be monitored to avoid duplication and maximize partnership. Partnership opportunities should include (1) schools; (2) neighborhood groups; (3) churches; (4) hospitals; (5) private sector; and (6) other agencies. Regional parks - sites within the area are sufficient and provide adequate service (Smoky Mountain National Park, Pisgah National Forest, Blue Ridge Parkway, Mt. Mitchell State Park and WNC Arboretum. District parks - one new site (Buncombe County). Community parks - three new sites - French Broad/landfill area; Lake Craig area; Erwin Hills area. Neighborhood parks - six new sites - Merrimon/Elkmont area, Beaverdam area; Starnes Cove area, Haw Creek area, Dingle Creek area and Royal Pines areas. Mini parks - nine new sites (existing acreage is adequate but individual districts have need for more sites) - north district - 2 sites minimum; south district - 4 sites minimum; east district - 1 site minimum and west district - 2 sites minimum. Specialized facilities: (1) create two sports game field complexes (a) Richmond Hill site (youth athletics) and (b) stand alone or at a community park site (adult/mixed-use); (2) improve existing swimming facilities at Malvern Hills and Walton Street; (3) develop 2 mega center sites west and south (one site with an indoor pool; (4) renovate and expand 4 existing centers as full multi-purpose recreation centers (Reid, Montford, Shiloh, Stephens-Lee); (5) reuse 7 existing centers as community centers (North, East, West, Murphy-Oakley, Senior Opportunity, Burton, Harvest House); and (6) develop one public golf course. Regarding greenways: (1) a Greenways Master Plan is currently being completed by the Planning Department which will make specific recommendations; (2) corridors were identified and coordinated with the Greenways Master Plan; and (3) standards indicate that 19-22 miles are needed for fitness and walking/jogging trails.

Action plan implementation (1) balance vision with realism; (2) three phases over the 17 year planning period (2015); (3) will meet the needs defined by the community; and (4) recognizes budget issues.

Capital Improvement Program - (1) There are three approaches (status quo, moderate, aggressive) for implementation; (2) following a status quo approach, the City is projected to spend $13.4 million in the next 17 years; and (3) following an aggressive approach, the cost could reach in excess of $70 million. A $30.4 million moderate scenario for capital improvements allows for (1) renovations/maintenance - $13.5 million; (2) 2 community parks - $7.8 million; (3) 3 neighborhood parks - $2.2 million; (4) 1 mega center without pool - $5.6 million; and (5) youth athletic complex - $1.4 million. A moderately aggressive proposal would include a renovations/maintenance program of $13,365,000; land acquisition program of $3,525,000; park development program of $13,942,000; and special use facilities development program of $26,482,000 for a total capital improvement cost of $57,315,000 which does not include greenway development.

Phase I (2000-2005) could include: (1) on-going renovations/maintenance; (2) purchase park land: 3 community, 3 neighborhood, 1 mini, and mega center site; (3) plan and develop parks: 1 community; 3 neighborhood, and 2 mini; (4) plan and develop special facilities: youth athletic facility, mega center with pool, and golf course - total Capital Improvement Plan of $27,847,500.

The proposed operations budget would be (1) at current levels (status quo), the City will spend $90.4 million for operations; and (2) the total cost for operations through Fiscal Year 2015-16 is projected to be $143,508,757 or approximately $8,507,621 per year.

Staff needs: (1) the new organizational structure is centered on efficiency, communication, and strategic management; and (2) four key positions under the Director have been identified which are the Superintendent of Recreation, the Superintendent of Administration, the Superintendent of Parks, and the Superintendent of Facility Services.

Pricing recommendations: (1) establish a costing program to evaluate direct and indirect costs; (2) evaluate each activity's merit and benefit in order to determine its level of public subsidy; (3) establish a strategy to seek out sponsorships and grants through a formal request process; (4) communicate to users the percentage of monies each program receives from the City and/our outside sources; and (5) price all new program services at appropriate levels of public subsidy that are in tune with City's value system.

Earned income opportunities: (1) resident and non-resident fees; (2) sponsorships; (3) grants; (4) partnerships; (5) park foundations; (6) advertising; (7) volunteer development; (8) marketing strategies; and (9) privatization.

Key funding/revenue sources include: (1) generate a revenue plan considering all options of (1) general tax revenues; (2) general obligation bonds; (3) revenue bonds; (4) foundations; (5) general foundations; and (6) federal and state assistance.

Master Plan funding strategy includes: (1) increasing General Fund contributions by 5% will generate $94,996,608 for the 17 year planning period (assuming $76.80 per capita); (2) this increase represents 0.4% of the total City budget for Fiscal Year 1997-98; (3) if the funding remains at current levels it will generate $90,457,057; (4) three bond issues are targeted for approximately $27.8, $18.2 and $11.2 million for the years 1999, 2005 and 2011 respectively. The total is $57,315,000 (100% of Capital Improvement Plan); (5) it is a goal for user fees to generate 18% of the total budget; (6) new and renovated facilities make this achievable; (7) the recommended Special Use Facilities (athletic complexes, 2 mega centers, golf course) will recover 73% of their cost under Asheville's current pricing philosophy; (8) a combination of partnerships, sponsorships, grants, gifts and other revenue sources; and (9) the goal for this combination is $12,393,873 of total budget or $729,051 over the 17 year planning period.

Review of the Master Plan funding strategy is the General Fund (49.29% of budget) for $94,966,608; Bonds (28.54% of budget) for $57,315,000; User Charge Revenue (18.00% of budget) for $36,148,276; and Partnerships, grants, sponsorships and gifts (6.17% of budget) for $12,393,873. The total being $200,823,757.

Mr. Stewart and Mr. Younger responded to various questions from Council, some being, but not limited to: their opinion on whether the community would support a bond referendum;

regarding the extraterritorial jurisdiction facilities, did they recommend that Buncombe County help with those facilities; what facilities are at the end of their life cycles; what types of partnerships were they thinking about; was the response to the citizen survey about average; why did they recommend a public golf course; what are the indirect costs they mentioned; what the bond referendum would cost the citizens in taxes; is it unusual for a parks & recreation department to maintain city buildings; what costs are attributable to the extraterritorial jurisdiction facilities; is it feasible to adopt a Parks & Recreation Master Plan without adopting a Greenway Master Plan; has any land been identified for mini-parks; suggestions for privatizing; how should the City proceed if a bond referendum failed; and what kind of grants are available.

Upon inquiry of Mayor Sitnick on whether the consultants felt that the City should sell any part of Memorial Stadium, Mr. Stewart felt that the City should not sell it.

Upon inquiry of Councilwoman Field relative to bonds and how much it costs the City to go through a bond referendum, City Manager Westbrook said that he would provide that information to Council.

It was the consensus of City Council to hold a public hearing on the Parks and Recreation Comprehensive Master Plan on May 12, 1998.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

LITTER CONTROL

Ms. Karen Rankin, Waste Management Coordinator, reviewed with Council where litter comes from: pedestrians, motorists, dumpsters used by businesses, loading docks, construction and demolition sites, trucks with uncovered loads and household trash handling and its placement at the curb for collection.

She reviewed the current clean-up efforts: (1) Adopt-A-Street Program; (a) run cooperatively with Quality Forward; (b) currently 45 groups participating; and (c) city provides gloves, bags, and trash disposal; and (2) dump site cleanups; (2) work with Buncombe County and the N.C. Dept. of Transportation.

She reviewed Asheville dump site cleanups in 1998. Completed cleanups includes Club Street - 30 truck loads; $17,000; and Montford - 12 truck loads, $12,000. Current projects are on Merritt Street, Craven Street and Richland Avenue.

Downtown efforts include: (1) early morning trash pick-up; cigarette butt receptacles added; (3) street cans collection frequency increased; and (4) began work on flyer management.

New initiatives include (1) appliance collection fee reduced from $25 to $5; (2) additional street sweeper purchased; and (3) new position created - Sanitation Projects Coordinator.

Litter violations penalties are based on weight and type of litter disposed: (1) up to 15 pounds - $100 to $500, misdemeanor; (2) 15 to 500 pounds - $100 to $1,000, misdemeanor; and (3) over 500 pounds or a hazardous waste, felony.

Research by Keep America Beautiful Inc. found that people litter because they feel no sense of ownership, even though areas such as parks are public property, they believe someone else - a park maintenance or highway worker - will pick up after them; and (3) litter has already accumulated.

Mayor Sitnick noted that (1) she is in the process of obtaining reports of how many signs are taken down and other pertinent information regarding the sign enforcement; (2) she has talked with the Coalition of Asheville Neighborhoods regarding neighborhood kiosks; (3) she has talked with the City Manager regarding street and sidewalk vacuums which are expensive, but would help the street sweepers keep sidewalks clean - especially in the downtown area; (4) there is a need for an education awareness project in the schools; and (5) City Council needs to lend their support to the enforcement of the state law that requires loads on dump trucks to be covered.

Councilwoman Field said that (1) the kiosks in downtown are working; (2) graffiti needs to be removed from the buildings or painted over it as soon as possible; (3) litter in downtown actually needs to be picked up and just not swept from street to sidewalk; (4) litter on vacant lots needs to be addressed; and (5) people need to be educated that the sidewalks in front of their buildings is their responsibility to keep clean along with keeping the grates around the trees clean as well from litter and cigarette butts.

Councilman Cobb stressed that an education program is an absolute must to help alleviate the problem of people littering.

Ms. Susan Roderick, Executive Director of Quality Forward, briefed Council on a litter summit taking place in Raleigh, N.C., and how our ideas might blend in with that road show. She also relayed that the private sector is starting to get involved with litter prevention.

Upon inquiry of the City Manager, Mayor Sitnick envisioned the litter roundtable consisting of those in the community who are already participating in that issue and having it open to the public and having it solution oriented. She suggested inviting various groups, i.e., Quality Forward, Adopt-A-Street, schools, the church community, etc. She felt that when a date is set for the litter roundtable, that it could be placed in Quality Forward's newsletter.

Mr. Bob Tinkler, with Adopt-A-Street, briefed Council on how they are working on litter prevention.

Ms. Willie Mae Brown, Chair of the Clean Community Committee, urged City Council to adopt-a-street and hoped they would continue to support their efforts.

Upon inquiry of Mayor Sitnick, Ms. Roderick said that Quality Forward has done some work with the fast food franchises and will continue to try to do more.

It was the consensus of City Council to hold the litter roundtable in the third week in August, 1998.

ESTABLISHMENT OF AN ASHEVILLE FILM BOARD

Ms. Robin Westbrook, Public and Community Involvement Coordinator, said that this is the consideration of an ordinance establishing an Asheville Film Board.

Western North Carolina (WNC) and the surrounding area has become an increasingly popular location for film production. Efforts to promote and coordinate film production in WNC are currently organized through the North Carolina Film Commission and the Western North Carolina Film Commission. City Council has expressed an interest in supporting these and other activities by establishing an Asheville Film Board. This Board will encourage and support efforts to increase film production in the City of Asheville.

City Attorney Oast suggested some amendment to the ordinance prior to adoption by City Council.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REPORTS FROM BOARDS AND COMMITTEES

Councilman Tomes said that the Minority Business Commission has requested that they be allowed to make a presentation to City Council. It was the consensus of Council to instruct the City Manager to schedule their appearance at a worksession.

Councilwoman Field was pleased to report that the Metropolitan Sewerage District Planning Committee is taking a step forward by hosting or initiating some type of long range planning for infrastructure for the whole region.

HILLCREST COMMUNITY MEETING DATE

It was the consensus of City Council to hold the Hillcrest community meeting on Tuesday, May 5, 1998, at 6:00 p.m., at the Hillcrest Community Center. The tour of the pedestrian bridge will take place at 5:30 p.m. on Tuesday, May 5, 1998, with City Council meeting at the community center.

DISCUSSION OF CONDITIONAL ZONING

Mr. Gerald Green, Senior Planner, said that this report provides information on conditional use zoning to assist City Council in making a decision regarding the application of this process in Asheville.

Conditional use zoning permits a significant amount of flexibility during the rezoning process. The flexibility provided by this approach allows the attachment of conditions tailored to the property being rezoned or to the use proposed for the site. Conditions are identified and agreed to by the applicant, with the approval of the decision-making body. Adverse impacts of the rezoning, and subsequent development, can be mitigated by the conditions attached to the rezoning. Significantly more time is required for the review and administration of conditional use zoning due to the need to identify conditions, negotiate with the various involved parties, and assure compliance with the conditions. Conditional use zoning can be a useful tool for those communities willing to commit the resources necessary to make it work.

This report is being provided as additional information for City Council regarding conditional use zoning.

By the use of slides, he explained what conditional use zoning is: (1) zoning which allows the attachment of conditions during the rezoning process; (2) conditions typically address potential impacts or circumstances unique to the property; (3) conditions vary from case to case; (4) conditions assure that development on rezoned land is compatible with surrounding uses and that adjacent properties are protected from negative impacts or loss of value; (5) conditions usually consist of on-site design restrictions and requirements, but can include requirements for construction of or payment for off-site improvements; (6) conditions must be identified by the rezoning applicant and approved by the City Council as part of the rezoning; (7) site plan is not reviewed as part of rezoning request; (8) during review of the site plan, review staff assures that all conditions attached to the rezoning are met; and (9) following approval of the site plan and construction of the building, City staff must assure that all conditions are met and continue to be met.

He then outlined two approaches to conditional use zoning: (A) Floating Zone: (1) conditional use design described for each zoning district in text of zoning ordinance; (2) no initial indication of conditional use zones on zoning map; (3) each rezoning considered on case by case basis; (4) rezoning of any property permitted subject to agreed upon conditions; and (5) if no action taken to obtain zoning/building permit within specified time, rezoning is void; and (B) Overlay Zone: (1) conditional use zoning permitted only in specified zoning districts; (2) conditional use districts described in text of ordinance and shown on zoning map as an overlay to the existing zoning; (3) City identifies and designates those areas where conditional zoning is appropriate or necessary; and (4) flexibility is limited under this approach.

The advantages include: (1) encourages dialogue and negotiation among the applicant/developer, staff, and neighboring property owners; (2) permits the identification of a specific use(s) allowed on the site; (3) reduces fear of the unknown; (4) conditions are tailored to the site, addressing impacts the proposed uses would have on neighboring properties and the infrastructure; (5) provides the City with greater flexibility in the approval of rezoning requests; (6) permits the mitigation of development impacts; and (7) if used correctly, can help in the implementation of the comprehensive plan and small area plans.

The disadvantages include: (1) requires more time for staff, applicants, neighboring property owners, Planning & Zoning Commission, and City Council to identify and approve conditions; (2) change in development plans for property following conditional zoning may result in rezoning becoming void; (3) administration of development becomes more time consuming, as each site could have different development standards; (4) could result in increase in number of rezoning requests , as change in development plans require revised conditions; (5) concern that City may be micro-managing development; (6) more staff time spent on conditional use zoning requests would require revision of other staff priorities; and (7) revisions to record-keeping system would be needed to keep track of conditions attached to rezonings and compliance with these conditions.

Mr. Green and City Attorney Oast responded to several questions from Council relating to why staff didn't recommend conditional use zoning when the Unified Development Ordinance was being reviewed; how does spot zoning come into place with conditional use zoning; what type of conditions can be placed on a rezoning; will the permit fees for conditional use zoning be higher; and can the conditional use zoning be limited to certain districts.

Mayor Sitnick stated that Council is trying to be efficient and effective with staff and felt that they are already being stretched where enforcement is concerned. She felt that if 95% of the cases want special consideration, then eventually everyone will want special consideration and then what is the point of a standard Unified Development Ordinance. She felt the issue needed some intense thought with some concerns being staff time, budget concerns if there is a need to hire additional staff, and City Council time.

Vice-Mayor Hay agreed that it sounded like a tremendous amount of staff time, in addition to more time for the Planning & Zoning Commission and City Council.

City Manager Westbrook, who is the former City Manager of Cary, N.C., where conditional use zoning is used, outlined his experiences with that type zoning.

Councilman Tomes realized that there needs to be standard procedures but since government is to work on behalf of the people, he felt Council should at least have the option for some flexibility.

It was the consensus of City Council to consider this again when the Unified Development Ordinance is having it's annual review in the next couple of months.

OTHER BUSINESS:

Councilwoman Field advised Council of a State Building Code requirement that has to do with the issue of allowing open stairs inside of buildings, which will have a major effect on affordable housing. She felt this may be something that City Council will want to write their legislative delegation about.

Ms. June Lamb stressed the need for the urgency of City Council to consider the Shelburne Road rezoning issue and not wait until the public hearing continued date of July 28, 1998.

CLOSED SESSION

At 6:52 p.m., Councilman Sellers moved to go into closed session for the following reasons: (1) to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties in the matter about which the Council expects to receive advice are: (A) Multimedia Publications of N.C., Inc., d/b/a Asheville Citizen-Times; (B) Brenmor Cable Partners, Ltd., d/b/a InterMedia; (C) City of Asheville - the statutory authority is G.S. 143-318.11 (a) (3); and (2) to establish, or to instruct the City's staff or negotiate agents concerning the position to be taken by or on behalf of the City in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real estate - the statutory authority is G.S. 143-318.11 (a) (5). This motion was seconded by Councilman Cobb and carried unanimously.

At 7:50 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Vice-Mayor Hay and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:50 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - April 28, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Tomes gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING APRIL 30, 1998, AS "ISRAEL'S INDEPENDENCE DAY "

Vice-Mayor Hay read the proclamation proclaiming April 30, 1998, as "Israel's Independence Day " in the City of Asheville and presented a proclamation to Rabbi Ratner who asked for peace in the Middle East.

B. PROCLAMATION PROCLAIMING MAY, 1998, AS "OLDER AMERICANS' MONTH," THE WEEK OF MAY 10-16, 1998, AS "SENIOR CENTER WEEK," "SENIOR SMILE WEEK," "NURSING HOME WEEK," AND MAY 17-23, 1998, AS "SENIOR WELLNESS WEEK"

Councilman Cobb read the proclamation proclaiming May, 1998, as "Older Americans Month," the week of May 10-16, 1998, as "Senior Center Week," "Senior Smile Week," "Nursing Home Week," and May 17-23, 1998, as "Senior Wellness Week" in the City of Asheville. He presented the proclamation to Ms. Frances Corbin who briefed Council on some planned activities taking place during the month.

C. PROCLAMATION PROCLAIMING THURSDAY, MAY 7, 1998, AS "PARKS AND RECREATION VOLUNTEER RECOGNITION DAY "

Councilman Sellers read the proclamation proclaiming Thursday, May 7, 1998, as "Parks and Recreation Volunteer Recognition Day" in the City of Asheville and presented the proclamation to Mr. Jim Orr who is the recipient of the 1998 award.

D. PROCLAMATION PROCLAIMING APRIL 30, 1998, AS "DAY OF DIALOGUE"

Councilwoman Field read the proclamation proclaiming Thursday, April 30, 1998, the beginning of "Day of Dialogue" in the City of Asheville and presented the proclamation to Ms. Holly Jones, Executive Director of the YWCA. Ms. Jones briefed the Council on some activities planned for the day.

E. PROCLAMATION PROCLAIMING MAY 7, 1998, AS "NATIONAL DAY OF PRAYER DAY""

Councilman Tomes read the proclamation proclaiming Thursday, May 7, 1998, as "National Day of Prayer" in the City of Asheville and presented the proclamation to Reverend Canon William G. McLoughlin, Rector of the Church of the Resurrection, and Reverend Frank

Saunders from St. James AME Church, who briefed the Council on some activities planned for the day.

II. CONSENT:

Mayor Sitnick said that Item C. on the Consent Agenda has been removed.

A. RESOLUTION NO. 98-44 - RESOLUTION TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO FUND THE FOOD SERVCE FOR THE SUMEMR DAY CAMP PROGRAM.

Summary: The consideration of the City applying for funding to provide food service as a part of the Summer Day Camp Program.

Funds are available through the North Carolina Department of Environment and Natural Resources, Division of Maternal and Child Health, Child and Adult Care Food Program to provide breakfast, lunch, and snacks. The City of Asheville wishes to apply for funding to provide food service in the Summer Day Camp Program.

The Summer Day Camp Program will provide supervised licensed child care, recreation, enrichment activities, and food service for children in kindergarten through 5th grade, June 4 through August 7, 1998, Monday through Friday, 7:30 am to 6 p.m. at a cost of $72 per week for city residents, $82 per week for non-city residents. Sites will be located at Claxton, Hall Fletcher, Jones, Dickson, and Vance Elementary Schools; and Reid Community Center. Breakfast, lunch and snacks will be provided daily at no extra cost. The number of meals and amount of reimbursement will vary based on the total meals actually served each month.

The Parks and Recreation Department recommends the City of Asheville apply for the Summer Food Service Program for Children through the North Carolina Department of Environment and Natural Resources.

RESOLUTION BOOK NO. 24 - PAGE 376

B. RESOLUTION NO. 98-45 - RESOLUTION RENAMING THE ATHLETIC FACTILITY IN THE HAW CREEK COMMUNITY IN HONOR OF CHARLIE BULLMAN

Summary: The Parks and Recreation Advisory Board recommends erecting a sign at the ballfields to rename this athletic facility in honor of Charlie Bullman.

In 1994, the Parks and Recreation Advisory Board unanimously approved renaming the ballfields in the Haw Creek community in honor of Charlie Bullman. Charlie Bullman has dedicated over 40 years of his life to the youth of Asheville. He has been very instrumental in developing the program for the East Asheville Youth Activities Association and has served as President for the league for all but three of the past 40 years. He has not only served as the President but as a role model for many children who have grown up learning the value of wholesome recreation. Charlie has proven himself as an invaluable asset to the community and the recognition of naming the ballfields in honor of Charlie is only fitting. A ceremony will be held on April 27 prior to the opening game of the season where a sign will be erected officially renaming the park the Charlie Bullman Park.

The Parks and Recreation Advisory Board recommends that City Council approve erecting a sign renaming this athletic facility in honor of Charlie Bullman.

RESOLUTION BOOK NO. 24 - PAGE 377

C. RESOLUTION AWARDING MILLING CONTRACT TO APAC-CAROLINA INC. FOR HILLIARD AVENUE

This item was removed from the Agenda.

D. ORDINANCE NO. 2464 - BUDGET AMENDMENT TO APPROPRIATE $1,500,000 IN SECTION 108 LOAN GUARANTEE FUNDS FOR REHABILITATION OF SUBSTANDARD AFFORDABLE RENTAL PROPERTIES

Summary: The consideration of a budget amendment to appropriate $1,500,000 from the U.S. Dept. of Housing and Urban Development ("HUD") in Section 108 Loan Guarantee Funds for rehabilitation of substandard affordable rental properties.

City Council approved submittal of the Section 108 Loan application on November 11, 1997. The City submitted an application to HUD on December 16, 1997, for $1,500,000 in Section 108 Loan Guarantee funds. Approval of the loan application by HUD was received by the City on March 31, 1998. This action will appropriate the funds into the General Ledger. These funds will be loaned to investor-owners of substandard affordable rental properties. The investor-owners must agree to rehabilitate the structure with loan proceeds and rent the units at affordable rents, to low and moderate income persons. The goal is to rehabilitate 100 - 150 rental units over the next three years.

Community Development staff recommends adoption of the budget amendment.

ORDINANCE BOOK NO. 16 - PAGE 440

E. ORDINANCE NO. 2465 - ORDINANCE ESTABLISHING AN ASHEVILLE FILM BOARD

Summary: Western North Carolina (WNC) and the surrounding area has become an increasingly popular location for film production. Efforts to promote and coordinate film production in WNC are currently organized through the North Carolina Film Commission and the Western North Carolina Film Commission. City Council has expressed an interest in supporting these and other activities by establishing an Asheville Film Board. This Board will encourage and support efforts to increase film production in the City of Asheville.

ORDINANCE BOOK NO. 16 - PAGE 442

F. MOTION SETTING A PUBLIC HEARING FOR MAY 12, 1998, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO INCLUDE A REVISED DEFINITION OF SCHOOLS

G. MOTION SETTING A PUBLIC HEARING ON MAY 12, 1998, TO REZONE 594 EMMA ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT AND COMMUNITY BUSINESS II TO CB I COMMUNITY BUSINESS I DISTRICT

H. MOTION SETTING A PUBLIC HEARING ON MAY 12, 1998, TO REZONE 2222 HENDERSONVILLE ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

I. MOTION SETTING A PUBLIC HEARING ON MAY 12, 1998, TO REZONE 2200 HENDERSONVILLE ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

J. MOTION SETTING A PUBLIC HEARING ON MAY 12, 1998, TO CONSIDER THE PARKS AND RECREATION DEPARTMENT 2015 COMPREHENSIVE MASTER PLAN

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and ordinances on the Consent Agenda and they will not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A REQUSET FOR A NEW STREET NAME OF WREN WAY DRIVE, LOCATED AT THE CORNER OF SHANNON DRIVE

RESOLUTION NO. 98-46 - RESOLUTION ACCEPTING THE STREET NAME OF WREN WAY DRIVE

Mayor Sitnick opened the public hearing at 5:22 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that the developer and owner of Cardinal Park Subdivision project has requested to rename the existing Second Street right-of-way to Wren Way Drive. The acceptance is more indicative and appropriate for the property location which is at the corner of Shannon Drive. The Buncombe County representative, and City of Asheville representatives, from Traffic Engineering Division and the Asheville Fire Department, have confirmed that Wren Way Drive will not duplicate another street name elsewhere in Buncombe County.

The Technical Review Committee and the Planning & Zoning Commission both voted unanimously to recommend approval of the new street name.

Mayor Sitnick closed the public hearing at 5:24 p.m.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 98-46. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 378

B. PUBLIC HEARING RELATIVE TO REZONING 1201 PATTON AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO HB HIGHWAY BUSINESS

ORDINANCE NO. 2466 - ORDINANCE TO REZONE 1201 PATTON AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO HB HIGHWAY BUSINESS

Mayor Sitnick opened the public hearing at 5:24 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is consideration of an ordinance to rezone a split-zoned lot located at 1201 Patton Avenue from RM-8 Residential Multi-Family Medium Density to HB Highway Business. The entire lot is approximately 1.03 acres and each zone is approximate one-half an acre.

The 2010 Plan shows this area to be low density residential which the current RM-8 zoning permits. City staff feels that any higher intense uses permitted in the HB zoning district could possibly cause negative impacts on the existing residential neighborhood and street. This existing neighborhood is isolated with its primary access adjacent to this property.

This property is inside the city limits of Asheville.

The Planning staff reviewed the rezoning request and recommended denial from RM-8 Residential Multi-Family Medium Density to HB Highway Business. However, at the Planning & Zoning Commission meeting on April 1, 1998, the Commission voted 6-1 to approve the rezoning of PIN # 9628.08-97-4767 from RM-8 Residential Multi-Family Medium Density to HB Highway Business.

Upon inquiry of Councilman Cobb, Mr. Ownbey responded that there will be buffering required depending on what type of development is built.

When Vice-Mayor Hay asked about the parking lot. Mr. Ownbey said that since the use grandfathered in, if he changes the use, he can no longer use the parking lot.

Mr. Chao J. Tse spoke in support of zoning the entire lot Highway Business. He explained that when his family bought the property, they were not told that it was split-zoned.

Mr. Steve Aceto, attorney representing the petitioner, passed out some photographs and deeds showing the topography of the area and how the piece is developed as a whole. He said that the Tse family has been selling food at this location for ten years to finance their investment in this property. He said the level, paved parking area has access off Patton Avenue and at the rear on Laurel Loop. He said that the N.C. Dept. of Transportation has determined that a traffic light at Patton Avenue and Druid Drive is warranted and will be eventually installed. He noted that since 1967 the ownership of this property has not been divided and has been deeded as a single lot since at least 1969. He noted that the zoning line does not follow the tax lot boundaries. He said the Unified Development Ordinance provides for substantial buffering to be added if this use were to change. He felt this was a common sense revision to the zoning maps.

Vice-Mayor Hay felt frustrated when people don't check the zoning maps when they buy property.

Councilman Tomes wondered how many other parcels of land in the City are split-zoned.

When Councilwoman Field questioned why the property was split zoned especially since the Planning & Development Director doesn't support split zoning and City Council went out of their way when adopting the Unified Development Ordinance to solve some of the lot that were split zoned. Mr. Ownbey responded that he didn't have that history on this particular lot, however, the boundary line was the same that was used under the old zoning ordinance.

Councilwoman Field felt that the City should get a listing of all of the split zoned lots and review them to see if they needed to be all zoned one classification.

Regarding the split zoned lot, Vice-Mayor Hay theorized that when Patton Avenue was widened, the N.C. Dept. of Transportation condemned a portion of the front part of the lot on Patton Avenue making the front lot much smaller and they just put parking in the back.

At the request of Councilwoman Field, Mr. Ownbey explained why the Planning & Zoning Commission felt the lot should be rezoned.

Mayor Sitnick closed the public hearing at 5:43 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2466. This motion was seconded by Councilman Tomes.

Councilman Sellers spoke in support of the rezoning to Highway Business, however, he was concerned about the entrance/exit onto Laurel Loop.

Councilwoman Field and Councilman Cloninger asked staff to attempt to get all the split zoned lots cleared up in Asheville.

Mayor Sitnick said that in looking at all the uses available in the Highway Business District and know that City Council cannot vote on a rezoning having to do with current use or intended use, she would vote against this rezoning because of the distance in which it intrudes into the residential neighborhood.

When Mayor Sitnick asked for a vote on the motion, said motion carried on a 6-1 vote with Mayor Sitnick voting "no".

ORDINANCE BOOK NO. 16 - PAGE 444

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2467 - ORDINANCE AMENDING THE ZONING OF PROPERTY ON OLD HAYWOOD ROAD FROM RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY

Mayor Sitnick noted that the public hearing on this matter was held on March 24, 1998, and tabled until today in order to give the petitioners and the neighboring property owners time to get together in an attempt to reach a compromise on the rezoning. She said that after the reports are given as to the outcome of the meeting, she would re-open the public hearing to hear only new information as it pertains to the rezoning.

Mr. Gerald Green, Senior Planner, reviewed the original request by stating that David and Connie Evans and Max and Flora Wilson are the owners of 3 lots (PIN Nos. 9628.13-12-1961, 9628.17-02-6431, and 9618.16-93-6038), containing approximately 42 acres, located on Old Haywood Road near its intersection with Patton Avenue. The property is wooded with two homes located on it. The area adjacent t Lakeside Drive is wet and marshy. The property which is requested to be rezoned was R-3 under the old zoning ordinance but with the adoption of the Unified Development Ordinance, the property was designated RS-4. The R-3 designation of the property under the previous zoning ordinance permitted a development density of 16 units per acre, both single family and multi-family development.

Mr. Green then briefed Council on the meeting by stating that interested parties were contacted and a meeting to discuss the issue in an attempt to reach a compromise was scheduled on Wednesday, April 15, at 5:30 p.m. in the old West Asheville Branch Library on Haywood Road. He arranged the meeting and served as mediator. The meeting was arranged as follows: (1) Five neighboring property owners were identified and invited to represent the neighborhood; (2) in order to keep the meeting focused, only the identified neighborhood representatives could participate in the discussion; (3) all interested area residents could attend the meeting; (4) the rezoning petitioners were invited to present their desires for the property and to hear the concerns of the neighboring property owners; (5) the petitioners' attorneys could participate in the identification of possible compromises, but not in the discussion of desires and concerns; and (6) the purpose of the meeting was to identify concerns, desires, and a potential compromise(s). In addition to the identified neighborhood representatives, approximately 30 area residents attended the meeting.

The meeting lasted approximately two hours during which a number of concerns were expressed by the neighborhood representatives. The identified concerns include:

- traffic impacts;
- the impact of multi-family development on the character of the neighborhood;
- school overcrowding; and
- pedestrian safety in the area.

The petitioners discussed their plans for the property, stating that they have no development plans. They are interested in selling the property, with the purchaser being responsible for the development. Mr. and Mrs. Evans mentioned that a prospective buyer was interested in converting the large home on the property into a bed and breakfast, which would require multi-family zoning.

Following the discussion of concerns and desires, the petitioners for the rezoning identified possible compromises, as follows:

- Revise the rezoning request to RM-6 instead of RM-8;
- Provide a 50 foot buffer of RS-4 zoning around the boundary of the property; and
- Request a partial rezoning of the property, requesting multi-family zoning only for the house and the surrounding 8 to 10 acres (care would have to be taken with this approach to avoid illegal spot zoning).

The neighboring property owners did not accept any of the compromises offered by the petitioners for the rezoning. The consensus of the neighboring property owners was that the property should be zoned RS-2 and they did not support any rezoning of the property to permit greater density.

The meeting ended with no compromise being reached and the area residents strongly opposed to the rezoning of the property.

Mr. Green said that the Evans' are not here at this meeting due to medical problems. He said that he has talked with the attorney for the petitioners and they may present a request to revise the rezoning request application to provide a 100 foot buffer around the perimeter of the property, thereby negating the protest petition which has been filed by the neighboring property owners.

City Attorney Oast explained that one of the legal requirements of a protest petition is that the properties in opposition to the proposed rezoning have to be located within a 100 feet of the area to be rezoned and if you back off the rezoning line by 100 feet, it effectively negates the protest petition.

Upon inquiry of Councilman Sellers about a small piece of property, Mr. Green said that since the piece is marshy with a stream running through it, it would be difficult to develop.

When Councilwoman Field asked how the 100 foot buffering would address the visual concerns of the property owners, Mr. Green said that any development in the center of the property would still be visible.

Upon inquiry of Mayor Sitnick, City Attorney Oast explained that spot zoning depends on a number of different factors and that only a court can say whether it's spot zoning or not. Mayor Sitnick said she saw this as spot zoning in reverse - rather than creating a spot zoning, we're creating an area around a piece to create the spot.

Mr. William F. Slawter, attorney for the petitioners Evans and Wilson, reported on the meeting as well, in that the petitioners had agreed to a compromise of a 50 foot buffer along the perimeter of the property, which would be in addition to the buffering required by the buffering ordinance, which may be as much as 30 feet in some areas. They also discussed reducing the request from RM-8 to RM-6. The response they heard was simply that the neighborhood did not want the property developed except to single family and even to a more restrictive zoning of RS-2. Based upon the outcome of the neighborhood meeting and their follow-up from that meeting, the petitioners have authorized him to ask that the petition for rezoning be modified so as to only request the rezoning to RM-8 on the interior portion of the property leaving a 100 foot strip around the entire perimeter of the property zoned RS-4. He presented City Council with a map showing how that rezoning would look in that it would not be RS-4 along the line between the Wilson property and the Evans property, but around the entire perimeter of the property. That would negate the protest petition, however, it would absolutely ensure that the development of the property around the perimeter would have to be single family or the 100 foot strip left undeveloped. He reiterated that the zoning of the property before adoption of the Unified Development Ordinance was R-3, which allowed 16 units per acre.

Mr. Slawter responded to a questions about how someone could develop lots in the 100 foot strip that met the requirements of RS-4.

In response to a question from Councilman Cobb, Mayor Sitnick felt that it was pretty fair to say that lots that are developed for more density or for commercial use sell for a higher value than residential use.

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Mayor Sitnick reopened the public hearing at 6:17 p.m.

Mr. Joseph Kane, representative of the property owners who directly surround the petitioners' property, said that the property owners are convinced that there has not been a convincing demonstration that all uses permitted under the proposed zoning district classification would be in the general public interest and not merely in the interest of an individual or small group of people. Also, there has not been convincing demonstration on the petitioners' behalf that all uses permitted under the proposed zoning district would be appropriate in the area of the proposed change. There is, however, convincing demonstration on the community's behalf that the character of the neighborhood will be materially or adversely affected by any use permitted under the proposed zoning classification. The protection and preservation of neighborhoods is clearly stated in both the 2010 Plan and the Unified Development Ordinance. The approval of the proposed rezoning would be inconsistent with the goals and objectives of the community. The neighborhood does not feel that the financial gain for the benefit of two petitioners is a legitimate basis for downzoning. Democracy should prevail. The neighborhood urges City Council not to rezone this property.

Mr. David Peifer said that there was no compromise to be found at the meeting and reiterated all the reasons why the neighborhood did not support rezoning.

Mr. Jim Fagan stressed that the majority should rule.

Mr. Herman Hipps said that if City Council allows the 100 foot strip, it will undermine the Unified Development Ordinance. He urged Council not to rezone the property at all.

Mayor Sitnick closed the public hearing at 6:37 p.m.

Upon inquiry of Councilman Cloninger, Mr. Green explained why the protest petition would be negated and noted that there is no way the community could do a valid protest petition with the 100 foot strip around the properties remaining RS-4. With no valid protest petition, there is no longer the 3/4's majority voting requirement from Council - it would only take a simple majority to pass. City Attorney Oast added that this is not the kind of change that would invoke a separate public notice requirement.

When Vice-Mayor Hay asked if staff has had a chance to review the 100 foot buffer and if staff had a recommendation, Mr. Green replied that they have not received this proposal.

Upon inquiry of Councilwoman Field about the tone of the meeting with the property owners and neighborhood, Mr. Green felt that there was a willingness to listen on all parts, however, the neighborhood was adamant that the property not be rezoned but the petitioners did try to compromise.

Mr. Green said that if this rezoning were approved with the 100 foot buffer around the perimeter of the properties, the only way to access a multi-family development would be by crossing single-family zoned property which would require the building of a public street onto the property as opposed to using the private drive. Mr. Slawter did state that they were aware of this requirement.

Councilwoman Field said that she is a strong supporter of affordable housing and feels that this is a very difficult decision for her to make.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2467 to rezone the 3 lots (PIN Nos. 9628.13-12-1961, 9628.17-02-6431, and 9618.16-93-6038), containing approximately 42 acres, located on Old Haywood Road near its intersection with Patton Avenue, from RS-4 to RM-8, with the exception of a 100 foot buffer around the entire perimeter of the property remaining RS-4. This motion was seconded by Vice-Mayor Hay.

Councilman Cobb said that the rezoning is against the 2010 Plan, there are traffic congestion in the area already, the school is overcrowded and the community doesn't want multi-family development. He would not vote in favor of the rezoning.

Councilman Tomes hoped to have consensus from the community, however, he would not vote in favor of the rezoning.

Mayor Sitnick said that she would also have to vote against the rezoning because (1) she believes strongly in the 2010 Plan and it serves the community well, (2) the rezoning request will create spot zoning in several spots; (3) that the development of the 100 foot buffer will result in split zoned lots that will come back to City Council for resolution at a future date; and (4) the RM-8 which permits some non-residential uses could negatively impact this neighborhood, including the affordable housing aspect of the neighborhood. She felt that while a 100 foot buffer is an interesting idea and a cleaver idea, she believed that it was created in order to get a better vote from this Council.

Councilman Cloninger said that if there was still the potential for the neighborhood to gather another valid protest petition, he would support postponing this hearing in fairness to them to do that. However, since there is no way that a valid protest petition can occur, he didn't see any point in postponing the action.

Upon inquiry of Mayor Sitnick, Mr. Oast outlined the purposes City Council should use in considering rezoning requests.

Councilwoman Field said that her firm was the architect for the Sand Hill Venable School and the school is designed to be expandable. She said that the County School System did understand that there would be growth in that community and the school is designed to be able to be added onto fairly easily.

Mayor Sitnick called for a show of hands on the motion. Said motion carried on a 4-3 vote with Vice-Mayor Hay, Councilwoman Field and Councilmen Cloninger and Sellers voting "yea" and Mayor Sitnick and Councilmen Cobb and Tomes voting "no".

City Attorney Oast explained that since the ordinance didn't pass by a 2/3's vote of the Council, it has to be voted on again at the next formal meeting.

At 7:00 p.m. Mayor Sitnick announced a three minute break.

V. NEW BUSINESS:

A. PRESENTATION ON BUILDING SAFETY DEPARTMENT RECEIVING AN INSURANCE SERVICE OFFICE RATING OF "2" - BEST IN THE STATE

Mayor Sitnick was pleased to report that the Insurance Service Office Rating of "2" is not only the best in the State, but Asheville is the only City in the State to receive such a rating, and only one of a few cities in the nation to receive the rating.

Mr. Terry Summey, Director of Building Safety, said that effective on May 1, 1998, the City of Asheville will have new Insurance Service Office (ISO) Building-Code Effectiveness Grading Schedule (BCEGS) Ratings; the new Ratings of "2" are the best in the State.

As a result of Hurricane Andrew in 1992 knocking the wind out of property/casualty insurers that covered homes and businesses, it was recognized that effective building code enforcement can lower insured losses. The ISO, in cooperation with numerous organizations, developed the Building Code Effectiveness Grading Schedule (BCEGS). Studies of various catastrophes graphically demonstrated that effective code enforcement reduces loss in catastrophic events. Experts estimate that Hurricane Andrew losses could have been reduced 25% to 55% if building codes had been strictly enforced.

In 1995, ISO completed classifying communities in Florida, North Carolina, and South Carolina, three of the country's most hurricane-prone states. The City of Asheville was evaluated in mid-1995 and received a positive rating of "4" for both new commercial and residential construction. Normally jurisdictions are reevaluated every five years unless significant changes occur within the jurisdiction's inspection department. Due to changes, the City was reevaluated in November 1997, and received new ratings of "2" which are effective on May 1, 1998.

The benefits of "BCEGS" include the following: improving building codes, building departments and code enforcement; leading to better, more catastrophe-resistant buildings; reducing property losses from catastrophes; and reducing the economic and social disruption that results from catastrophes' serious and widespread destruction.

Due to rating credit tables currently being developed by insurance companies, staff will report back to City Council in the near future with the insurance cost savings to property owners as a result of the new ratings.

Upon inquiry of Councilwoman Field, Mr. Summey said that the insurance could go down anywhere from 2% to 17%.

At 7:28 p.m., Vice-Mayor Hay moved to excuse Councilman Tomes from the meeting. This motion was seconded by Councilman Sellers and carried unanimously.

B. RESOLUTION NO. 98-47 - RESOLUTION APPOINTING A MEMBER TO VICTORIA OF ASHEVILLE BOARD OF DIRECTORS

Vice-Mayor Hay said that the term of Robert G. Wurst, as a member of the Board of Directors of Victoria of Asheville Inc., expired on November 29, 1997. This resolution will appoint Mr. Ben Durant, Budget Director, to serve until November 29, 2000, or until his successor has been appointed.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Hay moved for the adoption of Resolution No. 98-47. This motion was seconded by Councilman Sellers and carried unanimously.

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VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 14, 1998, AND THE WORKSESSION HELD ON APRIL 21, 1998

Mayor Sitnick asked that the minutes of the April 14, 1998, meeting be amended on page 11 under the comments of Mr. Jerry Rice. Said amendment would be the addition of the following sentence: "Mr. Rice also commented that he had contacted several cities in the eastern part of the state that had cable franchises with Multi-Media and requested public records from those cities and was refused."

Vice-Mayor Hay moved for the adoption of the minutes of the regular meeting held on April 14, 1998, as amended by Mayor Sitnick above, and the minutes of the worksession held on April 21, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the week of March 27-April 16, 1998: Hobson Construction (Water), Joy Gossett (Water), David Helms (Water), Marie Heller (Water), Anna Sue Beathard (Water), Bob Edsell (Water), David Zane (Water), and Premier Federal Credit Union (Civic Center).

The following claims were received during the week of April 17-23, 1998: Carl Smith (Water), Signal Point Systems (Streets), Joyce Bugg (Water), Karen Walton (Water), Gail Wilson (Streets), Karen Davis (Sanitation) and Ruby Tweed (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

C. PUBLIC RECORDS

Mayor Sitnick read the following statement:

"As of today at approximately 5:00 p.m. InterMedia announced that it was withdrawing its appeal from the Superior Court's Order for the release of cable TV franchise fee records. This means that its Motion to Stay the release of those records will also be withdrawn. The City has already determined that it will not appeal the Court's Order. This means that the records can be available for inspection immediately.

"We want to emphasize that the position taken by the City in this case was never about trying to withhold information about the cable franchise from the public; it was about the interpretation of a statute that exists to protect the privacy of anyone that pays to the City taxes based on gross receipts. That statute makes it a criminal offense to release records that might disclose a taxpayer's income, and requires that an official who releases such records be dismissed from employment and not hold a government job in this State for five years. The City was caught in the middle--between the public's understandable desire to see the records, and the taxpayer's interest in not having sensitive financial information disclosed. The City's only interest in this matter has been to correctly interpret and obey the law. Although the Court's order directed the release of the records, the way the Order was written left City with some uncertainty about how the statute and the Court's interpretation of it might apply to other tax records. Given the severe consequences of an incorrect interpretation of the statute, this uncertainty was troubling. That is why the City carefully considered an appeal.

"We do not think, however, that it was the Court's intention that its decision be used to gain access to other tax records that are protected from disclosure, and so the City decided not to appeal. We hope that no one will attempt to use the Court's Order for that purpose.

"We appreciate the actions of InterMedia that made the release of the records possible, and recognize their willingness to cooperate, despite their understandable position on the legal issue involved in this matter.

"For now, the City will make the franchise payment records from the 1967 franchise available for inspection. The City and its staff have worked hard to address all of the competing interests in this matter; that's our job. We hope that our well-intended efforts are appropriately recognized for what they are, and that we can put this unpleasant episode behind us and direct our energies to more productive ends."

Mayor Sitnick said that anyone interested in inspecting those records that they are available in the Legal Department. Due to a miscommunication between herself and the City Attorney, she was of the understanding that these records would be copied and available to hand out. They have not been completely copied and that is being done now. As the record, as it stands, is available for public inspection immediately.

Councilman Cloninger requested that the words "For now," be deleted from the beginning of the fifth paragraph in the statement because he felt that might lead to a misunderstanding.

Councilman Cloninger moved to adopt the statement as previously read by Mayor Sitnick, with the deletion of the words "For now" beginning in the fifth paragraph of the statement. This motion was seconded by Mayor Sitnick and carried unanimously.

Mayor Sitnick said that "this morning when it came to my attention that InterMedia was going to back down from its appeal and its Motion to Stay, I instructed the City Attorney to have copies of all of the records ready to hand out to the press, not within one minute, but within one second of the release of that information from InterMedia, that they were withdrawing their appeal. And I am sorry that there was some kind of miscommunication. I'm very upset about the fact, and very angry that those records are not ready immediately for the press. The file is ready for inspection - the records are being copied now."

D. BOARD OF ADJUSTMENT

Councilman Cloninger asked for a report regarding the variance granted by the Board of Adjustment for property on Merrimon Avenue in March of 1998. He felt Council needed to look at two things - (1) the vote itself and whether Council can take any action as to that specific vote; and (2) whether we need to make any changes to the Board of Adjustment authority.

Mr. Gerald Green, Senior Planner, said that it was his understanding that the only appeal from the Board of Adjustment decision to the Superior Court of Buncombe County. He felt City Council has no other alternative other than appealing that to the Court.

City Attorney Oast said that it is clear that City Council has standing to appeal from a Board of Adjustment determination on an interpretation by the Planning Director, and that is an issue that the Board has yet to consider. As to the variance issue, he would have to investigate that. Ordinarily standing requires that you be an adjacent property owner or that your property value be affected. He explained that there is another issue coming before the Board of Adjustment in May regarding an appeal on the scheduled use of the property. He asked that any further advice be given in closed session.

Councilman Cloninger wanted to make sure that no deadlines would pass before Council could take any action.

Mr. Green explained that Council could place a limit upon the extent of a variance which could be granted, so this magnitude of variance could not be granted in the future.

Vice-Mayor Hay stated that he would also like to see a report on this issue. He felt the issue looked more like a rezoning rather than a variance based on a hardship. He felt this raises an issue about the authority of the Board of Adjustment.

Mayor Sitnick suggested the Planning Department bring in an expert to instruct Board of Adjustment on what their authority is and responsibilities are on the Board.

E. INTERSTATE 26 CORRIDOR IN WEST ASHEVILLE

Councilman Cobb was concerned about the I-26 corridor project and the environmental and social impact coming right through the middle of Asheville. He felt City Council should take a position with the N.C. Dept. of Transportation ("NC DOT").

Councilwoman Field explained the amount of citizen involvement that the NC DOT used in coming up with the location of the corridor. She felt the City should sit down with them, rather than challenge them, and see how we can solve any problems and find out what some of the other options are.

Mayor Sitnick agreed with Councilman Cobb noting that there are going to be many citizens impacted and the City needs to take some precautions to make sure that the timing of how one thing impacts on another is done so that people whose homes are going to be taken or cut off are protected from noise, construction dirt, etc. She felt that some kind of City-oriented dialogue was necessary at least to allow people an opportunity to be educated.

Councilwoman Field suggested the Citizens for Transportation Advisory Committee, which was originally the connector committee, be part of the process. They are in the process of doing some long range planning and public participation.

Mayor Sitnick instructed the City Manager to come back with a recommendation on the best way to proceed with Council's concerns, with perhaps one day meeting and one night meeting.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:48 p.m.

CITY CLERK

Leni Sitnick
MAYOR

Tuesday - May 5, 1998- 3:00 p.m.

Worksession

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

Mayor Sitnick announced that City Council has a 5:30 p.m. tour of the Hillcrest pedestrian walkover bridge and a 6:00 p.m. Hillcrest community meeting scheduled so City Council will be on a tight timeframe during the worksession.

CONSENT:

Budget Amendment and Awarding of Bids for Cab & Chassis for Fire Department

Summary: Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were invited to furnish a cab and chassis for the Fire Department. The new cab and chassis will be a replacement for the 1980 Ford cab and chassis portion of the hazardous material rig. The following two bids were received as follows:

Carolina Truck Center, Hickory, NC	$32,968
Matthews Ford Inc., Asheville, NC	$33,400

Bids have been reviewed for technical compliance to specifications by the Fire Department and the Fleet Management Division, and their concurrence received in the following recommendation.

In addition to determining compliance to specifications, the evaluation of bids also considers the time specified in the proposals for the performance of the contract. The low bidder, Carolina Truck Centers, Hickory, N. C., is not recommended to receive award because of the length of time they require for delivery. The recommended award is to the second low bidder with the best delivery.

The budget amendment authorizes a transfer of funds from the Fire Department's appropriations for fleet management charges to a capital outlay account in the Capital Reserve Fund.

Subject to Council's approval, it is recommended that the bid be awarded to the second low bidder, Matthews Ford Inc., Asheville, N. C., in the amount of $33,400.00 for the purchase of a 1999 'Ford' model F800 cab and chassis and adoption of the budget amendment.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

Public Hearing Set to Demolish 22 Sulphur Springs Road

Summary: The consideration of a resolution setting a public hearing for the demolition of 22 Sulpher Springs Road for May 26, 1998.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

Grant Co-Application to the Economic Development Administration to Renovate 1st Floor of Grove Arcade Building

Summary: The consideration of a resolution authorizing submission of a grant application to the U.S. Economic Development Administration ("EDA") for $1,000,000 to renovate the First Floor of Grove Arcade Building as a public market.

The City of Asheville and the Grove Arcade Public Market Foundation will be co-applicants in applying to EDA for $1,000,000 through the Public Works Impact Program. The funds will be used to renovate the First Floor of the Grove Arcade building into a public market. The EDA funds will be matched by $1,000,000 City of Asheville Certificates of Participation to fund a portion of the renovation of the First Floor area of the Grove Arcade.

City Manager Westbrook responded to various questions from Council relating to the grant application.

Councilman Cloninger said that he has a conflict of interest on this item and requested that it be placed on the regular agenda at the next formal City Council meeting.

HUD CONSOLIDATED PLAN

Mr. Marvin Vierra, Community Development Director, said that the City will be applying for $1,537,000 in CDBG and $1,047,000 through the HOME program for the coming year. Anticipated program income will increase available revenue for CDBG activities by $303,400.

Council action will authorize submittal of Consolidated Plan to HUD. Deadline for submittal is May 15, 1998. The Consolidated Plan serves as a planning document as well as the application for funding under the CDBG and HOME grant programs.

The City's Housing and Community Development Committee has reviewed applications from Agencies for CDBG funds and recommends CDBG funding allocation as described on the proposed project listing. The Asheville Regional Housing Consortium has reviewed applications from Agencies and local governments for HOME funds and recommends HOME funding allocation as described on the proposed project listing.

A summary of the proposed Consolidated Plan was published in the Asheville-Citizen Times on March 27, 1998 requesting public comment to be submitted to the Community Development Division by April 30, 1998. Three community public hearings have been conducted by the staff on the Consolidated Plan.

Council briefly discussed the home ownership zone application process.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

WNC REGIONAL AIR POLLUTION CONTROL AGREEMENT

Fire Chief John Rukavina said that Buncombe County Manager Wanda Greene has requested that the City of Asheville to terminate its agreement with the Western North Carolina Regional Air Pollution Control Agency in favor of Buncombe County's offer to assume management of air pollution control services in Asheville.

Western North Carolina Regional Air Pollution Control Agency (WNCRAPC) is an agency established by an interlocal agreement between the City of Asheville, Buncombe County and Haywood County. The agreement is a continuing agreement, providing for termination on 120 days' notice on the part of any of the parties to the agreement.

Buncombe County is proposing the elimination of WNRCAPC as an interlocal-agreement agency, and to assume management responsibility for delivery of WNCRAPC services in all of Buncombe County (including Asheville) and Haywood County.

Staff has reviewed the WNCRAPC rules and regulations as currently applied in Asheville, and believes that there will be no substantial difference in the rules and regulations that would be forced—and the manner of their enforcement—if the entity providing enforcement services is a department or division of Buncombe County government, rather than an agency created by interlocal agreement. Based on this assessment, staff has recommended to the City Manager that the City of Asheville accept Buncombe County's offer to assume management of air pollution control services in Asheville as currently furnished in WNCRAPC.

The agreement provides for 120 days notice of withdrawal from the present agreement, but Buncombe County proposes that all parties agree to a waiver of the 120 day notice requirement.

The Fire Chief, in consultation with the Director of Building Safety, recommends that the City Council adopt the resolution to provide notice to withdraw from the current WNCRAPC effective July 1, 1998.

Mayor Sitnick was concerned that the lines of communication might not exist since the City would lose their ability to appoint members to the Board. She wanted to be assured that the City would continue to have the opportunity to get reports on the number of permits issued, problems with enforcement within the City, etc.

County Manager Wanda Green said that they would send Council minutes of the Board meetings and quarterly reports of the permits issued. She said that she would make sure that one Buncombe County appointee on the Board will be a City resident. She stressed that they are trying to make this administratively easy and they are looking to start a regional approach to air pollution control.

Upon inquiry of Councilwoman Field, Ms. Greene said that the City would not see a change in how the Board (after it is re-worked) interacts with the City's one stop permitting process.

Upon inquiry of Mayor Sitnick, Ms. Greene said that they do not want the function to go back to the State because they want to keep the local influence here because you might not get as much attention as you might like to have with the State.

When Mayor Sitnick asked what the City's fiscal impact would be, City Manager Westbrook said that there would be none - that the only impact would be the two appointments City Council makes to the Board.

Councilwoman Sitnick asked if the Boards and Commissions Committee could look into the possibility of City Council making the County's appointments (of County residents) to the Planning & Zoning Commission and the Board of Adjustment, since the County is willing to make one of their appointments to the new Board a City resident.

Mayor Sitnick and Vice-Mayor Hay both felt that since the City is being asked to relinquish input on the Board, they would like the opportunity to think about the issue a little more.

It was the consensus of City Council that this issue be tabled until the Boards & Commissions Committee could discuss it. After the Committee meets, they will come back to Council with a report and their recommendation.

REQUEST TO APPROVE OPTION TO PURCHASE PROPERTY LOCATED OFF TOLULA LANE

Mr. Ed Vess, Field Services Coordinator, said that this is consideration of a resolution approving an option to purchase an approximate two acre parcel of property along Town Branch tendered by Victoria Investment Company ("VIC").

Victoria Investment Company has tendered an Option To Purchase a 2.0 +/- portion of East Riverside Park along Town Branch.

The subject parcel is located off Tolula Lane at the rear of and adjacent to a medical office facility owned by VIC and occupied by Mountain Neurological Center, P.A. The proposed Option will allow VIC to explore the feasibility of purchasing the property for construction of additional parking for its current property. It will be necessary for VIC to petition for a change in zoning from RS-8 to Institutional. The Option will make it possible for VIC to initiate the process.

The stated purchase price in the Option is $45,000.00; however, the purchase price shall not be less than the appraised value and is subject to City of Asheville's Real Property Disposition Policy and the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269. The Option is also subject to VIC being the successful bidder.

Approval of the resolution will authorize the Mayor to sign the Option To Purchase and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

City of Asheville Parks and Recreation Department's and Community Development Division's staff recommend adoption of this resolution.

Mayor Sitnick asked who pays for the appraisal. Mr. Vess explained that they City pays for the appraisal and the other party pays for the survey of the property. Mayor Sitnick felt that is the City is approached by someone to sell a piece of property, perhaps they should pay for the appraisal or maybe a share of the cost. Mr. Vess said that whoever pays for the appraisal gets to choose the appraiser and the City would like to have that control. He said that an appraisal of this property would cost approximately $700.

Councilman Cobb felt that the $45,000 might be too low for that piece of property. Mr. Vess said that he met with the Parks & Recreation Director and that figure is based on previous sales of property in the area, the amount of property, the limited access and the topography of the property. He stressed that this is only a starting point - noting that the purchase price shall not be less than the appraised value and also subject to the upset bid process.

At the request of Councilman Cloninger, City Attorney Oast was asked to investigate a possible conflict of interest in this matter.

Mr. Phil Carson, attorney representing VIC, spoke in support of Council approving the Option to Purchase.

It was the consensus of Council, and agreed upon by Mr. Carson, that the City and VIC share in the cost of the appraisal with Mr. Carson stating that they would be happy to let the City choose the appraiser.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

LEGISLATIVE PROGRAM

City Attorney Bob Oast said that reviewed the following several items that Council may want to include in their 1998 legislative program:

1. Enactment of legislation that would enable the Asheville-Buncombe Community Relations Council to handle local employment discrimination complaints currently handled by the EEOC in Charlotte;

He explained that complaints alleging discrimination in employment on the basis of race, color, religion, sex, national origin, disability or age are currently filed with the Charlotte office of the EEOC.

The Asheville-Buncombe Community Relations Council is seeking to obtain a designated EEOC status, which would give it the same powers on the local level as the federal agency in Charlotte. ABCRC feels that this would take some of the burden off the EEOC office and help clear the backlog of complaints, enable local employer/employee disputes to be resolved much more quickly, and provide an additional source of funding to ABCRC and thereby decrease its dependency on the city and county.

The draft legislation would authorize Asheville to adopt an ordinance providing for the handling by ABCRC of EEOC complaints in Asheville.

Mr. Bob Smith, Executive Director of ABCRC, spoke in support of this legislation.

2. Amendment of G.S. 136-27.1 to provide for payment of relocation costs of water and sewer lines belonging to water or sewer systems organized pursuant to G.S. 160A-462 (local modification for Buncombe and Henderson counties);

He explained that G.S. 136-27.1 requires the state Department of Transportation to pay the nonbetterment cost for the relocation of water and sewer lines of certain entities when the lines are located within an existing state highway right-of-way and must be relocated for a state highway improvement project. These entities include nonprofit water or sewer associations or corporations, as well as water or sewer systems organized pursuant to G.S. 162A.

The Asheville-Buncombe Water Authority, which was organized pursuant to Article 20 of G.S. 160A rather than G.S. 162A, does not fall in any of the categories for which DOT is required to pay relocation costs. Therefore, when a state highway improvement project requires that its lines be relocated, the Water Authority does not receive reimbursement for this expense.

The draft legislation, which is written as a local bill for Buncombe and Henderson counties, would add a new category to G.S. 136-27.1, requiring DOT to pay relocation costs for lines constructed by a water or sewer system in those counties which was organized pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes.

3. Amendment of Section 8 of the Charter (Meetings generally; member's oath) to delete the requirement that city council meetings be held no less frequently than once each week;

He explained that Section 8 of Asheville's charter contains a requirement that the city council meet no less frequently than once each week. Without this charter provision, Asheville would be able to follow G.S. 160A-71, which permits city councils to decide for themselves how often they need to meet. The draft legislation would amend Section 8 to delete this requirement.

4. Amendment of Section 18 of the Charter (Ordinances and resolutions – Revision or amendment) to make it apply only to ordinances, not resolutions, and to remove the requirement that the original ordinance be specifically repealed.

He explained that Section 18 of Asheville's charter contains the procedure for amending ordinances and resolutions. The draft legislation would amend this section to refer only to ordinances, not resolutions, and would remove the requirement that the original ordinance be specifically repealed.

The General Assembly will convene on May 11. The deadline for submitting local bills for drafting will be May 20, and the last day to introduce local bills will be May 27.

Mayor Sitnick asked if the City could introduce some type of legislation to regulate the towing of cars by a local towing company from private parking lots. She said that the City is currently working on creating a provision in our ordinance that requires standardization signage on privately owned lots, i.e., placement, size and information on the sign.

City Attorney Oast explained that there are some state laws that regulate the towing industry and he would investigate that and report back to Council. However, he didn't think the setting of towing fees is possible because that can only be enacted through state-wide legislation.

Councilman Cloninger felt that we should concentrate on what we know we can regulate and that's adequate signage.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REPORTS FROM BOARDS & COMMISSIONS

Vice-Mayor Hay, Chairman of the Boards & Commissions Committee reported on the following:

River District Design Review Committee

After the deadline application of May 13, 1998, the Boards & Commissions Committee will meet and make further recommendations to City Council.

Asheville Film Board

The Committee recommends the vacancies on this Board be placed on the next quarterly appointment process.

Planning & Zoning Commission

The Committee recommends that the vacancy left by Jim Torpey be placed on the next quarterly appointment process. However, Councilman Sellers (liaison to the Commission) will talk with the Chairman and the Planning & Zoning Director to see if a replacement will need to be appointed prior to that time.

Downtown Commission

The Committee recommends that the vacancy left by Beth Lazer be placed on the next quarterly appointment process.

Bele Chere Commission

The Committee recommends not making appointments at this time. The Parks & Recreation Director will be reporting back to the entire Council on what form the Commission should take.

City Business & Development Commission

The Commission has not met since November 1997. Since City Council will be reviewing the Economic Development Plan in the future, the Committee recommends waiting for the consultant's recommendation relative to the structure of the Commission.

Housing Authority

This appointment will be made by the Mayor.

Residency requirements for Board applicants

Discussion surrounded whether the City should continue to proceed with the written guidelines that all appointees should be residents of the City or the extraterritorial jurisdiction or own property in the City.

It was the consensus of Council to have staff bring back an alternative to the policy that City Council intends to appoint City residents, except in extenuating circumstances that will be determined on a case-by-case basis.

BOARDS & COMMISSION INTERVIEWS NEEDED

It was the consensus of Council to instruct the City Clerk to arrange interviews with Michael Hootstein and Nelda Holder for the WNC Regional Air Pollution Control Board; with Charles Parker, Marilyn Nason, Linda Snyder, Albert Anderson, Clay Dover, Bill Moore and Marion Todd for the Airport Authority; with Charles Lemak, Betty Budd and Fairfax Arnold for the Citizens/Police Advisory Committee; with Bill Fulp and Wendell Craig for the Civil Service Board; and Joyce Dorr, Christopher Slusher, Scott Fowler, Murial Gomez and Paul Hornyak for the Civic Center Commission.

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to appoint Forrest MacGregor, Kasty Lavten, Regina Lusk and Philip Ackerman to the Tree & Greenway Commission.

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Deanna Kraft and Linda Wiggs to the Carriage Permit Advisory Committee.

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Stephanie Cooper, Michael Keleher and James Lewis to the Police Officers and Firefighter's Disability Review Board.

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Brian Peterson, Betty Lawrence and Chris Knorr to the Asheville-Buncombe Historic Resources Commission.

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Carl Mumpower and Laverne Laney to the Civic Center Commission.

I-26 CORRIDOR BRIEFING

City Manager Westbrook suggested that City Council be briefed by the N.C. Dept. of Transportation (NC DOT) now and then again in November when their Environmental Impact Statement is complete on the I-26 Corridor.

Councilman Cloninger asked that at the meeting that the NC DOT provide the City with a timeline of when certain decisions have to be made. That way, if the City wants input on a particular item, they can't say that the City is too late in making their request.

Mayor Sitnick requested that the NC DOT have available at the meeting the consolidated map. She also understood that RiverLink has the ability to show alternate routes of the I-26 Corridor and asked Mr. Ron Fuller to contact RiverLink to see if that can be made available at the meeting.

It was the consensus of Council to meet with the NC DOT as part of a worksession in the William F. Wolcott Jr. Building.

TOUR OF THE URBAN AREAS AROUND THE CITY

Councilwoman Field said that because there has been a verbal commitment not to look at annexations for a year from when the discussions started, she recommended canceling the tour of the urban areas around the City that was scheduled for Tuesday, May 12, 1998, from 1:30-5:00 p.m.

Councilwoman Field moved to cancel the tour of the urban areas around the City that was scheduled for Tuesday, May 12, 1998, from 1:30-5:00 p.m. and reschedule it in late fall. This motion was seconded by Councilman Sellers and carried unanimously.

RESIGNATION OF TRAFFIC ENGINEER

City Council suggested that the new Traffic Engineer be innovative and familiar with some of the things City Council is committed to, e.g., traffic calming and walkable communities.

CITY COUNCIL MEETINGS

Mayor Sitnick asked City Council to think about some ideas about how Council might cut down on the length of their meetings, without cutting down on public participation. She said that staff is moving forward with ways to consolidate staff and consultant reports.

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RALPH BISHOP

Mr. Ralph Bishop questioned the Council's authority to amend the City Charter. City Attorney Oast responded that he would be happy to provide Mr. Bishop with the appropriate statute.

Mr. Bishop also questioned comments from the public at worksessions. Mayor Sitnick explained that she does allow people to speak at worksessions for points of clarification and if they have questions. At this particular worksession, however, she noted that at the beginning of the meeting that City Council has a tour scheduled at 5:30 p.m. and they would be on a tight timeline. She stressed that the meeting is very open.

At 4:50 p.m., Mayor Sitnick adjourned the meeting until a 5:30 p.m. tour at the Hillcrest Apartments pedestrian walkover bridge at 100 Atkinson Street. Following the tour, at 6:00 p.m., City Council will be holding a community meeting at the Carl Johnson Hillcrest Community Center located at 100 Atkinson Street.

HILLCREST COMMUNITY MEETING

At 6:00 p.m., City Council held a community meeting at the Carl Johnson Hillcrest Community Center. Mayor Sitnick said that the Asheville City Council wanted to meet with the residents of the Hillcrest Apartments to discuss the status of the pedestrian walkover bridge. She then gave the following brief background on this issue as the City Council understands it.

In November 1994 at the request of the residents of Hillcrest, the Housing Authority and the City of Asheville, the Hillcrest pedestrian walkover bridge was closed by the North Carolina Department of Transportation ("NC DOT"). The reason for the closure, as requested by the residents of Hillcrest, was to prevent the walkover bridge from being used as an entrance by drug dealers into the Hillcrest neighborhood. With the closure of the bridge, walk-in, street-level drug transactions on the south end of the complex were all but eliminated. Many people feel closure played a large part in helping stem the flow of drug sales in the development. With the recent pedestrian fatality, as a result of an individual attempting to cross I-240 going into Hillcrest, the Housing Authority and the Asheville Police Department met with the residents' association of Hillcrest Apartments to reconsider the bridge closing. The residents' association agreed to survey the residents of the community to determine what their opinion would be regarding reopening the bridge.

She said that the City does not control the entrance or exit to the walkover bridge, nor does it maintain Interstate Highway I-240. This is the responsibility of NCDOT. City Council, however, can make recommendations to NCDOT concerning such issues.

The Hillcrest Apartments are owned and managed by the Housing Authority, a separate legal entity from the City and Council would also like to hear from this agency concerning the pedestrian walk over.

Comments from the public in favor of re-opening the bridge included the convenience of family members and residents; need for two ways in and out of the Complex; some people don't have cars or other transportation and need they need to be able to walk; closing the bridge has not stopped the flow of drugs but it has curbed it; and opening the bridge would save lives in that people would not have to try to cross I-240.

Comments from the public in favor of keeping the bridge closed included people have been killed in that area before the bridge was closed so why use that as an excuse to re-open it now; keeping the bridge closed is a way to curb drugs; with the bridge closed, it provides for a safe community; children are not safe if the bridge is reopened in that drug needles, etc., are found lying on the ground; unsupervised children will cross the bridge; there is a way in and out of the Complex; Clingman Avenue is sometimes just as bad as the Interstate traffic; surveillance cameras cost money; adults should not complain about being inconvenienced by the bridge closing if it will protect the children; if the bridge is re-opened, it will make it easier for people to vandalize apartments (especially apartments near the bridge) and then flee over the bridge; people still jumped the fence when the bridge was open; you can see a noticeable difference in the area since the bridge has been closed; and if the bridge is re-opened, residents will need to be committed to clean up their own yards and participate in a citizen-on-patrol program.

Suggestions included a monitoring of the bridge, patrolling the bridge, employ youth who are trained and paid to keep a portion of their area clean; opening the bridge up only during daylight hours; have a gate with a punch-code; and purchase a guardhouse with each group (Residents Association, NC DOT, City of Asheville and Housing Authority) contributing money for the guardhouse and then hire a private security guard.

Mr. Michael Godwin, representative of the Housing Authority, said that they are ready to support whatever the residents want to do. He noted that a survey taken revealed the residents suggested re-opening the bridge for a six month trial period.

Police Chief Will Annarino said that the Asheville Police Department will continue to work with the community if the bridge is re-opened or kept closed. If the bridge is re-opened, they will try to come up with other solutions to try to curb drugs in the Complex.

Upon inquiry of Councilwoman Field, Police Chief Annarino said that the person that was most recently killed on I-240 was legally intoxicated.

Mayor Sitnick said that with the upcoming I-26 Corridor project, there will be construction, more dirt, more noise and more activity in that area. As we work on concerns and solutions, she felt the NC DOT needs to be involved in the dialogue from the very beginning. She felt they will need to work with the City on some solutions.

It was the consensus of the residents present that children should be supervised and taught to go to a responsible adult when they find drugs, drug needles, etc. Perhaps someone from the AIDS Project could come in and do a program for the children.

Mayor Sitnick said that this is a multi-faceted community problem and needs to be addressed with the community working with the NC DOT, the Housing Authority and the City to secure the Complex and still provide proper safe access. She suggested a summary be created of concerns raised and potential solutions and be presented to City Council as soon as possible.

Mr. Godwin said the Housing Authority would be happy to work with the residents and the Police Department to come up with some alternatives.

At 7:20 p.m., Mayor Sitnick adjourned the meeting until 7:40 p.m. in Room 209 of the City Hall Building to conduct a closed session.

CLOSED SESSION

At 7:40 p.m., Vice-Mayor Hay moved to go into Closed Session to consider the qualifications, competence, performance, character, or fitness of an individual public officer or employee - statutory authorization is G.S. 143-318.11 (a) (6). This motion was seconded by Councilman Cobb and carried on a 6-1 vote, with Councilman Sellers voting "no".

At 9:12 p.m., Councilman Cobb moved to come out of Closed Session. This motion was seconded by Councilman Cloninger and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:12 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - May 12, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field (arrived in meeting at 5:40 p.m.); Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SATURDAY, MAY 16, 1998, AS "HIT THE PAVEMENT ... NOT YOUR PETS" WALK DAY

Councilman Cloninger read the proclamation proclaiming Saturday, May 16, 1998, as "Hit the Pavement ... Not your Pets" Walk Day in the City of Asheville and presented a proclamation to Ms. Marilyn Walker who briefed the Council on the day's activities.

B. PROCLAMATION PROCLAIMING THE WEEK OF MAY 16-20, 1998, as "THE GARDENERS OF AMERICA/THE MEN'S GARDEN CLUBS OF AMERICA GARDEN DAYS"

Councilman Cobb read the proclamation proclaiming the week of May 16-20, 1998, as "The Gardeners of America/The Men's Garden Clubs of America Garden Days" in the City of Asheville and presented the proclamation to Mr. Gerry Hardesty who briefed Council on some planned activities taking place during the week and the Club's activities.

At the suggestion of Councilman Cloninger, Mr. Hardesty said that he would be happy to meet with the Parks and Recreation Department to see how the Men's Garden Clubs can assist the City along the W.T. Weaver Boulevard greenway.

C. PROCLAMATION PROCLAIMING THE WEEK OF MAY 17-22, 1998, AS "NATIONAL PUBLIC WORKS WEEK"

Vice-Mayor Hay read the proclamation proclaiming the week of May 17-22, 1998, as "National Public Works Week" in the City of Asheville and presented the proclamation to Mr. Mark Combs, Director of Public Works. Mr. Combs then thanked individual representative employees from not only the City departments, but from the Metropolitan Sewerage District as well.

D. PROCLAMATION PROCLAIMING FRIDAY, MAY 29, 1998, AS "STRIVE NOT TO DRIVE DAY"

Councilman Sellers read the proclamation proclaiming Friday, May 29, 1998, as "Strive Not to Drive Day" in the City of Asheville and presented the proclamation to Ms. Katie Breckheimer, Chair of the Strive Not to Drive Day Planning Committee, and Ms. Elizabeth Teague from the Land-of-Sky Regional Council. Ms. Breckheimer briefed the Council on some activities planned for the day.

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II. CONSENT:

At the request of Ms. Dee Williams, Item A. was removed from the Consent Agenda for discussion.

At the request of Mr. Ralph Bishop, Item F. was removed from the Consent Agenda for discussion.

Councilman Cloninger noted that the City Attorney advised him that he does not have a conflict of interest on Item E.

A. RESOLUTION AUTHORIZING SUBMISSION OF THE CONSOLIDATED PLAN TO THE U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT ENTITLEMENT AND HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDS FOR 1998-99

This item was pulled form the Consent Agenda for further discussion.

B. ORDINANCE NO. 2468 - BUDGET AMENDMENT FOR THE PURCHASE OF A CAB AND CHASSIS FOR THE FIRE DEPARTMENT

Summary: Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were invited to furnish a cab and chassis for the Fire Department. The new cab and chassis will be a replacement for the 1980 Ford cab and chassis portion of the hazardous material rig. The following two bids were received as follows:

Carolina Truck Center, Hickory, NC	$32,968
Matthews Ford Inc., Asheville, NC	$33,400

Bids have been reviewed for technical compliance to specifications by the Fire Department and the Fleet Management Division, and their concurrence received in the following recommendation.

In addition to determining compliance to specifications, the evaluation of bids also considers the time specified in the proposals for the performance of the contract. The low bidder, Carolina Truck Centers, Hickory, N. C., is not recommended to receive award because of the length of time they require for delivery. The recommended award is to the second low bidder with the best delivery.

The budget amendment authorizes a transfer of funds from the Fire Department's appropriations for fleet management charges to a capital outlay account in the Capital Reserve Fund.

Subject to Council's approval, it is recommended that the bid be awarded to the second low bidder, Matthews Ford Inc., Asheville, N. C., in the amount of $33,400.00 for the purchase of a 1999 'Ford' model F800 cab and chassis and adoption of the budget amendment.

ORDINANCE BOOK NO. 16 - PAGE 448

C. RESOLUTION NO. 98-48 - RESOLUTION TO AWARD BIDS FOR A CAB AND CHASSIS FOR THE FIRE DEPARTMENT

Summary: See above Item "B".

RESOLUTION BOOK NO. 24 - PAGE 380

D. RESOLUTION NO. 98-49 - RESOLUTION SETTING A PUBLIC HEARING FOR MAY 26, 1998, TO DEMOLISH 22 SULPHUR SPRINGS ROAD

RESOLUTION BOOK NO. 24 - PAGE 382

E. RESOLUTION NO. 98-50 - RESOLUTION APPROVING AN OPTION TO PURCHASE AN APPROXIMATELY TWO ACRE PARCEL OF PROPERTY ALONG TOWN BRANCH TENDERED BY VICTORIA INVESTMENT COMPANY

Summary: This is consideration of a resolution approving an option to purchase an approximate two acre parcel of property along Town Branch tendered by Victoria Investment Company ("VIC").

Victoria Investment Company has tendered an Option To Purchase a 2.0 +/- portion of East Riverside Park along Town Branch.

The subject parcel is located off Tolula Lane at the rear of and adjacent to a medical office facility owned by VIC and occupied by Mountain Neurological Center, P.A. The proposed Option will allow VIC to explore the feasibility of purchasing the property for construction of additional parking for its current property. It will be necessary for VIC to petition for a change in zoning from RS-8 to Institutional. The Option will make it possible for VIC to initiate the process.

The stated purchase price in the Option is $45,000.00; however, the purchase price shall not be less than the appraised value and is subject to City of Asheville's Real Property Disposition Policy and the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269. The Option is also subject to VIC being the successful bidder.

Approval of the resolution will authorize the Mayor to sign the Option To Purchase and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Upon inquiry of Councilman Cobb, Mr. Ed Vess, Field Services Coordinator, said that this property was conveyed to the City over ten years ago.

RESOLUTION BOOK NO. 24 - PAGE 384

F. MOTION TO APPROVE THE 1998 LEGISLATIVE PROGRAM

This item was removed from the Consent Agenda for further discussion.

G. MOTION SETTING A PUBLIC HEARING ON MAY 26, 1998, TO CONSIDER A CONDITIONAL USE APPROVAL AND PERMIT FOR A DUPLEX AT THE CORNER OF LONDON ROAD AND SHADY OAK DRIVE

H. MOTION SETTING A PUBLIC HEARING ON MAY 26, 1998, TO ZONE SECTION 9 OF BILTMORE PARK RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

I. **MOTION SETTING A PUBLIC HEARING ON MAY 26, 1998, TO ZONE SECTION 10 OF BILTMORE PARK RS-2 RESIDENTIAL SINGLE FAMILY LOW DENSITY DISTRICT**

J. **MOTION SETTING A PUBLIC HEARING ON MAY 26, 1998, TO APPLY THE MANUFACTURED HOME OVERLAY TO TWO LOTS AT 9 EAST STARNES COVE ROAD IN A RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY DISTRICT**

K. **MOTION SETTING A PUBLIC HEARING ON MAY 26, 1998, TO APPLY THE MANUFACTURED HOME OVERLAY TO TWO LOTS ON PORTER ROAD IN A RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT**

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and ordinances on the Consent Agenda and they will not be read.

Vice-Mayor Hay moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA

A. **RESOLUTION NO. 98-51 - RESOLUTION AUTHORIZING SUBMISSION OF THE CONSOLIDATED PLAN TO THE U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT ENTITLEMENT AND HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDS FOR 1998-99**

Ms. Dee Williams, owner of Dee Williams & Company, explained that her company is a professional services firm which provides capacity building to small emerging and historically underutilized business firms in the area along packaging, business development, etc., and also provides services to non-profits and community-based organizations in the areas of organizational development and strategic planning. She said that she has sent a fax to the Mayor and Council and also previously raised pertinent issues about the Eagle/Market Streets Redevelopment Plan. She said that she did not want to hurt other organizations who are very deserving of CDBG funds and who have applications in, but certainly the issues raised in her fax as well as previous correspondence to the City Attorney, as well as some issues about this area being designated as a housing zone as the primary use of it, rather than as a commercial business zone, need to be addressed. She expressed issue in that the City of Asheville has submitted a plan to HUD for CDBG funds that addresses community economic development.

Ms. Cogburn said that Ms. Williams made a number of these comments at the Housing and Community Development Committee ("H&CD") yesterday so Vice-Mayor Hay, Councilwoman Field and Councilman Tomes are very familiar with what she has brought up and can address that as the H&CD Committee saw these issues.

Ms. Cogburn then explained that the City will be applying for $1,537,000 in CDBG and $1,047,000 through the HOME program for the coming year. Anticipated program income will increase available revenue for CDBG activities by $303,400. The City's H&CD Committee has extensively reviewed the applications from agencies for CDBG funds and recommends CDBG funding allocation as described on the proposed project listing. The Asheville Regional Housing Consortium has also extensively reviewed the applications from agencies and local governments for HOME funds and recommends HOME funding allocation as described on the proposed project listing. Council action will authorize submittal of Consolidated Plan to HUD. Deadline for submittal is May 15, 1998. The Consolidated Plan serves as a planning document as well as the application for funding under the CDBG and HOME grant programs.

Vice-Mayor Hay said that this is the City's primary means of funding affordable housing and other efforts in the City with federal money. The application process started in January and this is a culmination of about a five month process. The hardest job usually is not so much in picking the worthy projects, because there are plenty of those, but deciding how to allocate between worthy projects. He noted that's what most of the time the H&CD Committee spent it's time on. He noted that Ms. Williams is here to talk about the allocation to Eagle/Market Street which is in this package, but it along with all the other affordable housing efforts. The HOME funding is decided by another group and the CDBG funding is decided by the H&CD Committee.

Councilman Tomes said, as a member of the H&CD Committee, that the entire Committee realized that every project submitted had merits and warranted financial commitment. However, the problem is that they are dealing with limited resources and they had to turn down some projects.

Ms. Williams said that her concern was that over $600,000 has been spent and the people targeted for benefit in the depressed area of Eagle/Market Street (the owners) have not gotten one thing out of the CDBG money. She said they have lost faith to the point that they don't even participate in the public participation process. She felt Council has not mandated these sub-recipient agencies that got funding to either perform or leverage funds from other sources. She said the City has been providing almost 100% financing in Eagle/Market Street. She felt that the owners are going to suffer in that they don't have technical assistance to comply with the redevelopment and clean the area up. She said that former Community Development Director suggested that she supply a technical proposal in which these people could be specifically helped. She asked Council to consider amending the Plan so that technical assistance can be given to the property owners. She said this does not have to be with Dee Williams and Company but that she is only interested in helping these people. She suggested the owners to be brought back to the table and be part of the planning process.

At this time (5:40 p.m.), Councilwoman Field arrived from a meeting with the N.C. League of Municipalities in Raleigh, N.C.

Mayor Sitnick asked if Ms. Williams was suggesting City Council not to approve the plan in order to bring the property owners to the table, or could Council approve the plan and create some form for dialogue. Ms. Williams replied that she wanted other projects to go forward. She trusted Council if they said they would bring these owners to the table to see what it was that they wanted. And, if they want to help by participating in cleaning the area up and bringing that community back into the tax base - that's what she wants. She hoped that Council would amend the Plan once Council finds out that there is sufficient interest. She said that this doesn't have a thing to do with her - she's just an implement.

Mayor Sitnick said that City Council could approve the plan and then work with the H&CD Committee to create that dialogue.

Vice-Mayor Hay said that for several years the City has allocated money to the Eagle/Market Street CDC and not all of that money has been spent. Basically it's being held in reserve by the City until projects come on. The Committee, as part of it's oversight, asked about a year ago that they receive a monthly report from Eagle/Market Street CDC and Ms. Jill Arrington has been updating the Committee. He felt that the issues Ms. Williams raises are real issues and it is important to keep the property owners involved. However, he said the opportunity for dialogue exists presently and they will continue to use that form to review it.

Councilwoman Field, Chair of the H&CD Committee, said that she understood when the property owners were involved, everyone said it was a conflict of interest because they would be making decisions on money spent on their own property. The CDC's response was to evolve the property owners off of the board and get more community people on the board. She said that there are two sides to that issue, but definitely, if the community wants a dialogue, then we should definitely go forward with that. She saw no reason not to approve the allocations for this year.

Ms. Williams said that the property owners are tired of dialoging in that they just want technical assistance and they want to participate. She said that most of the owners have their own access to funds.

Councilman Cobb said that he would like for Ms. Williams to use all the resources that she has to bring some positive things to this Council because we all want to make the area something to be proud of. Ms. Williams responded that she is willing to help in anyway she can, however, she is a for-profit company. Her proposal was to leverage funds. She stressed the need to work together.

Councilman Tomes said that there is a collaborative effort being put forth where the community is involved. He said that the H&CD Committee does hear updates, and does not want it construed that there is not an effort being put forth in trying to clean up the Eagle/Market Street area. Ms. Williams responded that the only people working on that collaborative effort is the non-profits. The for-profit business owners are not going to stay in that area and not receive the benefit of technical assistance and/or some sort of financial assistance. She felt the non-profits have taken over the area in planning and the tax-paying entities don't have any input.

Councilwoman Field said that the Minority Business Commission is set up specifically to give technical advice. Ms. Williams replied that the Commission is housed by the County and staffed by a person who is a trained social worker, not an economic development specialist.

Councilman Tomes said that he has called property owners in that community and has offered to sit down and discuss their concerns with them. He told them he would bring their concerns to the entire Council if that was what they wanted. To date he has not had a return phone call to take him up on his offer.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 98-51. This motion was seconded by Councilman Cobb and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 385

B. MOTION TO APPROVE THE 1998 LEGISLATIVE PROGRAM

When Mayor Sitnick asked Mr. Ralph Bishop to limit his comments to three minutes (as is the time limit for all individuals not representing a group), Mr. Ralph Bishop felt that Mayor Sitnick was making a mockery out of the Constitution of the United States, the Constitution of the State of North Carolina, and the State law in that she would not let him discuss the issue longer.

After Mr. Bishop read a statement purported to be by then-Councilwoman Sitnick relative to meetings being held in orderly fashions, Mayor Sitnick noted that there was nothing in the statement he read that said she would not adhere to time limits and conduct the meetings in an orderly fashion.

Vice-Mayor Hay moved to approve the 1998 Legislative Program. This motion was seconded by Councilman Sellers and carried unanimously.

Because Mr. Bishop chose to talk about a different issue during his time on this topic, Mayor Sitnick told him that he could speak for three minutes at the end of the meeting under "Other Business" if he chose.

III. UNFINISHED BUSINESS:

A. SECOND READING OF ORDINANCE NO. 2467 - ORDINANCE AMENDING THE ZONING OF PROPERTY ON OLD HAYWOOD ROAD FROM RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY

Mayor Sitnick said that the first reading on this ordinance was held on April 28, 1998. She commented that after several days of discussion between herself and City Attorney Bob Oast, the following letter dated May 12, 1998, was received from William F. Slawter, attorney representing the property owners:

"I am writing on behalf of our client, David Evans, who is agent for his mother Hazel Ratcliff Evans, regarding the rezoning of property on Old Haywood Road. We would first like to apologize for any negative response that the Council has received regarding the procedure that has been followed relating to this rezoning.

"I believe it was impossible for any of us to forecast the response that has been received. Since notice had been given that the entire tracts owned by the Petitioners were subject to being rezoned RM-8, we did not foresee that anyone would feel that additional notice should be given to rezone a smaller portion of the area in question. Obviously, a larger area than that for which notice of public hearing has been given cannot be rezoned, but when a smaller area ends up being rezoned, any notice that would be given would be sent to exactly the same people who are given the initial notice, and since the area being rezoned would be smaller and therefore less offensive to the surrounding neighbors, it is hard to imagine that they would have additional objections to the rezoning of the smaller area than they have already expressed to the rezoning of the larger area. It is somewhat like petitioning for the rezoning of two adjacent lots, and then dropping the rezoning request with regard to one of the two lots. If anyone entitled to notice had already been given notice that both lots might be rezoned, what purpose would be achieved in giving new notice that only one lot was going to be rezoned?

"At the April 28, 1998 City Council meeting, during Gerald Green's initial presentation regarding the rezoning, he noted that the petitioners anticipated dropping the rezoning request with regard to the 100 foot buffer strip, and also noted that doing so would negate the protest petition. As I hope you will recall, when I next spoke, I mentioned that Mr. and Mrs. Evans could not be present due to Mr. Evans' being scheduled for heart by-pass surgery in Greensboro. As I stated at that time, we were willing to postpone further consideration of the matter, but were also willing to go ahead without the Evans being present in order not to further inconvenience the protesting neighbors. Although several representatives of the neighborhood thereafter spoke, none of them suggested postponing the matter. All who spoke seemed to want a Council vote on that date, and it appears to us that the concern with the procedure only arise after the outcome of the vote was known.

"Although we are convinced that the Council acted entirely appropriately at the April 28th meeting, our clients remain dedicated to pursuing this matter with as little ill-will as possible. At no time have they done anything more than to seek the rezoning of their property as allowed by law. They have sought compromise with the neighbors, but have not been able to achieve it. In a further effort by our clients to ensure that appropriate process is followed, the Evans have requested that we proceed as set forth hereinafter. Max and Flora Wilson also join in this request.

"It is our request that the City Council take action at today's meeting to remand this matter back to the Planning and Zoning Commission for further consideration, following which the issue can return to the Council for vote. This action would address the concern expressed by the neighbors regarding a lack of opportunity for them to address the question of the rezoning of the property with a 100 foot buffer strip remaining zoned RS-4, and any other issues which they may feel have arisen due to the change in the rezoning request. While this would cause some delay in the process and additional expense to our clients, they feel this move would be in keeping with the best interest of maintaining harmony in the community. Thank you for your consideration."

Mayor Sitnick said that today City Council will be voting on the second reading to rezoning the property. Because of the proposal presented on April 28, 1998, she was sorry that she didn't think to remand the matter back to the Planning & Zoning Commission ("P&Z Commission"), but it has been discussed by the City Attorney and herself. This Council was very concerned that the public was surprised by the last minute change of the 100 foot buffer and did not have a chance to understand it, digest it or respond to it. She asked if Council would be willing to hear comments from a representative of the neighborhood and then consider remanding the matter back to the P&Z Commission.

When Councilman Cloninger asked if it was the City Attorney's recommendation that Council remand this back to the P&Z Commission, City Attorney Oast said that based on discussions he has had with Mr. Slawter, with Council members and with staff members, it is his recommendation that it be remanded. One reason is that it will allow the Planning staff and the P&Z Commission to consider this revised proposal and make recommendations to Council. It will allow Council to use the resources that are there for that purpose before the matter comes up for a vote that would change the zoning. He felt that remanding the matter back was sound planning practice, although City Council can legally act on this rezoning at this time. Councilman Cloninger said that he supported the recommendation of the City Attorney.

Ms. Betty Fagan, neighborhood representative, said that at 2:00 today she received a call from Mr. Oast. She said that even though he explained this to her, this was something that the neighborhood was not aware of. She explained to Mr. Oast that she did not have time to contact the community. The last minute 100 buffer proposal on April 28 stunned the neighborhood and allowed no neighborhood thought process. She felt this was the same thing that has happened today - three hours prior to the meeting. "We would therefore request the City Council reinstate the protest petition and consider rezoning the subject property as originally submitted requiring 3/4's approval of City Council or alternately, to reject the petition for rezoning, as amended, of the property owners at the April 28 meeting."

Councilman Cloninger asked for clarification by asking the neighborhood if they do not want City Council to remand the matter back to the P&Z Commission but vote today, Ms. Fagan said that the neighborhood has not had an opportunity to get a consensus and as a community united thus far, they are not objecting and they are not accepting. Councilman Cloninger explained that remanding the matter would give the neighborhood the opportunity to review the proposal more carefully and give their input. Ms. Fagan again said that they are not accepting or rejecting it.

Mayor Sitnick explained that they started talking about this mid-week last week and it takes time for phone calls to be made and returned and Mr. Slawter was trying to get in touch with his clients. By the time there was enough discussion back and forth to realize this was a possibility in order to open up this process again because the neighborhood was stunned by it, and Mr. Slawter mentions that in his letter that there was no intention to do that, the idea was to give the neighbors an opportunity to review this, to have a chance to speak about it before the P&Z Commission and then again before Council. She regretted the inconvenience, the time taken to come to the meetings, and the frustration.

Ms. Fagan again said that the neighborhood is not rejecting Council's proposal at this time to remand it to the P&Z Commission and they are not accepting it. They will leave it entirely in the City Council's hands. It is the Council's decision.

Mayor Sitnick said that if she were a neighbor, she would want another opportunity to try and talk to members of the P&Z Commission and City Council.

Vice-Mayor Hay said that he would be interested in the Planning staff's and the P&Z Commission's recommendations.

Councilman Cobb said that he would be ready to vote now, but saw no problem with remanding the matter back to the P&Z Commission.

Councilman Tomes felt that if there is a faint possibility that some resolution can occur, he would be in favor of remanding the matter back.

Councilwoman Field felt the matter needed to be remanding back to the P&Z Commission, if, for no other reason, than if there are any concerns that City Council has not gone through the process correct.

Councilwoman Field moved to rescind Council's previous action on this rezoning request and remand the matter back to the P&Z Commission. This motion was seconded by Councilman Sellers and carried unanimously.

Councilman Cloninger noted that he does support remanding the matter back, however, he made clear that while Council will be open to the suggestions of the P&Z Commission and the feedback from the public, that remanding it to the P&Z Commission does not guarantee a different outcome from what the vote was on April 28. City Attorney Oast noted that City Council is not bound by any vote they take today.

Mayor Sitnick requested, and she did not know if the City had authority to do this, to amend whatever ordinance that allows a major revision in a rezoning request to occur after a public hearing is closed so that this does not happen again.

In response to Mayor Sitnick's request, Councilman Cloninger said that even if Council went ahead and voted on the request to rezone without any buffers and the protest petition had been in effect, and if the rezoning request had failed, City Council would still have the ability to consider a new proposal. One of Council could even make a motion for a new proposal, including a proposal to have a 100 foot buffer. Therefore, even though a vote may not have been taken on the first request to rezone to RM-8, Council would have been right back where they are today, because Council could have proposed what was before Council today (the 100 foot buffer) as the alternative to the original request.

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When Mayor Sitnick asked if there was a way for Council to avoid this kind of situation in the future, City Attorney Oast explained that the protest petition mechanism is specified by State law and City Council can't change that. However, the way Council handles that is something that may depend on the facts of the particular situation. Council always has the options, anytime this kind of matter comes up, to continue the matter or refer it back to the P&Z Commission. He would be happy to go through the options with Council the next time a situation like this occurs.

Mayor Sitnick suggested that the City Attorney outline those options for Council. She asked if there was a time limit that could be considered. City Attorney Oast again said that it is a matter of State law, however, Council can, through it's own procedures and the way they handle this matters, address the concerns that arise in a particular situation. Fortunately this type of matter doesn't happen very often but when it does, staff will try to be prepared.

Councilman Cloninger said that perhaps Council could consider a policy, generally speaking, that where Council gets a proposal that is substantially different from the one on the table, look to remand it back to the P&Z Commission for further review. Mayor Sitnick said that that request could be part of the information City Attorney Oast prepares.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOMENT ORDINANCE TO INCLUDE A REVISED DEFINITION OF SCHOOLS

ORDINANCE NO. 2469 - ORDINANCE TO AMEND THE UNIFIED DEVELOMENT ORDINANCE TO INCLUDE A REVISED DEFINITION OF SCHOOLS

Mayor Sitnick opened the public hearing at 6:19 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that the current definition of a school is rather broad and does not differentiate between traditional schools (i.e. elementary schools, high schools, etc.) and other institutions, such as instructional facilities (i.e. music schools, reading schools, etc.). This could present a problem, particularly with respect to residential zoning districts. The proposed definition is more specific and removes the ambiguity of the existing definition.

The current definition of a school is as follows: "School means a facility that provides a curriculum of elementary and/or secondary academic instruction, including kindergartens, elementary schools, junior high schools, middle schools, and high schools."

The proposed definition is as follows: "School means a public or private institution offering a curriculum of education authorized by the State of North Carolina giving regular instruction at the primary and/or secondary level. This definition includes kindergartens, elementary schools, junior high schools, middle schools and high schools but does not include day care facilities, individual instruction, or classes in a specialized subject."

Planning staff is recommending approval of the wording amendment. At the Planning & Zoning Commission meeting on April 1, 1998, meeting, the Commission voted unanimously to recommend approval of the amendment.

City Council discussed the definition of school and what types of schools this would affect.

Mayor Sitnick closed the public hearing at 6:31 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cobb moved for the adoption of Ordinance No. 2469. This motion was seconded by Councilman Sellers and carried unanimously.

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B. PUBLIC HEARING TO REZONE 594 EMMA ROAD FROM RM-6 MULTI-FAMILY LOW DENSITY DISTRICT AND COMMUNITY BUSINESS II DISTRICT TO COMMUNITY BUSINESS I DISTRICT

ORDINANCE NO. 2470 - ORDINANCE TO REZONE 594 EMMA ROAD FROM RM-6 MULTI-FAMILY LOW DENSITY DISTRICT AND COMMUNITY BUSINESS II DISTRICT TO COMMUNITY BUSINESS I DISTRICT

Mayor Sitnick opened the public hearing at 6:32 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is of an ordinance to rezone 594 Emma Road from RM-6 Residential Multi-Family Low Density and Community Business II District to Community Business I District.

The composition of the surrounding area is a residential neighborhood between two commercial/industrial areas, the commercial strip along Louisiana Avenue and the Westside Industrial Park. The 2010 Plan indicates the surrounding area to be low density residential which the current RM-6 zoning permits.

The review by the Technical Review Committee ("TRC") indicates major concerns: (1) infrastructure (water, stormwater and streets) in the area could not accommodate all the permitted uses allowed in the district; and (2) Emma Road should have some improvements to accommodate the traffic that could be generated by rezoning this lot.

Permitted uses in the Community Business I District would generate as much traffic as projected for the rezoning (to Commercial Industrial) for the tract of land approximately ½ mile east (Appalachian Stove) that was denied by City Council last year.

This property is outside the city limits of Asheville.

The Planning staff reviewed the rezoning request and recommended denial from RM-6 Residential Multi-Family Low Density and Community Business II to Community Business I. However, at the Planning & Zoning Commission meeting on April 1, 1998, the Commission voted 4-3 to approve the rezoning of PIN # 9639.17-10-3989 from RM-6 Residential Multi-Family Low Density and Community Business II to Community Business I.

Upon inquiry of Councilman Seller, Mr. Ownbey said the area is not in a floodplain, however, there is a lot of low land in this area and a lot of creeks that cause flooding.

Upon inquiry of Vice-Mayor Hay about Planning staff's recommendation of denial, Mr. Ownbey said that staff was looking at the area as residential, as well as the infrastructure improvements necessary.

Vice-Mayor Hay said that when he visited the property, he felt it was hard to foresee that property being put to any residential use.

Upon inquiry of Vice-Mayor Hay, Mr. Ownbey said that in order to develop the property, the infrastructure problems must be addressed as part of the permitting process, They would have to make sure there was water and sewer availability and it might be necessary for them to upgrade of streets (depending on the size of the project).

Councilman Cobb also stated that it was hard for him to visualize the area as residential.

Councilman Cloninger noted that residential is allowed in the Community Business I District.

Ms. Jane Mathews felt that the City needs to have some areas for housing and there is also a pattern of housing in this area. She felt the property has potential for commercial as well. But, in looking at the development pattern, it would probably be of more benefit to the residential neighborhood to have it remain zoned residential than to have things that may be more intrusive and to work toward nodes of commercial development.

Ms. Joanne Gunter, petitioner, spoke in support of the proposed rezoning noting that the land has always been used for business and also it is not a good place for homes.

Mr. James Woody spoke in support of the rezoning of this property.

Mr. John Van Dyke, Industrial Real Estate Broker, felt the area was more conducive to commercial development and spoke in support of the rezoning request.

Mr. Brian Peterson suggested City Council look at small area plans or a more comprehensive planning effort instead of looking at individual pieces of property in this area.

Councilwoman Field suggested that since Emma Road is in both the City and the County, that the N.C. Dept. of Transportation ("NC DOT") be contacted to suggest that they upgrade their portion of the road - not necessarily widening it, but improving it. The City needs to look at the portion of the road that is located in the City limits as well for improvements.

Mr. Ownbey said that Mr. Ted Wright, area property owner, was opposed to the rezoning.

Mayor Sitnick closed the public hearing at 6:52 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2470. This motion was seconded by Councilman Cloninger and carried unanimously.

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C. **PUBLIC HEARING TO REZONE 2222 HENDERSONVILLE ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT**

D. **PUBLIC HEARING TO REZONE 2200 HENDERSONVILLE ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT**

ORDINANCE NO. 2471 - ORDINANCE TO 2222 HENDERSONVILLE ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

ORDINANCE NO. 2472 - ORDINANCE TO 2200 HENDERSONVILLE ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

Mayor Sitnick announced that these two public hearings would be combined. She then opened the public hearing at 6:55 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that this is the consideration of ordinances to rezone 2222 and 2200 Hendersonville Road from RM-16 Residential Multi-Family High Density to Neighborhood Business and to amend the Comprehensive Plan to reflect this rezoning.

The original petitions requested a rezoning change from RM-16 Residential Multi-Family High Density to Highway Business.

The property at 2222 Hendersonville Road is unimproved, except for a decaying residential looking structure that has been used for commercial purposes in the past. The property at 2200 Hendersonville Road has on it a non-conforming use permitted under the Zoning Ordinance. The use consists of a tanning salon and a store selling spas and related supplies and services.

2222 Hendersonville Road fronts on Hendersonville Road, and is also entered from Forest Lane. The surrounding uses are residential multifamily across Forest Lane, and residential single family behind the

Both properties are zoned RM-16 Residential Multi-Family High Density (16 units per acre). There is commercial use to the south of the properties about one block, and north of the properties about an equal distance. Commercial uses are visible from the properties in both directions. The use across the street is a church.

2200 Hendersonville Road fronts on Hendersonville Road, and is also entered from Blake Terrace. The surrounding uses are residential multi-family across Blake Street, and residential single-family behind the property.

The property immediately to the north to 2222 Hendersonville Road is non-conforming commercial in use and is also requesting a rezoning from RM-16 Residential Multi-Family High Density to Highway Business.

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The property immediately to the south of 2200 Hendersonville Road is vacant, except for a decaying residential looking structure. That property owner is also requesting a rezoning from RM-16 Residential Multi-Family High Density to Highway Business.

The requested use does not conform to the 2010 Plan, which contemplates medium density residential in this area.

The City Planning and Development staff recommended denial of both the rezoning requests.

At the Planning & Zoning Commission meeting on April 1, 1998, the Commission recommended 6-1 to approve rezoning 2222 Hendersonville Road (PIN No. 9654-09-16-4596) and 2200 Hendersonville Road (PIN No. 9654-09-16-3780)) to Neighborhood Business.

Councilwoman Field said that under the prohibited uses is a drive-through facility which she understands is to prevent fast-food restaurants. However, one of the things mentioned at a meeting recently while talking about the Head of Montford was the possibility of a branch bank locating there and a branch bank needs to have a drive-up ATM which is not allowed. Obviously there is a difference between the intensity of use for a bank with a drive-up ATM and the intensity of use of a drive-through fast-foot restaurant. She thinks that an error was made in the Unified Development Ordinance because people need to have a bank that can be walked to in a neighborhood commercial development.

Upon inquiry of Councilman Cloninger, Mr. Black said that the Planning staff did recommend denial of the rezoning to Highway Business, but did not take a position on the rezoning to Neighborhood Business.

Councilman Cloninger noted that in Neighborhood Business that residential is still allowed by rights subject to special requirements. Mr. Black said that one of the things staff was looking for was mixed use - so that there would be commercial on the ground floor and residential above it.

When Mayor Sitnick asked if Neighborhood Business would constitute spot zoning, City Attorney Oast said that only a court can really say whether something is spot zoning but the things that Council needs to look at are whether you are taking a small tract of land in single ownership and zone it in such a way that allows the owner of that property to enjoy certain things that other similarly situated properties do not enjoy. It seems to him, however, that there are certainly arguments in support of this rezoning: (1) one of the tracks is already commercially used; (2) there is a scattering of different types of commercial uses up and down the highway; and (3) there is a fairly high density residential use. Those are all points that would be made in a case if it was challenged.

Mayor Sitnick noted that north, south and west is all residential.

Councilman Cloninger noted that the 2010 Plan did not really designate potential areas for neighborhood business designations.

Mr. John Van Dyke, real estate broker and representative of the property owners of 2222 Hendersonville Road, passed out information to Council supporting his request to rezone the property Neighborhood Business.

Mr. Steve Servais, real estate broker and representative of the property owners of 2200 Hendersonville Road, spoke in support of the rezoning to Neighborhood Business.

Mayor Sitnick closed the public hearing at 7:15 p.m.

Mayor Sitnick said that members of Council have previously received copies of both ordinances and they would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2471 to rezone 2222 Hendersonville Road and to amend the Comprehensive Plan to reflect this rezoning. This motion was seconded by Councilman Sellers.

Mayor Sitnick said that while she liked to pay homage to the 2010 Plan, she looks at Hendersonville Road and what it has become and it certainly doesn't comply with the 2010 Plan. She does have a concern about the spot zoning and she doesn't feel that the answer by the City Attorney quieted her concern. However, when you ride past there you realize that it is a heavily commercialized area. She did feel that it does intrude into the neighborhood.

Councilman Cobb said that this property is pretty much surrounded by business and no one has objected to the rezoning, therefore, he would be in favor of rezoning the property Neighborhood Business.

Councilman Cloninger said that he takes comfort in what the permitted uses are for Neighborhood Business District. He felt Council should be encouraging some of that but they also need to be careful where they allow it. He felt this was an appropriate place for it and he felt the surrounding neighborhoods could be well served by the uses that are permitted in this district.

Councilwoman Field agreed with Councilman Cloninger in that if we are going to promote walkable communities and greenways that make an urban environment a healthy environment, then we need to have some mixed use, especially in a positive kind of way in this area.

When Mayor Sitnick asked for a vote on the motion made by Councilman Tomes and seconded by Councilman Sellers, said motion carried unanimously.

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Councilwoman Field moved to adopt Ordinance No. 2472 to rezone 2200 Hendersonville Road and to amend the Comprehensive Plan to reflect this rezoning. This motion was seconded by Councilman Tomes and carried unanimously.

Mayor Sitnick said that her concerns about rezoning 2200 Hendersonville Road were the same as her concerns about rezoning 2222 Hendersonville Road.

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At this time, Mayor Sitnick announced a short break.

E. PUBLIC HEARING TO CONSIDER THE PARKS AND RECREATION DEPARTMENT 2015 COMPREHENSIVE MASTER PLAN

Mayor Sitnick opened the public hearing at 7:32 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Irby Brinson, Director of Parks and Recreation, said that the Master Plan represents a long-range plan for 17 years of what the parks and recreation needs for the City should be. Three goals were originally established were that the Plan be (1) community driven; (2) needed to be balanced with vision with realism; and (3) needed to recognize budget issues. The Master Plan process actually began in June of 1997, with an orientation meeting with the Parks and Recreation Advisory Board, staff members and a Steering Committee. Processes included review of demographic information, review of natural factors, analysis of facilities and programs, community needs assessment, and an action plan. Public input into the process was accomplished by conducting six meetings with the Project Advisory Team, and 16 focus group meetings in the community dealing with youth sports, special populations, neighborhood issues, government and community leaders. The consultants did review the national recreation standards set by the Recreation and Park Association and there was also a citizens survey that was mailed to 3,500 residents of the City with 481 being returned.

Based upon the information provided from the study, the areas that are needed for improvement are that we are deficient in the number of community parks that we currently have; deficient by six in the number of neighborhood parks; deficient by nine in the number of mini-parks; there is a need for two sports/game field complexes; two mega-center sites - one with an aquatics facility; there's a desperate need to renovate and expand four of our existing larger centers, our pools and all of our park areas. The standards also state the request for the development of one public golf course and the development of greenways. He stated that the Master Plan process for Parks and Recreation just reviews the national standards for greenways and the number of miles for greenways because there is a separate Master Plan that is going on with the Trust for Public Land for the greenway master planning process. Greenways were removed from this Master Plan and funding and the other information concerning greenways will be addressed in the Greenway Master Plan. Staff recognizes $57 million is a lot of money and they need to digest it and review it and come back with what they think is a realistic proposal for funding for the first phase of this process. They want to involve City Council and the community in the process as well.

Mr. Bill Schaefer; Finance Director, spoke to Council about the funding aspects of the Master Plan. He said the strategies for financing capital improvement costs include (1) pay as you go; (2) revenue bonds; (3) general obligation bonds; and (4) combination of strategies. He then reviewed the debt service requirements by saying the approximate annual debt service per $1 million at 6.0% for a 20 year term is $87,200/year and for a 15 year term is $103,000/year. The sources of debt service include (1) user charges from recreation facilities; and (2) ad valorem tax - currently 1 cent = $357,000/year (could service approximately $3.5-$4 million debt).

Mr. Schaefer then reviewed the general obligation approval process as follows: (1) determine the purpose, amount, timing, etc.; (2) public notice of intent to apply to the Local Government Commission ("LGC") with 10 days minimum prior to application; (3) submit application to the LGC (a) may require preliminary conference; (b) consideration of application by LGC; and (c) order approving application; (4) City Council introduces Bond Order; (5) sworn statement of debt/debt limitation; (6) publication of Bond Order, statement of debt and public hearing with 6 days minimum prior to public hearing; (7) public hearing; (8) pass Bond Order; (9) publish Bond Order; (10) petition for referendum on bond issue (within 30 days following publication of Bond Order) signed by minimum 10% of registered voters; (11) set referendum date within one year of Bond Order; (12) publish two notices of referendum with minimum 14 days and 7 days prior; (13) conduct referendum; and (14) issue approved bonds within 7 years.

When Mayor Sitnick asked if grants are being considered, Mr. Schaefer said that they are a significant part of the funding called for in the Plan, but not of the $57 million capital side. City Manager Westbrook also noted that grants are "not a sure shot."

Mr. Brownie Newman, representing the Western North Carolina Alliance, said that they are, in a general sense, very supportive of the Master Plan. The Master Plan seems to de-emphasize the value of creating additional natural parks in the City. There is a need to build more baseball and soccer fields and volleyball courts, etc., but the Master Plan appears to undervalue the establishment of new parks and conserving them for their natural values. Decisions regarding the Master Plan should be made simultaneously with the decisions regarding the Greenway Plan and the greenways should be linked with the new parks. They are concerned about the overall price of the Master Plan and that it might prevent it's passage. Because resources are limited, the City should place the highest priority on funding aspects of the Master Plan that will not happen unless the City takes action, e.g. creating new national parks, ballfields and jogging trails. The City should give a lower priority to funding for actions that may happen even if the City takes no action, e.g., if there is a real demand for a golf course, then a private developer will develop those kinds of facilities. They feel the City should give the highest priority to funding the following: maintenance and renovation of existing public parks and recreation facilities, creation of new community and neighborhood parks, and the development of new outdoor recreational facilities; the creation of an interconnected system of greenways; and allocate funding to buy additional areas or establish conservation easements as needed to meet these needs. They support making the Richmond Hill property a City park and not a golf course. The Richmond Hill area may be a good place to build a few ballfields but they think the City should consider building a smaller facility at Richmond Hill which would bring less new traffic into the neighborhood, have less environmental impact on the forest and keep resources available to build facilities in other parts of the City. They also support the idea of holding additional public forums to get more public input on the Master Plan.

Mr. Gary Stewart, consultant from Woolpert, LLP., said that the recommendations regarding the golf course is based on what they heard throughout the process from the public meetings and also looking at comparison recreation standards. When you look at the year 2017 and the planning projections and the population growth, the standards will tell you that you need four public golf courses and they are recommending one, which again goes back to some of the concerns making sure that they were as sensitive as they can with the budget.

Mr. Brian Peterson, representing the Coalition of Asheville Neighborhoods ("CAN"), reminded Council that this is not just a quality of life issue but also a very big economic development issue. CAN feels the City needs to work with the County, schools and other organizations because it is not just something City Council can do. As part of that, CAN is working to arrange a public forum tentatively set for June 25 to educate the public about the parks and recreation needs, what's in the master plan and also help develop some consensus over what the priorities should be. CAN is also looking to convene a stakeholders summit of parks and recreation facility users, neighborhood groups, sports and athletic groups, environmental and outdoor groups, churches, businesses, and non-profits to help begin to prioritize and encouraged City Council to be willing to work with all of these other groups to help develop the priorities. They are concerned that it doesn't appear to be integrated with the Greenway Master Plan and also hope that the City will look at coordinating and possibly merging the Buncombe County Parks and Recreation Department. Perhaps the City and County should work together to develop a common Master Plan. They are concerned there has not been much talk about Memorial Stadium which some feel that there is a great potential for developing the Stadium and the reservoir property for some sort of a downtown park along Beaucatcher Mountain. They hoped the City will be agreeable to working with CAN and letting them know what the City's process will be on this. Any tax increase or bond revenue is going to take a lot of public support and CAN wants to work with the City in developing that public support.

Mr. Ed Stein, West Asheville resident, felt that golf courses is not something Asheville will want in their community because of the chemicals used which seep into the ground water.

Mr. Andrew George asked Council to remove plans to build a golf course at Richmond Hill because of the thousands of pounds of toxic chemicals that will drain directly into the French Broad River. He encouraged more green spaces.

Mr. Jim Orr, member of the Parks & Recreation Advisory Board, spoke about the tremendous amount of effort made to get information about the process out to virtually organization inside and outside the City because it is a comprehensive plan, not just within the City limits. He felt communication has been great and now the information needs to be processed and move forward. People have had access to these meeting and have chose not to be at the meetings. To have someone come in now and say that they have never had the opportunity for input is erroneous. He is very familiar with golf course management and numerous articles have been written about the benefits of golf courses in communities and also near water sources. He said that chemical and fertilizer applications and stormwater runoff is a major part of golf course development and making sure that those things are adhered to by proper design and proper maintenance. He felt it would be totally beneficial for the City to get involved with golf course development.

Ms. Susan Andrews, President of the Kenilworth Residents Association, said that in general they support the Master Plan and understand that there have been a number of opportunities for public comment. However, she said that no one had every approached CAN with over 20 neighborhoods in the community to see what they would like to contribute to the parks plan. She felt CAN's public forum can educate people about how to divide the $57 million into manageable chunks. She said the Master Plan didn't do much to prioritize the projects but CAN's forum can do that. She said that a set of prioritizes can be brought back to Council at the end of June. She said the Master Plan states that the master plan scenarios were developed in-house by the consultant and she feels that more ordinary people need to be working on it.

Two Richmond Hill residents felt that a golf course at Richmond Hill would add to the community and increase the quality of life in that area.

Mr. Briggs Sherwood, Director of Development for Asheville-Buncombe Youth Soccer Association, said that there is a lot of room in the plan for dialogue. He said there are some environmentally sensitive ways to develop fields and perhaps, golf courses as well. They would still like to discuss the number of fields and where they are located with City and County Parks Departments and City and County schools. They urge Council to support the parks field efforts because they do not feel that soccer is purely recreational or sporting, but as an important element in the overall well-being of our youth and of our community. They basically support the plan and would like to help generate support for a bond referendum.

Ms. Martha Walz felt that it was just a fad that all small children have to pay in team sports. She is more interested in looking at the community as a whole. She did not think the Richmond Hill property is proper for ballfields. She urged Council not to look at just one segment of the population but at the retied, middle-aged and old people for quiet recreation.

Ms. Berkley Brown displayed pictures of the Richmond Hill property showing a beautiful view of the French Broad River, some really old trees, some streams, etc. She stated this is forest property which just happens to be two miles from downtown Asheville.

Ms. Mary Ann Piney, representing the Southern Appalachian Bio-Diversity Project which is a conservation group based in Asheville, urged Council to connect the parks through greenways. She felt that the entire community would not enjoy a golf course but everyone can enjoy a forest. She felt that there will always be an opportunity to build golf courses, but not always an opportunity to build a forest.

Mr. Samuel Camp, member of the Parks & Recreation Board, stressed that this Master Plan is the culmination of a year worth of efforts. He stressed that they need to look at revenue for the future.

Ms. Ann Whisenhunt, member of the Master Plan Steering Planning Committee, said that all the Master Plan meetings have been very well advertised and there is always opportunity for input. She hoped that everyone will continue to look at the big picture and not be torn apart by neighborhood issue.

Ms. Helen Morrison spoke in support of greenways and parks but wanted the City to stay out of debt. She felt the City should pay for these things as they come along or find a way that they are a pleasure and not a burden on the taxpayers. She felt the City needs a new auditorium and police officers need laptops in their cars. Therefore, community parks should be brought up to standards and then the greenways can come in later.

Ms. Kathy Berry was concerned that future generations will not know what a forest is and urged Council not to build a golf course on the Richmond Hill property.

Mr. Stewart and Mr. Leon Younger, consultants from Woolpert, LLP., generally summarized the comments he heard in that most people were supportive of the plan and there are some issues with some of the details, some of the recommendations that might deal with a facility or two, some recommendations or issues that people want to be part of the process and help implement this plan. No one is really opposed to what is being proposed. He also heard that we have a very diverse community and very diverse recreational needs. Their responsibility is to try and balance out the entire needs of all the people that this plan needs to serve. Hopefully there is something in there for everybody, e.g., greenways and preservation of open space.

Upon inquiry of Vice-Mayor Hay, Mr. Stewart said that the $5 million for the golf course is included in the $57 million.

When Vice-Mayor Hay asked if adoption of the Plan represent a commitment by the City to build a golf course, Mr. Younger said that it may be a commitment that a golf course is needed but this is a 17 year plan that will need to be reviewed every five years.

Mayor Sitnick remembered the consultants recommending that the City not sell any existing park space and they specifically recommended the City not sell Memorial Stadium. Therefore, she asked if they thought Memorial Stadium could be retrofitted to become little league ballfields. Mr. Stewart said they would have to take a closer look at it and do a site analysis. However, after some preliminary analysis, most of it will remain open space due to topography but in the ballfields area you could probably end up getting about three youth ballfields. One of their concerns, however, is about access. Their recommendation is that Memorial Stadium basically remain as is - a special use facility.

Mayor Sitnick asked the consultants if they could respond to some of the concerns raised about golf courses next to waterways. Mr. Stewart said that the sensitivity on the design criteria standards for golf course design is so much higher than in the past. The key is the design and what are the specifications that you hold the contractor to. From the prospective of the land, it's important to understand what you have there before you even look at that property for a golf course. He said that many golf courses are maintained with no chemicals.

City Manager Westbrook said that the Plan is coordinated with the Greenway Master Plan. The funding, which will be worked out later, can be part of a bond issue. He said the City cannot afford $57 million to implement the Plan. It has taken the City a year to complete this and it may take anywhere from six months to two years to get this through a referendum if Council chooses the route of a bond issue. Then detail plans will be needed before some of these facilities can be built. It may take anywhere from 2-4 years from now before the first thing is completed. In terms of process, he hoped that before going ahead with any public process that you let the staff come back to you with some recommendations on this. You have heard from the consultants and the public in a number of different forums and now Council needs to hear from the staff and hear what they recommend, in not only on projects, but what is to be funded over what period of time. Then, if Council wants to have additional public hearings as a part of the bond process or in any other form, that the City sponsor those opposed to any one group and invite everyone to be a part of that. It was his opinion that the taxes that would be needed to be raised for the $57 million would probably not be practical for the Council to think about.

Mr. Brinson said that staff needs to meet with the Finance Department and Planning staff and would prefer to have some members of Council with them to try to hone down what they think would be a legitimate phase one of this process. He took exception to the comments made by Ms. Andrews that no one notified local neighborhood groups. He said that a letter was sent to every neighborhood group, to the President of CAN, letters to the NAACP, every church, the Ministerial Alliance, and the Asheville Downtown Association. In addition, he followed up personally with phone calls to others. At one of the meetings they had, only one representative from that group showed up. The Parks & Recreation Department did make an effort and they are open for additional comments. From what he has heard, he doesn't think they are far off track and that staff can come back to City Council with a plan that they feel is doable and fiscally responsible so they can proceed to the next level. They also realize that they need to involve the public in some form with this process. Ultimately they are going to be the ones who will vote for a bond referendum. They will work internally to try to address those particular issues and get them involved in the process.

Mayor Sitnick closed the public hearing at 9:03 p.m.

Councilman Cloninger said that everyone agrees that (1) we do need a Master Plan and (2) we all feel that the cost of the Master Plan right now is too high. If we want to be successful in presenting this Master Plan to the public and implementing it, we've got to be very smart on how it is presented to them and the way we allow them to participate. We should not start out by trying to sell at $57 million Master Plan. He suggested (1) that we not formally adopt or endorse this Master Plan at this point - that is not to say we don't accept the concept, but because we recognize there are some things in the Master Plan that will not be ultimately agreed on; (2) we need to carefully coordinate this with the Greenway Master Plan for effectiveness and efficiency and to understand what our total cost will be from a parks and recreation standpoint; (3) we need to prioritize what we are going to realistically try to have in the Master Plan and therefore cut down on the cost we are so concerned about; and (4) we need to develop a game plan for presenting this to the public and also in implementing it. Part of that game plan will be the coordination of the presentation to the public and that's an area where CAN can play a very large role and he looks forward to working with them on that. However, he would ask CAN to work closely and in cooperation with the City in what you do and don't get out ahead of the City. Also, part of the development of the game plan, regardless of the combination of the funding utilized, will be the need for a bond referendum and if Council agrees that's going to have to be part of the game plan, would staff like Council to go ahead and direct them to at least start doing the spade work.

City Manager Westbrook replied that they would like that direction and asked Council to allow staff to not only to come back with a financing plan, but also a Parks and Recreation Development Plan over the next number of years.

Councilman Cloninger very much endorsed the concept of having a Master Plan but felt we should fine-tune it first.

Councilwoman Field strongly endorsed the Master Plan in concept and the consultant has done an excellent job in assessing what the community has and what it needs. She felt it was Council's job to make some of the final decisions, but felt this should be given back to staff and let them come back to Council with their recommendations.

When City Manager said that there is a lot of up-front planning time for a bond referendum, Mayor Sitnick and Councilman Cloninger agreed that the sooner we start working on a bond referendum the better.

Councilman Tomes was very pleased that Council will have a Master Plan to better inform Council. He hoped that even as the Plan is refined, he would like to see if they can build in some cost projects as we deal with the incremental stages of this Plan. Sometimes we look at the immediate and if we are pro-active, rather than reactive, we could save money by moving along in stages, realizing that five years from now it may cost us 1/3 or 1/4 more.

Mayor Sitnick said that one of the responsibilities of Council and staff will be as clear and informative as possible. This 17 year plan is now cut down by at least 6 months or possibly a year or two to get a bond referendum through. Then you may not see anything for 3-4 years before the first project is completed. We have to make sure that in order to get the public to buy into this that they know exactly what they're going to get when. It will be our responsibility to define everything as clearly as possible. As part of this, we need to begin immediately in developing a public information process so that when we go to the public to sell $10 million or $20 million initially that everyone understands exactly what that means.

Mayor Sitnick moved to (1) informally agree to the concept of the Master Plan, (2) make sure this Master Plan is coordinated with the Greenway Master Plan, (3) make sure we prioritize the game plan properly, (4) instruct staff to move on the referendum, and (5) have staff come back to Council with their recommendations after this public hearing. This motion was seconded by Councilman Cloninger and carried unanimously.

City Attorney Oast made clear that this is not adoption of the Master Plan, just adoption of the concept with expectation that staff will be bringing specific items back to Council with perhaps a more refined Master Plan for eventual consideration as to adoption.

Councilman Cobb said that in Chattanooga, Tennessee, they built a $49 Million aquarium from grant money. He would like to see 100 people and/or businesses in Asheville come forward with a grant of $500,000. They could pay $50,000 a year for ten years.

Mayor Sitnick said that the City will be applying for grants very aggressively.

V. NEW BUSINESS:

A. RESOLUTION NO. 98-52 - RESOLUTION AUTHORIZING SUBMISSION OF A GRANT APPLICATION TO THE U.S. ECONOMIC DEVELOPMENT ADMINISTRATION FOR FUNDS TO RENOVATE THE FIRST FLOOR OF THE GROVE ARCADE BUILDING INTO A PUBLIC MARKET

At the request of Councilman Cloninger, Councilwoman Field moved to excuse Councilman Cloninger from voting on this matter due to a conflict of interest. This motion was seconded by Councilman Sellers and carried unanimously.

Ms. Charlotte Caplan, Community Development Director, said that this is consideration of a resolution authorizing submission of a grant application to the U.S. Economic Development Administration ("EDA") for $1,006,232 to renovate the First Floor of Grove Arcade Building as a public market.

The City of Asheville and the Grove Arcade Public Market Foundation will be co-applicants in applying to EDA for $1,006,232 through the Public Works Impact Program. The funds will be used to renovate the First Floor of the Grove Arcade building into a public market. The EDA funds will be matched by $1,006,232 City of Asheville Certificates of Participation to fund a portion of the renovation of the First Floor area of the Grove Arcade.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Tomes moved for the adoption of Resolution No. 98-52. This motion was seconded by Councilwoman Field and carried unanimously.

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VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 28 1998, AND THE WORKSESSION HELD ON MAY 5, 1998

Councilman Sellers moved for the adoption of the minutes of the regular meeting held on April 28, 1998, and the worksession held on May 5, 1998. This motion was seconded by Councilman Cloninger and carried unanimously.

B. WNC AIR POLLUTION CONTROL BOARD

Mayor Sitnick presented a letter to Council in which Hazel Fobes, Chair of the Citizens for Safe Drinking Water, supported the appointment of Nelda F. Holder to the WNC Air Pollution Control Board.

C. N.C. LEAGUE OF MUNICIPALITIES MEETING

Councilwoman Field said that the Annexation Study Committee has made it's final recommendations for changes to the annexation policy. A couple of changes she noted were that (1) it increases the required population density from two persons to 2.3 persons; (2) annexation of agricultural, horticultural or forest land in the annexation area that is eligible for present use value taxation does not become effective until it becomes ineligible for its present use; and (3) a public information meeting will be required prior to the annexation. She said that the N.C. League of Municipalities believes that since this was supported by the Study Committee that it will probably go through with some changes.

Councilwoman Field said that there has been adopted and in the Governor's budget a new state enterprise zone process from the Department of Commerce. There will be eight pilot projects - four from cities over 25,000 and four from cities under 25,000. She felt the City should make an application quickly and find out as much as we can. She felt we had a real good possibility of getting one of these enterprise zones and there is a fair amount of money in the budget for that.

She also said that the League will be supporting an additional one cent local option sales tax authorization provided there is a full municipal share and provided the proceeds are used for capital projects only. The capital projects are only those defined as anything that the statute allows you to set aside in a capital reserve fund.

Mayor Sitnick instructed the City Manager to write a letter to the appropriate federal official to support ISTEA funding.

D. BIG SOUTH CONFERENCE BASKETBALL TOURNAMENT

City Manager Westbrook said that UNC-Asheville has requested that the City appropriate $10,000 for the Big South Conference in 1999 and 2000. He said that it would not be payable until April of 1999, so it will be something that will be appropriated for next year's budget. The Chamber of Commerce and the Asheville Tourism Development Authority has obligated themselves for $10,000. The Asheville Citizen-Times, the Buncombe County Commissioners, Ingles Markets, UNC-Asheville, one anonymous donor, in addition to smaller donations by other entitles, have all agreed to sponsor the tournament with a $10,000 donation.

It was the consensus of Council to allocate $10,000 in next year's budget for the Big South Conference in1999 and 2000, pending approval of the Tournament coming to Asheville.

E. COUNCIL MEETINGS

City Manager Westbrook stated that the I-26 Corridor briefing by the N.C. Dept. of Transportation has been scheduled for Tuesday, July 21, 1998, at the Public Works Facility as a part of Council's normal worksession beginning at 3:00 p.m.

Due to the July 4th Holiday, It was the consensus of City Council to cancel the Tuesday, July 7, 1998, City Council meeting.

F. COMMENTS BY JUNE LAMB - SHELBURNE ROAD REZONING

Ms. June Lamb expressed concern over the rezoning on Shelburne Road requested by Trinity Baptist Church. She asked Council to either approve or deny the rezoning request.

City Manager Westbrook said that City Council rescheduled the public hearing until July 28, 1998.

Mayor Sitnick said that she would meet with Ms. Lamb and discuss her concerns.

G. CLAIMS

The following claims were received by the City of Asheville during the week of April 24-30, 1998: Renee Harrin (Water), Sharon Sharp (Civic Center), G.C. Green (Water), C&H Auto Parts (Water) and Peggy Knopp (Water).

The following claims were received during the week of May 1-7, 1998: Glen Credle (Water), Cathy Glover (Water), Chris McConnell (Traffic Engineering) and Mack Lawing (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

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H. LAWSUIT

The City received a Complaint on May 4, 1998, from Rock Steven Edwards. The nature of the proceeding is appeal from Civil Service Board's decision of termination. This matter will be handled in-house.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:34 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - May 19, 1998 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Approval of Grant from FAA for Phase III of Runway 16 Project

Summary: This grant from the Federal Aviation Administration, in the amount of $652,731 consists of a project to construct extended runway safety area, Runway 16 (Phase III).

Fifth Modified Grant Agreement with the N.C. Dept. of Transportation for Phase III Terminal Expansion

Summary: The City is required by law to execute certain contracts and agreements for the Airport Authority. This Fifth Modified Grant Agreement is to allow the Authority to receive additional matching funds from the Dept. of Transportation ("DOT") for the Phase III Terminal Expansion.

Airport Director Jim Parker advises that the Terminal Expansion project was financed almost entirely with bond money, and that it was completed several years ago. The estimated cost of the project was $3.63 million and DOT's projected commitment under the State Aid to Airports program is approximately half of the estimate. Because of budgetary limitations, this entire amount was not available when the project was completed, and DOT has been making "installment" allocations of $300,000 or $200,000 on a yearly basis, as funds become available. In order for these allocations to continue, the Grant Agreement must be extended for another year, even though the project has been completed.

The $200,000 allocation for this year will still not complete the DOT's program commitment.

Speed Limit Reductions on Lindsey Road to 15 mph and Cherokee Road to 20 mph

Summary: The City 's Traffic Engineer has performed the necessary traffic analyses associated with the above mentioned locations as per the Manual on Uniform Traffic Control Devices and the North Carolina Supplement. We are seeking authorization from the City Council to change these speed limits.

Change to 15 MPH:	Change to 20 MPH:
(1) Lindsey Road (Entirety)	(1) Cherokee Road (Entirety)

These locations have been reviewed over the past 12 months as per the request of residents and motorists who utilize these roadways. Field surveys and speed studies were conducted and data reviewed based upon the 85th percentile speed, which is the speed at or below which 85 percent of the vehicles are moving. This speed is reviewed in relationship to the median speed and the pace speed range. The pace speed range is the range of speeds at which the largest concentration of motorists drive. These speeds were all reviewed to address the speeding problems in these areas.

1. Lindsey Road

   A speed study was conducted along Lindsey Road per the request of citizens in this area. The residential nature of this roadway vertical/horizontal alignment and width suggest that the speed limit needs to be 15 MPH. The Asheville Police Department concurs with our recommendation.

2. Cherokee Road

   A speed study was conducted along Cherokee Road per the request of citizens in this area. The residential nature of this roadway vertical/horizontal alignment and width suggest that the speed limit needs to be 20 MPH. The Asheville Police Department concurs with our recommendation.

Sale of Alcoholic Beverages for the Asheville Downtown Association's 1998 Events

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine for the 1998 events of the Asheville Downtown Association at the locations and times specified in the resolution.

For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville events to bring both the public and visitors to the downtown area. These events include: *Moonlight Over Downtown*, *Honda Hoot Public Rally*, *and four Downtown After Five activities.* The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

Budget Amendment to establish a Budget for Funds to Construct the Amboy Road Greenway

Summary: The consideration of a budget amendment, in the amount of $60,000, to establish a budget for the construction of a greenway that will connect the Amboy Road Park and the French Broad River Park.

Budget Amendment to appropriate funds from grant for Summertime Kids Program

Summary: The consideration of a budget amendment, in the amount of $1,000, to appropriate funds from the Community Foundation of Western North Carolina for the Summertime Kids program to provide enrichment activities for the Summer Teen Program.

Budget Amendment to appropriate expenditures for Non-Resident Fees Collected for Various Parks & Recreation Programs

Summary: The consideration of a budget amendment to appropriate expenditures for non-resident fees which have been collected for various Parks and Recreation programs.

Budget Amendment revenues and expenditures for Racquet Club Road Project

Summary: The consideration of a budget amendment to appropriate revenues and expenditures for Racquet Club Road Project.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

CITY-COUNTY MINORITY BUSINESS PLAN

Mr. Bill Schaefer, Finance Director, said that in 1993, the City contracted with Research and Evaluation Associates, Inc. for a "Minority Business Study to Support City of Asheville Minority Business Plan". The study's purpose was to determine whether there was sufficient evidence of discrimination in the award of contracts and procurement of supplies, materials and services during the past to justify continuance of the then-existing Minority Business Plan and, if so, to identify any modifications to the plan which would be required to place the plan on a legally defensible basis. The City's current Amended Minority Business Plan, dated December 6, 1994, incorporated revisions recommended by the disparity study. In July 1996 the City and County established a joint Minority Affairs Office. In November 1996, the Minority Business Commission held a retreat at the YMI Cultural Center to begin the process of developing a joint Minority Business Plan to provide policy and direction for a joint City/County minority business program. They used the City's existing 1994 plan as the baseline from which to develop the new joint plan. Subsequently, the Commission held a series of meetings with various constituencies, including representatives of minority businesses, the general public, and City and County staffs, to receive their comments and recommendations regarding the joint plan. The Draft City of Asheville - County of Buncombe Minority Business Plan was approved by the Minority Business Commission on April 23, 1998, and adopted by the County on May 12, 1998. Significant changes from the 1994 Plan are:

Inclusion of Buncombe County in all aspects of the Plan. Note: separate goals are established for the City and County (Section VII.D.3; page 17 of draft). The City goals are at the same as adopted in the 1994 Plan.

Minority Business Commission Membership: Increases membership from 9 to 13 (Section IV.A.3; page 4 of draft).

Retains: Council of Independent Business Owners, Associated General Contractors of America, Women in Construction, Asheville Area Chamber of Commerce, Asheville-Buncombe Community Relations Council, American Institute of Architects and Asheville Business Development Center.

Deletes : Black Business and Professional League and YMI Cultural Center.

Adds: Minority Business Alliance, NAACP, Eagle Market Streets Development Corporation and three certified minority business owners (one each from the four categories for which goals have been established: construction, professional services, procurement, and other services).

Staff Evaluations: Requires as part of the evaluation of all those staff members who are directly involved in the procurement and contracting process, that good faith efforts towards goal attainment be a consideration in evaluations and that City and County Managers meet semi-annually, at the request of the Commission, to discuss specific concerns (Section IV.B.3; page 6 of draft).

Certification of Minority Business Firms: Changes responsibility for certification of firms from the Minority Business Commission to the Minority Affairs Office and clarifies procedures and responsibilities for appeals of certification denial (Section VII; pages 12 through 16).

Enforcement: Strengthens enforcement options: Bids containing no documentation of good faith efforts shall be deemed non-responsive. Expands sanctions for failure to make or maintain good faith efforts to add provisions for removal of bidders from bid lists and/or debarment for a period of one year (Section VI; pages 17 - 19).

Grievance Procedure: Clarifies the procedures and responsibilities. Provides that when a grievance has been submitted, the bid process shall be held in abeyance and no award will be made until such time as the grievance is resolved or a final decision regarding the grievance is made by the City or County Manager (Section IX; page 19).

Additionally, numerous changes have been made to improve clarity, to streamline procedures and to generally enhance the plan's functionality in fulfilling its purposes of widening opportunities for participation, increasing competition, and ensuring the proper and diligent use of public funds.

Staff recommends the City Council adopt the resolution which replaces the current City of Asheville Minority Business Plan with a joint City of Asheville - County of Buncombe Minority Business Plan.

Ms. Laura Thompson, Chairman of the Minority Business Commission, was pleased to present this Plan to City Council for their consideration of adoption.

Mr. Schaefer responded to several questions from Council, some being, why the grievance procedure's final decision is either the City Manager or the County Manager, what was included in the definitions of "Minority Person", why the City is waiting to do a comprehensive Disparity Study in 2013;

Discussion surrounded the request of Mayor Sitnick, who was trying to be inclusive as possible, to include a letter, document of intent, addendum or attachment to the Minority Business Plan to send a message that we, as a community, also extend equal opportunities to the international community. She said that since Asheville has changed since the first Disparity Study was first completed, that when the comprehensive Disparity Study is conducted in 2013 that that particular category be included.

Councilman Tomes expressed his support for the Plan and stressed how important it was for the Plan to be enforced.

Upon inquiry of Ms. Dee Williams about how Buncombe County's goals were set since they did not have a Disparity Study completed, City Attorney Oast said that he would look into that issue and report to Council next week. Ms. Williams also suggested that the City contact the cities of Wilmington and Charlotte in that they are doing a number of things with those programs that work very well.

Ms. Vickie Gaddy, representing the National Association of Women in Government, said that they would like the adoption of the Plan to be by ordinance and not resolution. Ms. Gaddy then presented Mr. Oast with a copy of the Plan with their notes on it, noting that on page 19 in the third bullet, the comment reads "the county refuses to make this a part of the bid documents so that with this wording they cannot assess penalties" and on page 6 in the third paragraph - the comment reads "this is real important because the department heads need to be held accountable."

When Ms. Gaddy said that they have not presented these comments to Buncombe County, City Manager Westbrook reminded the Council that the Plan has already been adopted by the Minority Business Commission and Buncombe County and any amendments would need to go through both of those bodies first.

When Mr. Clarence Benton said that several business owners he has talked to have not seen the Plan that the County promised to make available to them, Mr. Schaefer said that he would be happy to give Mr. Benton those copies to review.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UPDATE ON THE VISION PROCESS

Ms. Pat Smith, Chair of the Vision Board of Directors, referenced a press release sent out on May 26, 1998, of the following five benchmarks: (1) Average Wages Per Job - the average earnings per job in Buncombe County will increase at an annual rate of at least 1% greater than the North Carolina average; (2) Graduation Outcome Index - The City of Asheville and Buncombe County will have an education that is rated number one on the Graduation Outcome Index for comparable Metropolitan Statistical Areas of our size; (3) Persons Below Poverty Level - The number of people in Buncombe County at the poverty level will be reduced by 1/2 of the 1990 level. Particular attention will be paid to reducing the level of poverty for those households with children; (4) Population Between 18-34 - There will be an increase in population age 18-34. This should result from opportunities encouraging our young people to make a decision to live and work in Buncombe County; and (5) Manufacturing Jobs - The proportion of manufacturing jobs in Buncombe County will be at the North Carolina average or higher.

Ms. Smith explained that these five key benchmarks are indicators of whether or not progress is being made in areas of education, quality of life, economic development and youth population. Benchmarks are indicators of community conditions that can be tracked over time to measure progress, or lack of progress, as we work to achieve our Vision. Three of the five key benchmarks compare conditions in Asheville and Buncombe County to state statistics or comparable Metropolitan Statistical Areas of our size. Two benchmarks present City and County statistics only.

All five benchmarks have percentage or numerical targets which indicate the urgency and direction of change that must be achieved for community improvement. The Vision will track these benchmarks annually.

Ms. Smith thanked City Council for their financial and volunteer support noting that without the level of support, they would not have this common vision.

Ms. Smith responded to several questions from City Council regarding the benchmarks.

Mayor Sitnick thanked Ms. Smith for the update on the Vision process.

TRANSFER OF PROPERTY TO HENDERSON COUNTY - BREVARD ROAD SITE

Assistant City Manager Doug Spell said that this is consideration of executing a deed transferring property on Brevard Road to Henderson County as a part of the Water Agreement.

On November 11, 1995 the Regional Water Authority, City of Asheville, Buncombe County, and Henderson County entered into the Water Agreement. This agreement was a part of the overall provision of water service via the Mills River Water Treatment Plant.

At the January 20, 1998, City Council worksession, staff presented this item to Council for consideration. The City Council requested additional information which staff provided via a memorandum dated January 26, 1998, including copies of prior water agreements.

One condition which is a part of the aforementioned Water Agreement pertains to the City of Asheville transferring by deed property to Henderson County on Brevard Road (NC 191). The stipulation outlined in Section XXII of the Agreement indicates that Henderson County must convey the property to MSD to be used for a wastewater treatment plant site within ten (10) years or convey it to a regional water and sewer authority of which Henderson County, the Authority and Asheville are a part. If neither of these conditions are complied with within the 10 year date of the transfer of the deed to Henderson County the property automatically reverts back to the City of Asheville.

The City Attorney's office has reviewed the deed prepared by the attorney for the Regional Water Authority. The deed has been prepared to take into account the automatic reversion to the City of Asheville in the event the property is not utilized in accordance with the stipulations of the agreement.

Staff recommends that City Council authorize the Mayor to execute the deed transferring the property to Henderson County in accordance with the Water Agreement dated November 11, 1995.

Upon inquiry of Councilman Sellers, Mr. Spell said that the City purchased the Mills River site directly from the private property owners.

Mayor Sitnick, in no way felt that the City should not honor the condition in the Water Agreement which pertains to the City of Asheville transferring by deed property to Henderson County on Brevard Road, however, she did not remember that provision being explained by staff prior to signing and she was sorry that the City had agreed to that. Mr. Spell said that he would be happy to research the minutes during that time period and report back to Council.

Upon inquiry of Councilman Cloninger, Mr. Spell said that he was not aware if Henderson County has any plans to convey the property to MSD or if Henderson County has any plans to convey it to a regional water and sewer authority of which Henderson County, the Authority and Asheville are a part.

Councilwoman Field said that it was her understanding that from the very beginning of the negotiations, this was seen as an opportunity of a combination water/sewer deal.

Mayor Sitnick felt that City Council should review the Water Agreement and how it impacts the City taxpayers. She felt this would be a good worksession item.

City Manager Westbrook asked the City Attorney if there was some way to set up an automatic notification process to the City if that site is developed as a wastewater treatment plant site. City Attorney Oast said that the notification process has to occur by statute because there are certain permitting processes these facilities have to go through. That is the only thing that can be built on this property and if it's not built , it reverts back to the City.

Councilman Tomes was in favor of honoring our commitment if it is legal and binding, however, he still questioned the City's reasoning behind that portion of the agreement.

Mayor Sitnick about a rumor that a pesticide treatment plant may be located on the site of the Mills River Water Treatment Plant. Mr. Spell said that that issue was discussed at the Regional Water Authority meeting and what is being looked at is mix facilities where the individual growers would mix the chemicals - it is not actually a treatment process. This would be a mixing and handling facility.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REPORT ON MEMORIAL STADIUM

Mr. Irby Brinson, Parks & Recreation Director, said that the Parks and Recreation staff was asked to review the possibility of selling a portion of Memorial Stadium and report back with a recommendation to City Council.

On March 10, 1998, Asheville City Council rejected an offer from Robert Camille to purchase approximately 21 acres of property known as Memorial Stadium. City Council did take action by requesting staff to investigate the possibility of selling a five-acre tract of the 21 acres. This five acres represented the gated area of the Stadium which is currently used for recreation purposes. In addition, Council directed staff to investigate the expansion of renovations to Mountainside Park, assist in the funding of a veterans' memorial, and construct the youth sports complex at Richmond Hill. Based upon City Council's request, staff investigated the potential dollar value for selling the five-acre tract and determined that the appraised value of this tract would represent approximately $500,000 in revenue. It is estimated that the above changes in the scope originally outlined in the proposed sale of the Stadium would result in a project of over $1.5 million. In addition, since the March 10 City Council meeting, staff has not had any response from the public in regard to the availability of this property for purchase. Staff contacted Robert Camille to determine whether he would be interested in this proposal and Mr. Camille stated he was not interested. Therefore, based upon the above information, staff does not recommend selling the five acre tract portion of Memorial Stadium.

The Parks and Recreation staff recommends retaining Memorial Stadium and not pursuing the sale of this facility.

Upon inquiry of Mayor Sitnick, Mr. Brinson said that in the Master Plan there are 26 different park areas that staff will be looking at regarding improvements and Memorial Stadium is one of those site.

When Councilman Cobb asked if the City could put some ballfields on the Memorial Stadium property temporarily, Mr. Brinson said that you could build three very small fields but they can't accommodate the children over 13 who would continue on to Senior Babe Ruth. The fields would also hinder the use of outdoor volleyball and football program that currently use the property.

It was the consensus of City Council not to pursue the sale of Memorial Stadium.

UPDATE ON CHARLOTTE STREET CORRIDOR PLAN

Mr. Mike Matteson, Urban Planner, said that staff has been working for the past couple of years to prepare a plan to help guide the future development of Charlotte Street. The plan contains staff's recommendations which are based upon numerous meetings with many individuals with a stake or an interest in the street. It is staff's view that the plan's recommendations will assist in allowing Charlotte Street to develop in a manner that is beneficial to the City of Asheville, the property owners and tenants, as well as the residents of surrounding neighborhoods.

This draft will be modified to include additional comments from staff, members of the advisory committee and/or members of the community. Additionally, staff is in the process of formatting the plan (in a similar manner as previous small area plans) and incorporating numerous maps and graphics which help to illustrate the concepts and recommendations of the plan.

Staff has tentatively scheduled a community meeting to present the plan and receive input from the community. This meeting has tentatively been set for Thursday, May 28th at 7:00 p.m. at the Jewish Community Center. Following the community meeting, the plan will be presented to the Planning and Zoning Commission and then to City Council for formal review and adoption. Staff anticipates these public hearings to take place in June.

He then reviewed the following three goals of the Plan which staff hoped would benefit the property owners and the City in general:

(1) Vehicular and Pedestrian Circulation

- Improve the safety and efficiency of all modes of transportation within the Charlotte Street corridor
- Promote increased pedestrian activity as well as alternate means of transportation within the Charlotte Street corridor

(2) Land Use

- Continue the existing balanced mix of uses on Charlotte Street between commercial, residential, institutional and open space
- Encourage compatible new development that serves adjacent neighborhoods and helps to create an economically vibrant pedestrian environment

(3) Streetscape and Appearance:

- Improve the appearance of Charlotte Street and create a unique and unifying for the corridor

City Council discussed some specific items in the Plan and how the draft should be distributed.

Councilman Sellers felt this Plan will be an excellent example of a tool for the Haywood Road Corridor Plan

Mr. Jerry Bailey submitted a letter to Council dated May 18, 1998, to Mr. Mike Matteson, which states that his biggest problem with the Plan "is the emphasis placed on the findings and conclusions of the Charette process. Mike, we have continually been willing to find common ground on this process; however no commercial property owner along Charlotte Street supports this process and particularly the findings of the Charette." The letter then continues that "... our key and significant points on the Charette process that prevent our support (you will notice that we have had serious problems with the involvement of Jane Matthews in this process form the beginning)."

Mayor Sitnick thanked Mr. Matteson for his report and Mr. Bailey for bringing his concerns to the attention of City Council.

DOG PARK TASK FORCE REPORT

Mr. Irby Brinson, Director of Parks and Recreation, said that in January, 1998, the Parks and Recreation Department established a Dog Park Task Force which was formed by individuals who were interested in developing a dog park for the City of Asheville. This group has investigated various dog parks throughout the country and has developed criteria which they feel could be used for a development of a park in Asheville. Even though a location has not been determined, the Dog Park Task Force feels that it has made headway in determining a viable park for this community. The Task Force plans to present information on a prototypical park with various amenities which typically would be found in the park.

The Parks and Recreation Department and the Dog Park Task Force is asking City Council's into the feasibility of developing a dog park in Asheville.

Ms. Ann Weber, Chair of the Dog Park Task Force, reviewed the following: (A) "Dogmographics" - (1) dog families: half of all households - an important constituency; (2) dog ownership, dog care, and citizens' responsibilities; (3) local challenges to canine good citizenship; and (4) the work and mission of the Canine Coalition of Asheville/Dog Park Task Force; and (B) "Dogma" - (1) what dogs mean to us; (2) what dogs need from us; (3) what dog owners need from the City and community; and (4) off-leash dog parks: solutions and benefits offered.

She then outlined a request for an off-leash dog park in Asheville. The requirements include: (1) land: 2+ acres of park land within city limits (city-owned property); (2) community support and neighborhood cooperation: getting/keeping it!; (3) gated entry, rules, fencing and maintenance; (4) pathways, lighting, monitoring, and security; (5) central location, unimpeded access, adequate parking; (6) "honor system" participation, monitored/overseen by volunteer advisors; and (7) Canine Communication Center: a notice board and more! The rationale is (1) dog owners are a significant and deserving segment of City population; (2) responsible dog care requires space and opportunities for community; (3) location and access of dog park must be competitive with other sites; (4) committed, volunteer advisory group will oversee park activities; (5) matching funds will continually be sought for park development; and (6) as visitors learn to use the dog park well, new parks can be developed.

She reviewed "The Best Friends Bark Park" as (1) freedom with security; (2) socializing with people and dogs (3) providing needed service to a large "special interest" group of citizens; (4) removing the burden of inappropriate dog presence from fragile locations; and (5) a model of how one park can flourish - and others can be developed! She outlined the "Center for Canine Good Citizenship" (1) be visible proof of "our taxpayer dollars at work"; (2) geographic center for dogs and owners' socialization and education; (3) more efficient information distribution and dog tax collection; (4) happier, better-behaved dogs; (5) more responsible, responsive dog owners; and (6) a more humane City and community.

She then asked for Council's support in developing an off-leash dog park in Asheville.

It was the consensus of City Council to offer support to continue this process to continue working toward the development of an off-leash dog park in Asheville.

Mr. Jerry Rice suggested that the Dog Park Task Force approach the County about this because there is a lot of land in the City that the County owns and some of those lots are in places that can't be built on.

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SUMMER YOUTH PROGRAM

Mr. Jeff Richardson, Personnel Director, said that this is the consideration of a budget amendment to provide funding for a Summer Youth Program ("SYP").

Asheville City Council has appropriated $100,000 since 1992 to fund a SYP. The program's purposes have been to employ "at-risk" City youth and to promote positive work ethics and healthy lifestyles. To qualify, applicants have had to be 14 - 19 years of age, a resident of Asheville and a student in a public or private school system. Household income has also been an indirect consideration.

1997 Summer Youth Program

- A decision to fund the program was made on April 22, 1997 via (Ordinance No. 2358) in the amount of $100,000 . Council recommended (1) designation of at least three slots from "One Youth At A Time" (OYATT), a job placement and training program. These youth were to go through the same recruitment and selection procedures as other participants; (2) incorporating applicable sections of the OYAAT training curriculum into the SYP training component and hire their instructors, if possible; and (3) evaluating the OYAAT and SYP efforts for future consideration.
- Seventy-two youth and one part-time Program Administrator/Counselor (30 hours per week @ $15.00 hourly) were hired.
- Youth were paid $4.65/hour and worked an average of 30 hours/week in various City Departments, United Way Agencies, Asheville Housing Authority and the Interdenominational Ministerial Alliance Summer Camp. Four (4) participants were also placed with OYAAT.
- Total direct cost was $101,195.

1998 Summer Youth Program

Current Issues For Consideration:

Current size of the program requires a program administrator to be hired. The City has utilized the same Program Administrator for the past five summers. He is not available for re-hire this summer.

Participating departments have expressed a desire to employ the youth 40 hours per week as opposed to 30 hours weekly.

Federal minimum wage law mandates $5.15 per hour (10% increase from last year).

OPTION A: Restructure Program. Pay youth a more competitive per hour wage ($5.50 hourly) and increase hours to 40 weekly. Eliminate the Program Administrator/ Counselor position and redesign the program to place more responsibility on the youth supervisor. Accept up to 25 of the top youth from last year's program. COST: $50,000 COST SAVING TO THE CITY: $51,195

OPTION B: Continue the program as currently designed. COST: $115,000

OPTION C: Discontinue the program and re-prioritize funding elsewhere.

Staff recommends Option A. Eliminate the Program Administrator. By decreasing the program's scope from 72 to 25, it will allow the program to be monitored internally by participating departments, along with the Personnel Department.

Mr. Richardson explained that a program administrator will be hard to find that can work for that time period with the right skills necessary.

Upon inquiry of Councilman Cloninger, Mr. Richardson explained the difference in responsibilities of the youth supervisor and the program administrator.

Upon inquiry of Councilman Cloninger, City Manager Westbrook said there are some non-profits that would be glad to take this program over but it has been staff's impression that City Council wanted a structured program and one that did not only have the youth work in summer for eight-hour days, but had additional training, like how to write a resume, how to conduct yourself during an interview, how to dress for a job, etc.

Mayor Sitnick suggested Mr. Richardson contact the Center for Creative Retirement who may have some people willing to donate their services. She also suggested contacting local colleges.

Councilman Tomes spoke very highly about the program and felt this was an excellent opportunity to help children with low self-esteem. He suggested Mr. Richardson contact Mr. Dwight Hulse at UNC-Asheville who, he felt, would be an excellent choice as program administrator.

Councilman Cobb suggested the City appropriate $100,000 for the program and ask for matching funds from the community.

After discussion on several different ideas for the program, City Council agreed upon funding the program at $100,000 with Mr. Richardson trying to find someone suitable for the program administrator with a 10% reduction in the number of kids being hired. Council also directed staff to begin looking at a philosophical change on the direction the program should take in the future and report back to Council in a memorandum form.

Mr. Jerry Rice felt (1) the age limit should be from 14-21 years; (2) the Chamber of Commerce should donate some money to the program; (3) the Blue Ridge Mental Health is a good resource for people who may want to volunteer their time in the summer; (4) retired teachers and special education teachers may be willing to work in the summer; and (5) churches should be approached to maybe adopt one child.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REPORTS FROM BOARDS AND COMMITTEES

Vice-Mayor Hay said that the Council Boards and Commissions Committee will be meeting next week to discuss several issues on different boards.

SIGN ENFORCEMENT

Mayor Sitnick stated that the City was continuing to make some progress in the elimination of illegal signs.

TROLLEY CARS

Mr. David Newman presented Council with an idea for two trolley cars to be run this summer on a trial basis as a service to the tourists who visit Asheville. He proposed that the cars would drop off and pick-up at the Grove Park Inn, several hotels, Pack Place, Biltmore Village and the Biltmore Estate. They propose to sell tickets at the Grove Park Inn and the other hotels. He felt the tourists would be served well by a different form of transportation other than City buses and taxi service. He questioned whether their stopping on City streets fall under any regulation by the City.

Councilwoman Field felt the idea was wonderful, however, she felt it might be confusing to the people where the trolleys stop when they find out they have to go to a hotel to buy a ticket. She suggested that people be allowed to purchase the trolley car tickets at other places, for instance, at Biltmore Estate, Pack Place or a shop in Biltmore Village.

Mr. Bill Kelly, from the Grove Park Inn, spoke in support of this venture and said that their trolley drivers would serve as tour guides.

Ms. Julia Cogburn, Planning & Development Director, felt this was a good idea and they would like to find a way to work out some of the legal concerns the City Attorney may have.

City Attorney Oast said that he would research the issue in terms of the City granting a franchise to the company. The franchise could contain certain terms and conditions that they must meet.

City Manager Westbrook said that he would recommend a franchise and asked Mr. Newman to put his proposal in writing. After City Council has an opportunity to review the information and recommendation by the City Attorney, the City Council can consider approval at that time.

UNIFIED DEVELOPMENT ORDINANCE ANNUAL REVIEW

It was the consensus of City Council to have the Planning staff bring to Council, at a worksession, the items they would like for Council to consider for possible amendments to the Unified Development Ordinance. The Planning & Zoning Commission members will be invited to the worksession. After the initial direction by City Council to staff, staff will be directed to prepare the appropriate ordinances for review by the Planning & Zoning Commission. After the Commission's review, City Council will hold public hearings, as appropriate, and consider adoption of the ordinance amendments.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:10 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - May 26, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Cobb gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE MONTHS OF MAY THROUGH NOVEMBER, 1998 AS "SHOW YOUR COLORS, AMERICA! MONTHS"

Mayor Sitnick read the proclamation proclaiming the months of May - November, 1998, as "Show Your Colors, America! Months" in the City of Asheville.

B. PROCLAMATION PROCLAIMING JUNE 4-11, 1998, AS "NURSE ASSISTANTS' WEEK' AND JUNE 4, 1998, AS "CAREER NURSE ASSISTANTS' DAY"

Councilman Cloninger read the proclamation proclaiming June 4-11, 1998, as "Nurse Assistants' Week" and June 4, 1998, as "Career Nurse Assistants' Day" in the City of Asheville and presented a proclamation to Ms. Chris Barger, Director of Nursing at Greentree. Ms. Barger briefed the Council on some activities taking place during the week.

C. PROCLAMATION PROCLAIMING JUNE 12-13, AS "RELAY FOR LIFE DAYS"

Councilwoman Field read the proclamation proclaiming June 12-13, as "Relay for Life Day" in the City of Asheville and presented a proclamation to Ms. Mary Mesnard, 1998 Relay for Life Chairperson, and Ms. Shannon C. Fagan, Area Executive Director for the American Cancer Society. They briefed the Council on some activities taking place during those days.

D. PROCLAMATION PROCLAIMING MAY 29, 1998, AS "CHILD WATCH DAY"

Mayor Sitnick read the proclamation proclaiming May 29, 1998, as "Child Watch Day"" in the City of Asheville and presented a proclamation to Ms. Perry Van Dyke who briefed the Council on some activities taking place during the day.

II. CONSENT:

A. MOTION SETTING A PUBLIC HEARING ON JUNE 9, 1998, RELATIVE TO ADOPTION OF THE 1998-99 ANNUAL OPERATING BUDGET

B. ORDINANCE NO. 2473 - BUDGET AMENDMENT TO THE WATER MAJOR CAPITAL PROJECT ORIDNANCE (35 FUND) TO REFLECT THE TRANSFER OF REVENUE BOND RELATED PROJECTS TO THE 29 FUND, TO REIMBURSE THE 30 FUND FOR 1998-98 DISTRIBUTION SYSTEM

IMPROVEMENTS, TO FUND THE GLENDALE WATER LINE (NC DEPT. OF TRANSPORTATION PROJECT), AND TO PROVIDE FUNDING FUR FUTURE N.C. DEPT. OF TRANSPORTATION PROJECTS THROUGH FUTURE "CONTRIBUTIONS FROM OTHER FUNDS"

Summary: The consideration of a budget amendment to the Water Major Capital Project Ordinance 82-25 (35 Fund) to reflect the transfer of revenue bond related projects to the 29 Fund, to reimburse the 30 Fund for 97/98 Distribution System Improvements, to fund the Glendale Water Line (NC DOT), and to provide funding for future NC DOT projects through future "Contributions From Other Funds".

By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance. This is a request to amend CPO 82-25 to reflect the following changes:

- Transfer the following expenses to the 29 Fund (Water Bond Capital Improvements Fund): the Phase II Master Plan Project ($565,779) and the South Buncombe Pump Station Phase II Project ($203,797). These bond related projects in the amount of $769,576 were funded in the 35 Fund prior to receiving $33 million in revenue bond proceeds in 1996. It is now necessary to transfer these expenses to the 29 Fund in order to provide adequate funding in the 35 Fund for other capital projects. This will result in an increase of $769,576 in equity in pooled cash in the 35 Fund.
- Reflect the reimbursement of $470,663 to the 30 Fund (Operating Budget) per the revised FY 97/98 Operating Budget. On September 16, 1997, the Authority approved the transfer of $470,663 from the 30 Fund (Operating Fund) to provide funding for the 97/98 Distribution System Improvements. As a part of the revisions to the Operating Budget that were approved in December 1997, the Authority authorized the postponement of the 97/98 Distribution System Improvements and the transfer of the $470,663 back to the operating budget.
- To fund Glendale Water Line (NC Department of Transportation Project) in the amount of $5,000. This is a replacement of a 6" waterline that was abandoned when the old bridge was torn down. This project includes a new bridge and a new 6" water line. We are expected to contribute 20% and NC DOT will contribute the other 80%.
- To authorize funding for the following future NC Dept. of Transportation Projects in the amount of $2,891,960:

◊	Biltmore Viaduct	$160,000
◊	I-40 at US 25A (Sweeten Creek)	295,504
◊	NC 151 Pisgah Hwy	121,440
◊	US 74/I-40 Interchange (Phase I)	994,179
◊	US 74 Phase II	1,088,176
◊	US 70/74 Tunnel Road & Haw Cr.	232,661

The Regional Water Authority approved a resolution amending and restating Capital Project Ordinance 82-25 on March 17, 1998.

Staff recommends adoption of the budget amendment which will reflect the transfer of revenue bond related projects to the 29 Fund, to reimburse the 30 Fund for 97/98 Distribution System Improvements, to fund the Glendale Water Line (NC DOT), and to provide funding for future NC DOT projects through future "Contributions From Other Funds".

C. RESOLUTION NO. 98-53 - RESOLUTION AUTHORIZING THE EXECUTION OF A UTILITY AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE IMPROVEMENTS OF U.S. 25A (SWEETEN CREEK ROAD), SR 3081 (ROCK HILL ROAD) AND SR 3079 (ROBERTS ROAD) NEAR ASHEVILLE

Summary: The consideration of a resolution to authorize the Mayor to sign a municipal agreement with the N. C. Dept. of Transportation ("NC DOT") for improvements of US 25A (Sweeten Creek Road), SR 3081 (Rock Hill Road) and SR 3079 (Roberts Road.)

The NC DOT's preliminary estimate was $76,000 for the sidewalk with the City's portion being 40% of estimated cost of $30,400. The City shall participate in 40% of the cost of the sidewalks. The NC DOT shall participate in 60% of the cost of the sidewalks up to a maximum of 2% of the actual construction cost. All costs which exceed the 2% cap shall be borne by the City. Construction is scheduled to begin in 1999.

The funds ($30,400) for this project has been budgeted in line item 62-430-15-488-02-4410.

A water line may need to be relocated as a result of this construction, but the design is not complete at this time. When the design is finalized then staff will request City Council and the Regional Water Authority to approve funds necessary to relocate the water line.

Staff recommends that City Council authorize the Mayor to sign the Municipal Agreement for improvements of US 25A (Sweeten Creek Road), SR 3081 (Rock Hill Road) and SR 3079 (Roberts Road).

RESOLUTION BOOK NO. 24 - PAGE 387

D. RESOLUTION NO. 98-54 - RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR IMPROVEMENTS TO THE US 74, SR 2775 (REED CIRCLE) AND SR 3136 (CANE CREEK ROAD) FOR THE RELOCATION AND UPGRADE OF WATER LINE THAT WILL BE IN CONFLICT WITH HIGHWAY CONSTRUCTION

Summary: The consideration of an agreement with the NC Dept. of Transportation for improvements to the US 74, SR 2775 (Reed Circle) and SR 3136 (Cane Creek Road) for the relocation and upgrade of water lines that will be in conflict with highway construction.

The NC Dept. of Transportation will design and relocate the water line during construction of street and highway improvements. The project includes the relocation of 2,997 linear feet of 6-inch water mains, 109 linear feet of 8-inch water mains, and 16,514 linear feet of 12-inch water mains with valves and other appurtenances along the US 74, SR 2775 (Reed Circle) and SR 3136 (Cane Creek Road) for construction of a highway. The preliminary estimated cost of upgrade of the water lines is $1,088,176.00. This agreement states that the Municipality (City of Asheville) will reimburse NC DOT for cost associated with the relocation of water lines in three (3) equal annual installments plus interest on the unpaid balance, with the first payment due upon completion of the project. NC DOT will submit an itemized invoice, within sixty days, to the City of Asheville for cost incurred during construction. This project has been approved as a future commitment by the Regional Water Authority of Asheville, Buncombe and Henderson. This project starts April of 1998. This agreement states that the Municipality obligates itself to service and maintain facilities along the highway within the NC DOT right of way limits in accordance with the mandate of the North Carolina General Statutes.

Staff recommends that City Council authorize the Mayor to sign the Municipal Agreement for improvements to US 74, SR 2775 (Reed Circle) and SR 3136 (Cane Creek Road).

RESOLUTION BOOK NO. 24 - PAGE 388

E. RESOLUTION NO. 98-55- RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR IMPROVEMENTS AT NC 151/PISGAH HIGHWAY FROM SOUTH OF SR 1117 (FOWLER MOUNTAIN ROAD) TO 0.2 MILES SOUTH OF US 19-23-74 TO RELOCATE WATER LINES THAT WILL BE IN CONFLICT WITH HIGHWAY CONSTRUCTION

Summary: The consideration of an agreement with the NC Dept. of Transportation for improvements at NC 151/Pisgah Highway from south of SR 1117 (Fowler Mountain Road) to 0.2 miles south of US 19-23-74 to relocate water lines that will be in conflict with highway construction.

The NC Dept. of Transportation will include in its construction contract provisions to relocate and adjust certain city-owned water lines located along the project area. This project includes the relocation of 715 linear feet of 8-inch water mains, and 1,820 linear feet of 6-inch water mains, valves and other appurtenances along NC 151/Pisgah Highway. The preliminary estimated cost of relocation of the water lines is $121,440.00. This agreement states that the Municipality (City of Asheville) will reimburse for cost associated with the relocation of water line and upon completion of work NC DOT will submit an itemized invoice to the City of Asheville for cost incurred during construction. This project has been approved as a future commitment by the Regional Water Authority of Asheville, Buncombe and Henderson. This project started October 27, 1997 and will be completed in June, 2000. This agreement states that the Municipality obligates itself to service and maintain facilities along the highway within the NC DOT right of way limits in accordance with the mandate of the North Carolina General Statutes.

Staff recommends that City Council authorize the Mayor to sign the Municipal Agreement for improvements on NC 151/Pisgah Highway from south of SR 1117 (Fowler Mountain Road) to 0.2 miles south of US 19-23-74, Project Number R-2116B.

RESOLUTION BOOK NO. 24 - PAGE 389

F. RESOLUTION NO. 98-56 - RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR IMPROVEMENTS AT US 74 FROM I-40 INTERCHANGE SOUTHWEST TO SR 2775, WHICH INCLUDES MINE HOLE GAP FOR THE RELOCATION AND UPGRADE OF A 6-INCH AND 8-INCH WATER LINE THAT WILL BE IN CONFLICT WITH HIGHWAY CONSTRUCTION

Summary: The consideration of an agreement with the NC Dept. of Transportation for improvements at US 74 from I-40 Interchange southwest to SR 2775, which includes Mine Hole Gap for the relocation and upgrade of a 6-inch and 8-inch water line that will be in conflict with highway construction.

The NC Dept. of Transportation will design and relocate the water line during construction of street and highway improvements. The project includes the relocation of 6,850 linear feet of 12-inch water mains, 11,750 linear feet of 8-inch water mains and 3,250 linear feet of 6-inch water mains valves and other appurtenances along US 74 due to widening of highway to five lanes. The preliminary estimated cost of upgrade of the water lines is $994,179.00. This agreement states that the Municipality (City of Asheville) will reimburse NC DOT for cost associated with the relocation of water lines and upon completion of work NC DOT will submit an itemized invoice to the City of Asheville for cost incurred during construction. This project has been approved as a future commitment by the Regional Water Authority of Asheville, Buncombe and Henderson. This project starts February, 1998 and will be completed in February 2001. This agreement states that the Municipality obligates itself to service and maintain facilities along the highway within the NC DOT right of way limits in accordance with the mandate of the North Carolina General Statutes.

Staff recommends that City Council authorize the Mayor to sign the Municipal Agreement for improvements of US 74 from I-40 interchange southwest to SR 2775 which includes Mine Hole Gap.

RESOLUTION BOOK NO. 24 - PAGE 390

G. RESOLUTION NO. 98-57 - RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR IMPROVEMENTS TO THE INTERSECTION OF US 70-74 (TUNNEL ROAD) AND SR 2863 (HAW CREEK LANE) FOR THE RELOCATION AND UPGRADE OF WATER LINE THAT WILL BE IN CONFLICT WITH HIGHWAY CONSTRUCTION

Summary: The consideration of an agreement with the NC Dept. of Transportation for improvements to the intersection of US 70-74 (Tunnel Road) and SR 2863 (Haw Creek Lane) for the relocation and upgrade of a water line that will be in conflict with highway construction.

The NC Dept. of Transportation will design and relocate the water line during construction of street and highway improvements. The project includes the relocation of 540 linear feet of 30-inch water main with valves and other appurtenances along the intersection of US 70-74 (Tunnel Road) and SR 2863 (Haw Creek Lane) for construction of a highway. The preliminary estimated cost of upgrade of the water lines is $232,660.50. This agreement states that the Municipality (City of Asheville) will reimburse NC DOT for cost associated with the relocation of water lines in three (3) equal annual installments plus interest on the unpaid balance, with the first payment due upon completion of the project. NC DOT will submit an itemized invoice to the City of Asheville for cost incurred during construction. This project has been approved as a future commitment by the Regional Water Authority of Asheville, Buncombe and Henderson. This project starts March of 1998. This agreement states that the Municipality obligates itself to service and maintain facilities along the highway within the NC DOT right of way limits in accordance with the mandate of the North Carolina General Statutes.

Staff recommends that City Council authorize the City Manager to sign the Municipal Agreement for improvements to the intersection of US 70-74 (Tunnel Road) and SR 2863 (Haw Creek Lane) interchange.

RESOLUTION BOOK NO. 24 - PAGE 391

H. RESOLUTION NO. 98-58 - RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR IMPROVEMENTS OF I-40 AT US 25A (SWEETEN CREEK ROAD) FOR THE RELOCATION AND UPGRADE OF WATER LINE THAT WILL BE IN CONFLICT WITH HIGHWAY CONSTRUCTION

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Summary: The consideration of an agreement with the NC Dept. of Transportation for improvements of I-40 at US 25A (Sweeten Creel Road) for the relocation and upgrade of water lines that will be in conflict with highway construction.

The NC Dept. of Transportation will design and relocate the water line during construction of street and highway improvements. The project includes the relocation of 312 linear feet of 6-inch water mains, 970 linear feet of 8-inch water mains, 165 linear feet of 16-inch water mains and 2,964 linear feet of 24-inch water mains with valves and other appurtenances along I-40 at US 25A (Sweeten Creek Road for construction of an interchange. The preliminary estimated cost of upgrade of the water lines is $295,504.00. This agreement states that the Municipality (City of Asheville) will reimburse NC DOT for cost associated with the relocation of water lines and upon completion of work NC DOT will submit an itemized invoice to the City of Asheville for cost incurred during construction; which shall be paid within sixty (60) days of the date of invoice. This project has been approved as a future commitment by the Regional Water Authority of Asheville, Buncombe and Henderson. This project starts fall of 1998. This agreement states that the Municipality obligates itself to service and maintain facilities along the highway within the NC DOT right of way limits in accordance with the mandate of the North Carolina General Statutes.

Staff recommends that City Council authorize the Mayor to sign the Municipal Agreement for improvements of I-40 and US 25A (Sweeten Creek Road) interchange.

RESOLUTION BOOK NO. 24 - PAGE 392

I. RESOLUTION NO. 98-59 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A FIFTH MODIFIED GRANT AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR PHASE III TERMINAL EXPANSION

Summary: The City is required by law to execute certain contracts and agreements for the Airport Authority. This Fifth Modified Grant Agreement is to allow the Authority to receive additional matching funds from the Dept. of Transportation ("DOT") for the Phase III Terminal Expansion.

Airport Director Jim Parker advises that the Terminal Expansion project was financed almost entirely with bond money, and that it was completed several years ago. The estimated cost of the project was $3.63 million and DOT's projected commitment under the State Aid to Airports program is approximately half of the estimate. Because of budgetary limitations, this entire amount was not available when the project was completed, and DOT has been making "installment" allocations of $300,000 or $200,000 on a yearly basis, as funds become available. In order for these allocations to continue, the Grant Agreement must be extended for another year, even though the project has been completed.

The $200,000 allocation for this year will still not complete the DOT's program commitment.

RESOLUTION BOOK NO. 24 - PAGE 393

J. RESOLUTION NO. 98-60 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A GRANT AGREEMENT WITH THE FEDERAL AVIATION ADMINISTRATION FOR PHASE III OF RUNWAY 16

Summary: This grant from the Federal Aviation Administration, in the amount of $652,731 consists of a project to construct extended runway safety area, Runway 16 (Phase III).

RESOLUTION BOOK NO. 24 - PAGE 394

K. ORDINANCE NO. 2474 - ORDINANCE REDUCING THE SPEED ON LINDSEY ROAD TO 15 MILES PER HOUR AND ON CHEROKEE ROAD TO 20 MILES PER HOUR

Summary: The City 's Traffic Engineer has performed the necessary traffic analyses associated with the above mentioned locations as per the Manual on Uniform Traffic Control Devices and the North Carolina Supplement. We are seeking authorization from the City Council to change these speed limits.

Change to 15 MPH:	Change to 20 MPH:
(1) Lindsey Road (Entirety)	(1) Cherokee Road (Entirety)

These locations have been reviewed over the past 12 months as per the request of residents and motorists who utilize these roadways. Field surveys and speed studies were conducted and data reviewed based upon the 85th percentile speed, which is the speed at or below which 85 percent of the vehicles are moving. This speed is reviewed in relationship to the median speed and the pace speed range. The pace speed range is the range of speeds at which the largest concentration of motorists drive. These speeds were all reviewed to address the speeding problems in these areas.

1. Lindsey Road

   A speed study was conducted along Lindsey Road per the request of citizens in this area. The residential nature of this roadway vertical/horizontal alignment and width suggest that the speed limit needs to be 15 MPH. The Asheville Police Department concurs with our recommendation.

2. Cherokee Road

   A speed study was conducted along Cherokee Road per the request of citizens in this area. The residential nature of this roadway vertical/horizontal alignment and width suggest that the speed limit needs to be 20 MPH. The Asheville Police Department concurs with our recommendation.

ORDINANCE BOOK NO. 16 - PAGE 459

L. ORDINANCE NO. 2475 - BUDGET AMENDMENT TO PROVIDE FUNDING FOR THE 1998 SUMMER YOUTH PROGRAM

Summary: This budget amendment, in the amount of $100,000, is to provide funding for the 1998 Summer Youth Program.

ORDINANCE BOOK NO. 16 - PAGE 460

M. MOTION SETTING A PUBLIC HEARING ON JUNE 9, 1998, TO REZONE TWO PROPERTIES LOCATED ON CHATHAM ROAD AND W.T. WEAVER BOULEVARD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO RS-8 RESIDENTAL SINGLE-FAMILY HIGH DENSITY

N. **MOTION SETTING A PUBLIC HEARING ON JUNE 9, 1998, TO REZONE TWO LOTS AT 23 BEAR CREEK DRIVE FROM HIGHWAY BUSINESS TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY**

O. **MOTION SETTING A PUBLIC HEARING ON JUNE 9, 1998, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY CHILD DAY CARE CENTERS AS A PERMITTED USE, SUBJECT TO SPECIAL REQUIREMENTS IN THE OFFICE DISTRICT**

P. **MOTION SETTING A PUBLIC HEARING ON JUNE 9, 1998, TO CONSIDER A MODIFICATION OF THE SUBDIVISION STANDARDS TO PERMIT THE CREATION OF A FLAG LOT WITH A FLAGPOLE WIDTH OF 15 FEET AT 63 CUMBERLAND AVENUE**

Q. **RESOLUTION NO. 98-61 - RESOLUTION APPROVING THE CONSUMPTION OF ALCOHOLIC BEVERAGES FOR THE ASHEVILLE DOWNTOWN ASSOCIATION'S 1998 EVENTS**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine for the 1998 events of the Asheville Downtown Association at the locations and times specified in the resolution.

For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville events to bring both the public and visitors to the downtown area. These events include: *Moonlight Over Downtown*, *Honda Hoot Public Rally*, *and four Downtown After Five activities.* The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

RESOLUTION BOOK NO. 24 - PAGE 395

R. **ORDINANCE NO. 2476 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR THE AMBOY ROAD GREENWAY**

Summary: The consideration of a budget amendment, in the amount of $60,000, to establish a budget for the construction of a greenway that will connect the Amboy Road Park and the French Broad River Park.

ORDINANCE BOOK NO. 16 - PAGE 462

S. **ORDINANCE NO. 2477 - BUDGET AMENDMENT TO APPROPRIATE EXPENDITURES FOR NON-RESIDENT FEES WHICH HAVE BEEN COLLECTED FOR VARIOUS PARKS AND RECREATION PROGRAMS**

Summary: The consideration of a budget amendment to appropriate expenditures for non-resident fees which have been collected for various Parks and Recreation programs.

ORDINANCE BOOK NO. 16 - PAGE 464

T. **ORDINANCE NO. 2478 - BUDGET AMENDMENT TO APPROPRIATE REVENUES AND EXPENDITURES FOR THE RACQUET CLUB ROAD PROJECT**

Summary: The consideration of a budget amendment to appropriate revenues and expenditures for Racquet Club Road Project.

ORDINANCE BOOK NO. 16 - PAGE 466

U. ORDINANCE NO. 2479 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FROM THE COMMUNITY FOUNDATION OF WESTERN NORTH CAROLINA IN THE SUMEMRTIME KIDS PROGRAM

Summary: The consideration of a budget amendment, in the amount of $1,000, to appropriate funds from the Community Foundation of Western North Carolina for the Summertime Kids program to provide enrichment activities for the Summer Teen Program.

ORDINANCE BOOK NO. 16 - PAGE 468

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and ordinances on the Consent Agenda and they will not be read.

Vice-Mayor Hay moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO COSNDIER A CONDITIONAL USE APPROVAL AND PERMIT FOR A DUPLEX AT THE CORNER OF LONDON ROAD AND SHADY OAK DRIVE

At the request of staff due to an advertising error, Councilman Tomes moved to reschedule this public hearing until June 9, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

B. PUBLIC HEARING RELATIVE TO THE DEMOLITION OF 22 SULPHUR SPRINGS ROAD

ORDINANCE NO. 2480 - ORDINANCE TO DEMOLISH 22 SULPHUR SPRINGS ROAD

Mayor Sitnick opened the public hearing at 5:20 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Terry Summey, Director of Building Safety, said that the structure located at 22 Sulpher Springs Road is a dilapidated structure. The Owners Gabriel and Livia Ferrari have not responded to the order of the Director Designee of the Building Safety Department to repair or demolish this structure. This structure was inspected by Building Safety Department staff on August 21, 1997, with the aid of a administrative search warrant. The Building Safety Inspector sent a correction order to the property taxpayer of record on August 22, 1997. There was no response. A formal hearing was then scheduled and held on December 10, 1997. The owners did not appear. Based on the evidence presented at that hearing, the Building Safety hearing officer moved to order the owners to obtain a building permit for demolition or repair of said structure within 15 days of receipt. The owners would then have an additional 60 days to commence work. As of April 20, 1998, no application for a building permit had been submitted to the permit office. Building Safety Inspectors found the following conditions, which have been documented by videotape:

- The dwelling does not have electrical service and the electrical wiring was removed.
- The dwelling has an internal and external accumulation of garbage.
- The dwelling does not have a safe source of hot water supply.
- The dwelling does not have stairways connecting the 2nd floor and 1st floor as well as the 1st floor and the basement level except a standard workman's ladder. The openings are not covered to keep persons from falling through.

A letter was sent notifying all nonprofit agencies listed in the Minimum Housing Code for their assistance in this matter. No response has been received.

N.C.G.S. 160A-443(5) authorizes the City Council to direct by ordinance the demolition of a dilapidated structure such as 22 Sulpher Springs Road subsequent to failure of the owners Gabriel and Livia Ferrari to demolish or repair as described above. N.C.G.S. 160A-443(6) authorizes placement of a lien on the property to recover the cost of a demolition so ordered by City Council.

The following is an overview of some general information regarding this property:

- Fair market value of structure is $26,400.00;
- Estimated value to rebuild the structure only is $70,928.00;
- Land value without the structure is $29,500.00; and
- Estimated cost to demolish the structure is $9,000.00.

The Director of Building Safety Department recommends adoption of the ordinance to demolish 22 Sulpher Springs Road.

Upon inquiry of Councilman Tomes if every effort has been made to meet with the owners so see why he has not been able to repair the violations, Mr. Summey said that based on written information, there have been discussions dating back to the early 1990's. In 1995 the owners had temporary electrical service and a permit to bring it up to Code. However, the permit expired and the temporary electrical service was removed. Then in 1997, the City began its attempt to inspect the house again to see if it met Code. At that point in time, the owners refused to let the City inspect the house and they had to obtain an administrative warrant to do the inspection. He personally spoke to the owners at length about the condition of the house and what needed to be done to bring it up to Code. He felt that Mr. Ferrari's beliefs are contrary to the standards the City has in their Housing Code. Mr. Summey felt Mr. Ferrari is fully aware of the things that need to be done but he has shown no interest in repairing anything.

Upon inquiry of Councilman Cobb, Mr. Summey said that the house was involved in a fire in the late 1980's. It is his understanding that the Ferraris bought the house after the fire from the previous owners and the Ferraris are occupying the house without ever obtaining approval to move into it.

Mr. Gabriel Ferrari, co-owner of 22 Sulphur Springs Road, stressed to Council that he has been "persecuted over nine years because he brought the work commanded by the heavenly father." He said when they bought the house, they did not know that a man died in the house. He has experience in fire investigation and has seen traces of arson where the man died. Because it is his duty, he has sent letters to the District Attorney advising of his findings. He said in 1997 a conspiracy began of Asheville city officials against him. He said what Mr. Summey reports is 80% not true. The said that 3/4 of the house is dedicated to the school of surviving skills which is a Buncombe County, non-profit, non-tuition religious adult school. He suggested a compromise of power in the front left wing and one portion of the house.

Mayor Sitnick asked if there was a reason the house has not been brought up to Code considering the number of occasions, number of requests and number of years where the Building Inspections Department and the Housing Code Department has informed them of the violations. She asked if Mr. Ferrari understood that the City has a consistent rule for everyone who lives in Asheville and that everyone has to abide by the same laws.

Mr. Ferrari said the last conversation he had with Larry Lowe, a retired housing inspector, he said that he could not finish repairs until the criminal investigation was through. To do otherwise would force him to get rid of the evidence at the house. He felt it was not a matter of refusing to comply to the City Code, he felt it was a criminal matter. He said he would finish the repairs if he could get the power turned back on.

When Councilman Tomes asked what the status of the investigation was, Mr. Ferrari said that the District Attorney refused to investigate. He said, however, that the State Attorney, the Director of the FBI, Janet Reno, and the International Association of Human Rights know about the persecution he has endured here in Asheville.

Upon inquiry of Councilman Sellers, Mr. Summey said that he has no knowledge of an on-going investigation. City Attorney Oast said that the only knowledge he has of that investigation is that following the fire, there was a fire inspection both as to cause and to the extent of the damage. As far as he knows, that has been concluded. The rest of the incidents Mr. Ferrari is alluding to, he is not aware of.

Councilwoman Field asked if the City orders the demolition, what rights do the owners have. City Attorney Oast said that the ordinance can be contested in the same way that other ordinances Council adopts can be contested. If Council adopts the ordinance today, it would not mean that the house would be demolished tomorrow. There would be some period of time (probably months) where, because if the owner refuses to vacate, the City would have to evict him and we would also have to solicit proposals for the demolition, etc.

Mayor Sitnick said that electrical wiring has a great deal to do with safety and she doesn't know what that would have to do with an investigation of a fire nine years ago. The dwelling has internal and external accumulate of garbage which has nothing to do with an investigation. That has to do with respect for the owner's and neighbor's property. The dwelling does not have a safe source of hot water supply. Again, bringing the house up to Code to have hot water doesn't appear to be to be part of any on-going or concluded investigation. The fact that there are no stairways connecting the second floor to the first floor or the first floor to the basement level, doesn't seem to have anything to do with a concluded or an on-going investigation. The openings that lead to those floors are not covered and could pose a safety concern to the people who live there. Her concern is that the owners are speaking about an investigation of something that occurred nine years ago - none of which has to do with the building safety inspector's desire to have the house brought up to Code.

Mr. Ferrari said the house has two stairs in the basement and then explained that he was put in jail so that the City could get into his basement to see if he had an arsenal there. It was then that he realized that the City wanted to condemn the building and place an explosive device in the basement. He said the hot water was in place but the City disconnected the gas when he was under false arrest. Regarding the accumulation of garbage, he said he was demolishing 700 feet of old wood fence around the property and was going to take it to the dump. However, the floor on his van was destroyed and the City refused to help him get rid of the old fencing. He has since rented a vehicle to remove the debris.

Councilman Cobb asked about the two vehicles in the front of his property without tags and asked if the bus in the backyard was tagged. Mr. Ferrari said that he just bought the bus and it will be tagged. He said that he will probably get rid of the van but the other vehicle might be fixed. He then stated that he would probably get rid of them both.

When Councilman Cobb asked why the Ferraris did not attend the hearing on December 10, 1997, Mr. Ferrari said that he was scared and thought they wanted to kill him.

Mayor Sitnick said that it was her understanding that if Council votes to demolish this residence today, Mr. Ferrari still has time to bring the house up to Code. City Attorney Oast said that there will be some time because of our processes between the effective date of the ordinance and when the demolition is effected. He said that Mr. Ferrari could obtain the appropriate building permits to bring the house up to Code. It is the kind of thing that happens a lot of times, when houses are found to be dilapidated as this one is. He did point out to Council that there was a hearing at which point Mr. Ferrari could have contested whether the house was dilapidated or not. There was a right of appeal from that to the Board of Adjustment and from there to Superior Court. However, Mr. Ferrari didn't take advantage of that hearing.

Ms. Livia Ferrari, co-owner of 22 Sulphur Springs Road, said that her husband is speaking the truth and there are a lot of lies in the report. She was told that the house has a sound foundation and sound structure and her husband did more than the Code required. She said three years ago her electricity was cut off illegally. They did nothing wrong. As soon as they moved, someone stole the building permit from City Hall. It is clear that someone wants the house demolished.

Mayor Sitnick asked why the Ferraris didn't come in for the hearing on December 10 so they could express the things they are expressing now. Mrs. Ferrari responded that her husband was afraid to go to the hearing. She also said that they were sick that day and called in the morning and said they couldn't come.

When Mrs. Ferrari said that her husband wants electricity in some of the house, Mayor Sitnick explained that everyone has to obey the same rules. Everyone has to have electricity throughout their house and since they are asking for electricity in only part of the house, they are asking for special treatment. Mayor Sitnick reiterated that had they gone to the hearing on December 10, they would have had the opportunity to go before the Board of Adjustment and request the variance you are requesting now.

Mrs. Ferrari said that they wanted to go, but "they wanted to kill" them.

Mr. James Boehm, adjoining property owner, said that there was all kinds of trash, rats and snakes that come onto his property from the yard at 22 Sulphur Springs Road. He said that the garbage is not gone from the property, just covered up with tarps. He has signs all over his property, several directed toward his house with his house number on it making threats to his family. He has signs threatening toward the City itself. For the past nine years, he has been living in the house in direct violation of the Code and has had nine years to correct the Code violations and he hasn't done any of it.

When Mayor Sitnick asked why it has taken nine years for the City to do anything, Mr. Summey said that he was not sure when Mr. Ferrari started living there, however, sometime after 1995 it came to his attention they were living there. The neighborhood started complaining about all the issues regarding this property and that's really what brought this to light. Normally they don't take action on someone who is living in a structure, even if it's substandard. He said they would go in and try to eliminate the things that are substandard. In this case, when they went in, the immediate thing that stood out was there was a gas water heater not vented properly. They could have been killed from the carbon monoxide so they cut the gas off. The City does try to eliminate hazards that they see. Again, they do continue to let people live in houses they should not live in. However, in this case there is no effort on the owners part to bring anything up to Code so they are to the point of where demolition is what they are seeking.

Councilman Tomes recognized that they may be a language problem and wondered if there was a reputable scholar that could be contacted to help mediate this process. He senses that when Mr. Ferrari is talking about the school, he is talking about a religious practice of his faith. He wants to be sensitive of that, but also to help him understand that we cannot, even with religious practices, have two sets of standards.

Mr. Summey felt that Mr. Ferrari understands a lot of the things required of him, but the things that need to be done need to be done by a licensed contractor to correct the work. Mr. Ferrari doesn't understand Codes. For instance, even the plumbing system is not vented property. It is just a multitude of things throughout the house that Mr. Ferrari has done but they don't meet the Code. The only really way he could bring this up to standards is for him to be able to hire a contractor to come in and do the work. There is not even a smoke detector in the house - just basic life safety things that should be there before the house is even occupied.

Again, Councilman Tomes wondered if the City could find someone to clearly help Mr. Ferrari understand the concerns here. Mr. Summey said that Mr. Ferrari's issue is more of a life style issue. He is trying to live a self-sufficient lifestyle without a lot of the things that most people have. Mr. Ferrari told him that he didn't want an electrical system per the Code because it is hazardous to his health and causes cancer.

Councilman Tomes said that if Mr. Ferrari is going to occupy the dwelling, that there are specific requirements that must be met. He explained that Mr. Ferrari can have the service terminated as long as it comes up to Code. Councilman Tomes is just trying to process cultural differences that he is sensing to make sure that we have covered all bases.

Mr. Summey said that he told Mr. Ferrari that if he brought his house up to electrical code, he could go to the circuit breaker and cut his electricity off. It would be his choice, but the house would be brought up to Code. He could still live the lifestyle he chooses to live, however, he chooses not to do that.

Councilwoman Field said that another issue is that this is an urban environment and if his house catches on fire, then that is a threat to his neighbors. He is not living out in the country where you are 1/2 acre away from the next residential use. There was to be some respect for the requirements of the rest of the people who live in this neighborhood. It sounds like he totally understands what needs to be done.

When Mayor Sitnick asked if the signs in the yard are permitted uses, Mr. Summey replied that there are violations on all the signs.

Mayor Sitnick closed the public hearing at 6:17 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2480. This motion was seconded by Councilman Cobb.

Councilman Tomes hoped that during the process of moving toward demolition, that Mr. Ferrari would be willing to comply with the request. If the house can be brought up to Code, he would like to see that pursued even if we have to put a time constraint on that to ensure that he complies and then let him make the decision after having complied whether he wants to utilize the electricity or not.

Mayor Sitnick requested that the Ferraris strongly consider bringing the house up to Code so that the City doesn't have to proceed with demolishing their home. She said they have heard from the inspectors that the house is not up to Code. She hoped that the Ferraris would work with Building Inspections to bring the house up to Code.

When Mr. Ferrari said that he needed power, Councilwoman Field said that temporary power can be obtained with a building permit.

The motion made by Councilman Sellers and seconded by Councilman Tomes carried unanimously.

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C. PUBLIC HEARING TO ZONE SECTION 9 OF BILTMORE PARK RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY

ORDINANCE NO. 2481 - ORDINANCE TO ZONE SECTION 9 OF BILTMORE PARK RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY AND RS-8 RESIDENTIL SINGLE-FAMILY HIGH DENSITY

Mayor Sitnick opened the public hearing at 6:20 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that this is consideration of an ordinance to zone Section 9 of the Biltmore Park Subdivision to RS-4 Residential Single-Family Medium Density District and RS-8 Residential Single-Family High Density District.

This is newly annexed land, and this is the first zoning for this property. The use is currently residential.

The eastern part of Section 9 consists of 29 residential lots, most of which exceed one quarter acre in size. None of the lots is one half acre or larger, thus precluding zoning of RS-2 Residential Single Family Low Density District. To zone the area RS-8 Residential Single-Family High Density District would not be in keeping with the plated character of the area.

The character of the area is more in keeping with the neighboring lots to the north and east of the area, and which are already zoned RS-4. Although some lots may be non-conforming, the setbacks shown on the recorded subdivision plats meet the requirements of the RS-4 District. Under certain circumstances, the Unified Development Ordinance could create the need for the non-conforming lots to be merged with neighboring lots to create conforming lots. This is presently being explored with the applicant.

The remainder of Section 9, 27 residential lots totaling 4.046 acres, is plated at a density greater than four units per acre, and with the exception of three lots, slightly less than eight units per acre. The plated setbacks of the three lots, which are less than one eighth acre in size, meet the requirements of the RS-8 district. Under certain circumstances, the Unified Development Ordinance could create the need for the non-conforming lots to be merged with neighboring lots to create conforming lots. This is presently being explored with the applicant.

The City Planning and Development staff recommends RS-4 and RS-8 zoning for Section 9 of the Biltmore Park Subdivision. At their meeting of May 6, 1998, the Planning and Zoning Commission recommended 5-0 to approve the proposed zoning.

Upon inquiry of Councilman Cloninger about who the owners of the lots are in case there is a possible conflict of interest, Mr. Black said that he did not know who the owners were.

Mayor Sitnick closed the public hearing at 6:25 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2481. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 482

D. PUBLIC HEARING TO ZONE SECTION 10 OF BILTMORE PARK RS-2 RESIDENTIAL SINGLE FAMILY LOW DENSITY

ORDINANCE NO. 2482 - ORDINANCE TO ZONE SECTION 10 OF BILTMORE PARK RS-2 RESIDENTIAL SINGLE FAMILY LOW DENSITY

Mayor Sitnick opened the public hearing at 6:26 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that this is the consideration of an ordinance to zone Section 10 of the Biltmore Park Subdivision to RS-2 Residential Single-Family Low Density District.

This is newly annexed land, and this is the first zoning for this property. The use is currently residential. Section 10 is 3.935 acres. This section has been joined to Lot 15, already in the City, and already zoned RS-2. Section 10 is also adjacent to an area already zoned RS-2.

The City Planning and Development staff recommends RS-2 zoning for Section 10 of the Biltmore Park Subdivision. At their meeting of May 6, 1998, the Planning and Zoning Commission recommended 5-0 to approve the proposed zoning.

Mayor Sitnick closed the public hearing at 6:27 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2482. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 474

E. PUBLIC HEARING TO APPLY THE MANUFACTURED HOME OVERLAY TO TWO LOTS AT 9 EAST STARNES COVE ROAD IN A RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY DISTRICT

ORDINANCE NO. 2483 - ORDINANCE TO APPLY THE MANUFACTURED HOME OVERLAY TO TWO LOTS AT 9 EAST STARNES COVE ROAD IN A RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 6:28 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of an ordinance to apply the Manufactured Home Overlay to two lots at 9 East Starnes Cove Road in a RS-4 Residential Single Family Medium Density District.

The composition of this residential neighborhood has several manufactured homes scattered throughout the surrounding area with a manufactured home park (which has the Manufactured Home Rental Community and the Manufactured Home overlay) adjoining this property to the east.

The 2010 Plan indicates the surrounding area to be low density residential which the current RS-4 zoning permits. These two lots were rezoned in September of 1995 from commercial to residential.

This property borders the city limits of Asheville.

The Planning staff reviewed the rezoning request and recommended approval of the Manufactured Home Overlay district for these two lots. At the May 6, 1998, Planning & Zoning Commission meeting, the Commissioners voted unanimously to approve the application of the Manufactured Home Overlay District to PIN Nos. 9628.17-01-4281 and 5047.

Ms. Michelle Watts, petitioner, spoke in support of this overlay request.

Mayor Sitnick closed the public hearing at 6:33 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hay moved for the adoption of Ordinance No. 2483. This motion was seconded by Councilman Cobb and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 475

F. PUBLIC HEARING TO APPLY THE MANUFACTURED HOME OVERLAY TO TWO LOTS ON PORTER ROAD IN A RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2484 - ORDINANCE TO APPLY THE MANUFACTURED HOME OVERLAY TO TWO LOTS ON PORTER ROAD IN A RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 6:34 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of an ordinance to apply the Manufactured Home Overlay to two lots on Porter Road in a RS-8 Residential Single Family High Density District.

The composition of this residential neighborhood has several manufactured homes scattered throughout the surrounding area. The 2010 Plan indicates the surrounding area to be low density residential which the current RS-8 zoning permits.

The UDO requirements for establishing a "Manufactured Home Overlay":

- the homes should be architecturally compatible with the existing residential structures;
- manufactured homes should comprise at least 20% of the homes in this area (there are 3 existing residents of which 1 is a manufactured home);
- vacant land should be available for location of manufactured homes (there is adequate space on either of the 2 lots for additional manufactured homes);
- vacant land should be available for location of manufactured homes (there is adequate space on either of the 2 lots for additional manufactured homes); and
- the area must be a minimum of 5 acres.

This property is outside the city limits of Asheville.

The Planning staff reviewed the rezoning request and recommended approval of the Manufactured Home Overlay District for these two lots. At the May 6, 1998, Planning & Zoning Commission meeting, the Commissioners voted unanimously to approve the application of the Manufactured Home Overlay District to PIN Nos. 9657.11-75-0780 and 9657.12-75-5629.

Discussion surrounded the design standards which need to be met in the manufactured home overlay district specifically noting that the property cannot be turned into a trailer park.

Mr. Jess Morrison, representing his daughter and her husband, urged City Council not to allow mobile homes in the area. He was not against anyone owning a home, he just did not want trailers put on that property.

Ms. Ann Whitted, petitioner, urged City Council to allow the manufactured home overlay district.

Mr. Carroll Rogers felt that the reason why there is not much opposition from the neighbors is that the petitioner told them the manufactured homes would be located on a different location than what is really planned. He was concerned that there is a possibility of 64 mobile homes on that property.

Ms. Sam Scroggs was concerned that the area not be built up with trailers. He has no problem, however, if the design standards for a manufactured home overlay district are met.

Mayor Sitnick closed the public hearing at 6:54 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2484. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 477

G. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE AS IT RELATES TO THE DEFINITION OF ANTENNAS AND TELECOMMUNICATION TOWERS

At the request of City staff, Councilman Cloninger moved to continue this public hearing, without further advertisement, until June 23, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 98-62 - RESOLUTION AUTHORIZING THE CONVEYANCE OF 137.21 ACRES TO HENDERSON COUNTY REFERRED TO AS THE BREVARD ROAD SITE

Assistant City Manager Doug Spell said that this is consideration of executing a deed transferring property on Brevard Road to Henderson County as a part of the Water Agreement.

On November 11, 1995 the Regional Water Authority, City of Asheville, Buncombe County, and Henderson County entered into the Water Agreement. This agreement was a part of the overall provision of water service via the Mills River Water Treatment Plant.

At the January 20, 1998, City Council worksession, staff presented this item to Council for consideration. The City Council requested additional information which staff provided via a memorandum dated January 26, 1998, including copies of prior water agreements.

One condition which is a part of the aforementioned Water Agreement pertains to the City of Asheville transferring by deed property to Henderson County on Brevard Road (NC 191). The stipulation outlined in Section XXII of the Agreement indicates that Henderson County must convey the property to MSD to be used for a wastewater treatment plant site within ten (10) years or convey it to a regional water and sewer authority of which Henderson County, the Authority and Asheville are a part. If neither of these conditions are complied with within the 10 year date of the transfer of the deed to Henderson County the property automatically reverts back to the City of Asheville.

The City Attorney's office has reviewed the deed prepared by the attorney for the Regional Water Authority. The deed has been prepared to take into account the automatic reversion to the City of Asheville in the event the property is not utilized in accordance with the stipulations of the agreement.

Staff recommends that City Council authorize the Mayor to execute the deed transferring the property to Henderson County in accordance with the Water Agreement dated November 11, 1995.

Mr. Spell noted that as a result of questions raised by City Council at their worksession last week, he furnished them with a memo which hopefully addressed their concerns.

When Councilman Sellers asked how and when the City acquired the property, Mr. Spell said that the property was acquired in 1992 for $999,999. It was purchased with anticipation of an intake on the French Broad River and a water plant being constructed on the site.

Upon inquiry of Councilman Tomes, Mr. Spell said that in our area of our Mills River Water Treatment Plant there has been some discussion of procedures for pesticide mixing and some discussion of actually looking at constructing some handling facilities for pesticides. The Water Authority, as part of their budget deliberations, included some funds to research that and make a grant application.

When Councilman Tomes asked if the quality of the water will be impacted, Mr. Spell said that the particular mixing stations he is referring to are on the Mills River which is tributary to the French Broad River. At this point, the state testing has not identified any specific violation of chemical spills to the river. Obviously if those occurred, there would be concern.

Mr. Spell explained again the two parameters in the Water Agreement that speak to the property after the City of Asheville transfers it to Henderson County. They have 10 years to convey it to MSD. At the time it is conveyed to MSD, there is another 10 year period where MSD has to construct a wastewater treatment plant on the property within that subsequent 10 years. The second is that the property could be deeded to a regional water and sewer authority of which Henderson County, the Authority and Asheville are a part. If neither of these conditions are complied with within the 10 year date of the transfer of the deed to Henderson County the property automatically reverts back to the City of Asheville.

When Councilwoman Field asked what the consequences would be if the City chose not to transfer the property to Henderson County, City Attorney Oast said that it would be a violation of the Water Agreement and the consequences that entails. Also, there is the possibility of the City being sued for specific performance under the contract. Councilman Cloninger felt that not transferring the property would greatly jeopardize our ability to enter into any future regional agreements because other governing bodies might question whether we would carry through with what we promised to do.

Upon inquiry of Councilwoman Field, Mr. Spell said that if a wastewater treatment plant is built, they would have to fulfill all the requirements of the EPA and the NC Dept. of Environment and Natural Resources ("DENR").

Councilwoman Field said that it was her understanding that DENR has toughened up on their enforcement regarding spills and fines for violators.

Mayor Sitnick said that the agreement does includes language regarding the conveyance of this site to Henderson County. The reason that she did not remember this was in fact that the only indication that was found in the minutes with regard to this provision is in the specific language included in the agreement, but that there was no specific reference was made by City staff as to the subject property being deeded from the City of Asheville to Henderson County. The reason she didn't remember this is because she did not read the 20-30 page document - she relied on City staff to tell Council the most pertinent facts.

Mayor Sitnick said that the agreement was structured so that the City of Asheville would deed the property to Henderson County to assist them in trying to get sanitary sewer service in northern Henderson County either via MSD or a regional water and sewer authority. She asked if there were efforts being made at that time to form a regional water and sewer authority. Mr. Spell said that there was an actual resolution adopted to initiate a study of a regional water and sewer authority.

Mayor Sitnick questioned the fact that Buncombe County, to which City taxpayers pay taxes, has retained a consulting engineering firm to investigate the provision of sanitary sewer to northern Henderson County and southern Buncombe County. She asked if Henderson County participating in the cost of the engineering firm or is Buncombe County paying for it all. Mr. Spell said that it was his understanding that it is being paid by Buncombe County only.
The basis, according to County staff, is that any new industry or economic development that occurs in northern Henderson County would be of benefit to the residents of Buncombe County.

Mayor Sitnick felt that the City certainly needs to abide by an agreement even though her opinion of the Agreement has changed. She is looking at the regionalism of this and as the Mayor of Asheville, she's looking to see what's in it for Asheville. She said that in 10 years a lot of things happen and she wants to make sure that the provision in the agreement for this property to revert back to the City of Asheville doesn't get forgotten. She asked the City Attorney to prepare some type of document that we can present to Henderson County just as a reminder - not to interfere with the previous agreement, but just to make sure that in 10 or 20 years we don't forget that provision. In addition, she is concerned that that particular piece of property might be poorly located, too high, for sewer treatment. What occurs if that happens? With those concerns in mind, she would have no problem in directing City staff to authorize the transfer in accordance with the agreement, but would certainly ask if the City Attorney address her concerns while preparing the deed.

City Attorney Oast said that a draft deed has been prepared which incorporates the provisions in the agreement which calls for the reversion to the City of Asheville. He said that the would be happy to go back and look at the deed to make sure that they address Mayor Sitnick's concerns.

Councilwoman Field said it was very difficult to balance the need for a regional approach to infrastructure with the needs or the important considerations of the taxpayers of the City of Asheville, who also pay taxes in Buncombe County. She said that Asheville is bigger than just the boundaries of Asheville - it really is all of Western North Carolina. She felt as good neighbors we need to consider how we help. She thinks it's very positive that MSD is looking at some kind of regional approach to utility planning for the future.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 98-62. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 397

V. NEW BUSINESS:

A. RESOLUTION NO. 98-63 - RESOLUTION ADOPTIONG THE CITY OF ASHEVILLE-COUNTY OF BUNCOMBE MINORITY BUSINESS PLAN

Mr. Bill Schaefer, Finance Director, said that in 1993, the City contracted with Research and Evaluation Associates, Inc. for a "Minority Business Study to Support City of Asheville Minority Business Plan". The study's purpose was to determine whether there was sufficient evidence of discrimination in the award of contracts and procurement of supplies, materials and services during the past to justify continuance of the then-existing Minority Business Plan and, if so, to identify any modifications to the plan which would be required to place the plan on a legally defensible basis. The City's current Amended Minority Business Plan, dated December 6, 1994, incorporated revisions recommended by the disparity study. In July 1996 the City and County established a joint Minority Affairs Office. In November 1996, the Minority Business Commission held a retreat at the YMI Cultural Center to begin the process of developing a joint Minority Business Plan to provide policy and direction for a joint City/County minority business program. They used the City's existing 1994 plan as the baseline from which to develop the new joint plan. Subsequently, the Commission held a series of meetings with various constituencies, including representatives of minority businesses, the general public, and City and County staffs, to receive their comments and recommendations regarding the joint plan. The Draft City of Asheville - County of Buncombe Minority Business Plan was approved by the Minority Business Commission on April 23, 1998, and adopted by the County on May 12, 1998. Significant changes from the 1994 Plan are:

Inclusion of Buncombe County in all aspects of the Plan. Note: separate goals are established for the City and County (Section VII.D.3; page 17 of draft). The City goals are at the same as adopted in the 1994 Plan.

Minority Business Commission Membership: Increases membership from 9 to 13 (Section IV.A.3; page 4 of draft).

Retains: Council of Independent Business Owners, Associated General Contractors of America, Women in Construction, Asheville Area Chamber of Commerce, Asheville-Buncombe Community Relations Council, American Institute of Architects and Asheville Business Development Center.

Deletes : Black Business and Professional League and YMI Cultural Center.

Adds: Minority Business Alliance, NAACP, Eagle Market Streets Development Corporation and three certified minority business owners (one each from the four categories for which goals have been established: construction, professional services, procurement, and other services).

Staff Evaluations: Requires as part of the evaluation of all those staff members who are directly involved in the procurement and contracting process, that good faith efforts towards goal attainment be a consideration in evaluations and that City and County Managers meet semi-annually, at the request of the Commission, to discuss specific concerns (Section IV.B.3; page 6 of draft).

Certification of Minority Business Firms: Changes responsibility for certification of firms from the Minority Business Commission to the Minority Affairs Office and clarifies procedures and responsibilities for appeals of certification denial (Section VII; pages 12 through 16).

Enforcement: Strengthens enforcement options: Bids containing no documentation of good faith efforts shall be deemed non-responsive. Expands sanctions for failure to make or maintain good faith efforts to add provisions for removal of bidders from bid lists and/or debarment for a period of one year (Section VI; pages 17 - 19).

Grievance Procedure: Clarifies the procedures and responsibilities. Provides that when a grievance has been submitted, the bid process shall be held in abeyance and no award will be made until such time as the grievance is resolved or a final decision regarding the grievance is made by the City or County Manager (Section IX; page 19).

Additionally, numerous changes have been made to improve clarity, to streamline procedures and to generally enhance the plan's functionality in fulfilling its purposes of widening opportunities for participation, increasing competition, and ensuring the proper and diligent use of public funds.

Staff recommends the City Council adopt the resolution which replaces the current City of Asheville Minority Business Plan with a joint City of Asheville - County of Buncombe Minority Business Plan.

Mr. Schaefer asked for one amendment to the Plan - the General Statute reference on page 3 under verifiable goal should read "The same as defined in N.C. Gen. Stat. sec. 143-128." He said the change deleted the subsection "(c) 4".

When Councilman Tomes noted that he has received a few calls from people who feel they were not adequately or properly notified of the Plan, Mr. Schaefer stated that the Plan and process has been open to all and quite widely known throughout the minority community.

Ms. Dee Williams, owner of Dee Williams & Company, said that having the right to participate allows people to know a lot more about the Plan. She said they were the ones that noticed that there was no G.S. 143-128. She said that it was sunset on June 30, 1995. She said they cited the pertinent statute they could use along with the executive order. She said the Plan treats them like the red-headed step-child. It is not an economic development plan. It is couched in social work terms. She wants the plan to be synergistic with the City's economic development plan. This plan should have benchmarks. She said the Plan is to last 20 years at the aggregate cost of $2 million. She felt this Plan is pretty much like the old one that cost over $1 million and produced largely nothing. The program needs to be benchmarked and appraised every year and if it's not working, it should quit. Some benchmarks include (1) contribute to the expansion of economic growth and industrial capability, while providing the benefits of increasing the tax base and creating living wage jobs; (2) increase market share for those designated firms, measured in terms of a percent of gross receipts in that SIC or market; (3) move some of these firms in the areas where they have been historically underutilized or that present entrance barriers; (4) demonstrate some indication that assistance which is provided will produce, within a reasonable time period, self-sustaining M/WBE firms, capable of remaining in business without the continuous need for remedial assistance; (5) attract resources from the private, state and federal sectors; and (6) produce a reasonable cost to benefits ratio as compared to other alternatives.

Vice-Mayor Hay said that we are currently working on an economic development plan for the City and asked if that economic development plan would address economic development in the minority business community. City Manager Westbrook said that it would address the economic development in the larger sense and the Minority Business Plan would support it for the minority community.

Mr. Clarence Benton, Publisher of the Asheville Advocate newspaper, said that he talked to 20 people in the minority business community and only 4 have heard about it. He urged City Council not to rush this Plan through and make sure that everyone who wants to be involved is given the chance to participate.

Mr. Schaefer responded to several comments by Ms. Williams: (1) the citation correction was not brought to their attention by Ms. Williams, it was brought to their attention by staff; (2) the City's legal staff said there is no legal problem with leaving the reference to G.S. 143-218 in the Minority Business Plan; (3) the use of the section is for definitional purposes only and it is still valid; (4) the economic development portions are separate from minority business noting that this is a plan for remediation for those minorities that were defined as needing remediation in the disparity study; (5) the Minority Business Commission wrestled with the staffing issue long and hard as to whether the Plan should define staffing levels or define tasks to be performed by the Minority Affairs Office. It was unanimously endorsed that it should define those actions to be done, not the number of people or the funding level required to do those - those were the prerogative of staff and the governing bodies on an annual basis; (6) the City and the County are committed to funding what is necessary to carry out and implement the Plan; (7) the membership of the Commission itself, which is made up of representatives from various minority agencies, helped foster the information throughout the minority community; and (8) the Plan has not been rushed through in that it has been in working format for 18 months with public meetings, retreats and small working groups.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 98-63. This motion was seconded by Councilman Sellers.

Vice-Mayor Hay said this Plan structures and defines the City and the County's business relationship with the community. The City and the County are major players in this community in terms of contracts, placing bids, buying supplies, etc. That what this is designed to do. This is really a Plan to avoid discrimination and provide equal opportunity in regard to the business practice of the City and the County. Economic development for the minority community is a high priority item for the City and this should relate to that. If we try to build economic development into this Plan, then we get away from the point of the plan itself, which is to structure the way the County and the City do business. business.

Councilman Tomes was encouraged and wanted to make sure that the Plan was implemented.

Mayor Sitnick said this is a good Plan and a great improvement over the past Plan. She thanked everyone for their input. The document is only as good as the people who implement it. There is a commitment on the part of this Council to make sure that not only do we have a good working Minority Business Plan but that our overall economic development plan for this community does have benchmarks, is fair, creates an atmosphere of outreach that includes everyone in the community.

The motion made by Councilwoman Field and seconded by Councilman Sellers carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 399

B. RESOLUTION NO. 98-64 - RESOLUTION APPOINTING A MEMBER TO THE WNC REGIONAL AIR POLLUTION CONTROL BOARD

Summary: The term of Nilous Avery as a member on the WNC Regional Air Pollution Control Board expires on June 15, 1998.

After each Council member voiced their nominations, they each spoke in support of their choices.

Mayor Sitnick nominated Nelda Holder.

Councilman Tomes nominated Michael Hootstein.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, he asked for a vote to appoint Nelda Holder - Mayor Sitnick, Vice-Mayor Hay, Councilman Cloninger, Councilman Cobb, Councilwoman Field and Councilman Sellers voted in favor of Nelda Holder.

Councilman Tomes voted in favor of Michael Hootstein.

The resolution will appoint Nelda Holder to serve as a member of the WNC Regional Air Pollution Control Board to serve a six year term, term to begin on June 16, 1998, and end on June 15, 2004, or until her successor is appointed.

RESOLUTION BOOK NO. 24 - PAGE 400

C. RESOLUTION NO. 98-65 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

Summary: The terms of Otis Michael and Charles Parker, as members on the Asheville Regional Airport Authority, expire on June 30, 1998.

After each Council member voiced their nominations, they each spoke in support of their choices.

Councilman Sellers nominated Bill Moore.

Mayor Sitnick nominated Marilyn Nason.

Councilman Tomes nominated Albert Anderson.

Councilman Cobb nominated Clay Dover.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, he called the roll for each member of Council to vote for their preferred candidate.

Councilman Cloninger voted for Albert Anderson and Clay Dover.

Councilman Sellers voted for Bill Moore and Albert Anderson.

Councilwoman Field voted for Bill Moore and Albert Anderson.

Vice-Mayor Hay voted for Bill Moore and Albert Anderson.

Councilman Tomes voted for Bill Moore and Albert Anderson.

Councilman Cobb voted for Clay Dover and Albert Anderson.

Mayor Sitnick voted for Bill Moore and Marilyn Nason.

Albert Anderson received six votes; Bill Moore received five votes; Clay Dover received two votes and Marilyn Nason received one vote. The resolution will appoint Albert Anderson and Bill Moore to serve as members of the Asheville Regional Airport Authority, to serve each serve a four year term, terms to begin on July 1, 1998, and end on June 30, 2002, or until their successors are appointed.

RESOLUTION BOOK NO. 24 - PAGE 401

D. RESOLUTION NO. 98-66 - RESOLUTION REAPPOINTING MEMBERS TO THE CARRIAGE PERMIT ADVISORY BOARD

Vice-Mayor Hay said that the terms of Deanna Kraft and Linda Wiggs expire on June 25, 1998. This resolution will reappoint Dr. Kraft and Ms. Wiggs to each serve a three year term, respectively, terms to expire June 25, 2001, or until their successors have been appointed.

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Tomes moved for the adoption of Resolution No. 98-66. This motion was seconded by Councilman Cobb and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 402

E. RESOLUTION NO. 98-67 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Summary: There currently exists a vacancy on the Citizens/Police Advisory Committee.

After each Council member voiced their nominations, they each spoke in support of their choices.

Councilman Sellers nominated Fairfax Arnold.

Councilman Tomes nominated Betty Budd.

After City Clerk Burleson called to Council's attention that this appointment must be a person from the Central area, City Council instructed her to advise Ms. Budd of the error in interviewing for the vacancy and that City Council was very impressed with her interview and she will be first for consideration for the south vacancy on this Committee.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, he asked for a vote to appoint Fairfax Arnold - Vice-Mayor Hay, Councilman Cloninger, Councilwoman Field, and Councilman Sellers voted in favor of Fairfax Arnold.

Mayor Sitnick, Councilman Cobb, Councilman Tomes voted in favor of Betty Budd.

Fairfax Arnold received four votes and Betty Budd received three votes. Therefore, the resolution will appoint Fairfax Arnold as a member of the Citizens/Police Advisory Committee to serve the unexpired term of Mr. Joe Chandler, whose term will expire on June 30, 1999, or until her successor is appointed.

RESOLUTION BOOK NO. 24 - PAGE 403

F. RESOLUTION NO. 98-68 - RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD

Summary: The term of Beth Arrowood as Chairman of the Civil Service Board expired on May 21, 1998.

Vice-Mayor Hay said that the Boards & Commissions Committee asked that City Council appoint the Chair to the Civil Service Board at their next formal meeting. He said that the Chair is appointed from the existing membership and we can go forward with the appointment of the member at this meeting.

City Attorney Oast said that there will be an election for the City employee representative on May 28, 1998.

Mayor Sitnick nominated Bill Fulp.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, he asked for a vote to appoint Bill Fulp and the vote was unanimous. Therefore, the resolution will appoint Mr. William F. Fulp to serve as a member of the Civil Service Board, to serve a two year term, term to expire May 21, 2000, or until his successor is appointed.

RESOLUTION BOOK NO. 24 - PAGE 404

G. RESOLUTION NO. 98-69 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Vice-Mayor Hay said that the terms of Mr. Jimmy Sullivan, Mr. Tim Moffitt, Mr. R. Carl Mumpower and Ms. Laverne Laney expire on June 30, 1998. Mr. Steve Toomey has resigned as a member on the Civic Center Commission, leaving unexpired term until June 30, 2000.

Councilman Cloninger moved to reappoint Mr. Mumpower and Ms. Laney to each serve a three year term, terms to expire on June 30, 2001, or until their successors have been appointed. This motion was seconded by Councilman Sellers and carried unanimously.

After each Council member voiced their nominations, they each spoke in support of their choices.

Mayor Sitnick nominated Christopher Slusher and Joyce Dorr.

Councilwoman Field nominated Paul Hornyak.

Councilman Cloninger nominated Clay Dover.

Vice-Mayor Field nominated Muriel Gomez.

There was some discussion about possible conflicts of interest of Ms. Gomez and Mr. Slusher. City Attorney Oast said that conflicts of interest are determined on a case by case basis.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, each Council member voted for three candidates. Joyce Dorr and Paul Hornyak each received six votes; Christopher Slusher and Clay Dover each received four votes; and Muriel Gomez received one vote. Since there was a tie between Christopher Slusher and Clay Dover, Vice-Mayor Hay asked for a show of hands in favor of Christopher Slusher - 4 hands were raised. By a show of hands in favor of Clay Dover - 3 hands were raised. Therefore, the resolution will (1) appoint Christopher Slusher to the Civic Center Commission to serve the unexpired term of Mr. Toomey, term to expire June 30, 2000, or until his successor has been appointed; (2) appoint Joyce Dorr to the Civic Center Commission to serve a three year term, term to begin on July 1, 1998, and end on June 30, 2001, or until her successor has been appointed; and (3) appoint Paul Hornyak to the Civic Center Commission to serve a three year term, term to begin on July 1, 1998, and end on June 30, 2001, or until his successor has been appointed.

RESOLUTION BOOK NO. 24 - PAGE 405

H. RESOLUTION NO. 98-70 - RESOLUTION REAPPOINTING MEMBERS TO THE POLICE OFFICERS AND FIREFIGHTERS DISABILITY REVIEW BOARD

Vice-Mayor Hay said that the terms of Stephanie Cooper, Michael Keleher and James Lewis, as members on the Police Officers and Firefighters Disability Review Board, expire on July 19, 1998. This resolution will reappoint Ms. Cooper, Dr. Keleher and Mr. Lewis to each serve a two year term, respectfully. All terms will expire on July 19, 2000, or until their successors have been appointed and qualified.

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Mayor Sitnick moved for the adoption of Resolution No. 98-70. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 406

I. RESOLUTION NO. 98-71 - RESOLUTION REAPPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Vice-Mayor Hay said that the terms of Mr. Brian Peterson, Ms. Betty Lawrence and Mr. Chris Knorr expire on July 1, 1998. This resolution will reappoint Ms. Lawrence and Mr. Knorr to each serve an additional three year term, respectively. Their terms will expire July 1, 2001, or until their successors have been appointed.

The vacancy left by Mr. Peterson will be advertised in the next quarter of upcoming vacancies.

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Tomes moved for the adoption of Resolution No. 98-71. This motion was seconded by Councilman Cobb and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 407

J. RESOLUTION NO. 98-72 - RESOLUTION APPOINTING MEMBERS TO THE TREE/GREENWAY COMMISSION

Summary: The terms of Scott Pierson, Dennis Wilson, Adina Goodwin and Henry Mitchell expire on August 1, 1998. This resolution will appoint Kasty Latven, Forrest MacGregor and Regina Lusk to each serve a three year term respectively. Their terms will expire on July 1, 2001, or until their successors have been duly appointed.

The vacancy left by Mr. Wilson will be advertised in the next quarter of upcoming vacancies.

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Tomes moved for the adoption of Resolution No. 98-72. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE I408

VI. OTHER BUSINESS:

A. REPORT FROM BOARDS & COMMISSIONS COMMITTEE

Vice-Mayor Hay said that the Boards & Commissions Committee recommends that a resolution be prepared for the next formal meeting to read that you must be a City resident to be eligible to be on a City board or commission.

Vice-Mayor Hay said that the vacancy on the Planning & Zoning Commission will be advertised for 30 days with an appointment in mid or late July.

B. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 12, 1998, AND THE WORKSESSION HELD ON MAY 19, 1998

Councilman Cloninger moved for the adoption of the minutes of the regular meeting held on May 12, 1998, and the worksession held on May 19, 1998. This motion was seconded by Councilwoman Field and carried unanimously.

C. CLAIMS

The following claims were received by the City of Asheville during the week of May 8-14, 1998: Caton McBride (Water), Betty Underwood (Water), Richard Gilbert (Water), Sonja Long (Parks & Recreation), Beverly Black (Traffic Engineering) and Evelyn Brank (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

D. CLOSED SESSION

At 8:22 p.m. Councilwoman Field moved to go into closed session to discuss matters relating to the location or expansion of industries or other businesses within the area served by the City Council - statutory authority is G.S. 143-318.11 (a) (4). This motion was seconded by Councilman Sellers and carried unanimously.

At 8:48 p.m., Councilman Tomes moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:48 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - June 2, 1998- 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Approval of a Permanent Maintenance Agreement with Commonwealth Dreamland Partners for Stream Location on the Lowe's Site

Summary: The consideration of adoption of a resolution to allow the City Manager to enter into a permanent maintenance agreement, as required by the Board of Adjustment, for the relocation of a portion of Haw Creek.

On May 19, 1997 the Board of Adjustment approved a No-Rise Certification in order to allow the Developer, Commonwealth Dreamland L.L.C., to relocate a portion of Haw Creek in order to build a new Lowe's building. A contingency of the Board of Adjustment's approval was that the City of Asheville enter into a permanent maintenance agreement to assure that the relocated watercourse is maintained in accordance with the Floodplain Ordinance regulations. This agreement stipulates that the Developer shall be solely and exclusively responsible for all maintenance and upkeep relating to the relocation of Haw Creek and all appurtenances relating thereto for the duration of the Ground Lease Agreement and any extensions to the Lease. It further provides that should it become necessary for the City to provide maintenance to this portion of Haw Creek the Developer shall reimburse the City within sixty (60) days after submittal by the City of an invoice outlining the cost involved. Additionally, the maintenance agreement states that the Developer shall cause a registered North Carolina Engineer to inspect the integrity of the relocation work at least once annually and immediately correct any problems noted.

City staff recommends approval of a resolution allowing the City Manager to execute a permanent maintenance agreement with Commonwealth Dreamland, L.L.C., in order to construct the new Lowe's building.

Agreement with Kiwanis Club to Accept Donation for Lakewood Park Playground Equipment

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Kiwanis Club of Asheville to provide funds and materials to refurbish and rebuild a playground at City-owned Lakewood Park.

The Kiwanis Club of Asheville has made the generous proposal to raise money and donate to the City, $15,000 for the purchase of new playground equipment for Lakewood Park in the Kenilworth neighborhood. In addition, the Kiwanis will solicit donations of materials needed to construct the sand and play areas of the playground. The City's involvement will include providing $10,000 to purchase materials to build the playground, dedicate the services of the Assistant Landscape Architect to design the playground and provide the Parks and Recreation Maintenance Crews to demolish the obsolete structures and build the new playground. Since the current Parks and Recreation budget allows only two playgrounds per year, this represents an opportunity to refurbish a playground that would not otherwise be renovated in the near future.

It is hoped that this will be first of many such cooperative efforts between Civic groups and the City.

The Parks and Recreation Department staff recommends City Council adopt the resolution.

Awarding Bids for Infrastructure Construction - Rankin Heights Subdivision

Summary: The consideration of a resolution awarding Hobson Construction Company the contract for construction of Rankin Heights Subdivision.

McGill Associates on behalf of the Community Development Division opened bids for the construction of Rankin Heights Subdivision on May 1, 1998. The following is the bid summary:

Precision Contracting	$229.785.00
Hahn Construction	$222,556.50
Hobson Construction	$199,743.00
Thorpe Construction	$238,535.64

The lowest bid received for the project was in the amount of $199,743.00 from Hobson Construction Company. The amount of funds available for the project is $203,000.00.

Community Development staff recommends acceptance of the low bid and awarding the contract to Hobson Construction Company.

WNC Regional Air Pollution Control Agreement

Summary: Buncombe County Manager Wanda Greene has withdrawn her request of February 16, 1998, that the City of Asheville consider withdrawing from the interlocal agreement that authorizes Western North Carolina Regional Air Pollution Control Agency.

Budget Amendment to Fund Land Acquisition for the Reid Creek/Broadway Greenway

Summary: This budget amendment transfers $118,200 from right-of-way funding in the Street & Sidewalk Fund to the Reid Creek/Broadway Greenway project in order to fund land acquisition.

Funding in the amount of $225,000 was set aside in the Street & Sidewalk Fund for acquisition of residual right-of-way from the Broadway Widening Project a number of years ago. Since this funding was not needed for the Project, a decision was made in 1996 to leave this money set aside for Broadway Greenway land acquisition. This amendment transfers funding needed in the amount of $118,200 from the Street & Sidewalk Fund to the Broadway Greenway Project in the General Capital Projects Fund to cover costs to acquire property for the Reid Creek/Broadway Greenway Project. Current funding in place for the Reid Creek/Broadway Greenway Project is $58,790 which covers the City's contract with the Trust for Public Land.

Upon inquiry of Councilman Cloninger, City Manager Westbrook updated City Council on the status of the greenway projects.

Setting Public Hearing for Voluntary Annexation of Section 11 of Biltmore Park

Summary: The consideration of a resolution setting a public hearing on June 23, 1998, to consider the Biltmore Park Section 11 annexation.

Biltmore Farms, Inc. (owner and applicant) has submitted an annexation petition for a 22.07 acre area identified as Biltmore Park annexation 11. This is the eleventh annexation petitioned by Biltmore Farms Inc. for property located west of Overlook Road. This area is contiguous to the existing corporate limits, specifically to Biltmore Park, Annex 8.

Setting Public Hearing for Voluntary Annexation of Section 12 of Biltmore Park

Summary: The consideration of a resolution setting a public hearing on June 23, 1998, to consider the Biltmore Park Section 12 annexation.

Biltmore Farms Inc. (owner and applicant) has submitted an annexation petition for a 11.36 acre area identified as Biltmore Park annexation 12. This is the twelfth annexation petitioned by Biltmore Farms Inc. for property located west of Overlook Road. This area is contiguous to the existing corporate limits, specifically to Biltmore Park, Annex 9 and Annex 7.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

HILLCREST UPDATE

Deputy Chief Ross Robinson said that after the May 5, 1998, City Council community meeting at Hillcrest regarding the opening or continued closure of the pedestrian bridge, City Council requested staff offer solutions to accessibility and social concerns in the Hillcrest area.

On May 5, 1998, City Council met with residents of the Hillcrest Community at the enrichment center regarding the opening or continued closure of the pedestrian bridge. City Council had an opportunity to view the closed pedestrian bridge and consider views of the residents who attended the meeting. Asheville Police, in conjunction with the Housing Authority have collaborated with residents and other municipal services to address both the opening and the continued closing of the pedestrian bridge. The Housing Authority has recounted the social programs and management practices which have made beneficial changes to life in Hillcrest from what they were several years ago.

Concerns of the residents:

- Fatal accidents will continue to occur if pedestrians do not have access to the pedestrian walkover.
- Parents and students are inconvenienced because the most direct route to some schools, stores and facilities is unavailable (pedestrian bridge).
- Many residents must rely on public transportation which becomes unavailable or expensive late in the day.
- Opening the bridge will give drug buyers and sellers a protected route to Hillcrest.
- Safety and health problems associated with drug dealing will return to Hillcrest; whereas these problems greatly diminished when residents asked the bridge be closed.
- Those who use the reopened bridge may become crime victims.

Concerns of residents of Roberts Street:

- A petition has been received by the Mayor's office indicating some businesses and residents on Roberts Street have requested that traffic from the pedestrian bridge be diverted from Roberts Street.
- The United Christian Church located on Roberts Street opposes any reopening of the pedestrian bridge citing previous traffic as undesirable for their congregation.

Survey of the residents:

- Approximately 58% of those surveyed by the residents council favor reopening the bridge.
- A recent survey by the Housing Authority did not identify overwhelming social concerns among Hillcrest residents. In fact, only three residents responded.

Recommendations and contingencies:

1. Reopening the bridge must be accompanied by the following:

- Environmental changes on the Roberts Street side of the walkover to discourage crime and improve sight distances; clearing of brush and additional lighting of the area. *Public Works has estimated clearing of the property to cost approximately $5,000 and would require one week to complete.*
- A *request of the Department of Transportation* should be made to install additional *lighting to deter criminal activity* in the area of the steps leading to Roberts Street.
- Repair of the fence which separates the sidewalk from I-240. *Department of Transportation engineers are ready to make these repairs should the bridge be reopened.*
- Placement of a handrail on the existing steps from the sidewalk next to I-240 down to Roberts Street. *There is no current commitment from D.O.T. to install this.*
- Relocation of the Police Office in Hillcrest to an apartment next to the pedestrian bridge to stem as much unwanted traffic as possible from the area. *This relocation will depend on availability of apartments; however, it can take place very soon.*
- Strengthening of crime prevention programs as well as Citizens on Patrol in the community. *The residents council has recently met to elect new officers and become better organized.*
- A future assessment of the impact any reopening has had on the residents of Hillcrest and their neighbors on Roberts St.

2. Continued Closure of the Pedestrian Bridge must emphasize:

- Public education regarding safe, alternate pedestrian routes . The North Carolina Department of Transportation indicates traffic volumes for the I-240 area will increase as the new corridor opens to the northern part of the county.
- Review and emphasize public transportation schedules and routes. (The Asheville Transit Authority indicates the frequency of bus departures from Hillcrest will increase as the new terminal opens; however, 6:15 PM will be the latest buses will leave from Hillcrest or depart from other locations destined for Hillcrest.)

Review of current social programs currently at work in Hillcrest

- Hillcrest Enrichment Center
- Asheville Police "ARGUS" office
- Mountain Area Prenatal Substance Abuse Program (17-A)
- Dept. of Social Services located at apt. 17-B (satellite office)
- Daycare Center (Headstart program) on-site

Deputy Chief Robinson said that Mr. Bill Smart from the Dept. of Transportation could not attend the meeting but offered to assist with the clearing of brush from the right-of-way so the City wouldn't have to bear the entire cost. He also agreed to get the Bridge Dept. to assist the City in installing the handrail for the steps that lead from the sidewalk to Roberts Street. He said he could not commit to the installation of additional lighting, however, he would submit a request, if recommended by the City Manager, to Dept. of Transportation officials in Raleigh who make those decisions.

Councilman Cobb was concerned if the walkway had to be handicapped accessible

Upon inquiry of Councilman Tomes about the educational component of whatever is decided, Deputy Chief Robinson said that the Police Department will work with the residents council noting that there is a variety of resources available to spread the word. Mr. Mike Godwin, representative of the Housing Authority, said that they also can address this through a notice to the residents and also in their monthly newsletter.

Mr. Godwin responded to a question from Mayor Sitnick relative to residents patrolling, noting that the issue was discussed, but nothing was confirmed.

When Mayor Sitnick asked if the fence on the south side had been repaired, Deputy Chief Robinson replied that it had not been, however, the Dept. of Transportation has informed them that if the City requests the bridge to be re-opened, they will fix it almost immediately.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RESOLUTION NO. 98-73 - RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE OF THE CITY COUNCIL'S INTENT TO AUTHORIZE EXECUTION OF A LEASE AGREEMENT WITH ASHEVILLE PROFESSIONAL HOCKEY LTD. FOR USE OF THE ASHEVILLE CIVIC CENTER

Civic Center Director David Pisha said that this is consideration of a directing the City Clerk to publish notice of the City Council's intent to authorize execution of a lease agreement for the Asheville Civic Center.

The United Hockey League has approached The Asheville Civic Center about placing a team affiliated with their league at the facility. They have furthermore agreed to pay the facility a per game fee of $750.00 up to $1500.00 based on attendance. Additional consideration of up to $250.00 per game is further agreed if Civic Center cost exceed the prior revenue. The Civic Center retains a minimum of $150,000.00 in concession revenues before sharing additional revenues with the team. Based on attendance, the Civic Center could retain up to $250,000.00 before any sharing took place. Any revenue split with the team is after taxes and food costs have been deducted. The Civic Center receives 10% of any merchandise sales after $500,000.00. The team agrees to supply an ice floor and all related equipment necessary for the presentation of professional hockey. At the end of five (5) years, title to this equipment is transferred to the city without any cost to the city. The city, however, has the option to acquire this equipment sooner if it chooses by assuming the lease of this equipment. The Civic Center further more has the use of the ice floor for other events to include public skating. The Civic Center has the first option to purchase skates for public use, and in so doing, would retain 80% of any revenues received from this venture. Since the city will ultimately come to own the ice floor and related equipment, the city has agreed to share maintenance cost on a 50/50 basis with the team when such upkeep costs exceed $5,000.00. The Civic Center has further agreed to furnish locker room and office space to the team. Any advertising placed in the arena by the team must have prior approval from the Civic Center Director.

Upon inquiry of Councilman Cloninger, City Attorney Oast said that there are several ways the City will end up owning the ice floor.

City Manager Westbrook said that staff will have to come back to City Council with a proposal for a skating program.

After Mr. Pisha responded to several questions, City Council expressed their excitement in this venture.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution directing the City Clerk to publish a notice of Council's intent to authorize execution of the lease with Asheville Professional Hockey, Ltd. and it would not be read. She noted that the resolution authorizing execution of the lease will be on June 23, 1998.

Councilwoman Field moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Sellers and carried unanimously.

Councilman Field moved for the adoption of Resolution No. 98-73. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 409

REPORT ON CABLE TV FRANCHISE RENEWAL

Ordinance Regulating Cable Service Providers

The following is a summary of an ordinance to adopt regulations for cable service providers located in the City of Asheville.

The City of Asheville does not now have an ordinance regulating cable service providers. Article 8 of Chapter 160A of the North Carolina General Statutes authorizes North Carolina cities to adopt ordinances in the exercise of police power delegated to them. North Carolina law authorizes cities to grant franchises to public enterprises, including, but not limited to, cable television systems. Federal and State law further authorize cities to regulate cable service providers in other ways. This ordinance would include provisions regarding the granting of franchises to cable service providers and regulations regarding their use of the public rights-of-way.

A draft of this ordinance was previously considered by the City Council on November 25, 1997, January 20, 1998, February 3 and 24, 1998, and March 3, 1998. At its work session on March 3, 1998, the City Council instructed City staff and Rice, Williams Associates, consultant to the City on cablevision matters, to renegotiate certain terms and conditions of a franchise renewal with the current cablevision franchise holder, Brenmor Cable Partners, L.P. (d/b/a InterMedia). New terms and conditions have been negotiated which resulted in changes to this ordinance.

The City Manager and the City Attorney's Office recommend consideration of the ordinance.

Ordinance Granting a Franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia)

The following is a summary of an ordinance to grant a cable television franchise to InterMedia.

At an election held on July 28, 1967, the citizens of the City of Asheville approved, by referendum, the granting of a franchise to Thoms Broadcasting Companies, Inc., for the construction and operation of a community antenna television system in the City of Asheville. The cable television franchise granted to Thoms Broadcasting Companies, Inc., has been transferred to successive franchisees and InterMedia is the current franchise holder.

The 1967 franchise was granted for thirty five (35) years, which time period would end in the year 2002. Many technological advances have occurred and various regulatory laws have changed since 1967. As part of those technological advances, InterMedia is in the process of completing a rebuild of the cable system within its franchise areas in the City of Asheville and in Buncombe County. As a result of the rebuild of the cable system, InterMedia requested that the City of Asheville enter into renewal negotiations. Based upon technological and regulatory changes since 1967 and upon a desire to include more consumer protection provisions, the City of Asheville was also interested in negotiating a renewal of the franchise terms and conditions.

Proposed terms and conditions for a franchise renewal were incorporated into a draft franchise ordinance which was considered by the City Council on November 25, 1997. The ordinance was subsequently considered by the City Council at work sessions on January 20, 1998, and February 3, 1998. In addition, a community meeting to inform the public about the proposed franchise ordinance was held on February 10, 1998, and a public hearing was held on February 24, 1998. At the conclusion of the public hearing on February 24, 1998, the City Council determined to further consider the matter and a work session was held on March 3, 1998.

At the work session held on March 3, 1998, the City Council instructed City staff and Rice, Williams Associates, consultant to the City of Asheville for cable television matters, to renegotiate certain terms and conditions of the franchise with InterMedia. The issues which were to be renegotiated are as follows:

1. The length of the term of the franchise.
2. The amount of funding for initial equipment and on-going support for public, educational and governmental ("PEG") access channels.
3. The amount passed through to subscribers for funding of the initial equipment and on-going support for PEG channels and the institutional network.
4. The inclusion of other school and library sites on the institutional network.
5. The provision of Internet access to schools and libraries.
6. The terms of the state-of-the-art clause.
7. Consideration of the use of binding arbitration for certain situations.
8. The amount of the civil penalty.
9. Discounts for senior citizens.
10. The mechanism for subscribers to request refunds.
11. The ability for area industries to request increased capacity (550 MHz versus 750 MHz system capacity).
12. The amount of the franchise fee settlement.

Ms. Meldrum said that new terms and conditions have been negotiated and she reviewed the proposal comparison which is attached hereto as Exhibit "A", with the side letter attached hereto as Exhibit "B".

The City Manager and the City Attorney's Office recommend consideration of the ordinance granting the franchise to InterMedia.

Resolution authorizing the City Manager to execute a settlement agreement with InterMedia and TCI regarding franchise fees

The following is a summary of a resolution to authorize the City Manager to execute a settlement agreement with InterMedia and TCI regarding franchise fees.

The 1967 franchise requires that the franchise holder pay to the City of Asheville 6% of the gross monthly service charges collected annually for providing the radio and television signals over the cable system within the corporate limits of the City of Asheville. Under the 1967 franchise, that payment was deemed to be full compensation for use of the City's property rights, services rendered, supervision and inspection of equipment and facilities.

Concerns had been raised by the City of Asheville regarding whether or not the City had been paid all of the fees due under the terms of the 1967 franchise. The City of Asheville and the current franchise holder, Brenmor Cable Partners, L.P. (d/b/a InterMedia), have reviewed the language of the 1967 franchise and franchise fee payments made to the City of Asheville during the last few years. As a result of discussions by the parties regarding this issue, a settlement was proposed and considered by the City Council at previous meetings. On March 3, 1998, at a work session, the City Council instructed City staff to conduct further negotiations regarding the settlement.

Ms. Meldrum said that those further negotiations have been concluded and she then reviewed the documents attached hereto as Exhibit "C", ending with the proposed settlement of $175,000.

The City Manager and the City Attorney's Office recommend consideration of the settlement and of the resolution.

Ms. Meldrum reviewed the attached comparison chart of the 1967 franchise to the June 1998 franchise proposal. Said chart is attached hereto as Exhibit "D".

Ms. Meldrum then reviewed the cable franchise comparisons chart which is attached hereto as Exhibit "E".

Vice-Mayor Hay voiced concern that the side letter relative to Internet access was not as strong as he would have liked it. Councilman Cloninger agreed with Vice-Mayor Hay and hoped that there was some way, perhaps posting a bond, to make sure that InterMedia does provide Internet access to the schools in the City. Ms. Meldrum responded that City staff did ask that language be included in the franchise, that the language be stronger and some type of security, however, InterMedia only agreed to the language in the side letter.

Mr. Joe Haight, General Manager of InterMedia, and Mr. Bruce Stewart, General Counsel for InterMedia, responded to questions from City Council which include, but not limited to, how many minority students are in the Job Training Partnership Act program, why Gainesville, Georgia, and Nashville, Tennessee, who have 750 MHz systems are exempt from the state-of-the-art clause, why would an industry want a 750 MHz system if a 550 MHz system can accomplish the same things; and why InterMedia will not make a firm commitment to provide Internet access to the schools and libraries.

Ms. Meldrum responded to various questions from City Council relating to if there is any argument that the City is entitled to 6% franchise fee; why the City's consultants performed a three year review regarding the franchise fees; what were some of the problems associated with the Lexington, N.C., court interpretation; is there any provision for late fees in the 1967 franchise; if the City were to litigate, how much would it cost the taxpayers in legal and accounting fees; and why were the cities chosen in the cable franchise comparison chart.

Mayor Sitnick noted that the franchise fee concerns were noted long before 1994 by former City Manager Doug Bean.

Mayor Sitnick pointed out that two separate votes will be required to grant the franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia).

It was the consensus of City Council to hold a public hearing on these revised set of documents, said public hearing to be scheduled on June 9, 1998, for public hearing on June 23, 1998.

City Manager Westbrook said that City staff would like City Council to consider voting on the ordinances at the conclusion of the public hearing.

Councilwoman Field wanted to make sure that the public is fully aware that if City Council approves the renegotiated documents, that the subscribers will have a 35-cent increase per month. She was also concerned that InterMedia will not have to build cable system in annexation areas if another cable system is serving that area. She felt that the City should be able to say to Asheville residents that if they are annexed, they can be served by InterMedia if they choose.

Mr. Wally Bowen asked what portion of the proposed PEG funding will be set aside for the citizens or non-profits use and what is the cost for the hardware, software, etc. costs to activate the I-Net for use by City government. He also pointed out that the Citizens for Media Literacy received a grant of $8,000 to produce a public awareness video and conference on public access, education access and government access which they hope will be completed in August.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

REPORT ON THE BILTMORE AVENUE PROPERTIES

Mr. Ed Vess, Field Services Coordinator, said that this is consideration of disposition of certain City-owned real properties acquired under redevelopment in light of current downtown market conditions.

City Council requested appraisals of the properties located at 5, 7 1/2, 9, & 11-13 Biltmore Avenue, the parking lot on the east side of South Lexington Avenue and the property at 135 Cherry Street following a report on the current status of the properties.

Appraisals have been obtained on the properties which reflect the following values:

Address	Market Value	Leased Fee Value
5 & 7 1/2 Biltmore Avenue	$340,000	$300,000
9, 11 & 13 Biltmore Avenue	$470,000	$380,000
E/S South Lexington Ave.	$65,000	No lease
Total Downtown Properties	**$875,000**	
135 Cherry Street	$105,000	No lease
Total All Properties	**$980,000**	

The Market Value represents the estimated unencumbered fee simple value. The Leased Fee Value represents the estimated value of the City's interest in the property subject to existing leases.

The highest and best uses of the properties are all commercial with the Biltmore Avenue properties best suited for retail, the South Lexington Avenue property best suited for parking and the Cherry Street property best suited for office.

The purpose of the appraisals was to assist in making the determination whether to sell the properties or to hold them the intent being to achieve the highest return to the City. The question of whether to offer the contiguous properties as one parcel also was put to the appraiser. It is the appraiser's opinion that no advantage would be obtained by combining the contiguous parcels. Each parcel is appraised and considered separately.

The Biltmore Avenue properties are located in a prime commercial area but, they are encumbered by below market leases. The effect of the leases on the value of the properties is reflected in the difference between the market value and the leased fee value. The leased fee value was determined by using the Discounted Cash Flow (DCF) or Present Value method. The DCF method calculates the present value of the cash flow plus the capitalized resale value realized by holding the properties for ten years as an investment less any refurbishment expenses. The DCF method takes into account the existing rents and assumes a discount rate of 13%. It also assumes an expenditure of $55,350. on 5 Biltmore Avenue and $21,970. on 9 Biltmore Avenue for refurbishment. The Biltmore Avenue properties are a good investment and therefore very marketable properties. However, since the current leases expire in the year 2000, that invites the question of whether to hold the properties for two years and then sell them. In such case if a value appreciation of 8% annually, a discount rate of 13% and a capitalization rate of 11.5% is assumed the present value of the future sale price plus the discounted cash flow for 5 - 7 1/2 Biltmore Avenue for a holding period of two years would be $347,616 or a 16% increase over the current lease fee value of $300,000. For 9 - 13 Biltmore Avenue, the present value of the future sale price plus the discounted cash flow would be $443,627 or a 17% increase over the current lease fee value of $380,000. Staff recommends holding the Biltmore Avenue properties until the current leases expire and then offering them for sale at that time. In the interim rental rates for those units not under lease should be increased to market rate incrementally over the two year period.

The parking lot on South Lexington Avenue is a metered lot and is currently being managed by Parking Services. Since the appraisal indicates that parking is the highest and best use for the property, staff recommends the lot be retained for parking.

The Cherry Street property is being used by Neighborhood Housing Services. It has been a part of the Head of Montford Redevelopment Project strategy to cooperate with NHS in the improvement of the Montford community. Provision of office space to NHS at affordable rates has been in the furtherance of a public purpose. With close-out of the Head of Montford Redevelopment Project in sight, staff recommends offering 135 Cherry Street for sale. The sale will be pursuant to provisions of the General Statutes.

Approval of the resolution will authorize that: (1) 5 - 7 1/2 Biltmore Avenue (PIN 9649.18-40-2028) and 9 - 13 Biltmore Avenue (PIN 9649.18-40-1091) be held for 2 years before being offered for sale; (2) the parking lot on the east side of South Lexington Avenue (PIN 9649.18-40-1018) be retained for public use; and (3) 135 Cherry Street (PIN 9649.17-21-0243) be offered for sale.

Community Development Staff recommends adoption of the resolution.

Upon inquiry of Councilman Sellers, Mr. Vess said that any money realized would go back into the Community Development Block Grant Program.

Vice-Mayor Hay said that he would like, when this money does become available to earmark it for an affordable housing trust fund .

Upon inquiry of Councilman Cloninger, Mr. Vess said that at this point in time, he would recommend that the Biltmore Avenue properties be held for two years before being offered for sale. After that two year period of time, City Council will have another opportunity to review whether they want to sell the properties or continue to hold them.

Mr. Richard Jacobs, appraiser, explained to Council how the leased fee value was determined.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

NEXT COMMUNITY MEETING

It was the consensus of City Council to hold their next community meeting on June 30, 1998, at 7:00 p.m. at the Burton Street Recreation Center in West Asheville. City staff will be available to answer questions at 6:00 p.m. prior to the actual City Council community meeting.

It was Vice-Mayor Hay's hope that the next community meeting be held in the South area, maybe in the Skyland area.

BUDGET AMENDMENT RELATIVE TO LEGAL FEES FOR BILLBOARD DEFENSE

City Attorney Oast said that the budget ordinance amendment appropriates $75,000 for legal fees associated with defense of the lawsuit filed by two outdoor advertising companies challenging the City's ordinance requiring the amortization and removal of off-premise signs.

As Council has been advised, the City has retained the law firm of Horack, Talley, Pharr & Lowndes of Charlotte to provide a defense for the City in the lawsuit brought by Fairway Outdoor Advertising Co. and Outdoor Communications, Inc., challenging the City's ordinance, adopted in November of 1997, requiring the removal of off-premise signs, following a 7-year amortization period.

The City Attorney's Office solicited proposals from several firms around the State. The Horack, Talley firm is defending the City of Charlotte in its billboard litigation, and is well-qualified to defend the City of Asheville.

The defense of the billboard lawsuit is an extraordinary matter, and was not anticipated in the City's FY 1997-98 budget. Moreover, the timing of the engagement was such that the information necessary for a budget request was not available at the time budget submissions for fiscal year 1998-99 were due. We now have information that enables us to project costs, and we are requesting sufficient funding to cover those costs for the remainder of FY 1997-98 and into FY 1998-99. Accordingly, the appropriation made this year will be carried over into next year's budget.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CLOSED SESSION

At 5:47 p.m., Councilwoman Field moved to go into close session to establish or to instruct the City's staff concerning the position to be taken by or on behalf of the City in negotiating the price and other material terms of a controversial or proposed contract for the acquisition of real property - G.S. 143-318.11 (a) (5). This motion was seconded by Councilman Sellers and carried unanimously.

At 6:12 p.m., Vice-Mayor Hay moved to come out of closed session. This motion was seconded by Mayor Sitnick and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:12 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

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EXHIBIT "A"

PROPOSAL COMPARISON

Issues to Renegotiate	January 1998 Proposal	June 1998 Proposal
Term	17 years	12 years
PEG - Number of Channels	Three initial channels; one additional channel when threshold met	No change
PEG - $ for Initial Equipment	$200,000	$340,000
PEG - $ for On-Going Support	$36,000/year for 10 years (beginning in 8th year) [8 years = $288,000 10 years = $360,000]	$50,000/year for 8 years (beginning in 5th year) [8 years = $400,000]
Institutional Network - List of Sites	21 sites $380,000 [City-owned buildings, Buncombe County Courthouse, three branch library sites, Asheville High School & Asheville Middle School]	25 sites $398,316 [Adds Asheville Board of Education Administrative Office, T.C. Roberson High School, Pack Memorial Library and West Asheville Branch Library]

EXHIBIT "A" - Page 2

Issues to Renegotiate	January 1998 Proposal	June 1998 Proposal
Pass-through to Subscribers [PEG and Institutional Network]	Years 1-7 = 20¢ Years 8-17 = 15¢ [per subscriber/per month]	Years 1-5 = 35¢ Years 6-12 = 30¢ [per subscriber/per month]
Internet Access to Schools and Libraries	Policy only - free modems to schools	Side letter-free modems and monthly service to schools
State-of-the Art Clause	Compared Asheville cable system to cable systems owned and operated by Franchisee in North Carolina, South Carolina, Georgia & Tennessee	Adds comparison to other N.C. systems; broadens term and subscriber comparison; removes population growth comparison; adds exception for two of Franchisee's systems which now have 750 MHz systems
550 MHz vs 750 MHz System	550 MHz System	Adds provision to allow negotiation with industry for increased capacity for data transmission
Customer Service Standards- Request for Refunds by Subscribers for Outages	Subscribers must request	No change
Senior Citizen Documents	None	Side letter with company policy on bulk rates to elderly housing units and nursing homes

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EXHIBIT "A" - Page 3

Issues to Renegotiate	January 1998 Proposal	June 1998 Proposal
Binding Arbitration	None	Non-binding arbitration for state-of-the-art clause
Civil Penalty Amount	$100.00 per day	$150.00 per day
Franchise Fee Settlement	$150,000	$175,000

Other Changes:

1. Side letter with company policy on commitment to job training program (JTPA).

2. Franchise changed so that Franchisee does not have to build cable system in annexation areas if another cable system is serving that area.

INTERMEDIA

424 Church Street
Suite 1600
Nashville, TN 37219
Phone: (615) 244-2300
Facsimile: (615) 254-4276

EXHIBIT "B"

6/1/98

James L. Westbrook, Jr.
City Manager
City of Asheville
Post Office Box 7148
Asheville, NC 28802

RE: InterMedia Cable Television Franchise Renewal

Dear Mr. Westbrook:

During our most recent negotiations on the Cable Television Franchise Renewal, we discussed InterMedia's policies and intentions concerning our operations and the provision of cable television service to our customers in the City of Asheville. In response to your request, this letter shall confirm InterMedia's current policies, and acknowledge our intentions and plans on the selected matters we discussed.

1) InterMedia has stated publicly that we are planning to provide Internet access to the schools in the City of Asheville. Specifically, if InterMedia determines that the provision of high-speed internet access services by cable modems is economically feasible in the City of Asheville, then at such time that InterMedia begins to provide such internet services, InterMedia intends to offer free internet access service and a free cable modem to each school within the City of Asheville for as long as InterMedia continues to provide such service.
2) During our discussions you inquired about InterMedia's policy concerning discounts to elderly housing units and nursing homes. Please be advised that InterMedia currently provides discounts to such facilities by providing a bulk rate discount to such facilities and is committed to continuing this policy. For instance, InterMedia currently provides such bulk rate discounts to the following facilities: Asheville Housing Authority facilities (specifically Aston Towers and Bartlett Arms Apartments), Asheville Manor, Hospice of Asheville, Victoria Health Care, The Oaks, Brooks Howell Home, Rivendell Woods and the Veterans Administration Hospital.
3) InterMedia is currently actively involved with the Job Training Partnership Act ("JTPA") which provides internship opportunities and other job training

opportunities for local high school minority students. InterMedia is committed to continuing equal opportunity employment programs and training programs such as the JTPA or similar programs.

4) Consistent with our discussions, InterMedia agrees to pass through $0.35 per subscriber in years one (1) through five (5), and $0.30 per subscriber in years six (6) through twelve (12), in order to recover the PEG initial equipment funding, the ongoing PEG funding and for the cost of the institutional network required in the renewal franchise. InterMedia further agrees that no interest will be assessed or other rate of return will be imposed on the total funding and that once InterMedia has been fully reimbursed for such franchise obligations, the subscriber pass through amount will no longer be collected from customers.

We thank you, the City Attorney's office, and the City Council for your time and attention to the conclusion of the franchise renewal process. We look forward to the renewal of our franchise and to providing the citizens of Asheville with superior customer service and access to advanced cable services.

Sincerely,

Bruce J. Stewart
General Counsel

/cbm

cc: Joe Haight, General Manager, InterMedia
Patsy Brison Meldrum, Assistant City Attorney II
Jean Rice, Partner, Rice Williams Associates

EXHIBIT "C"

Franchise Fee Issue
and
Proposed Settlement

Issue: Does the phrase "gross monthly service charges collected" in the 1967 franchise include premium services, revenues from home shopping networks and other revenue sources?

Measures to Address Issue:

- Legal research on court interpretation of phrase or similar language
    - Problem North Carolina case - Lexington, North Carolina
- Legal research on federal regulations governing amount of franchise fees
    - 1967 franchise says 6%
    - federal law set cap of 5% in 1984 (effective January 1, 1985)
- Legal research on how far back could collect fees (statute of limitations)
    - Three Years
    - Ten Years
    - Unlimited
- Review amount of franchise fee payments made
- Review records of TCI Cablevision of Asheville, Inc. to determine amount of revenues from basic and expanded basic services, premium channels (HBO, Cinemax, etc.), installation charges and rental fees and home shopping networks
- Assemble report comparing amount of franchise fee payments made to revenue sources listed above

Chronology

1967 -	Franchise approved; 6% franchise fee; basic service only
1980 -	HBO (premium service) introduced by local franchisee
1984 -	Disney (premium service) introduced by local franchisee
1985 -	Expanded basic service began
	Federal law limits franchise fees to 5%
1986 -	Pay-per-view introduced by local franchisee
1988 -	Showtime (premium service) introduced by local franchisee
1996 -	Rice, Williams conducts franchise fee review
1997 -	Franchise renewal and settlement first proposed

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Franchise Fee Issue and Proposed Settlement

IF "gross monthly service charges collected" ("gross") includes premium services, home shopping network revenues, etc.

THEN

For Four Years *

"gross" = $29,029,377 x 6% = $1,741,762.62

Amount paid = $20,223,852 x 6% = - 1,213,431.12

Difference (6%) = $ 528,331.50

* Rice, Williams contract was for a three year review; based on timing of review, fourth year could be included and was included in report.

BUT **5% Federal limit**

For Four Years *

5% Federal Limit = $29,029,377 x 5% = $1,451,468.85

Amount paid = $20,223,852 x 6% = -1,213,431.12

Difference (5%) = $ 238,037.73

⇓

For Three Years **

= $ 178,528.29

* Rice, Williams contract was for a three year review; based on timing of review, fourth year could be included and was included in report.

** Information for three years determined in the event statute of limitations is three years.

Should Have Paid $29,029,377 x 5% = $1,451,468.85

Paid $20,223,852 x 6% = $1,213,413.12

Difference (4 years) = $ 238,037.73

Difference (3 years) = $ 178,528.29

EXHIBIT "D"

Comparison of 1967 Franchise to June 1998 Franchise Proposal

	1967 Franchise	June 1998 Proposal
Term	35 years	12 years
System	Community Antenna Television System	Fiber to Feeder Design
Public, Educational and/or Governmental Access Channels (PEG Channels)	One channel for Asheville City Board of Education	Three initial channels; one additional channel when threshold met
Initial Equipment for PEG Channels	None	$340,000
On-Going Support for PEG Channels	None	$50,000 per year
Institutional Network	None	25 sites $398,316
Franchise Fee Amount	6% of gross monthly service charges collected [paid on basic and expanded basic tiers only] [1996 = $350,900 1997 = $379,000] Payable semi-annually	5% of gross annual revenues [paid on basic and expanded tiers; premium and pay-per-view services; leased access; Internet; home shopping; etc.] [1999 estimate = $404,000] Payable quarterly
Service Area	"Wherever practicable" to residents served by public utilities	Entire City limits and new annexation areas
Service to New Residential Construction	None	Cost-sharing arrangement
Emergency Alert System	No	System for City Police/Fire meeting FCC requirements
State-of-the-Art Clause	No	Compares Asheville to Franchisee's systems in NC, SC, TN and GA and other NC systems
Consumer Protection Standards	No	Yes
Bond and Insurance Requirements	No	Yes
Indemnification Requirements	Yes	Broadened
Transfer and Assignment Approval	Yes	Broadened
Termination; Revocation	Revocation for failure to comply with terms of franchise	Expanded to include regulatory ordinance, application and orders or rulings; adds hearing process
Penalties	No	$150 per day civil penalty

EXHIBIT "E"

CABLE FRANCHISE COMPARISONS

City/State Franchisee	Date of Agreement; Term	Number of Subscribers	Penetration Rate	Maximum System Frequency	Fiber Deployment	Institutional Network	PEG Access Channel Capacity	Franchisee Funding for PEG Access Equip. and Facilities	PEG Access Services Funding Source
Wilmington Time Warner	1993 15 years (10 years initial; 5 year renewal)	34,000	74%	550MHz	Yes	No	1 Education 1 Government 1 Public (if requested)	No funding Equipment provided	Franchisee No current pass through
Gastonia Time Warner	1997 15 years	15,000	56%	750MHz	Yes	Yes	3 Channels	$200,000 Initial $75,000 in year 7	Franchisee $.38 pass through
Burlington Time Warner	1995 15 years	25,000	65%	750MHz (FCC contract)	Yes	No	1 Education 1 Government	$25,000 Initial	Franchisee
Rocky Mount MediaCom	1991 15 years	28,000	66%	550MHz	Yes	One closed circuit channel	1 Education 1 Government 1 Public	$125,000 Initial; $50,000 after year 5	Franchisee No pass through
Greenville, NC MediaCom	1992 15 years	25,000	62%	550 MHz	Yes	One closed circuit channel	1 Education 1 Government 1 Public	$50,000 Initial $50,000 18 months $70,000 for repairs and replacement $100,000 grant	Franchisee $.21 pass through
Catawba Co. Charter	1995 15 years	36,000	65%	550MHz	Yes	Yes	1 Initial 3 Maximum	$75,000	Above $25,000 pass through
Asheville Proposal InterMedia	1998 12 years	21,000	67%	550MHz	Yes	Yes	3 Initially 1 Additional	$340,000 Initial; $50,000 per year for years 5-12	Franchisee grant and pass-through $.35 in years 1-5; $.30 in years 6-12

Tuesday - June 9, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Vice-Mayor Hay gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION OF SONDLEY AWARD TO PAM AND JIM TURNER

Mayor Sitnick said that the Sondley award is given by the Historic Resources Commission of Asheville & Buncombe County ("HRC") to an individual or individuals in the community who by word or deed has kindled among the citizens of Asheville and Buncombe County an appreciation for the history or historic resources of the area.

Mr. Robert Galloway, HRC Chairman, spoke briefly about the Turner's contributions to historic preservation.

Mayor Sitnick was pleased to present the 1998 Sondley Award to Pam & Jim Turner.

B. RESOLUTION NO. 98-74 - RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE DAVID R. KING

City Manager Westbrook said that David R. King has been employed by the City of Asheville for over 24 years and has requested retirement from his position as Line Maintenance Worker I in the Meter Services Division of the Water Resources Department.

Resolution No. 98-74 was adopted by acclamation.

RESOLUTION BOOK NO. 24 - PAGE 410

C. RECOGNITION OF CITY OF ASHEVILLE WINNERS IN THE EXCELLENCE IN EXCELLENCE IN PUBLIC SERVICE AWARDS PROGRAM

City Manager Westbrook said that on May 20, 1998, the City joined with Buncombe County and several local, federal and state agencies to recognize public employees at the "Excellence In Public Service Awards Program." The goal of the program is to honor outstanding employees in governmental agencies in the Asheville-Buncombe area who have performed exceptional and meritorious work during 1997 for their agencies and the community. Awards are given in 10 categories. A City employee selection committee reviewed the City nominations and selected finalists in each category to go on and compete with the other agencies. A "Blue Ribbon Committee" (comprised of area business representatives) considered all agency nominations and selected one winner for each category. In addition, one category winner was also selected as the "Public Service Employee of the Year" for the Asheville-Buncombe County area. Those winners were announced at UNC-A on May 20, 1998. Those winners from the City are as follows:

Outstanding Technician, Assistant or Aide - Lee Smith (Police)

Outstanding Heroic Act- Tonna Ramsey and Alyson Pressley (Parks & Recreation)

Outstanding Team and Public Service Employees of the Year - Fire Safety Team:

Joe Meadows, Team Leader; Joe Capel; Carl Denning; Kevin Griffin; Dan Flinn; Eric Velez; and Karen Murphy, Facilitator

CHANGES IN AGENDA

A. RESOLUTION RELATIVE TO THE DISPOSTION OF CERTAIN CITY-OWNED REAL PROPERTY

Mayor Sitnick said that she has received a request from Habitat for Humanity to continue this matter until July 28, 1998, in order to give them an opportunity to review the proposed resolution. Therefore, Councilwoman Field moved to continue this matter until Tuesday, July 28, 1998. This motion was seconded by Councilman Tomes and carried unanimously.

Vice-Mayor Hay was not opposed to continuing this matter, however, there seems to be a misunderstanding in that City Council is not considering a resolution to immediately raise the rents on Biltmore Avenue.

B. MOTION REGARDING THE OPENING OR CONTINUED CLOSURE OF THE PEDESTRIAN WALKOVER BRIDGE AT HILLCREST APARTMENTS

Mayor Sitnick asked for a motion to advance on the agenda the Hillcrest Apartments Pedestrian walkway bridge matter. Therefore, Councilman Sellers moved to advance the Hillcrest bridge walkway matter prior to the public hearings scheduled. This motion was seconded by Councilwoman Field and carried unanimously.

II. CONSENT:

A. MOTION SETTING A PUBLIC HEARING ON JUNE 23, 1998, TO CONSIDER (1) ORDINANCE REGULATING CABLE SERVICE PROVIDERS; (2) ORDINANCE GRANTING A FRANCHISE TO BRENMOR CABLE PARTNERS, L.P. (D/B/A INTERMEDIA) AND (3) RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SETTLEMENT AGREEMENT WITH INTERMEDIA AND TCI REGARDING FRANCHISE FEES

B. RESOLUTION NO. 98-75 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PERMANENT MAINTENANCE AGREEMENT WITH COMMONWEALTH DREAMLAND PARTNERS FOR STREAM LOCATION ON THE LOWE'S SITE

Summary: The consideration of adoption of a resolution to allow the City Manager to enter into a permanent maintenance agreement, as required by the Board of Adjustment, for the relocation of a portion of Haw Creek.

On May 19, 1997 the Board of Adjustment approved a No-Rise Certification in order to allow the Developer, Commonwealth Dreamland L.L.C., to relocate a portion of Haw Creek in order to build a new Lowe's building. A contingency of the Board of Adjustment's approval was that the City of Asheville enter into a permanent maintenance agreement to assure that the relocated watercourse is maintained in accordance with the Floodplain Ordinance regulations. This agreement stipulates that the Developer shall be solely and exclusively responsible for all maintenance and upkeep relating to the relocation of Haw Creek and all appurtenances relating thereto for the duration of the Ground Lease Agreement and any extensions to the Lease. It further provides that should it become necessary for the City to provide maintenance to this portion of Haw Creek the Developer shall reimburse the City within sixty (60) days after submittal by the City of an invoice outlining the cost involved. Additionally, the maintenance agreement states that the Developer shall cause a registered North Carolina Engineer to inspect the integrity of the relocation work at least once annually and immediately correct any problems noted.

City staff recommends approval of a resolution allowing the City Manager to execute a permanent maintenance agreement with Commonwealth Dreamland, L.L.C., in order to construct the new Lowe's building.

RESOLUTION BOOK NO. 24 - PAGE 411

C. RESOLUTION NO. 98-78 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE KIWANIS CLUB TO PROVIDE FUNDS AND MATERIALS TO REFURBISH AND REBUILD A PLAYGROUND AT CITY-OWNED LAKEWOOD PARK

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Kiwanis Club of Asheville to provide funds and materials to refurbish and rebuild a playground at City-owned Lakewood Park.

The Kiwanis Club of Asheville has made the generous proposal to raise money and donate to the City, $15,000 for the purchase of new playground equipment for Lakewood Park in the Kenilworth neighborhood. In addition, the Kiwanis will solicit donations of materials needed to construct the sand and play areas of the playground. The City's involvement will include providing $10,000 to purchase materials to build the playground, dedicate the services of the Assistant Landscape Architect to design the playground and provide the Parks and Recreation Maintenance Crews to demolish the obsolete structures and build the new playground. Since the current Parks and Recreation budget allows only two playgrounds per year, this represents an opportunity to refurbish a playground that would not otherwise be renovated in the near future. It is hoped that this will be first of many such cooperative efforts between Civic groups and the City.

RESOLUTION BOOK NO. 24 - PAGE 412

D. ORDINANCE NO. 2485 - BUDGET AMENDMENT TO APPROPRIATE FUNDING FOR THE LAKEWOOD PARK PROJECT BASED ON DONATIONS MADE BY THE KIWANIS CLUB AND OTHER INTERESTED PARTIES

Summary: This budget amendment, in the amount of $15,000, will appropriate funding for the Lakewood Park project based on donations made by the Kiwanis Club and other interested parties.

The Parks and Recreation Department and the Kiwanis Club of Asheville have been working on a public/private partnership to renovate the Tot Lot at Lakewood Park. The Kiwanis Club is committed to providing $15,000 towards this project. In addition, it is anticipated that additional sources of revenue may be generated for this project in the near future.

The Parks and Recreation staff recommends appropriating funds for the renovation of Lakewood Park through City Council's approval of the budget amendment.

ORDINANCE BOOK NO. 17 - PAGE 1

E. RESOLUTION NO. 98-77 - RESOLUTION AWARDING CONTRACT TO HOBSON CONSTRUCTION COMPANY FOR CONSTRUCTION OF RANKIN HEIGHTS SUBDIVISION

Summary: The consideration of a resolution awarding Hobson Construction Company the contract for construction of Rankin Heights Subdivision.

McGill Associates on behalf of the Community Development Division opened bids for the construction of Rankin Heights Subdivision on May 1, 1998. The following is the bid summary:

Precision Contracting	$229.785.00
Hahn Construction	$222,556.50
Hobson Construction	$199,743.00
Thorpe Construction	$238,535.64

The lowest bid received for the project was in the amount of $199,743.00 from Hobson Construction Company. The amount of funds available for the project is $203,000.00.

Community Development staff recommends acceptance of the low bid and awarding the contract to Hobson Construction Company.

RESOLUTION BOOK NO. 24 - PAGE 413

F. RESOLUTION NO. 98-78 - RESOLUTION CANCELING TUESDAY, JULY 7, 1998, CITY COUNCIL WORKSESSION

RESOLUTION BOOK NO. 24 - PAGE 415

G. ORDINANCE NO. 2486 - BUDGET AMENDMENT TO TRANSFER RIGHT-OF-WAY FUNDING IN THE STREET AND SIDEWALK FUND TO THE REID CREEK/BROADWAY GREENWAY PROJECT TO FUND LAND ACQUISITION

Summary: This budget amendment transfers $118,200 from right-of-way funding in the Street & Sidewalk Fund to the Reid Creek/Broadway Greenway project in order to fund land acquisition.

Funding in the amount of $225,000 was set aside in the Street & Sidewalk Fund for acquisition of residual right-of-way from the Broadway Widening Project a number of years ago. Since this funding was not needed for the Project, a decision was made in 1996 to leave this money set aside for Broadway Greenway land acquisition. This amendment transfers funding needed in the amount of $118,200 from the Street & Sidewalk Fund to the Broadway Greenway Project in the General Capital Projects Fund to cover costs to acquire property for the Reid Creek/Broadway Greenway Project. Current funding in place for the Reid Creek/Broadway Greenway Project is $58,790 which covers the City's contract with the Trust for Public Land.

Upon inquiry of Councilman Cloninger, City Manager Westbrook updated City Council on the status of the greenway projects.

ORDINANCE BOOK NO. 17 - PAGE 3

H. RESOLUTION NO. 98-79 - RESOLUTION FIXING DATE OF PUBLIC HEARING ON JUNE 23, 1998, ON VOLUNTARY ANNEXATION OF SECTION 11 OF BILTMORE PARK

Summary: The consideration of a resolution setting a public hearing on June 23, 1998, to consider the Biltmore Park Section 11 annexation.

Biltmore Farms, Inc. (owner and applicant) has submitted an annexation petition for a 22.07 acre area identified as Biltmore Park annexation 11. This is the eleventh annexation petitioned by Biltmore Farms Inc. for property located west of Overlook Road. This area is contiguous to the existing corporate limits, specifically to Biltmore Park, Annex 8.

RESOLUTION BOOK NO. 24 - PAGE 416

I. RESOLUTION NO. 98-80 - RESOLUTION FIXING DATE OF PUBLIC HEARING ON JUNE 23, 1998, ON VOLUNTARY ANNEXATION OF SECTION 12 OF BILTMORE PARK

Summary: The consideration of a resolution setting a public hearing on June 23, 1998, to consider the Biltmore Park Section 12 annexation.

Biltmore Farms Inc. (owner and applicant) has submitted an annexation petition for a 11.36 acre area identified as Biltmore Park annexation 12. This is the twelfth annexation petitioned by Biltmore Farms Inc. for property located west of Overlook Road. This area is contiguous to the existing corporate limits, specifically to Biltmore Park, Annex 9 and Annex 7.

RESOLUTION BOOK NO. 24 - PAGE 418

J. ORDINANCE NO. 2487 - BUDGET AMENDMENT FOR LEGAL FEES ASSOCIATED WITH DEFENSE OF THE LAWSUIT FILED BY TWO OUTDOOR ADVERTISING COMPANIES CHALLENGING THE CITY'S ORDINANCE REQUIRING THE AMORTIZATION AND REMOVAL OF OFF-PREMISE SIGNS

Summary: This budget ordinance amendment appropriates $75,000 for legal fees associated with defense of the lawsuit filed by two outdoor advertising companies challenging the City's ordinance requiring the amortization and removal of off-premise signs.

As Council has been advised, the City has retained the law firm of Horack, Talley, Pharr & Lowndes of Charlotte to provide a defense for the City in the lawsuit brought by Fairway Outdoor Advertising Co. and Outdoor Communications, Inc., challenging the City's ordinance, adopted in November of 1997, requiring the removal of off-premise signs, following a 7-year amortization period.

The City Attorney's Office solicited proposals from several firms around the State. The Horack, Talley firm is defending the City of Charlotte in its billboard litigation, and is well-qualified to defend the City of Asheville.

The defense of the billboard lawsuit is an extraordinary matter, and was not anticipated in the City's FY 1997-98 budget. Moreover, the timing of the engagement was such that the information necessary for a budget request was not available at the time budget submissions for fiscal year 1998-99 were due. We now have information that enables us to project costs, and we are requesting sufficient funding to cover those costs for the remainder of FY 1997-98 and into FY 1998-99. Accordingly, the appropriation made this year will be carried over into next year's budget.

ORDINANCE BOOK NO. 17 - PAGE 5

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and motions on the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

MOTION TO CONTINUE TO KEEP THE PEDESTRIAN WALKOVER BRIDGE AT HILLCREST APARTMENTS CLOSED

Councilman Tomes felt that Council needed to think in terms of the psychological messages the City sends the Hillcrest residents which goes beyond a fence or a passageway. He said he would support the wishes of the residents of the Hillcrest community.

Councilwoman Field asked about the City's liability in complying with the Americans with Disabilities Act ("ADA") compliance in terms of providing ramped access on both sides of the bridge. City Attorney Oast said that it is his understanding that this is a N.C. Dept. of Transportation ("NC DOT") facility and it seems that any responsibility for meeting ADA requirements would fall on the NC DOT. He said the City may have some agreement with NC DOT that would require us to share in some of those costs, however, it is a NC DOT facility and he felt they had primary responsibility for it. He said that there is also the alternate access going the other way, which may be a factor in whether or not ADA compliance is actually required for this particular cross-over.

Mayor Sitnick said that regardless of whether the bridge remains closed or is re-opened, Council supports the recommendations and contingencies as follows, especially those that require requests to the NC DOT:

1. Reopening the bridge must be accompanied by the following:

- Environmental changes on the Roberts Street side of the walkover to discourage crime and improve sight distances; clearing of brush and additional lighting of the area. Public Works has estimated clearing of the property to cost approximately $5,000 and would require one week to complete.
- A request of the NC DOT should be made to install additional lighting to deter criminal activity in the area of the steps leading to Roberts street.
- Repair of the fence which separates the sidewalk from I-240. NC DOT engineers are ready to make these repairs should the bridge be reopened.
- Placement of a handrail on the existing steps from the sidewalk next to I-240 down to Roberts Street. There is no current commitment from NC DOT to install this, however, City Council will request this.
- Relocation of the Police Office in Hillcrest to an apartment next to the pedestrian bridge to stem as much unwanted traffic as possible from the area. This relocation will depend on availability of apartments.
- Strengthening of crime prevention programs as well as Citizens on Patrol in the community. The residents council has recently elected new officers and become better organized.

- A future assessment of the impact any reopening has had on the residents of Hillcrest and their neighbors on Roberts St.

2. Continued Closure of the Pedestrian Bridge must emphasize:

- Public education regarding safe, alternate pedestrian routes . The NC DOT indicate traffic volumes for the I-240 area will continue and better routes need to be found.
- Review and emphasize public transportation schedules and routes. (The Asheville Transit Authority indicates the frequency of bus departures from Hillcrest will increase as the new terminal opens; however, 6:15 p.m. will be the latest buses will leave from Hillcrest or depart from other locations destined for Hillcrest.)

Mayor Sitnick felt that the City needed to look at the transportation issue which the bridge is part of. She also asked the NC DOT, as soon as possible, to look at a new solution for that area to create a more convenient pedestrian-friendly way to get to and from Hillcrest. Also, she hoped that the City would look into locating a police officer in one of the apartments (not part of the resource center) in the near future.

Councilman Cobb felt that if the bridge were re-opened, we could be creating a lot of problem, however, 58% of the survey asked that the bridge be re-opened and he would vote in support of the majority of the residents.

Pastor Nicks, United Christian Church located at the end of Roberts Street, talked about the drug and theft problems in their community when the bridge was opened. Since its closure, there has been no violence and things has quieted down. He urged City Council not to re-open the bridge which will allow drugs back into their community. He noted that even though 58% of the Hillcrest community wanted the bridge re-opened, 42% want it kept closed and 100% of the Roberts Street community want it to remain closed.

Council man Cloninger moved that the pedestrian walkway bridge remain closed and that City Council adopt the recommendation of staff in connection with closure of the bridge. This motion was seconded by Councilman Sellers.

Councilman Cloninger felt this is a very tough issue and their are strong arguments for opening the bridge and strong arguments for keeping the bridge closed. Ultimately, he was moved by the mothers of the young children who asked Council to put their children first. They asked Council to keep the criminals and drug-pushers from coming into their community which had happened for years prior to the bridge being closed. They also asked that Council help protect the young children who might inadvertently cross the bridge and get into harms way. Therefore, he would will vote to keep the bridge closed.

Vice-Mayor Hay agreed that this is a very difficult situation. Hillcrest is an isolated community and there are very few ideas about how to improve their situation. He listened carefully to the people who have lived at Hillcrest throughout the entire period noting that there has been remarkable progress made in the living conditions there since the bridge closure. He felt that he would trust the judgment of the people because they know what it was like before the closure and they are the ones who know what it's like now. He felt they want what is best for their community and he would support the bridge remaining closed.

Councilwoman Field felt that the Hillcrest community is an isolated island which is totally inappropriate for any neighborhood. I-240 will be widened soon and a new bridge will be built across the river and a lot of things will be happening in that area. She would like to see Council look toward relocating all of the units of affordable housing at Hillcrest into scattered sites all over the City and turn that site into a commercial site or some other use that does not isolate people. She doesn't like dead-end streets and likes people to be able to walk. She doesn't think re-opening the bridge will save any lives because someone who is inebriated or in a hurry who wants to get across will run across I-240 if they want to - opening the bridge will not make a lot of difference. She was pleased that after the bridge was closed the community started turning around and we started hearing positive things coming from the community. She didn't want to make this a race issue because we are talking about what is best for everyone.

Mayor Sitnick said that Hillcrest is a ghettoized, surrounded by highway, island. We have cut off access to Hillcrest and the bus schedule makes it almost impossible for anyone who works in the evening to get home safely unless they have a car. She is comfortable with the fact that if the walkway is opened a main component of the recommendation that she will pursue would be a not-to-distant future re-evaluation of the bridge and the activity that either remains the same or changes. It is now the only way people can get across I-240 and as I-240 construction increases it becomes more of a threat with congestion, traffic tie-ups, etc. We are a pedestrian friendly community and the perfect answer is not to re-open the bridge. She would like the NC DOT to assume some responsibility and create a better route to get across I-240 until such a time that we can relocate the residents pursuant to Councilwoman Field's suggestion. She has talked about that same suggestion for years and was told that any kind of high rent office park or commercial use would not be appropriate there because that was originally a landfill and the compaction of the ground couldn't tolerate high rises. In any event, there are people living in Hillcrest that need some kind of safe route. She heard from the residents council at Hillcrest of the need for increased responsibility on the part of the parents and adults in the community for their small children in the area. This situation will require everyone's resources and everyone's commitment until a real solution is found. Opening or closing the walkway is not a solution - only a stop-gap measure to make sure that people have a way to get across I-240 and get back into Hillcrest if they don't have cars.

Councilman Tomes noted that all public housing in Asheville has been made a gated community. With the development of the riverfront property and the volume of traffic being increased in the development of the expressway, he has no other alternative than to support the majority of the Hillcrest residents to re-open the bridge.

Upon inquiry of Councilwoman Field, Police Chief Will Annarino said that the walkway that goes over to Westgate is not closed and the other walkway that goes across 19-23 is not closed either.

Councilman Cobb would support re-opening the bridge and felt that if the Police Department cannot protect the residents, then the City should try to find some other place for them to live.

Councilman Cloninger commented that regardless of the outcome, City Council will continue to review the problems at Hillcrest in a more comprehensive way to see if we can come up with an overall game plan rather than piece-meal remedies.

When Mayor Sitnick called for a vote on the motion made by Councilman Cloninger and seconded by Councilman Sellers, said motion carried on a 4-3 vote, with Vice-Mayor Hay, Councilwoman Field, and Councilmen Cloninger and Sellers voted "yes" and Mayor Sitnick and Councilmen Cobb and Tomes voted "no".

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE APPROVAL AND PERMIT FOR A DUPLEX AT THE CORNER OF LONDON ROAD AND SHADY OAK DRIVE

Mayor Sitnick said that next on the agenda is the application a conditional use permit for a duplex at the corner of London Road and Shady Oak Drive. This is a public hearing for Council to consider whether the requested permit should be issued. There being no preliminary matters to be considered, she opened the public hearing at 5:56 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing. She then administered the oath to anyone who anticipated speaking on this matter.

Mayor Sitnick reviewed the procedures for this hearing by stating that City Council will first hear from staff who will describe the proposal and provide some background information. Then the applicant may make a presentation and then comments from the public will be taken. She said that there will be an opportunity for questions and rebuttal comments, as necessary. Following the hearing, Council will then debate the proposal and will take action on the request. Hearing no questions about the procedure, she asked for staff's presentation.

Mr. Bruce Black, Urban Planner, said that the Technical Review Committee ("TRC") has reviewed an application for a conditional use permit for a duplex on the corner of Shady Oak Drive and London Road (PIN 9647-12-96-1860). The applicant proposes access from Shady Oak Drive. He said that water and sewer is available. The Unified Development Ordinance specifies several conditions which must be met in order to be granted approval. All of these conditions, detailed below, other than number 6, have been met.

1) The project is located in an RS-8 District in which duplexes are allowed as a Conditional Use;
2) The proposed use is more than 300 feet from any other multifamily use other than an accessory apartment;
3) The area of the lot on which the duplex is to be located exceeds 125% of the minimum lot size for the district in which it is located (RS-8);
4) Parking is located in the rear of the building, and is screened from the neighbors by landscaping;
5) Structure has a single front entrance;
6) Structure will meet all applicable NC building codes. Please note that this will be a function of the building permit application and subsequent inspections by the Building Safety Department.

The Planning and Development staff recommends approval subject to the condition that the duplex meet all North Carolina Building Code requirements.

At their meeting of April 20, 1998, the TRC recommended unanimously to approve the proposed duplex subject to the condition that all grading and site plans must be submitted to MSD for review prior to construction or grading of any kind, and that the structure meet all applicable North Carolina Building Codes.

Upon inquiry of Mayor Sitnick, Mr. Black said that this is a unit that was moved from West Terrace Apartments and this duplex has not been cut in half. He said, however, that even though he has not visited this full-size duplex, that he has visited one of the duplexes presently in the neighborhood which was cut in half and rehabilitated and it is very small but very liable.

After looking at the duplex, Councilman Tomes felt that the old, dilapidated, run-down buildings would require extensive rehabilitation to bring them up to par to mirror the kind of structures in the Shiloh community.

Vice-Mayor Hay said it was his understanding that the primary objection has to do not so much with the placement of the duplex on this lot, but in particular this unit on this lot. He asked if the building permit process will address any concerns about design, dilapidated looks, etc. Mr. Black responded that to the best of his knowledge, there is no aspect of any City regulation that addresses aesthetics, other than the historic areas.

Councilwoman Field said that the Minimum Housing Code has aesthetic implications in that it requires that there not be any holes in the roof, screens on the windows, etc.

Mayor Sitnick noted that in a conditional use permit, there are seven findings that have to be met before City Council can issue the approval. Those conditions are: (1) That the proposed use or development of the land will not materially endanger the public health or safety; (2) That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operating of the surrounding area in its basic community functions or by providing an essential service to the community or region; (3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property; (4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located; (5) That the proposed use or development of the land will generally conform with the comprehensive plan and other official plans adopted by the city; (6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and (7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

Upon inquiry of Councilman Cobb, Mr. Black said that if they put a new duplex, triplex or quadraplex on that lot a conditional use permit will be required.

With regard to finding no. 3, Vice-Mayor Hay asked if Council could take into account the proposed use that is this particular building. In other words, can Council step beyond just the proposal that it be a duplex, but that they take a look at exactly what they propose to do with it? City Attorney Oast felt that Council could.

When Councilwoman Field asked for guidance with finding no. 2, City Attorney Oast said that on this particular item, that finding is probably not germane and not relevant to Council's consideration on this permit request because it is not in the nature of a public necessity.

Councilwoman Field asked how Council could fulfill the requirement that it has to meet all seven of the findings if one of the findings is deleted. City Attorney Oast suggested that finding no. 2 not be considered because it is not relevant. He further clarified the question by saying that finding nos. 1 and 2, in a lot of model ordinances, are usually crafted in the alternative so that if Council were to determine that the proposed use might materially endanger the public health or safety, then Council could still allow it to locate there, if Council were determine that it were also a public necessity.

Councilman Tomes was concerned about finding no. 4 as well.

The following individuals spoke against City Council issuing the conditional use permit for several reasons , some being, but not limited to, old and use substandard housing being moved in the Shiloh community, particularly on London Road; the duplex is already on Caribou Road in Shiloh and the water has already been dug in; units came from a condemned development; units are substandard housing that will have to be brought up to meet Minimum Code requirements; the unit will diminish property values; property taxes have recently been raised and if the units are allowed to be located there - property values will fall; since cosmetics cannot be considered, if the units in question are not fire hazards or endanger of falling down, the City has no choice but to approve that they meet the Minimum Housing Code; units contain non-friable asbestos; 100 signatures have been obtained from the Shiloh community protesting the units; home ownership contributes to strong and safe neighborhoods; Shiloh is a historic, intact black community; the Shiloh residents are in favor of better housing and an income of rental properties, but they want certain standards; Shiloh does not want to be a dumping ground for Asheville; large buildings are being put in their community, surrounding their homes and it impossible for the residents to upgrade their homes and keep them maintained properly; Shiloh is a proud community and they do not want trash brought into their community; the developer who brought in the units onto Brooklyn Road manipulated the elderly people in the community; Shiloh should be protected like every other community in Asheville, the majority of Shiloh is home ownership and not renters; Shiloh is being infiltrated with these substandard units; there are no provisions for waiver of finding no. 2; this is an issue of power in whether Council feels the Shiloh residents' interest is greater than that of the applicant; there is a lot of traffic on London Road already; no sidewalks for the children on London Road; the average value of one structure is $9,000 and on some streets, they are placed beside $175,000 properties; and a small area plan for the Shiloh area might be appropriate so the Shiloh community will not be as land-locked and squeezed by two highway developments as is Hillcrest.

Mr. Charles Williams, voted spokesman for the neighborhood
Ms. Frieda Nash, resident of Shiloh community
Ms. Pauline Seabrook, resident of Shiloh community
Mr. Linwood Crump, property owner on Brooklyn Road
Mr. Jesse Ray Jr.
Ms. Catherine Proctor
Mr. Ted Scales
Ms. June Lamb
Ms. Helene Green
Mr. Frederick Payne, 299 Brooklyn Road
Ms. Shirley Coxe
Mr. Robert C. Morgan

Vice-Mayor Hay asked if this was a proposal to build a duplex that was constructed in the harmony with other buildings in the community would the community have objection to that as well. Mr. Williams said that when renters come into a community, they tend to take down the value of homeowners properties.

Ms. Beth Maczka, Director of the Affordable Housing Coalition, said that an analysis was performed in the Kimberly Avenue area relative to rental housing in single-family neighborhoods and the findings were that that there was no diminishing of property values of homeowners that lived next door to the large apartment complexes. When there is small scale scattered housing is that there is no noticeable impact on a neighborhood. She shares the concern of the neighborhood in terms of the quality of housing and it fitting into the neighborhood. She hoped that City Council will consider design standards for affordable housing. She stressed there is an incredible need for affordable housing.

Mr. Emory Mitchell, developer, said that even though the houses are not attractive now, several of these units have been moved all over the City. People are rehabilitating the units with new wiring, plumbing, putting in new windows and vinyl siding. He said they will end up being attractive looking units. He felt people needed to give him a change to fix the units. One unit has been moved into the Shiloh area and the owner, Mrs. Gardenhight , has put vinyl siding on it, enlarged the front porch, brick veneered the outside and it is now on the market for $70-80,000. He stressed that they will bring the units up to Code. On this particular unit, he is the owner of the property and he will rehabilitated it and rent it. He anticipated re-doing the wiring and the plumbing, installing new windows, putting vinyl on the three exterior walls and brick veneer on the front, enclosing the porch, planting shrubs around the building and he also noted that there will be only one door accessible into the building where it will not look like a duplex unit. The duplex is currently located on Caribou Road on steel beams.

Upon inquiry of Councilman Cloninger, Mr. Emory said that he owns one unit which is rented in the Newfound area. The other units moved within the City are on Westwood Place.

When Councilman Cloninger asked if there was any dialog between the developer and the Shiloh community, Mr. Emory said that he didn't think there would be any opposition. He said that he would be willing to meet with the residents and show them what has been done with some of the other duplexes that he has bought and moved and share the proposed plans for this duplex.

When Mayor Sitnick asked Ms. Nash if she thought the neighborhood would be willing to meet with the developer to discuss his plans and see the photographs, Ms. Nash replied that she felt the neighborhood would be receptive to the meeting. Ms. Nash also noted that this needs to be done with all developers who plan to build in the area.

Mayor Sitnick hoped that when City Council reviews the Unified Development Ordinance, that stronger language be inserted that would possibly mandate developers to meet with neighborhoods before the project gets to the public hearing stage.

City Attorney Oast said that to the extent that the neighborhood and Mr. Mitchell can agree on how to address some of the aesthetic problems with the structure, those can be made part of the conditions on the permit.

When Mr. Crump stated that no notices were sent to the people in the Brooklyn Road area when those units were brought in, Mr. Black responded that this was not a zoning matter which requires notices to property owners. They required a building permit.

Councilman Sellers said that he has lived in West Asheville and has been in the apartments. He has seen what Mr. Mitchell has done with his properties and has no doubt that Mr. Mitchell will do the same if the neighborhood will give him a chance to finish the product.

When Councilwoman Field asked if Mr. Mitchell is the same developer who has put in other units in parts of the community, Mr. Mitchell replied that he is not that developer.

Mr. Williams stated that he and Mr. Mitchell have tried to contact each other but they have been emphatic that Shiloh does not want to be a dumping ground.

When Councilman Cloninger asked Mr. Williams if the community would be willing to meet with Mr. Mitchell, Mr. Williams said that meeting with a developer is always an option, however, the issue today is whether or not to issue a conditional use permit and the residents council request that it be denied. Mr. Williams further stated that they were willing to meet with Mr. Mitchell, however, Mr. Mitchell needs to make the extra effort to arrange that meeting with the residents.

Mayor Sitnick agreed that while it is unfortunate that this dialog didn't occur before now, if Council votes to grant the conditional use permit, the project will happen. Councilman Cloninger's suggestion for a meeting with the community and developer gives an opportunity for the neighbors to feel some level of comfort that the kind of development Mr. Mitchell proposes will be along the lines of the development that has already been rehabilitated and on the market. She had a major concern over the handling of the asbestos siding and if it was disposed of properly, handled properly, wetted down, etc. She also expressed concern over the alleged manipulation of the senior citizens in the area along with the concern that water lines are being installed to accommodate the unit prior to the permit being granted.

Mr. Black said that there is evidence that the concrete has been cut and the dirt has been disturbed, however, this is a single-family area and a single-family lot. If the Regional Water Authority requirements are met, there is no reason why a water line could not be run to the property.

Upon inquiry of Councilwoman Field, Mr. Mitchell said he is not the developer who cut down any trees to move a unit into the neighborhood.

When Councilwoman Field asked if the City could cite Mrs. Gardenhight for problems created by the removal of asbestos siding after the fact, City Attorney Oast said that environmental laws are typically the providence of the State of North Carolina and he would have to research the question. Mayor Sitnick noted that when she checked with the Planning Department several weeks ago on the asbestos question, she was told by Senior Planner Gerald Green that there was compliance with all the laws pertaining to asbestos.

Mayor Sitnick would like staff to look into the asbestos issue and report back to Council.

Councilman Tomes stressed that the neighborhood feels like they have had no input into this matter and he felt Council needed to be sensitive to their concerns. He urged the community to be willing to meet with the developer but acknowledged that it was unfair for Council to ask Mr. Williams if that would be a possibility since he has not had a chance to talk to the residents about it.

Mr. Crump said that Mr. Mitchell has nothing to do with the unit on Brooklyn Road. Carver Realty is the company putting the unit in on Brooklyn Road. He said they are not meeting the development standards on pouring the footings and zoning enforcement should send someone out there to investigate. Mr. Black responded that they are meeting the legal requirements under the N.C. Building Code and the zoning regulations of the City of Asheville.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 7:17 p.m.

Councilman Tomes suggested the vote be postponed and encouraged a meeting of the Shiloh residents with Mr. Mitchell. He thought that City staff should suggest to potential developers to meet the neighborhood at the beginning of their project stage.

Mayor Sitnick said that she was prepared to vote against the permit at this time, based on finding nos. 1, 3 and 4. She would, however, support the efforts of Council to encourage some dialog at this time and would be willing to postpone the vote only if the community was convinced that property values would not be diminished. She would like to wait for the report from staff concerning the asbestos situation. As strongly as she supports the need for in-fill affordable housing or affordable housing of any kind, she also supports the integrity of existing neighborhoods.

Councilman Cobb could not understand how those units would not diminish property values in the area and felt the units were not in harmony with the existing neighborhood.

Vice-Mayor Hay said that Council struggled last year in the Unified Development Ordinance process with duplexes, quadraplexes and triplexes in residential areas and tried to find some middle ground with the conditional use permit process with specific requirements. He said they were urged at the time to consider setting some design standards as part of that because they were told that was a major concern - what things were going to look like when they come in. Unfortunately, Council did not set those design standards. He felt the issue really is that this is a structure that nobody would want in their neighborhood. If there is some way to get to the point where we can put these design issues out of the mix and deal with only the issues of whether this is a valid conditional use, then he would like to see Council do that. Perhaps this needs to be postponed to give people a chance to see that the design will be different from what they are seeing being brought in all over their neighborhood.

Mayor Sitnick said that these units came from a neighborhood that did provide affordable housing, they were on bus lines, near work, etc., but they are being moved into a neighborhood of a different level of single-family homes. She agreed with Vice-Mayor Hay that design is mostly what everyone is concerned about, whether in affordable housing or increased density.

Upon inquiry of Councilwoman Field of whether City Council is allowed to make decisions based on aesthetics, City Attorney Oast said that on conditional use permits he didn't think Council can deny a conditional use permit because it is not aesthetically pleasing, but you can impose conditions on the granting of the permit that would address such things as harmony with the neighborhood and that kind of thing.

Councilwoman Field was not read to vote because staff has not addressed these seven findings to her satisfaction. There has been no discussion of a point by point analysis. She was concerned that all of the findings must be met and yet the City Attorney says that finding no. 2 is not relevant. She is really disturbed that the City doesn't have some kind of basic guidelines that describes what undue traffic congestion is and what is a traffic hazard. Also, she did not think we should be judging Mr. Mitchell based on what some other person has done wrong.

Councilman Tomes moved postpone action on this matter until July 14, 1998, in order to have staff develop what Council has requested and have an opportunity for the neighborhood and Mr. Mitchell to meet and dialog. This motion was seconded by Councilwoman Field and carried unanimously.

Councilman Cloninger hoped that Mr. Mitchell will be as specific as possible as to what he proposes to do with the property, including photographs.

Mayor Sitnick asked for (1) a report from staff on the asbestos situation and not only on the London Road duplex, but on the other duplexes coming out of the West Asheville property; (2) a report back to Council when and if a meeting occurs with the developer and the neighborhood before July 14, noting that the neighborhood has the opportunity to call any Council member to ask questions or express comments; (3) staff to address the concerns about traffic; (4) an analysis of each point to see if all the findings have been met; (5) a response from the City Attorney on how we can waive finding no. 2; and (6) a note that when Council reviews the Unified Development Ordinance that staff find an amicable and satisfactory way to encourage developers and neighborhoods in controversial issues to have some kind of dialog.

Mr. Charles Williams agreed to be the contact person of the neighborhood.

At 7:35 p.m. Mayor Sitnick announced a short break.

B. PUBLIC HEARING TO REZONE TWO PROPERTIES LOCATED ON CHATHAM ROAD AND W.T. WEAVER BOULEVARD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY

ORDINANCE NO. 2488 - ORDINANCE TO REZONE TWO PROPERTIES LOCATED ON CHATHAM ROAD AND W.T. WEAVER BOULEVARD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY

Mayor Sitnick opened the public hearing at 7:53 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Mike Matteson, Urban Planner, said that this is consideration of an ordinance to rezone two properties on Chatham Road and Weaver Boulevard from RM-8 Residential Multi-Family Medium Density District to RS-8 Residential Single-Family High Density District.

This rezoning proposal is the result of a request for a zoning study of a larger area which was presented to City Council in February. After examining the zoning pattern in the area, Planning and Development Department staff recommended that the two properties (PIN Nos. 9649.06.38-1040 and 9649.06-37-1807) be rezoned from RM-8 to RS-8 for the following reasons;

- It is staff's opinion that these properties are very much a part of the larger neighborhood (which is predominantly zoned RS-8) and should therefore be zoned consistently.
- The condition of the streets which serve these properties makes them questionable for medium density development. Chatham Road is very narrow with on-street parking and Weaver Boulevard in this location has only one westbound lane.
- Medium density multi-family development would still be possible with RS-8 zoning but would need to be developed as a planned unit development which would help to assure quality, compatible design.

The property owner of PIN No. 9649.06.38-1040 (the larger of the two tracts) is opposed to the rezoning. Staff is recommending approval of the rezoning. At their May 6, 1998, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning.

Upon inquiry of Councilman Tomes about one of the owners being opposed to the rezoning, Mr. Matteson explained that City Council initially instructed staff to look at a larger tract of ten lots which included these two and for the reasons noted above staff felt the two tracts should be rezoned. Mr. Matteson noted that he did not have anything in writing as to why the owner was opposed to the rezoning and the owner was not at the Planning & Zoning Commission meeting.

Upon inquiry of Councilwoman Field, Mr. Matteson said no traffic study was performed, however, part of staff's recommendation is not necessarily the volume of traffic, but the fact that Chatham is a narrow road with on-street parking.

Mr. John Quigley, President of the Jackson Park/Woolsey Neighborhood Association, spoke in support of Council rezoning these two lots and noted that the neighborhood assumed that the entire area would be rezoned RS-8 when the Unified Development Ordinance was adopted last year. He also expressed concern about the illegal parking on Chatham Road.

Ms. Beth Maczka, Director of the Affordable Housing Coalition, expressed concern of the properties being zoned single-family. The two provisions to include affordable housing in neighborhoods that were included in the Unified Development Ordinance were the planned unit developments and the conditional use permits - neither has been used in the past year to incorporate affordable housing in any place in the community. She felt this would be a very appropriate place for multi-family housing.

Ms. Maczka said that she would not be able to stay for the budget public hearing, however, she wanted to thank Council for considering fee waivers for non-profit and for-profit developers so that they will have a greater incentive to do this type of development.

Upon inquiry of Councilwoman Field, Mr. Matteson explained how the larger tract (1.9 acres) could be divided up into single-family lots.

When Mayor Sitnick asked why has the City allowed parking on both sides of Chatham Road, Mr. Matteson said that there are some homes that don't have driveways or garages so their only parking is on the street. Mayor Sitnick felt that staff needed to look at the parking situation on Chatham Road.

Mr. Rich Walton spoke in support of the rezoning and felt that the parking problems is due to lack of enforcement.

Mr. David Whitley, 210 Edgewood Road, spoke in support of the rezoning and noted that the neighborhood is concerned about the strain of infrastructure in the area.

Mayor Sitnick closed the public hearing at 8:19 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2488. This motion was seconded by Councilman Cobb and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 7

C. PUBLIC HEARING TO REZONE TWO PROPERTIES LOCATED AT 23 BEAR CREEK DRIVE FROM HIGHWAY BUSINESS TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY

ORDINANCE NO. 2489 - ORDINANCE TO REZONE TWO PROPERTIES LOCATED AT 23 BEAR CREEK DRIVE FROM HIGHWAY BUSINESS TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY

Mayor Sitnick opened the public hearing at 8:20 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of an ordinance to rezone two lots at 23 Bear Creek Drive from Highway Business District to RM-8 Residential Multi-Family Medium Density District.

The Planning & Zoning Commission initiated this request as they reviewed and approved the rezoning of 16 Bear Creek Road last month. The 2010 Plan shows this area to be low density residential which the RM-8 zoning permits. Direct access to this property is along an existing residential neighborhood street that terminates into a single family structure on the property. The volume of traffic through the existing single family neighborhood is very low.

Since the rezoning of these two lots was initiated by Planning & Zoning Commission, a letter from the property owner was requested. The owner stated in his letter that he opposed the rezoning but did not attend either of the Planning & Zoning Commission meetings to voice his objections. No objections were received from the neighborhood.

This property is within the city limits of Asheville.

The Planning staff reviewed the rezoning request and recommended approval of the rezoning of PIN Nos. 9628.15-54-5464 and 5527 from HB Highway Business to RM-8 Residential Multi-Family Medium Density District. At the May 6, 1998, the Planning & Zoning Commission meeting, the Commissioners voted unanimously to recommend the rezoning of PIN Nos. 9628.15-54-5464 and 5527 from HB Highway Business to RM-8 Residential Multi-Family Medium Density District.

Mayor Sitnick closed the public hearing at 8:24 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cobb moved for the adoption of Ordinance No. 2489. This motion was seconded by Councilman Sellers and carried unanimously.

Mayor Sitnick said that she received a phone call from Sybil Hamilton who was opposed to the rezoning.

ORDINANCE BOOK NO. 17 - PAGE 9

D. PUBLIC HEARING TO CONSIDER A MODIFICATION OF THE SUBDIVISION STANDARDS TO PERMIT A FLAG POLE WIDTH OF 15 FEET FOR A FLAG LOT AND TO PERMIT A RESIDENTIAL LOT TO HAVE A STREET FRONTAGE OF LESS THAN 25 FEET AT 63 CUMBERLAND AVENUE

Mayor Sitnick opened the public hearing at 8:25 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Mike Matteson, Urban Planner, said that this is the consideration of a motion relative to a modification of the subdivision standards to permit the creation of a flag lot with a flagpole width of 15 feet and a street frontage of 15 feet at 63 Cumberland Avenue.

The subdivision standards require a flag lot to have a minimum flagpole width of 25 feet and a minimum street frontage of 25 feet. Rosalind Whiteley, owner of the lot located at 63 Cumberland Avenue, is requesting a modification of the subdivision standards found in Sec. 7-15-1 of the UDO to permit a flag lot with a flagpole width of 15 feet and a street frontage of 15 feet. There are two houses located on the lot, one at the front of the lot and one at the rear. These homes have been on the property approximately 75 years. The lot is fronted by Cumberland Avenue and at the rear by an undeveloped alley. The alley has been closed to the western edge of this lot, but remains open from Elizabeth Street to this lot and continues to provide access to this lot and to other lots in the area. A flagpole width of 25 feet would create a non-conforming situation in that the side yard setback for the house at the front of the lot would not comply with the requirement for the RM-8 zoning. Emergency access to the house at the rear can be provided with a 15 foot wide flagpole. Standards for granting a modification to the subdivision standards are found in Sec. 7-15-1.J.2. of the UDO.

The Planning and Zoning Commission recommended approval of the modification by a 5-0 vote.

Upon inquiry of Councilman Tomes about accessibility, Mr. Matteson said that these are two existing homes and the subdivision is simply lines on a plat. The actual conditions on the lot would not change as a result of this. The house in the rear would continue to be served by the existing drive and the existing alley.

Vice-Mayor Hay said that City Council received a letter from Mr. Jones who is concerned that the alley will become nothing more than an overflow parking lot, especially for the rear cottage. Mr. Matteson responded that this is an existing cottage and because of the lot size, once it's subdivided, it can only be used as a single-family home. The number of cars would not increase.

When Mayor Sitnick asked if there are any restrictions in the use of the alley, City Attorney Oast said that it would depend on whether the alley is a private or a public alley. Either way, thought, it may be possible to reserve it as being open for fire purposes. Mr. Matteson said that Senior Planner Gerald Green talked to the Fire Marshal and the Fire Marshal indicated that the Fire Department could use the existing driveway.

Mayor Sitnick closed the public hearing at 8:33 p.m.

Councilwoman Field moved to approve the modification of the subdivision standards to permit a flag pole width of 15 feet for a flag lot and to permit a residential lot to have a street frontage of 15 feet at 63 Cumberland Avenue. This motion was seconded by Councilman Sellers and carried unanimously.

E. PUBLIC HEARING RELATIVE TO ADOPTION OF THE 1998-99 ANNUAL OPERATING BUDGET

Mayor Sitnick opened the public hearing at 8:35 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Budget Director Ben Durant, said that City Council conducts a public hearing each year to receive public input on budget issues before the Annual Operating Budget is adopted.

The Fiscal Year 1998/99 Annual Operating Budget was presented to City Council on May 19, 1998, and a budget worksession was held on May 21, 1998. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of this Public Hearing was published on May 29 and June 5, 1998. The adoption of the Budget ordinance is scheduled on June 23, 1998, at the City Council meeting.

At the time the budget was presented, the Fiscal Year 1998/99 Annual Operating Budget was balanced with an ad valorem tax rate of $.52 per $100 of assessed value. Information recently received from the County regarding the appeals that the County estimated that the City would see due to reevaluation have been revised and basically the new net revenue neutral tax rate can be adjusted to $.51. However, several important priorities, including federal mandates for enhanced fire protection, are not included in this budget.

A copy of the Budget is available for public inspection in the City Clerk's office. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the Budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption with the only exception being the ad valorem tax rate, which cannot be changed once adopted.

Councilman Tomes asked if the $.51 tax rate would allow the City to cover the federal mandate regarding fire protection. Mr. Durant said that it would not and that one cent will cover most of that cost.

Mr. Albert Sneed, representing the Council of Independent Business Owners, said that based on information they received from the County, it appears to them that $.52 or $.51 tax rate is not revenue neutral. He explained his calculations and urged Council to have no real tax increase, which would be a $.48 tax. He said that the City of Asheville cannot afford all of the things that City Council and the citizens would like to have. One reason is that personal incomes in this community have continued to decline since 1979 when they are measured against the State. The other issue is the City doesn't have the property tax base in this community and we are running property values out of town. He urged Council to create an environment where we get incomes up and tax base in the community.

Upon inquiry of Councilman Tomes, Mr. Sneed felt it was critical that City Council gets out of micro-managing development and that there be rules that are predictable and quick. He also felt that staff does not have a pro-tax base attitude.

Fire Chief John Rukavina responded to Mr. Sneed's comment that the federal mandate regarding fire protection was only a matter of interpretation.

City Manager Westbrook responded to Mr. Sneed's calculations and noted that City staff has worked the numbers from several different formulas and continue to arrive at the same number.

Mayor Sitnick said that Council doesn't have a lot to say about declining personal incomes in the respect that there are a lot of industries, corporations and businesses that are participating in down-sizing, mergers, etc. - the kinds of things that put people out of work. The minimum wage in this Country should be considered a national shame. Maybe there are things that Council can do to be more encouraging to create a better outreach to the business community. We have made some improvements in the permitting process so that developers are made aware from day one what is expected of them. The Unified Development Ordinance is an improvement and it still needs to be tweaked but it certainly set the guidelines for developers to understand. It is important to remember that the rules and regulations protect the quality of life and we have to find ways to balance all that out so we can do good development. She hoped our economic development strategy for this community creates a mission statement that uses the word "sustainable" in it that allows people to have enough for what they need today and that leaves enough for those that follow. We have a community that is in deep fiscal distress. We have not raised taxes in eight years and when services and the level of services and the demands on municipal government by the citizens goes up. We have snow storms, unfunded mandates, and a 3% room tax that is devoted completely to tourist development which doesn't come back in and help the Asheville taxpayer pay for any of the crumbling, old infrastructure that is used by everyone. We have a City that is the infrastructure hub, not only for Western North Carolina, but for the whole State. The burden is on the double-dipped Asheville taxpayer who pays Asheville taxes and Buncombe County taxes. We have a community, because of our age and topography, limited in what it can do. We don't even have enough money in the budget this year for some new sidewalks. We have a fund balance that is below what it should be. We need to look out for the Asheville taxpayer, and personally she doesn't think that the Buncombe County leaders consider Asheville part of their venue and she doesn't think that the State delegation considers Asheville part of their District.

Councilman Cloninger said that the statements made by Mayor Sitnick are not his feelings. The City is not in severe economic distress. Asheville has for years followed a sound fiscal policy, our economic condition is good, our fiscal condition is good, our bond rating has improved, and we have otherwise received high marks for the way that the City has conducted itself fiscally. It is certainly true that we have a lot more things that we'd like to do in this community than we have the money for, but to say that we are suffering severe economic or fiscal hardship is absolutely not true.

Ms. June Lamb felt the idea of growth for the City is out-doing the intentions for quality of life. She hoped, among other things, that Council begin saving by eliminating $1.8 million in consultants which are used for master plans, eliminate $100,000 for the Chamber of Commerce, and to pay attention to the failures reported in the Vision project.

Upon inquiry of Mr. Jerry Rice, City Manager Westbrook explained the definition of revenue neutral.

Mr. Rice said that the County Manager's definition is different and felt that once the City and County come to agreement in what revenue neutral is, then they need to start cooperating with each other.

Councilwoman Field noted that the City represents 38% of the County's budget, which is fairly a large amount. So, our residents do indeed provide to the County's well-being.

City Manager Westbrook responded to questions from Councilwoman Field regarding the formula for sales tax division and whether the school tax is still included in that calculation.

Mr. Clarence Benton requested that the Asheville Advocate be included in the City's advertising budget for public notices and/or information pages. City Manager Westbrook said that this may be a policy decision opposed to a budget decision. Several years ago Council decided it would publish CityWorks in two newspapers of general circulation. He explained that Council can reallocate the same amount of funds in three newspapers, and if so, that is a policy decision. If, on the other hand, Council wants to increase the amount of funding for CityWorks by 1/3, then that is a budget issue.

Mayor Sitnick instructed staff to find out how much it would cost to advertise CityWorks in the Asheville Advocate. Councilwoman Field also asked for staff to find out of the cost per subscriber. They asked this information be furnished on the date the budget is adopted, June 23.

Upon inquiry of Councilwoman Field relative to multi-cultural activities, City Manager Westbrook said that the budget contains $64,000 for the City's contribution to the YMI Cultural Center which includes the full-time person and the program aspects of running the YMI. That $64,000 amount does not include the utility costs of approximately $2,000 a month. After discussion, Parks & Recreation Director Irby Brinson said that he would be working with the YMI Cultural Center on negotiating an agreement.

Mayor Sitnick closed the public hearing at 9:30 p.m.

Mayor Sitnick announced that adoption of the 1998-99 Annual Operating Budget will be at the June 23, 1998, City Council meeting.

F. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY CHILD DAY CARE CENTERS AS A PERMITTED USE, SUBJECT TO SPECIAL REQUIREMENTS IN THE OFFICE DISTRICT

ORDINANCE NO. 2490 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY CHILD DAY CARE CENTERS AS A PERMITTED USE, SUBJECT TO SPECIAL REQUIREMENTS IN THE OFFICE DISTRICT

Mayor Sitnick opened the public hearing at 9:31 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Mike Matteson, Urban Planner, said that this is the consideration of an ordinance to amend the Unified Development Ordinance to identify child day care centers as a permitted use, subject to special requirements in the Office District.

The Office District is designed to accommodate small offices (4,000 sq. ft footprint, 8,000 sq. ft gross floor area) in areas which abut residential uses or are transitioning from residential uses to office uses. These areas are typically served by narrow streets which cannot carry significant traffic. Child day care centers in this district can provide a valuable service for office employees in the district and for residents of adjacent residential areas. Given the scale of existing uses in those Office Districts currently mapped, the proximity of residential uses, and the limits of the street systems serving these districts, a need exists for standards which would limit the impacts of the child day care centers and assure that the centers are compatible with existing uses in the Office District. After discussing this matter for some time, the Planning and Zoning Commission identified the following requirements for child day care centers in the Office District:

- Maximum number of children - 50;
- Outdoor play areas must be fenced or otherwise enclosed and shall not include driveways, parking areas, etc.;

- Drop-off and pick-up areas must be located on the site so as not to obstruct traffic flow on adjacent public streets; and
- Parking shall not be located in the front yard.

These requirements are designed to assure that child day care centers in the Office District are compatible with adjacent uses in this district and surrounding districts.

The Planning and Zoning Commission recommended approval of this ordinance amendment by a 5-0 vote. The staff of the Planning and Development Department recommends approval of the ordinance amendment.

Mayor Sitnick closed the public hearing at 9:32 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2490. This motion was seconded by Councilman Cobb and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 11

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 98-81 - RESOLUTION AMENDING THE CITY COUNCIL RULES ON BOARDS AND COMMISSIONS RELATIVE TO RESIDENCY REQUIREMENTS OF CITY APPOINTEES

Vice-Mayor Hay said the City Council Boards & Commissions Committee has requested that the policy governing City Council appointments to boards and commissions, be amended relative to residency requirements of City appointees. The rules will now read that "appointees to boards and commissions shall be residents of the City of Asheville, unless otherwise specified or provided for by law, ordinance, or Council action establishing said board or commission, or in the rules or by-laws of said board or commission, if approved by Council."

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Hay moved for the adoption of Resolution No. 98-81. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 420

B. RESOLUTION NO. 98-82 - RESOLUTION APPOINTING A CHAIR TO THE CIVIL SERVICE BOARD

Vice-Mayor Hay said it is City Council's responsibility to appoint a Chair to the Civil Service Board.

The following are the existing Board members: Bill Fulp - City appointee; Nancy Kauffman - City appointee; Jane Mervine-Knisely - Employee appointee; Jesse Warren - Employee appointee; and Garry Moffitt - Member appointed by the other four members).

Because our City appointees recommended Mr. Moffit, Councilwoman Field moved to appoint Garry Moffitt as Chair to the Civil Service Board to serve a two year term, term to expire May 21, 2000, or when his term on the Civil Service Board expires, whichever occurs earlier. This motion was seconded by Councilman Cobb and carried unanimously.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman moved for the adoption of Resolution No. 98-82. This motion was seconded by Councilman Cobb and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 423

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 26, 1998, AND THE WORKSESSION HELD ON JUNE 2, 1998

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on May 26, 1998, and the worksession held on June 2, 1998. This motion was seconded by Councilwoman Field and carried unanimously.

B. EXOTIC CAR WASH

Councilman Sellers requested a status report at the next worksession on the exotic car wash which was recently opened.

C. BOARD OF ADJUSTMENT

Mr. Keith Thompson discussed a concern relative to a Board of Adjustment variance on Merrimon Avenue.

Councilman Cloninger said that he was increasingly concerned about the Board of Adjustment and their continued disregard of the advice of the Planning staff and the City Attorney's Office as to what the parameters of their authority are and to what constitutes a hardship. He felt Council should take a close look at the decision they reach on Merrimon Avenue. If City Council feels the Board has not acted appropriately, City Council should consider appealing immediately and also Council should take a real hard look at whether the Board of Adjustment should continue to exist under its current makeup.

Mayor Sitnick instructed staff to place on the July 21 worksession agenda a discussion concerning the Board of Adjustment.

D. CLAIMS

The following claims were received by the City of Asheville during the week of May 15-28, 1998: John Kitchen (Police), Randy Glasgow (Streets), Linda Hipps (Traffic Engineering), Arthur Pappas (Parks & Recreation), Michelle St. Arnold (Water), Frank Comito (Sanitation) and Roy Heath (Streets).

The following claims were received by the City of Asheville during the week of May 29-June 4, 1998: Christy Rutledge (Traffic Engineering), Francine Thomas (Streets), Bruce and Susan Councell (Sanitation), Teresa Wells (Streets), J. Clifton Dozier (Police), Robyn Robison (Water), Ronald Bennett (Water), Ricky C. Briggs, Donna Fitzpatrick (Traffic Engineering), Joel Murray (Sanitation) and Denise Goodson (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

E. LAWSUIT

The City received a Complaint on June 2, 1998, which is generally described as follows: Walton Lurey v. City of Asheville and Asheville Transit Authority - negligence due to motor vehicle accident involving Asheville Transit Authority.

This matter will be referred to Mr. Fred Barbour, an attorney outside of the City Attorney's Office. City Attorney Oast will be the primary person responsible in the City Attorney's Office for this file.

F. CLOSED SESSION

At 9:42 p.m., Councilwoman Field moved to go into closed session to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property - G.S. 143-318.11 (a) (5). This motion was seconded by Councilman Sellers and carried unanimously.

At 10:20 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Vice-Mayor Hay and carried unanimously.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:20 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - June 16, 1998 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr. (arrived at 3:44 p.m.); Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Bids for Annual Asphalt Contract

Summary: Consideration of a resolution to award annual contract for asphalt materials to Asheville Division, APAC-Carolina Inc.

Pursuant N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were invited to furnish the City's estimated annual requirement of asphalt materials to be purchased as needed for force account re-surfacing and street repair. One (1) bid was received.

Since only one bid was received, a survey was conducted to identify other governmental agencies cost for asphalt. By comparison, the price bid to the City of Asheville appears to be consistent with other governmental agencies cost. This bid has been reviewed with Mark Combs and his concurrence received in this recommendation.

Subject to Council's approval, it is recommended the City enter into a contract with Asheville Division, APAC-Carolina, Inc., Asheville, North Carolina, for the purchase, on an "as-needed" basis only, the estimated annual requirement of 21,550 tons of assorted asphalt materials for a grand total of $581,850.00. The contract to become effective from the date of approval through June 30, 1999 with no guarantee of minimum purchase quantity.

Bids for Truck with Detachable Leaf and Dump Bodies

Summary: Consideration of a resolution to award contract to Carolina Truck Centers Inc. for the purchase of a crew cab truck with detachable leaf and dump bodies for the City of Asheville Public Works Department, Street Division.

Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were invited to furnish a crew cab truck with hoist and detachable leaf and dump bodies for the Public Works Department, Street Division. The new vehicle will be a replacement for truck #323. Five (5) bids were received as follows:

Carolina Truck Center, Hickory, NC	$82,580.00
Volvo & GMC Truck, Hickory, NC	$82,629.17
Nu-Life Environmental, Easley, SC	$86,320.00
Carolina Truck & Body, Asheville, NC	$87,705.16
W. Carolina Freightliner, Asheville, NC	$88,977.00

Bids have been reviewed for technical compliance to specifications by the Public Works Department and the Fleet Management Division, and their concurrence received in the following recommendation.

Funds for this purchase are to be from the Street Division's appropriations, Account Code 20-430-15-427-00-5740.

Subject to Council's approval, it is recommended that the bid be awarded to the low bidder, Carolina Truck Centers Inc., Hickory, N. C., in the amount of $82,580.00 for the purchase of a 1999 'International' model 4700 cab and chassis with a 'Swaploader' SL-225 hoist, a 'Baker' 14 foot leaf body and a 'Heil' LH-13 dump body.

Sale of Surplus Street Sweeper

Summary: Consideration of a resolution authorizing the sale of a surplus street sweeper to the Town of Hot Springs, N. C. pursuant to N. C. Gen. Stat. sec. 160A-274.

The Town of Hot Springs is offering $6,500.00 to purchase a street sweeper that has been declared surplus and taken out of service by the Public Works Department. This offer is considered to be fair when compared to the market value and prior auction proceeds for this type of equipment.

Upon Council's approval, the City will accept the Town of Hot Springs offer in the amount of $6,500.00 for the purchase of one (1) 1987 Athey model AHL Street Sweeper.

Red Road & Patton Hill Road Water Line Project Bid Award

The consideration of adopting a resolution awarding the contract to Cooper Construction Company Inc. for the Red Road and Patton Hill Road Water Line Project.

The Engineering Department has developed construction plans for the Pipeline Replacement Program 97-98 Phase I - Red Road and Patton Hill Road Water Line Project. This project consists of the construction of a six-inch water line along Red Road and Patton Hill Road to replace the existing two-inch water line. The engineer's estimate for this project is in the amount $193,193.00.

The project was advertised for one month. On Tuesday, May 26, 1998, the Engineering Department received 5 bids for the project as follows:

Cooper Construction, Hendersonville, NC	$169,174.95
Steppe Construction Co., Mill Spring, NC	$178,320.00
Hobson Construction Co., Arden, NC	$180,803.00
Buckeye Construction Co., Canton, NC	$197,855.45
Wheeler Construction Co., Weaverville, NC	$198,442.00

The construction time for this project is identified as 60 calendar days in the contract documents. The contract calls for liquidated damages in the amount of $250 per calendar day beyond this contract time.

The budgeted amount for this project is $293,000 and sufficient funds have been budgeted for the award of project.

Cooper Construction was the lowest responsible bidder in the amount of $169,174.95.

Staff recommendations that City Council adopt a resolution awarding the bid for Pipeline Replacement Program 97-98 Phase I - Red Road and Patton Hill Road Water Line Project - Contract E-438 to Cooper Construction Company Inc.

Amendment of Regional Water Authority Capital Project Ordinance - 35 Fund

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 82-25 to increase funding for the Glendale Bridge Water Line Project and to provide funding for the Carter Cove/Blackberry Lane Annexation Project.

By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

Funding is needed for the following projects:

- In February 1998, the Authority approved funding for the Glendale Water Line (NC DOT Project) in the amount of $5,000. This is a replacement of a 6" waterline that was abandoned when the old bridge was torn down. This project includes a new bridge and a new 6" water line. We are expected to contribute 20% and NC DOT will contribute the other 80%. Since that time, I have been informed that the project will cost more than anticipated. The original estimate did not include insulation of the water line attached to the bridge or necessary valving to isolate the line in order to make repairs. It is estimated that an additional $5,000 is needed for the project. Funding is available in the Reservoirs/Tunnel Repairs Project that is being postponed until FY 1998/1999.
- Carter Cove/Blackberry Lane is a project that was previously approved by City Council and the Authority's Policies and Priorities Committee. It is an extension of the water line on Blackberry Lane for residents who were annexed into the City. The Engineering Department is designing this project which is estimated to cost $37,700. Funding is available in the Reservoirs/Tunnel Repairs Project that is being postponed until FY 1998/1999.

Staff recommends adoption of the budget amendment amending Capital Project Ordinance 82-25 to reprogram funds in the amount of $42,700 from the Reservoirs/Tunnel Repairs to the Glendale Bridge Project and to Annexation Phase I for the Carter Cove/Blackberry Lane Annexation Extension.

Amendment of Regional Water Authority Capital Project Ordinance - 29 Fund

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 92-17 (29 Fund - Water Bond Capital Improvements Fund) to provide additional funding for the North Fork/Bee Tree Chemical Improvements Project.

By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds in the 29 Fund. The original budget for the North Fork/Bee Tree Chemical Improvements Project was $1.5 million. This is a revenue bond project that was originally budgeted in the 35 Fund before revenue bond proceeds had been received. The expenses for this project were transferred to the 29 Fund at the end of FY 1997/1998. Following is a summary of the status of the budget for this project:

Original Contract	$1,367,000.00
C/O No. 1	-73,480.00
C/O No. 2	4,982.00
C/O No. 3	2,908.29
C/O No. 4	-5,000.00
Revised Construction Contract	1,296,410.29

CDM Engineering Contract	216,600.00
Additional Services Law Eng.	1,409.77
Advertising	213.90
Allocated 35 Fund Interest Exp.	75,856.95
Tax Refund	-1,092.25
Total Estimated Cost	**1,589,398.66**
Amount Budgeted for Project	**1,500,000.00**
Need to Increase Appropriations	**89,398.96**

Since there is insufficient funding to close out the North Fork/Bee Tree Chemical Improvements Project, it is necessary to increase appropriations at this time. This project exceeded the budget of $1.5 million for the following reasons:

- The bids for construction came in slightly higher than expected ($13,541.71 over budget)
- A portion of the interest expense charged to the 35 Fund for insufficient funds in FY 1996/1997 was allocated to this project in the amount of $75,856.95.

There is adequate funding in the Water Distribution Master Plan to offset the over-expenditure in the North Fork/Bee Tree Chemical Improvements Project. The bids for the West Asheville Reservoir Project budgeted in the Water Distribution Master Plan came in under budget; therefore staff is recommending decreasing the Water Distribution Master Plan by $89,398.96 and increasing North Fork/Bee Tree Chemical Improvements by the same amount.

This budget amendment will provide adequate funding to close this project at the end of FY 1997/1998.

Staff recommends approval of the budget amendment to reprogram funds in the amount of $89,398.96 from the Water Distribution Master Plan Downtown Project to the North Fork/Bee Tree Chemical Improvements.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

SKATEBOARD PARK

Mr. Irby Brinson, Director of Parks & Recreation, said that the Skateboard Task Force was established by the Parks and Recreation Department over a year ago to investigate the possibility of constructing and operating a skateboard park downtown.

In May of 1997, the Parks and Recreation Department conducted a community meeting to discuss skateboard issues in Asheville. Approximately 125 people attended that meeting, and as a result of that meeting, the Skateboard Task Force was implemented. The purpose of this task force was to begin work on a process that would investigate the feasibility of building a skateboard park. Over this period of time, the task force has been working on various issues and has determined two possible locations for a permanent site. In the meantime, due to problems that have occurred around the Vance Monument over the past several months, the department has been working with Police and Parking Services to determine a tentative location to help eliminate some of the problems. The top of the Civic Center Parking Deck (8th floor) has been determined as a possible temporary location for a park. Staff has been working with the Legal, Police, Parking Services, Fire, and Risk Management Departments. In addition, the task force has met with residents of downtown to solicit their feedback in the possibility of locating a temporary park on top of the deck.

The Parks and Recreation Department and the Skateboard Task Force is seeking City Council approval to proceed in developing a temporary park on top of the Civic Center Parking Deck as well as continue to explore the location of a permanent site.

With the help of Police Officer Mark Wilson, Downtown Development Manager Terry Clevenger and skateboarder Lee Pace, Mr. Brinson addressed the areas of concern with skateboarding.

Mr. Brinson then presented the task force's progress report in that the location criteria is that it be close to downtown; accessible to City-owned transportation, use of City-owned property and ability to supervise.

Mr. Gabe Smith, skateboarder, outlined a proposal for a skateboarding facility by detailing the park design of "the Warlord" which cost is approximately $70,000, while City Attorney Oast reviewed any risk management and legal concerns, noting that skateboarding is pretty low on the risk management scale. City Attorney Oast said that regardless of whether the park becomes a reality or not, the current ordinance does require some revisions and he will be bringing those revisions to Council in the future.

With the help of Steve Thompson, Parking Services Supervisor, Lee Pace, skateboarder, and Police Lt. John Kirkpatrick, Mr. Brinson outlined in detail the proposal to use the 8th floor of the Civic Center Parking Deck. Lt. Kirkpatrick reported that several locations were measured with regard to noise levels and his research revealed that the decibel noise level from 15 feet would be from 60-65 comparing that to normal conversation being a level of 60.

The Skateboard Park Rules & Regulations include no drugs or alcohol; no profanity; no vandalism, including graffiti, tagging or other means of defacing city and personal property; no camping, no loitering, keep the area clean and free of litter; keep the noise level to a minimum; no skating below the top level of the Civic Center Parking Garage at any time; all skating is limited to the designated area; skaters may access the facility using any of the three stairwells or the elevator; skaters only in the skating area; and spectators must remain in their designated seating area. Anyone violating the regulations will be banned from using the park and the parking garage. The hours of operation would be Monday-Saturday 10:00 a.m. - 8:30 p.m.; and on Sunday from 1:00 p.m. - 8:30 p.m.

Mr. Brinson said that three possible locations were arrived at for a permanent location. Those are the Rankin Street gravel parking lot behind the Civic Center, the old leaf dump on Broadway and Stephens-Lee Recreation Center. It was then determined that Stephens-Lee Recreation Center would not be the best location and based on the parking study, the Rankin Street gravel parking lot was pulled from the list as well. They are still researching the old leaf dump on Broadway as the permanent location.

Mr. Brinson said that it would cost approximately $5,000 to fence in around the area on the 8th floor.

Staff and task force members responded to many questions from Council, some being, but are not limited to: will the large number of skateboarders going to the skateboard park increase traffic in downtown; what is the cost of an average skateboard; what are the penalties for violation of the ordinance prohibiting skateboarding in the business district; has the task force looked at the property owned by NC DOT at the I-240 overpass or the concrete parking lot at the north end of Lexington; has the City explored any public/private venture; is there anything included in the Parks and Recreation Master Plan to accommodate skateboarders; what are precautions that will be made if the park attracts large crowds; will one person be adequate to maintain the park; has there been any research done regarding possible turf issues; are there any age restrictions for use of the park; does staff think that the use of the elevator during the park hours might impede the convenience of the people who park in the garage daily or rent on a monthly basis; is the park consistent to the parking study currently underway; how many months is it anticipated that the temporary park will be in operation; what would happen to the temporary park if the spaces on the 8th floor are needed; has staff addressed possible vandalism of cars parked in the parking deck; what are the security measures in place now and anticipated if the park is built; what is the cost of the temporary park; and how will restroom facilities be handled.

Ms. Marilyn Muccio, resident at Vanderbilt Apartments, expressed concern of the safety of the area, noise, if there would be extra security, and that the area is not shaded. She wondered if there were any state regulations that the City would be violating. She also felt that if the City charges a fee that some children will not be able to use the park.

Mr. Brinson responded to Ms. Muccio's concerns and particularly noted that they do not plan to charge a permit fee for use of the park. However an annual fee may be considered for the permanent park, but that is something they have not pursued yet. He said that the has no knowledge of any state regulations concerning the temporary park and regarding no shade, he noted that several activities, e.g., tennis, football, basement, are performed in the sun.

Mayor Sitnick was also concerned about the safety of the youth on the 8th floor of the garage.

Ms. Laura Maltby, resident in the Asheville Hotel, spoke in support of this temporary solution to a very real problem.

Ms. Susan Roderick, representative of Quality Forward, was excited about the proposal and stated that they would be glad to help with any fund-raising. She felt that most people would welcome the skateboard park on the leaf dump on Broadway, which could be part of the greenway system. She suggested a permanent site might be the parking lot across from Southern Bell in front of 45 Cherry Street on the NC DOT's right-of-way.

Mr. H.K. Edgerton was concerned about the City's cost for security for this park when there doesn't seem to be enough police man-hours to solve problems in the Eagle-Market Street area.

Mayor Sitnick responded to Mr. Edgerton by saying that the City is making an effort to place a community resource center in the Eagle-Market Street area. Mr. Brinson also responded that the skateboarders are raising money to buy materials and will build wooden ramps and other devices to skate over. He said that they are not asking for any additional appropriation.

Ms. Bonnie Contreras spoke in support of the park and noted that skateboarders will work on accomplishing the goals set.

It was the consensus of Council to place this item on the next formal City Council agenda.

CRUISE-IN TRACK

Mr. Irby Brinson, Director of Parks & Recreation, said that the Parks and Recreation Department, in conjunction with the Police Department, has been working on the problem associated with cruising on Patton Avenue.

Last year, several articles appeared in the newspaper in regard to merchant concerns with problems associated with cruising on Patton Avenue especially on Friday and Saturday evenings. In an effort to be proactive in its efforts, Sandi Hosey, Special Projects Coordinator for the Parks and Recreation Department, and Officer Wade Wood of the Police Department, held the City's first cruise-in in September of 1997 at the Sam's Club parking lot.

With the help of Mr. Russ Parris, Ms. Hosey updated Council on the success of the cruise-in, the survey results of a poll taken of the cruisers, and also updated them on three cruise-ins planned for 1998. She noted that the problem they have is finding a location which the owners will let them use their facility on Patton Avenue. Several meetings have been held where business owners are invited, however, attendance by the owners is very poor.

After some discussion on trying to find a location, it was suggested that Ms. Hosey contact the West Asheville Business Association and attend a meeting to see if they can perhaps help them find a solution to the location problem for these cruse-ins.

It was the consensus of Council to lend their support in developing the cruise-ins in 1998.

RESCINDING BELE CHERE COMMISSION

Mr. Irby Brinson, Director of Parks & Recreation, said that the Parks and Recreation Department wishes to rescind Resolution No. 93-45, dated March 30, 1993, which established the Bele Chere Commission for the City of Asheville.

On March 30, 1993, the City Council established the Bele Chere Commission. This Commission was formed from Past Chairs of the Bele Chere Festival along with two appointees from City Council. Over the years, this Commission has served in an advisory capacity for the Bele Chere Board and staff. Responsibility for the Bele Chere Festival was transferred to the Parks and Recreation Department in 1995, and staff feels it is no longer necessary to have the Commission serve in an advisory function to Bele Chere since there currently exists a Parks and Recreation Advisory Board. It is staff's desire to have the Past Chairs of Bele Chere continue to serve as mentors for the Festival and to participate in various Bele Chere functions as they have in the past.

The Parks and Recreation Department recommends that City Council rescind Resolution No. 93-45 which established the Bele Chere Commission as an official City board or commission.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BUDGET AMENDMENT RE: PAVING OF McCORMICK FIELD

Mr. Irby Brinson, Director of Parks & Recreation, said that this is the consideration of a budget amendment, in the amount of $79,577, for the paving of the McCormick Field parking lot based upon prior commitment by former City Manager Doug Bean.

In 1992, former City Manager, Doug Bean, agreed that the City would pay for the paving of the McCormick Field parking lot as the City's commitment to the renovations of the minor league ballpark. Based upon review by both the City and County, payment has never been made by the City for this project. Buncombe County has now requested payment for the paving of the McCormick Field parking lot which was completed in 1992. The total cost for this project was $81,577; however, due to the contractor failing to complete various requirements of the contract, $2,000 was deducted from the original total. Therefore, the amount the City has been requested to pay is $79,577.

The Parks and Recreation Department is requesting City Council approval of the budget amendment to appropriate funds totaling $79,577 to pay for the paving of McCormick Field parking lot.

Mayor Sitnick expressed concern about the County billing the City six years later. Mr. Brinson said that by a letter dated September 16, 1992, former City Manager Doug Bean wrote to Mike Watson, who was the architect on the McCormick Field project, stating that the City would reimburse the County for the parking lot improvement change order in an amount not to exceed $81,577.

Councilwoman Field, who was a member of City Council in 1992, remembered vaguely that since the City Manager only had authority to approve projects under $35,000 that he did bring the issue to City Council's attention and Council at that time gave him authority to pay for the paving. She would review her notes to see if she could bring anymore light to this issue.

Councilman Cloninger felt that if staff is confident that the City made the commitment to pay, then the City should stand by that commitment.

Vice-Mayor Hay noted problems associated with the paving and final settlement and felt that some of that might explain the delay in receiving the bill.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

AFFORDABLE HOUSING STRATEGIES

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of adopting a resolution approving strategies proposed in the Affordable Housing Study and instructing staff to prepare a first-year action plan.

The Affordable Housing Study was commissioned in October 1997 from Housing and Community Insight, Inc. for a fee of $28,200. The scope of work was to analyze historic and current trends in Asheville's housing supply and demand, including housing for ownership, rental and special needs, and to prepare a five-year affordable housing strategy including goals for housing production, potential financial resources, and administrative structures. The report was submitted in February 1998.

The Housing and Community Development Committee has reviewed the report and heard a presentation on its contents from the principal author Richard Genz. It finds the report to be based on good factual information and sound analysis. It is clear that Asheville faces a significant shortage of housing, at all price levels, and in both ownership and rental sectors. The shortages are particularly severe for housing affordable to people with low to moderate income (below 80% of area median income), According to the Study, Asheville will need 675 additional housing units a year to meet demand over the next five years, and 455 additional units of rental assistance.

The study recommends eight broad strategies. They are (with minor amendments proposed by the Housing and Community Development Committee):

1. Develop a strong leadership role for the City to promote housing production and affordability.
2. Use local zoning and regulatory policies to support affordable housing.

3. Increase production of rental and ownership housing.
4. Promote in-fill housing, mixed-use development and adaptive re-use of existing buildings.
5. Expand housing rehabilitation
6. Encourage affordable housing development by both for-profit and non-profit developers.
7. Develop transitional housing for those with special needs.
8. Develop formal City-County collaboration on housing.

The Housing and Community Development Committee endorses these strategies and recommends their approval by Council.

Under the eight strategies, the study recommends 49 separate implementing actions. It is not feasible, nor did the study's authors intend, that all these actions should be carried out simultaneously. They can be treated as a menu from which to prioritize and select actions that are most suitable for immediate implementation. Some actions have already started through the efforts of the Chamber of Commerce's "Homes for Asheville-Buncombe" Task Force. As progress is made year by year, the study can be revisited and further implementing steps added. The process should coincide with, and eventually be subsumed within the City's consolidated planning process for housing and community development.

That City Council accept the eight broad strategies set forth in the Resolution and instruct staff to prepare an initial action plan detailing implementing actions that have the highest priority and can reasonably be put into effect within the next twelve months.

Upon inquiry of Councilman Cobb, Ms. Caplan said that a newly constructed house selling at or below $100,000 would be considered affordable.

Upon inquiry of Mayor Sitnick, Vice-Mayor Hay and Councilwoman Field explained how the City can work with the County on housing.

Discussion surrounded the need for a source of designated income to create a local housing trust fund for affordable housing.

Mr. H.K. Edgerton urged Council to include the African American community in discussions. He noted that there was not any African American representation on the HOME Consortium. Councilwoman Field said that Asheville has two appointments, one of which is her and the other is the Director of Affordable Housing Beth Maczka. If Council chooses, they can remove either herself or Beth and appoint an African American representative, since Asheville has no control over the other appointments on the Consortium.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ORDINANCE NO. 2491 - ORDINANCE TO ALLOW A FRANCHSE AGREEMENT WITH ASHEVILLE TROLLEY COMPANY

City Attorney Bob Oast said that this is the consideration of a request from the Asheville Trolley Works, LLC, for a franchise to operate trolleys on the city streets, stopping at various points along said streets to board and discharge passengers.

The applicant, a Limited Liability Company by the name of Asheville Trolley Works, LLC, (ATW), wishes to operate rubber tired trolleys on the Asheville city streets. The owner is the Grove Park Inn and SouthCities Capital Corporation. The company plans to serve the Grove Park Inn and the Biltmore Mansion, and various points in-between. The operation is geared towards tourists and is desired by merchants and hotels that expect to benefit from the existence of such a service.

The ATW service will operate primarily during the tourist season, and will probably not operate at all during the winter months. Although in the current plan the trolleys will run primarily during daylight hours, it is conceivable that they will also be used to transport hotel guests or other tourists during evening hours for restaurant tours, or to other special events.

He reviewed various items in the franchise, noting that current plans are for the trolley to service the Grove Park Inn, The Biltmore House, and the Radisson Hotel from within the properties of these businesses. It is also planned that the trolley will stop near the Haywood Park Hotel, Pack Square, and in Biltmore Village. Although these are the only planned stops on public streets, it is conceivable that other stops may be desirable in the future. The precise location of the trolley stops must be approved by the Planning Director. Trolley stops shall be so located and signs shall be so designated as to minimize the possibility of confusion with the bus stoops of the Asheville Transit Authority ("ATA").

The hours of operation shall be limited to between 7:00 a.m. and 8:00 p.m. Sunday through Thursday, and between 7:00 a.m. and Midnight Friday and Saturday. For City-recognized holidays and days on which City-approved festivals occur in the Central Business District, the operating hours may be extended to Midnight, regardless of the day of the week.

The ATW may operate up to three trolley vehicles pursuant to the franchise. The trolley service shall be so operated and the routes so designed that each stop is serviced not less frequently than once per hour during the hours of operation.

The term of the franchise shall be for one year beginning on June 24, 1998, and ending on June 23, 1999. There is an insurance and indemnity clause in the franchise agreement.

Mr. Oast then reviewed the trolley equipment and condition of vehicle standards and the revocation and termination clause.

Because of the sense from Council in trying to support the operation, the fee for operation of this franchise shall be $1.00 per day for each day of the term of the franchise. The fares charged by the ATW for trolley service shall be prominently displayed on the exterior of each trolley vehicle.

The trolley will not replace the ATA service in these areas, nor is it likely to significantly affect ATA ridership, as the market it aims to capture (tourists, hotel guests, etc.) do not currently ride the ATA service. Officials of ATA have been advised of the trolley proposal and have expressed no objection, though the ATA Board has not formally considered the matter.

The franchise ordinance requires that City staff give approval to all routes and stopping places on the basis of public health, safety and welfare. The agreement allows the operation of this business subject to the possibility of further regulation should such become necessary in the future. This is not an exclusive franchise.

Franchise ordinances require two affirmative votes of the City Council. Council's next formal meeting is June 23, and there is not another regular meeting until July 14. It is recommended that Council waive its rules and vote on the proposed ordinance at this worksession, in order to permit final consideration and a second vote on June 23.

When Mayor Sitnick requested that no signs be placed on the outside of the trolleys, Mr. Newman said that they have not come up with an advertising scheme as of yet, however, they will scheme their advertising in that way if Council wishes.

Upon inquiry of Councilman Tomes on whether the drivers will be local, Mr. Newman said that they envision the drivers of the trolleys to be knowledgeable about Asheville in that the trolleys will be like a tour bus.

Mr. Newman responded to a concern from Councilman Tomes if someone locally would like to ride the trolley. He said that even though they will gear all marketing to sell tickets in hotels, however, if someone wants to ride the trolley, they would accept the $3 from that person.

Mayor Sitnick felt that Council should be cautious in this franchise agreement and that it should be reviewed in either three or six months. She questioned whether the $1 day for the franchise (regardless of whether one or three trolleys were operating) was adequate or should we consider receiving a percentage. She felt there should not be any advertising signs on the outside of the vehicle.

It was the consensus of Council not to include a provision in the franchise agreement to require ATW to provide ridership figures. Mr. Newman stated that ATW will keep track of ridership and provide those figures to Council when the franchise is up for renewal.

Councilwoman Field moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Cloninger and carried unanimously.

Councilman Tomes moved to adopt Ordinance No. 2491 on its first reading. This motion was seconded by Councilman Sellers and carried unanimously.

Mayor Sitnick said that the required second vote on this ordinance will take place at Council's next formal meeting.

EXOTIC CAR WASH

Pursuant to a request of Councilman Sellers, City Council was presented with the following update on the status of any violations found concerning the operation of a car wash at 97-99 New Leicester Highway.

As Council is aware, the operators of XCapades Adult Night Club have for weeks now been advertising the opening of an exotic car wash. The first day of operation of the car wash was Saturday, June 6, 1998. Staff from the Police, Planning and Development and Building Safety Departments were all present on Saturday to determine whether or not any violations of local or state regulations/laws were taking place. Following is the status from each department:

- Police - At present the police have determined no violation exists over which they have jurisdiction. They will continue to monitor the situation to ensure no future violations occur.
- Building Safety - The plumbing inspectors who have visited the site have identified the need for no permits at this time. They did require a vacuum breaker on the outside water faucet last week which was provided. They are currently treating the waste water the same as stormwater for parking lots with no special code requirements. The electrical inspector is also watching for any electrical issues. They will continue to evaluate the situation and may place additional requirements on the car wash if it becomes a continuing operation.

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- Planning and Development - Based on the advertisements placed by XCapades in local publications, the Department sent the owners and operators of XCapades a notice of violation last week stating that the operation of a car wash at 97-99 New Leicester Highway would be in violation of our ordinance for failure to receive a permit to operate such an establishment. (At present we have been unable to successfully deliver notification to the business owner – only to the operator). The notice further stated that should the car wash be a form of adult entertainment, additional regulations would apply. A department employee inspected the site on June 6th and determined that the car wash did not constitute adult entertainment.

We understand that the operators plan to continue operating the car wash on Saturdays. If that is true, the operators would be in violation of the city's ordinance requiring a permit for the establishment of a new use. If Saturday's car wash is not a continuing venture, then we do not feel that the city would need to pursue any action at this time. We will continue to monitor the situation to evaluate whether or not a permit is necessary. For any day the operation takes place without a permit we can subject them to a fine of $100.00. Should the operation continue for several weeks without obtaining a permit we may want to consider other legal options which would include injunctive relief. Obviously, we may want to reconsider our approach should the operation become an adult establishment. The operators have thirty days to appeal the notice sent to them. We have heard nothing from the operators.

Staff of all departments involved will continue to monitor the situation at XCapades. We will keep Council informed if the situation changes.

Upon inquiry of Councilman Sellers, Planning & Development Director Julia Cogburn said that she would see if there is any kind of sign violation with temporary banners at that location.

REPORTS FROM BOARDS & COMMISSIONS

Outside Agency Committee

Councilman Cloninger stated that each Council member received a copy of the Outside Agency Committee's recommendations and that they will be reported on in detail as part of the adoption of the budget at next week's formal Council meeting.

Discussion surrounded the amount allocated in the budget for the YMI Cultural Center. Because the budget has not been adopted at this time, City Council felt it would be appropriate for the City Manager to advise the YMI Cultural Center Board of Directors that they anticipate funding the YMI Cultural Center $64,000 for a staff person and programming, however, the utilities are not included in that amount.

OTHER BUSINESS

Mayor Sitnick commended the Asheville Police Department for their handling of a situation in West Asheville on June 15, 1998.

Mayor Sitnick asked for, and received, City Council's support of a letter City Manager Westbrook has sent to the Housing Authority requesting that the Housing Authority set up a focus group involving the Hillcrest Residents Association, Housing Authority, Asheville Police Department, Roberts Street neighborhood, Asheville Transit Authority, and the N.C. Dept. of Transportation to continue to discuss the problems and information that was brought forward as part of the entire Hillcrest pedestrian bridge issue. Councilwoman Field asked that the N.C. Dept. of Transportation be contacted immediately to repair the fence.

CLOSED SESSION

At 5:45 p.m., Councilman Tomes moved to go into closed session for the following reasons: (1) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations - G.S. 143-318.11 (a) (4); (2) to consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee - G.S. 143-318.11 (a) (6); and (3) to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease - G.S. 1434-318.11 (a) (5) (i). This motion was seconded by Councilman Sellers and carried unanimously.

At 6:12 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:12 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - June 23, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding (left meeting at 7:20 p.m.); Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Sellers gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SATURDAY, JUNE 27, 1998, AS "RIDE FOR KIDS" DAY

Mayor Sitnick read the proclamation proclaiming Saturday, June 27, 1998, as "Ride for Kids" Day in the City of Asheville and presented a proclamation to Mr. Michael Traynor, President of Pediatric Brian Tumor Foundation, and Mr. Allen Hughes, leader of Asheville Task Force for the Foundation, who briefed the Council on the day's activities.

B. PROCLAMATION PROCLAIMING THE MONTH OF JULY, 1998, AS "NATIONAL RECREATION AND PARKS MONTH"

Mayor Sitnick read the proclamation proclaiming the month of July, 1998, as "National Recreation and Parks Month" in the City of Asheville and presented a proclamation to Parks & Recreation Director Irby Brinson who briefed the Council on some activities that would be taking place during the month.

II. CONSENT:

A. RESOLUTION NO. 98-83 - RESOLUTION AWARDING BID TO APAC-CAROLINA INC., ASHEVILLE DIVISION, FOR ANNUAL CONTRACT FOR ASPHALT MATERIALS

Summary: Consideration of a resolution to award annual contract for asphalt materials to Asheville Division, APAC-Carolina Inc.

Pursuant N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were invited to furnish the City's estimated annual requirement of asphalt materials to be purchased as needed for force account re-surfacing and street repair. One (1) bid was received.

Since only one bid was received, a survey was conducted to identify other governmental agencies cost for asphalt. By comparison, the price bid to the City of Asheville appears to be consistent with other governmental agencies cost. This bid has been reviewed with Mark Combs and his concurrence received in this recommendation.

Subject to Council's approval, it is recommended the City enter into a contract with Asheville Division, APAC-Carolina, Inc., Asheville, North Carolina, for the purchase, on an "as-needed" basis only, the estimated annual requirement of 21,550 tons of assorted asphalt materials for a grand total of $581,850.00. The contract to become effective from the date of approval through June 30, 1999 with no guarantee of minimum purchase quantity.

RESOLUTION BOOK NO. 24 - PAGE 424

B. RESOLUTION NO. 98-84 - RESOLUTION AWARDING BID TO CAROLINA TRUCK CENTER FOR TRUCK WITH DETACHABLE LEAF AND DUMP BODIES

Summary: Consideration of a resolution to award contract to Carolina Truck Centers Inc. for the purchase of a crew cab truck with detachable leaf and dump bodies for the City of Asheville Public Works Department, Street Division.

Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were invited to furnish a crew cab truck with hoist and detachable leaf and dump bodies for the Public Works Department, Street Division. The new vehicle will be a replacement for truck #323. Five (5) bids were received as follows:

Carolina Truck Center, Hickory, NC	$82,580.00
Volvo & GMC Truck, Hickory, NC	$82,629.17
Nu-Life Environmental, Easley, SC	$86,320.00
Carolina Truck & Body, Asheville, NC	$87,705.16
W. Carolina Freightliner, Asheville, NC	$88,977.00

Bids have been reviewed for technical compliance to specifications by the Public Works Department and the Fleet Management Division, and their concurrence received in the following recommendation.

Funds for this purchase are to be from the Street Division's appropriations, Account Code 20-430-15-427-00-5740.

Subject to Council's approval, it is recommended that the bid be awarded to the low bidder, Carolina Truck Centers Inc., Hickory, N. C., in the amount of $82,580.00 for the purchase of a 1999 'International' model 4700 cab and chassis with a 'Swaploader' SL-225 hoist, a 'Baker' 14 foot leaf body and a 'Heil' LH-13 dump body.

RESOLUTION BOOK NO. 24 - PAGE 426

C. RESOLUTION NO. 98-85 - RESOLUTION DISSOLVING THE BELE CHERE COMMISSION AND DELEGATING ITS RESPONSIBILITIES TO THE RECREATION BOARD

Summary: The Parks and Recreation Department wishes to rescind Resolution No. 93-45, dated March 30, 1993, which established the Bele Chere Commission for the City of Asheville.

On March 30, 1993, the City Council established the Bele Chere Commission. This Commission was formed from Past Chairs of the Bele Chere Festival along with two appointees from City Council. Over the years, this Commission has served in an advisory capacity for the Bele Chere Board and staff. Responsibility for the Bele Chere Festival was transferred to the Parks and Recreation Department in 1995, and staff feels it is no longer necessary to have the Commission serve in an advisory function to Bele Chere since there currently exists a Parks and

Recreation Advisory Board. It is staff's desire to have the Past Chairs of Bele Chere continue to serve as mentors for the Festival and to participate in various Bele Chere functions as they have in the past.

The Parks and Recreation Department recommends that City Council rescind Resolution No. 93-45 which established the Bele Chere Commission as an official City board or commission.

RESOLUTION BOOK NO. 24 - PAGE 428

D. RESOLUTION NO. 98-86 - RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE REGIONAL WATER AUTHORITY TO AWARD THE BID OF THE RED ROAD AND PATTON HILL ROAD WATER LINE PROJECT (PIPELINE REPLACEMENT PROGRAM 1998-98 PHASE I) TO COOPER CONSTRUCTION COMPANY INC.

Summary: The consideration of adopting a resolution awarding the contract to Cooper Construction Company Inc. for the Red Road and Patton Hill Road Water Line Project.

The Engineering Department has developed construction plans for the Pipeline Replacement Program 97-98 Phase I - Red Road and Patton Hill Road Water Line Project. This project consists of the construction of a six-inch water line along Red Road and Patton Hill Road to replace the existing two-inch water line. The engineer's estimate for this project is in the amount $193,193.00.

The project was advertised for one month. On Tuesday, May 26, 1998, the Engineering Department received 5 bids for the project as follows:

Cooper Construction, Hendersonville, NC	$169,174.95
Steppe Construction Co., Mill Spring, NC	$178,320.00
Hobson Construction Co., Arden, NC	$180,803.00
Buckeye Construction Co., Canton, NC	$197,855.45
Wheeler Construction Co., Weaverville, NC	$198,442.00

The construction time for this project is identified as 60 calendar days in the contract documents. The contract calls for liquidated damages in the amount of $250 per calendar day beyond this contract time.

The budgeted amount for this project is $293,000 and sufficient funds have been budgeted for the award of project.

Cooper Construction was the lowest responsible bidder in the amount of $169,174.95.

Staff recommendations that City Council adopt a resolution awarding the bid for Pipeline Replacement Program 97-98 Phase I - Red Road and Patton Hill Road Water Line Project - Contract E-438 to Cooper Construction Company Inc.

RESOLUTION BOOK NO. 24 - PAGE 430

E. RESOLUTION NO. 98-87 - RESOLUTION AUTHORIZING THE SALE OF A SURPLUS STREET SWEEPER TO THE TOWN OF HOT SPRINGS, NC

Summary: Consideration of a resolution authorizing the sale of a surplus street sweeper to the Town of Hot Springs, N. C. pursuant to N. C. Gen. Stat. sec. 160A-274.

The Town of Hot Springs is offering $6,500.00 to purchase a street sweeper that has been declared surplus and taken out of service by the Public Works Department. This offer is considered to be fair when compared to the market value and prior auction proceeds for this type of equipment.

Upon Council's approval, the City will accept the Town of Hot Springs offer in the amount of $6,500.00 for the purchase of one (1) 1987 Athey model AHL Street Sweeper.

RESOLUTION BOOK NO. 24 - PAGE 437

F. ORDINANCE NO. 2492 - BUDGET AMENDMENT TO THE WATER BOND CAPITAL IMPROVEMENTS FUND (29 FUND) TO PROVIDE ADDITIONAL FUNDING FOR THE NORTH FORK/BEE TREE CHEMICAL IMPROVEMENTS PROJECT

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 92-17 (29 Fund - Water Bond Capital Improvements Fund) to provide additional funding for the North Fork/Bee Tree Chemical Improvements Project.

By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds in the 29 Fund. The original budget for the North Fork/Bee Tree Chemical Improvements Project was $1.5 million. This is a revenue bond project that was originally budgeted in the 35 Fund before revenue bond proceeds had been received. The expenses for this project were transferred to the 29 Fund at the end of FY 1997/1998. Following is a summary of the status of the budget for this project:

Original Contract	$1,367,000.00
C/O No. 1	-73,480.00
C/O No. 2	4,982.00
C/O No. 3	2,908.29
C/O No. 4	-5,000.00
Revised Construction Contract	1,296,410.29
CDM Engineering Contract	216,600.00
Additional Services Law Eng.	1,409.77
Advertising	213.90
Allocated 35 Fund Interest Exp.	75,856.95
Tax Refund	-1,092.25
Total Estimated Cost	**1,589,398.66**
Amount Budgeted for Project	**1,500,000.00**
Need to Increase Appropriations	**89,398.96**

Since there is insufficient funding to close out the North Fork/Bee Tree Chemical Improvements Project, it is necessary to increase appropriations at this time. This project exceeded the budget of $1.5 million for the following reasons:

- The bids for construction came in slightly higher than expected ($13,541.71 over budget)
- A portion of the interest expense charged to the 35 Fund for insufficient funds in FY 1996/1997 was allocated to this project in the amount of $75,856.95.

There is adequate funding in the Water Distribution Master Plan to offset the over-expenditure in the North Fork/Bee Tree Chemical Improvements Project. The bids for the West Asheville Reservoir Project budgeted in the Water Distribution Master Plan came in under budget; therefore staff is recommending decreasing the Water Distribution Master Plan by $89,398.96 and increasing North Fork/Bee Tree Chemical Improvements by the same amount.

This budget amendment will provide adequate funding to close this project at the end of FY 1997/1998.

Staff recommends approval of the budget amendment to reprogram funds in the amount of $89,398.96 from the Water Distribution Master Plan Downtown Project to the North Fork/Bee Tree Chemical Improvements.

ORDINANCE BOOK NO. 17 - PAGE 19

G. ORDINANCE NO. 2493 - BUDGET AMENDMENT TO THE WATER MAJOR CAPITAL PROJECT ORDINANCE (35 FUND) TO INCREASE FUNDING FOR THE GLENDALE BRIDGE WATER LINE PROJECT AND TO PROVIDE FUNDING FOR THE CARTER COVE/BLACKBERRY LANE ANNEXATION PROJECT

Summary: The consideration of adopting a resolution awarding the contract to Cooper Construction Company Inc. for the Red Road and Patton Hill Road Water Line Project.

The Engineering Department has developed construction plans for the Pipeline Replacement Program 97-98 Phase I - Red Road and Patton Hill Road Water Line Project. This project consists of the construction of a six-inch water line along Red Road and Patton Hill Road to replace the existing two-inch water line. The engineer's estimate for this project is in the amount $193,193.00.

The project was advertised for one month. On Tuesday, May 26, 1998, the Engineering Department received 5 bids for the project as follows:

Cooper Construction, Hendersonville, NC	$169,174.95
Steppe Construction Co., Mill Spring, NC	$178,320.00
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Buckeye Construction Co., Canton, NC	$197,855.45
Wheeler Construction Co., Weaverville, NC	$198,442.00

The construction time for this project is identified as 60 calendar days in the contract documents. The contract calls for liquidated damages in the amount of $250 per calendar day beyond this contract time.

The budgeted amount for this project is $293,000 and sufficient funds have been budgeted for the award of project.

Cooper Construction was the lowest responsible bidder in the amount of $169,174.95.

Staff recommendations that City Council adopt a resolution awarding the bid for Pipeline Replacement Program 97-98 Phase I - Red Road and Patton Hill Road Water Line Project - Contract E-438 to Cooper Construction Company Inc.

ORDINANCE BOOK NO. 17 - PAGE 21

H. MOTION SETTING A PUBLIC HEARING ON JULY 14, 1998, TO REZONE EIGHT LOTS OFF SWEETEN CREEK ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

I. MOTION SETTING A PUBLIC HEARING ON JULY 14, 1998, TO CONSIDER A MODIFICATION FROM THE SUBDIVISION STANDARDS REGARDING A FLAG LOT FOR PROPERTY ON OLD HAW CREEK ROAD

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and motions on the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Cloninger and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO ANNEXING A CONTIGUOUS AREA KNOWN AS SECTION 11 OF BILTMORE PARK

ORDINANCE NO. 2494 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE, N.C., BY EXTENDING A CONTIGUOUS AREA KNOWN AS SECTION 11 OF BILTMORE PARK

Mayor Sitnick opened the public hearing at 5:19 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that Biltmore Farms, Inc. (owner and applicant) has submitted an annexation petition for a 22.07 acre area identified as Biltmore Park annexation 11. This is the eleventh annexation petitioned by Biltmore Farms Inc. for property located west of Overlook Road. This area is contiguous to the existing corporate limits, specifically to Biltmore Park, Annex 8. The effective date of the ordinance is December 23, 1998.

Mayor Sitnick closed the public hearing at 5:24 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2494. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 23

B. PUBLIC HEARING RELATIVE TO ANNEXING A CONTIGUOUS AREA KNOWN AS SECTION 12 OF BILTMORE PARK

ORDINANCE NO. 2495 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE, N.C., BY EXTENDING A CONTIGUOUS AREA KNOWN AS SECTION 12 OF BILTMORE PARK

Mayor Sitnick opened the public hearing at 5:24 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that Biltmore Farms Inc. (owner and applicant) has submitted an annexation petition for a 11.36 acre area identified as Biltmore Park annexation 12. This is the twelfth annexation petitioned by Biltmore Farms Inc. for property located west of Overlook Road. This area is contiguous to the existing corporate limits, specifically to Biltmore Park, Annex 9 and Annex 7. The effective date of the public hearing is December 23, 1998.

Upon inquiry of Ms. Hazel Fobes, City Manager Westbrook explained that this annexation is a voluntary annexation of raw land.

Mr. Ralph Bishop asked for a certified copy that he has been denied his constitutional right as set forth in the first amendment to the Constitution of the United States to seek redress at the last City Council meeting he attended.

City Attorney Oast said that if Mr. Bishop feels like he has been denied his constitutional rights, he may seek redress in a court of law. If he would like a certified copy of the minutes where he believes that to have occurred, the City Clerk will be happy to provide those to him at the appropriate cost.

Mayor Sitnick closed the public hearing at 5:32 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2495. This motion was seconded by Councilman Cobb and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 25

C. PUBLIC HEARINGS RELATIVE TO CABLE TELEVISION FRANCHISE RENEWAL

Mayor Sitnick explained that while there is a connection between the following three items, City Council will address each item separately. The ordinance regulating cable service providers is a generic, general ordinance that the City would have to have for any cable company and for any franchise agreement. We do not currently have an ordinance regarding this in place. The next ordinance is granting a franchise specifically to Brenmor Cable Partners, d/b/a InterMedia. This ordinance requires two votes at two separate meetings. The last item is a resolution authorizing the City Manager to execute a settlement agreement of franchise fees. All three items will be heard separately and voted on separately.

Vice-Mayor Hay stated that the settlement of franchise fees is a different issue than the franchise renewal. Many people think that they are inter-dependent and it's important to note that they are not necessarily inter-dependent. They have been negotiated at the same time and there is some cross-over, however, Council will vote separately on them and it is possible that one Council member might want to vote for the franchise renewal and against the settlement agreement.

Councilman Cloninger again noted that the ordinance regulating cable service providers does not have any impact on negotiations with InterMedia as to the franchise fees or the settlement. However, if a franchise is approved with InterMedia, they would be subject to that ordinance.

PUBLIC HEARING RELATIVE TO AN ORDINANCE REGULATING CABLE SERVICE PROVIDERS

ORDINANCE NO. 2496 - ORDINANCE REGULATING CABLE SERVICE PROVIDERS

Mayor Sitnick opened the public hearing at 5:35 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Assistant City Attorney Patsy Meldrum said that this ordinance would adopt regulations for cable service providers located in the City of Asheville. The ordinance would include provisions regarding the granting of franchises to cable service providers and regulations regarding their use of the public rights-of-way.

Mr. Ralph Bishop asked for the ordinance to be read. Mayor Sitnick said that the issue has been discussed for over two years, the ordinance is 48 pages long and has been available at worksessions and formal meetings in which he has attended. In addition, the ordinance is available at this meeting and she would be happy to furnish him a copy.

Mayor Sitnick closed the public hearing at 5:45.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2496. This motion was seconded by Councilman Cloninger and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 27

PUBLIC HEARING RELATIVE TO GRANTING A FRANCHISE TO BRENMOR CABLE PARTNERS, L.P. (D/B/A INTERMEDIA)

ORDINANCE GRANTING A FRANCHISE TO BRENMOR CABLE PARTNERS, L.P. (D/B/A INTERMEDIA)

Mayor Sitnick opened the public hearing at 5:45 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Assistant City Attorney Patsy Meldrum said that this ordinance grants a cable television franchise to InterMedia.

At the work session held on March 3, 1998, the City Council instructed City staff and Rice, Williams Associates, consultant to the City of Asheville for cable television matters, to renegotiate certain terms and conditions of the franchise with InterMedia. The issues which were to be renegotiated are as follows:

1. The length of the term of the franchise.
2. The amount of funding for initial equipment and on-going support for public, educational and governmental ("PEG") access channels.
3. The amount passed through to subscribers for funding of the initial equipment and on-going support for PEG channels and the institutional network.
4. The inclusion of other school and library sites on the institutional network.
5. The provision of Internet access to schools and libraries.
6. The terms of the state-of-the-art clause.
7. Consideration of the use of binding arbitration for certain situations.
8. The amount of the civil penalty.
9. Discounts for senior citizens.
10. The mechanism for subscribers to request refunds.
11. The ability for area industries to request increased capacity (550 MHz versus 750 MHz system capacity).
12. The amount of the franchise fee settlement.

New terms and conditions have been negotiated.

She clarified a couple of misconceptions about some of the details. The $340,000 funding for the initial equipment for PEG will be paid in three years and the on-going support begins in the fifth year for eight years.

She explained that the state-of-the-art clause presented in the January proposal has been broadened and then reviewed in detail the changes in the paragraph which reads "an average of at least three (3) other communities in North Carolina which have a cable system franchise with the same or a comparable term (within three years, more or less), up to 5,000 subscribers more or less than the existing number in Asheville, a similar number of cable plant miles, and similar or less stringent local laws, rules and regulations concerning the operating of a cable system."

Vice-Mayor Hay asked about the elimination of Nashville, Tennessee, and Gainesville, Georgia, from the group of comparison cities. Ms. Meldrum said that in Nashville and Gainesville they now have 750 MHz systems. If the other systems which meet the other criteria have those, they would be required to rebuild to a 750 MHz system during this franchise term. The City would not be restricted from requiring that. We would not be relegated to a 550 MHz system during the 12 year term.

Along those lines, Councilman Cloninger noted that one of the reasons why it was proposed to take out Nashville and Gainesville that have a 750 MHz system is that those systems were install four or more years ago and that the 550 MHz systems installed today have the same capabilities with the digital application that those 750 MHz systems had four or more years ago. It was also his understanding that the community would be able to have all the services they need with a 550 MHz system. There may be some unique situations in which a particular industry may require a 750 MHz system, but under the terms of this agreement, that unique industry could get that 750 MHz, but they would have to pay for it, rather than the people of Asheville.

Upon inquiry of Mayor Sitnick, InterMedia General Manager Joe Haight said that at present they are engineering at 750 MHz through about 55% of the plant in Asheville. The plant in Asheville is about 825 miles total. They are 96% finished with the rebuild at to 550 MHz.

When Councilman Tomes asked about what the 750 MHz would do for business, Mr. Haight said that the 200 MHz would be reserved for data which would be a commercial application, not a residential application. They will still be able to provide the residential application in the 550 MHz system. They can covert what is already 550 MHz to 750 MHz in the future in order to keep up with whatever the demand requires. He said that the fiber backbone is capable of 1,000 MHz signal and they do have plenty of spare that would cover any commercial application within the City.

When Mayor Sitnick hoped that this rebuild would never be required again, Mr. Haight said that he would be hesitant to say that, considering the changes he has seen over the last 25 years in this business.

Ms. Meldrum stated that a new sentence has been added since the January proposal in the system rebuild section. The sentence reads as follows: "In the event that businesses and industries located in Asheville seek additional capacity for their data communications needs, then whenever such capacity is available on the cable system, franchisee agrees to enter into negotiations for data transmission leases with such interested companies with the terms to be agreed upon by the applicable parties."

She cleared up some confusion about the Institutional Network sites. She said information was presented to the public that there are no recreation or community centers included in the list of sites for the Institutional Network. The confusion results from these sites being identified as fire stations. The City of Asheville has four facilities where there is a fire station, a community center and a branch library - West Asheville on Haywood Road, North Asheville on Larchmont, Murphy-Oakley on Fairview Road and East Asheville on Tunnel Road. In that the West Asheville branch library had moved to an adjacent building, and that site was added. There are some community centers and recreational facilities and all the branch libraries and the main library are included in the Institutional Network.

Another question arose about the use of the Institutional Network and the fact that it was relegated in the ordinance granting the franchise for educational and governmental use. The reason for that is the requirement of the federal statute. It is limited to governmental and educational use and the federal law does not include business use on the Institutional Network.

Ms. Meldrum said that that this is a non-exclusive grant, meaning the City could grant a similar franchise to other cable companies and we do grant non-exclusive use of the rights-of-way for other utilities as well.

Mr. Haight said that after further negotiation, InterMedia is willing to incorporate language into the franchise which does provide, if they are in the Internet business, a modem to each school and library in the service area. They hope that will be satisfactory to Council. The language to be inserted reads "In the event that franchisee elects to provide high-speed Internet access services by cable modems in the City, then at such time that franchisee begins to provide such Internet services to its subscribers on a commercial basis, franchisee shall provide free Internet access service and a free cable modem to each school and public library located within the franchise area and which are passed by the activated feeder cable for as long as franchisee decides, in its sole discretion, to continue to provide such Internet services to its subscribers in the franchise area. Such Internet access services and modems shall be provided when Internet service to franchisee's subscribers becomes available in the cable system node in which the school or public library is located and within thirty (30) days of a written request from the school or public library for such services and modem."

Ms. Meldrum said that with the addition of the above in the franchise, the June 1, 1998, side letter has been revised and presented Council with the revised side letter dated June 23, 1998, from InterMedia setting forth certain other matters related to the franchise. She noted that the revised side letter also includes some clarification language about the pass through.

Councilman Cloninger appreciated InterMedia agreeing to include that language in the franchise document. This is a big step which will pay big dividends for the children in the schools.

Upon inquiry of Councilman Cobb, Ms. Meldrum said that the funds for the initial PEG equipment is for the first three years and then starting again in the fifth year. There will be no funds in the fourth year from the franchise agreement.

When Councilman Cobb asked about the pass through to subscribers, Ms. Meldrum explained that there will be a difference of $168,116 which is a PEG grant by InterMedia to the City. After InterMedia has been fully reimbursed their $970,200, the subscriber pass through amount will no longer be collected from their customers.

Upon inquiry of Mr. Ralph Bishop, Ms. Meldrum explained that there is a provision in the franchise for abandonment of the cable plant and a bond securing the removal of the cable plant. The City can either force removal or could remove it, take the funds from the bonds or take over the remaining plant.

Mr. Peter Reiser asked that the City request an all day classical music channel. Ms. Meldrum replied that federal law does not allow a city through a franchise to regulate the types of programming that must be required on cable television system.

Mr. Bill Wald felt that the City should consider the settlement agreement prior to granting the franchise to InterMedia because the negotiating power will be reduced.

A representative of the Western North Carolina American Civil Liberties Union said that they have a large concern about the public access channel. They asked that a public access channel will be funded and nurtured. They hoped that all the monies would not go to the government channel and nothing to the public access channel. He felt that the City needed to be careful in what InterMedia would provide as an "in-kind" payment. He personally felt that the agreement can be negotiated more strongly in favor of the City.

Upon inquiry of Mr. Jerry Rice, Ms. Meldrum said that the City is getting a fiber optic system which is now 96% in use.

Mr. Rusty Maynard expressed concern about the four access channels and the City's option to allow the franchisee to use such unused capacity for other programming services to subscribers and then it cannot revert back to no use by the franchisee unless there is 90 days notice given by the City. He felt that was unclear as to how much use is present and whether or not there is a priority system in effect so that the franchisee cannot just have free use to put its programming ahead of any remaining public access programming. His point was that public access programming may at times be insufficient or weak, but that should not mean that it should become a lower priority. He felt that there should still be a review process on whatever the franchisee wishes to put in the unused space because you should have a common theme of quality and goals on that channel. He questioned if there was a clear blanket of liability coverage that extends from the insurance policy of the franchisee to this activity that is taking place on the public access channel.

While Ms. Meldrum responded to some of Mr. Maynard's questions, City Manager Westbrook said that if City Council approves the franchise, then staff will come back with a recommended plan of action for implementing the PEG channels and it would be the Council's choice on how they would want to govern those channels. He said that the City would need a staff person to help regulate the new franchise as well.

Mr. Richard Mathews asked Council to take their time and use their patience in these times of rapidly moving technology. Council is now in a position to act in the long term interests of the citizens and not the short term constraints of the City's balance sheet. He urged Council to make sure that whatever system they agree to gives the City the greatest range of flexibility and upgradability. He hoped the City will not be constrained to a technology that goes out of date in a short period of time. He also suggested that Council take advantage of the educated citizenry in Asheville who want to participate in this process and asked Council to consider forming a commission that draws on their expertise to make sure that information is made available to improve the quality of citizenship in this community. He said that since the City has a poor record of enforcement of existing ordinances, the franchise should be framed in a way that automatically will lead to compliance with the goals of our community.

Councilman Tomes firmly believed that no one can envision what will happen in five years from now given the degree of technology that is going on today.

Ms. Meldrum responded to questions from Council relative to how the state of the art clause will be triggered.

Mayor Sitnick said that since the mid-80's there have been questions about the franchise fees, etc. and when the City gets a staff person on board to regulate this franchise, that person will keep a constant watch on franchise issues and will have the ability to be notified when things are changing so that we don't fall behind anymore and don't have to worry about back-tracking where these issues are concerned. Ms. Meldrum noted that our newly adopted cable service providers ordinance can require an annual performance evaluation at the option of City Council. Mayor Sitnick said that it was her personal hope that the City does schedule performance evaluation sessions open to the public annually.

Mr. Wally Bowen, representative of the Citizens for Media Literacy, passed out to Council a statement, which is attached hereto as Exhibit "A", and reviewed some of the points contained in that statement.

Mr. Rusty Sivils feels that it is inappropriate for television to be turned over to a corporation to be managed. He wanted the City to seriously consider operating the cable system as a public utility as other cities have done. He felt it was critical to the public welfare that we have a good well-funded staffed public access system that is truly accessible to everyone.

Mr. Scott Barber felt that several answers received so far have been along the lines of if we run into a problem, we will negotiate that at the time. He was concerned at we are currently at one of those windows of opportunity when the City has a little bit of negotiating room and a little bit of power with which to negotiate a stronger agreement. This is the only opportunity until the next franchise to really tell the cable company what the City wants. He urged City Council not to make an expeditious decision and noted that a lot of citizens would like to sit down and look at how we can create an agreement that would be satisfactory to the cable subscribers and to those who feel strongly that a well funded public access channel would be beneficial to this community in ways we can't quite imagine yet.

Mr. Wald questioned whether Asheville really needed three public access channels.

Mayor Sitnick closed the public hearing at 7:18 p.m.

Mayor Sitnick felt that the citizen input into this issue has been nothing short of amazing. Since February 1994 when she first asked that the franchise fee issue be looked into, the former Councils and this present Council have recognized that this is an issue of deep concern. This very long, drawn out, complex issue has been on the table for several years. She said that there has been an inference that City Council had already decided certain things regarding the cable franchise and the franchise fee settlement. She assured the public that no decisions have been made prior to this meeting.

Councilman Cobb said that Asheville has been living with this agreement for 31 years and one option is to continue with the same agreement for another four years. However, Asheville is losing a lot of money a year if we continue on with the present franchise. He felt that most of the discussion surrounded the PEG channels which we have not formerly had. He felt that since technology is changing so quickly, this franchise agreement could be obsolete in five years, but Council must move on with what they know today. His biggest concern is the pass through to the subscribers.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Cobb moved for the adoption of the ordinance granting a franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia) for the operation and maintenance of a cable system. This motion was seconded by Councilman Cloninger.

At 7:20 p.m., Vice-Mayor Hay announced a recess because Mayor Sitnick developed a nose-bleed.

At 7:40 p.m. the meeting resumed with Vice-Mayor Hay announcing that Mayor Sitnick has a nose-bleed and in caution, she has been transported to the hospital. He said that Mayor Sitnick did request that City Council postpone taking action on the cable issues until she can be present at the meeting. The next formal meeting would be July 14, 1998, however, Ms. Meldrum will be out of town during that time.

Councilwoman Field suggested that the June 30, 1998, Burton Street community meeting be rescheduled and City Council deal with the cable issues at that time. Councilman Cloninger stated that he would not be in town on June 30 and he would like to have an opportunity to vote on this issue.

City Attorney Oast said that if Council is going to continue their action on this matter, he would recommend Council continue their action until the July 28, 1998, meeting.

Because of Mayor Sitnick's request, Councilman Cobb moved to withdraw his motion to adopt the ordinance granting a franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia) for the operation and maintenance of a cable system. Councilman Cloninger withdrew his second.

Councilman Sellers moved to continue the discussion of granting the franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia) until July 28, 1998. Councilman Tomes said that he will have a conflict with the July 28, 1998, date. Said motion died for a lack of a second.

Councilman Cobb moved to continue the discussion of granting the franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia) until July 14, 1998. This motion was seconded by Councilman Cloninger and carried unanimously.

Councilman Sellers moved to continue the public hearing regarding a settlement agreement with InterMedia and TCI regarding franchise fees until July 14, 1998. This motion was seconded by Councilman Tomes and carried unanimously.

Mr. Haight said that he was deeply disappointed that Council did not get to vote tonight although he certainly understood why. He asked if the Mayor does return to the meeting, could the cable issues be brought back up for action. Vice-Mayor Hay said that City Council has decided not to consider the issues again tonight and the people in the room were told it would not be considered again until July 14. Mr. Haight said that he was absolutely committed to be out of town on July 14 and it will be extremely difficult for him to drive many hours to get back, but he would if he needed to. He hoped Council would consider that, if the Mayor did return to the meeting, that this process be continued.

Councilwoman Field noted that City Council has had the public hearing on the ordinance granting the franchise and felt that if the Mayor did return, then Council may want to proceed with that particular issue. The public hearing on the settlement agreement regarding franchise fees issue could remain rescheduled on July 14, 1998.

Vice-Mayor Hay said that if the Mayor returns, then City Council could discuss this again.

D. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE AS IT RELATES TO THE DEFINITION OF ANTENNAS AND TELECOMMUNICATION TOWERS

At the request of City staff, Councilman Cloninger moved to continue this public hearing, without further advertisement, until August 11, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2491 - ORDINANCE GRANTING A FRANCHISE TO OPERATE A TROLLEY WITHIN THE CITY OF ASHEVILLE

City Attorney Oast said that there is one modification in the agreement which was described on June 16, 1998, and that recommendation is by our Risk Manager. We have included a requirement for automobile liability insurance, in addition to the commercial general liability insurance that they are already required to get.

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilwoman Field moved for second and final reading of Ordinance No. 2491, with the modification as described by the City Attorney. This motion was seconded by Councilman Tomes and carried unanimously.

V. NEW BUSINESS:

A. MOTION AUTHORIZING CITY STAFF TO PROCEED IN DEVELOPING A TEMPORARY SKATEBOARD PARK ON TOP OF THE CIVIC CENTER PARKING DECK AS WELL AS CONTINUE TO EXPLORE THE LOCATION OF A PERMANENT SITE

Mr. Irby Brinson, Director of Parks & Recreation, said that the Skateboard Task Force was established by the Parks and Recreation Department over a year ago to investigate the possibility of constructing and operating a skateboard park downtown. He briefly explained why the top of the Civic Center Parking Deck (8th floor) has been determined as a possible temporary location for a temporary skateboard park.

The Parks and Recreation Department and the Skateboard Task Force is seeking City Council approval to proceed in developing a temporary park on top of the Civic Center Parking Deck as well as continue to explore the location of a permanent site.

Upon inquiry of Councilman Cobb, Mr. Brinson said that the area under the I-240 bridge is rather small and there are quite a few people who park there. He also noted that it is the N.C. Dept. of Transportation right-of-way as well. He will, however, continue to explore that area as a possible permanent site.

When Councilman Tomes asked about the property on Cherry Street as a possible permanent site, Mr. Brinson said that he did look into that and it is N.C. Dept. of Transportation property. Ms. Susan Roderick, with Quality Forward, has offered to set up a meeting with Gordon Myers to explore that possibility.

Councilman Tomes moved to authorize City staff to proceed in developing a temporary park on top of the Civic Center Parking Deck as well as continue to explore the location of a permanent site. This motion was seconded by Councilman Sellers.

Councilman Cloninger felt that it was worth trying this on an experimental basis and then reevaluate it at the end of the year.

When Ms. Marilyn Muccio, resident who lives near the Civic Center Parking Garage, asked about how emergencies would be handled in the parking deck, Mr. Brinson said that they have talked to the emergency medical people and it would be handled as any other accident in the parking garage, they would use the elevator.

Mr. Wesley Sharp, who works with the Salvation Army Boys and Girls Club, spoke in support of this program.

Councilwoman Field felt the temporary park is a wonderful opportunity for the young people to come together and do something positive. She would be willing to meet with the appropriate people to try to find a permanent location in downtown.

City Attorney Oast said that he did not presume to speak for the Mayor, however, in a meeting with her earlier in the day, she did express a desire that the performance of this temporary skateboard park be reviewed after a period of about three months.

Councilman Cobb felt sure that the skateboarders will be well aware that the City is watching them and hoped that the City would be able to move these type parks into other areas in the City and develop other programs for our youth.

The motion made by Councilman Tomes and seconded by Councilman Sellers and carried unanimously.

At 7:54 p.m., Councilwoman Field moved to excuse Mayor Sitnick from the meeting. This motion was seconded by Councilman Tomes and carried unanimously.

At 7:54 p.m., Vice-Mayor Hay announced a 15-minute break.

B. RESOLUTION NO. 98-88 - RESOLUTION APPROVING STRATEGIES TO PROMOTE AFFORDABLE HOUSING

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of adopting a resolution approving strategies proposed in the Affordable Housing Study and instructing staff to prepare a first-year action plan. She reviewed the eight broad strategies. They are (with minor amendments proposed by the Housing and Community Development Committee):

1. Develop a strong leadership role for the City to promote housing production and affordability.
2. Use local zoning and regulatory policies to support affordable housing.
3. Increase production of rental and ownership housing
4. Promote in-fill housing, mixed-use development and adaptive re-use of existing buildings.
5. Expand housing rehabilitation
6. Encourage affordable housing development by both for-profit and non-profit developers.
7. Develop transitional housing for those with special needs.
8. Develop formal City-County collaboration on housing.

The Housing and Community Development Committee endorses these strategies and recommends their approval by Council.

City staff recommends that City Council accept the eight broad strategies set forth in the Resolution and instruct staff to prepare an initial action plan detailing implementing actions that have the highest priority and can reasonably be put into effect within the next twelve months.

Ms. Caplan suggested Council amend strategy no. 7 to read "Develop transitional and permanent housing for those with special needs." The suggestion was recommended by the Blue Ridge Center and staff supports the change because there is a clear need.

Councilman Tomes offered a footnote as it relates to strategy no. 6. He said that when the City deals with the overall concern of affordable housing, he would like the riverfront development group be allowed to make a presentation at a worksession and that the City make an effort to include them in this process.

When Councilman Cobb asked about a source of funding, Ms. Caplan said that one strategy that will be looked at is the development of a Housing Trust Fund.

Vice-Mayor Hay spoke in support of the affordable housing strategies and felt it was a major step in the City moving forward with affordable housing.

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Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 98-88 with strategy no. 7 be amended to read "develop transitional and permanent housing for those with special needs." This motion was seconded by Councilman Sellers and carried unanimously.

Mr. Jim Barrett, resident on Cumberland Avenue, thanked Council for addressing the huge problem of affordable housing in Asheville.

Mr. Jerry Rice felt that the job market does not allow some people to afford more than a trailer and Council should review the Unified Development Ordinance and not put so many restrictions on what people can put on their land.

Vice-Mayor Hay felt that as tough policy decisions are made, for instance in zoning, we now have a strategy and a plan that gives Council a point of reference.

The motion made by Councilwoman Field and seconded by Councilman Sellers carried unanimously.

Vice-Mayor Hay made a personal challenge to the other City Council members to work on the strategy to develop formal City-County collaboration on housing. He felt that City Council can be working on that themselves above and beyond what staff can do.

RESOLUTION BOOK NO. 24 - PAGE 438

C. ORDINANCE NO. 2497 - BUDGET AMENDMENT FOR THE PAVING OF MCCORMICK FIELD PARKING LOT

Mr. Irby Brinson, Director of Parks & Recreation, said that this is the consideration of a budget amendment, in the amount of $79,577, for the paving of the McCormick Field parking lot based upon prior commitment by former City Manager Doug Bean.

In 1992, former City Manager, Doug Bean, agreed that the City would pay for the paving of the McCormick Field parking lot as the City's commitment to the renovations of the minor league ballpark. Based upon review by both the City and County, payment has never been made by the City for this project. Buncombe County has now requested payment for the paving of the McCormick Field parking lot which was completed in 1992. The total cost for this project was $81,577; however, due to the contractor failing to complete various requirements of the contract, $2,000 was deducted from the original total. Therefore, the amount the City has been requested to pay is $79,577.

The Parks and Recreation Department is requesting City Council approval of the budget amendment to appropriate funds totaling $79,577 to pay for the paving of McCormick Field parking lot.

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2497. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 75

D. RESOLUTION NO. 98-89 - RESOLUTION ENDORSING APPOINTMENT OF MARSHALL LOGAN TO THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE

Vice-Mayor Hay said that the term of Phillip E. Crouch, as a member on the Housing Authority Board of Directors, expired on June 11, 1998. This resolution will endorse the appointment by Mayor Sitnick of Mr. Marshall Logan to serve a five year term, term to expire June 11, 2003, or until his successor has been appointed.

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Tomes moved for the adoption of Resolution No. 98-89. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 23 - PAGE 439

E. ORDINANCE NO. 2498 - ADOPTION OF THE 1998-99 ANNUAL OPERATING BUDGET

Vice-Mayor Hay said that the public hearing on the budget was held on June 9, 1998.

City Manager Jim Westbrook said that this report presents the Fiscal Year 1998/99 Annual Operating Budget for the Mayor and Council's consideration before adoption.

The Fiscal 1998/99 Annual Operating Budget was presented to City Council on May 21, 1998. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the budget along with a notice of the public hearing was published on May 29 and June 5, 1998. The City Council conducted a public hearing on the budget at the June 9, 1998 Council meeting.

The Fiscal Year 1998/99 Annual Operating Budget is balanced with a revised net revenue-neutral tax rate of $.51 per $100 of assessed valuation. All essential City services are maintained.

The budget as presented to City Council includes a recommended General Fund appropriation of $56,428,543. Key items for Council's review are summarized and discussed below:

- Fees for the recycling program have been revised and are included in this budget in accordance with the Fees and Charges Committee recommendations which will raise the per household recycling fee from $.75 per month to $1.54 per month.
- Outside Agency funding has been revised in accordance with the Outside Agency Committee recommendations to allow most agencies that currently receive City funding to receive the same appropriation for Fiscal Year 1998/99 as originally appropriated in Fiscal Year 1997/98.
- Additional funding for part-time staff in the City Development Office is provided.

The Fiscal Year 1998/99 budget currently does not include funding for certain mandated or desired programs discussed at Council's retreat. These programs cannot be funded unless new or enhanced revenue sources are identified or reductions to existing services are made.

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The following is a list of unfunded mandates and desired programs:

1. Federal mandate for expanded fire protection - $462,359
2. Funding for a Storm Water Regulations Study - $125,000
3. Downtown Development Plan - $50,000
4. Traffic calming initiatives - $50,000
5. River Development Plan - $50,000
6. Study to update the 2010 plan - $50,000

The total cost for the aforementioned programs is $787,359. One cent on the tax rate will generate an additional $434,000 in revenue. Council may consider setting the tax rate above the net revenue-neutral rate of $.51 to fund some or all of the aforementioned programs.

During budget worksessions and the public hearing, the Mayor and Council requested the following additional information regarding the Fiscal Year 1998/99 budget.

Proposed YMI Funding Detail:

Recreation Center Director	$35,329
Part-time Recreation Center Assistant	10,426
Fringe Benefit Costs	11,160
Travel & Training	1,200
Rental Expense for Sound Equipment	1,000
Copying & Duplicating	500
Postage	200
Departmental Supplies	1,885
Professional Services	2,000
Licenses & Taxes	100
Car Allowance	200
Total	$64,000

Advertising cost and circulation figures for *Asheville Citizen-Times, Mountain XPress, and Asheville Advocate* newspapers are as follows:

News Paper	Distribution	Circulation	Advertising Rates (for ¼ of a page)	Unit Cost
Citizen-Times	Daily	35,000	$789.08/weekly	$.02
Mountain Xpress	Wednesday	17,428	$138.32/weekly	$.008
Asheville Advocate	Friday	5,000	$ 56.00/weekly	$.01

A previous staff report dated June 5, 1998, and memorandum dated May 29, 1998, contain other requested information.

Revised Fees and Charges Committee recommendations:

The Fees and Charges Committee initially recommended a 50% reduction in building safety and engineering fees for new residential construction that qualifies as affordable housing. It was recommended that fees would also be waived for any new houses built in the following

CDBG redevelopment target areas: Home Ownership Zone (West End/Clingman Area) and Montford Avenue/Hill Street Area.

Councilwoman Field reported that the Housing and Community Development Committee has proposed an alternative recommendation that would waive 50% of building inspection and engineering fees for new single family homes constructed within the City of Asheville that meet NC State Building Codes and sell at a price below $100,000. The Housing and Community Development Committee further recommends 50% fee waivers for multi-family homes funded by CDBG, HOME grants funds or multi-family homes that are eligible for such funding.

City Manager Westbrook said that MSD has approved a similar proposal and staff is working with the Water Authority.

Vice-Mayor Hay said that the Housing & Community Development Committee really wanted to do as much for multi-family as we could, but administratively it was just much more difficult to know what an affordable rental unit was going to be, especially on an on-going basis. We wanted to ensure that we were truly encouraging affordable rental housing. He hoped that the day will come soon when we can find a way to bring this to other multi-family projects as well.

Upon inquiry of Councilman Cloninger about the river development plan, Planning & Development Director Julia Cogburn said that this was the City's portion, discussed with RiverLink, of a public/private partnership to actually do a concentrated plan for the core area of the River District. At the present time the City does not have any other sources for funding. RiverLink does have their portion which is $75,000.

Councilman Cloninger reviewed the outside agency funding as follows:

Agency	97-98 Approved	98-99 Request	98-99 Recommended
A-B Community Relations Council	$63,000	$66,500	$63,000
Arts Alliance	30,000	35,000	30,000
A-B CrimeStoppers*	21,667	0	0
A-B Vision Inc.	15,000	20,000	15,000
Asheville Area Chamber of Commerce	100,000	100,000	100,000
Asheville Area Rescue Squad Inc.	12,000	15,000	6,000
Asheville Sister Cities Inc.	2,000	2,000	2,000
Buncombe County Drug Commission	30,000	45,000	30,000
Life on Life's Terms Inc.	0	27,000	0
One Youth at a Time Inc.	9,333	18,000	10,000
RiverLink Inc.	18,000	75,000	18,000
Smith-McDowell House Museum	0	15,000	0
Vanderbilt Apartments Inc.	0	75,000	0
YMI Cultural Center**	0	36,000	0
Totals	$301,000	$529,500	$274,000

* A-B CrimeStoppers will be funded through the City's operating budget in the same amount as the current year.

** Funding in the amount of $64,000 is included in the Parks & Recreation budget for the YMI Cultural Center.

Councilman Tomes and Councilwoman Field recommended that in addition to the $64,000 budgeted for the YMI Cultural Center that the City budget up to $2,000 a month for the YMI Cultural Center utilities, with the YMI submitting the bills monthly for the City of Asheville to pay.

City Manager Westbrook said that if Council decides to increase the budget for the YMI, then he recommend the $24,000 be included in the Parks & Recreation budget, and not in the outside agency fundings.

Councilman Cloninger felt the YMI is doing a good job, but felt that since we are already budgeting $64,000 to them, they should be asked to pay for their utility bills.

Councilman Tomes moved to amend the budget to include an additional $24,000, to be distributed up to $2,000 a month, to the Parks & Recreation budget for the YMI Cultural Center's utility bills. This motion was seconded by Councilwoman Field and carried on a 5-1 vote with Councilman Cloninger voting "no".

Mr. Gene Ellison thanked Council for their support and spoke in support of the budget City Council is proposing for the YMI Cultural Center.

Mr. Jerry Rice asked what effect will the Buncombe County Commissioners 3-2 denial of the Water Authority's budget earlier today have on the adoption of the City's budget (since the Water Authority's budget is adopted as part of the City's budget). City Manager Westbrook said that he was unaware of the County's vote and encouraged City Council to adopt the budget as presented. If there are some future negotiations that would change the budget, then Council can amend that portion of the budget.

Mr. Clarence Benton asked Council to include the Asheville Advocate in part of their advertising budget. City Manager Westbrook explained that the proposed budget has a sum of money in it for which we provide for CityWorks in the Asheville Citizen-Times and the Mountain Xpress. City Manager Westbrook said that Council can readjust the total for three newspapers or increase the budget to include the Asheville Advocate in their advertising.

Upon inquiry of Councilman Cloninger, Mr. Benton said that his newspaper comes out twice a month.

Councilwoman Field wondered if this was really a budget issue. She felt Council should just approve an amount of money for advertising CityWorks and then go back and look at how it might be split up. She said that the Asheville Advocate certainly reaches perhaps an audience that is different from the Mountain Xpress or the Citizen-Times, but the cost per subscribers if probably five times higher than the Citizens-Times and even more than that for the Mountain Xpress.

Councilwoman Field also said that another concern was that everything that comes out in CityWorks is very time oriented and it needs to get to people at a particular date and needs to come out on a regular basis. Her experience with the Asheville Advocate is that it is not a regular newspaper. Mr. Benson responded that most of the time is does comes out on a regular basis, but being a small business it has struggles and sometimes it takes money that he doesn't have - last year being the worst but he is taking steps to correct that.

City Manager Westbrook said that the money is in the budget for advertising and staff will continue to split it up as they have been directed to in the past, unless Council directs staff to do otherwise.

Upon inquiry of Councilman Cobb, City Attorney Oast said that the City has certain legal requirements within which to follow for their legal advertising. He said the Asheville Citizen-Times qualifies and that is where the City does it's legal advertising.

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Cloninger moved, in light of the fact that services will suffer if we were to meet our federal mandate without adjusting taxes accordingly, that Council reduce the tax rate to $.52 per $100 of assessed valuation. This motion was seconded by Councilman Cobb.

Councilman Tomes was concerned that since no one can dictate unfunded mandates, would Council be better off with reducing the tax rate to $.53 per $100 of assessed valuation. He was not in favor of raising taxes, but somehow the community must understand that the City has no control over federal mandates and Council has to address the issues. He was especially concerned with the stormwater regulations mandate. City Manager Westbrook said that cities ordinarily know at least one fiscal year ahead of the mandate and the City is aware that the stormwater mandate becomes effective in 1999.

Councilman Cobb felt that federal mandates are something that City Council can't control but reducing the tax rate to $.53 might jeopardize the parks and recreation bond.

Vice-Mayor Hay said that raising taxes is something that City Council has not planned to do and it has been their clear message to staff, and they have responded appropriately, to find other sources of revenue and make the City work on what the City's present tax rate is and concentrate on growth from the tax base. He doesn't want to lose site of the fact that they have otherwise been very successful in doing what people want them to do, is to keep taxes where they have been all along and to focus on building the City's revenues in other ways.

City Manager Westbrook said that if the Council is not able to fund all of the items talked about at the retreat, staff will continue to work on them. Staff will try to be innovative, but may have to come back and recommend using contingency or fund balance and ask for Council to look at those programs on an individual basis in the context of that particular problem. He said as Councilman Tomes points out, stormwater is important and the $125,000 is for the study to tell us what we need to do to be in compliance with the new regulations when they come out in 1999.

Councilwoman Field said that in her seven years on Council she has never voted to raise taxes, however, this is a federal mandate she doesn't see how we can get out of. She felt that when the City didn't raise taxes and the County did raise taxes, it changed the relationship between the City and the County's proportion of sales tax revenues and other revenues that are proportional. She felt we needed to be more creative, more innovative, work smarter and harder in this community and particularly in the City. We do an excellent job of providing services and we want to continue to do that. We don't want to cut back any more than we have.

The motion made by Councilman Cloninger and seconded by Councilman Cobb carried unanimously.

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F. RESOLUTION NO. 98-90 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH ASHEVILLE PROFESSIONAL HOCKEY, LTD., FOR INTERMITTENT USE OF A PORTION OF THE ASHEVILLE CIVIC CENTER

Mr. David Pisha, Civic Center Director, said that this is the consideration of a resolution authorizing the City Manager to execute a lease agreement for the Asheville Civic Center.

The United Hockey League has approached The Asheville Civic Center about placing a team affiliated with their league at the facility. They have furthermore agreed to pay the facility a per game fee of $750.00 up to $1500.00 based on attendance. Additional consideration of up to $250.00 per game is further agreed if Civic Center cost exceed the prior revenue. The Civic Center retains a minimum of $150,000.00 in concession revenues before sharing additional revenues with the team. Based on attendance, The Civic Center could retain up to $250,000.00 before any sharing took place. Any revenue split with the team is after taxes and food costs have been deducted. The Civic Center receives 10% of any merchandise sales after $500,000.00. The team agrees to supply an ice floor and all related equipment necessary for the presentation of professional hockey. At the end of five (5) years, title to this equipment is transferred to the city without any cost to the city. The city, however, has the option to acquire this equipment sooner if it chooses by assuming the lease of this equipment. The Civic Center further more has the use of the ice floor for other events to include public skating. The Civic Center has the first option to purchase skates for public use, and in so doing, would retain 80% of any revenues received from this venture. Since the city will ultimately come to own the ice floor and related equipment, the city has agreed to share maintenance cost on a 50/50 basis with the team when such upkeep costs exceed $5,000.00. The Civic Center has further agreed to furnish locker room and office space to the team. Any advertising placed in the arena by the team must have prior approval from the Civic Center Director.

The Civic Center staff recommends City Council adopt the resolution.

City Attorney Oast said that in the franchise that was originally proposed, he had inserted the requirement that the team provide mortgage insurance on the ice so that if they walked away for any reason, the payment on the floor would continue to be made. The City's Risk Manager said that kind of insurance product does not exist. He still feels that the proposed agreement is risk free to the City in that we won't get stuck with an ice floor and the payment on it, unless we want to. What it does mean is that we won't get a windfall if the hockey team walks away from it. We will still have the floor at the end of five years and if, at any time in those five years the hockey team walks out, the only way we get the ice floor is if we buy it. Whereas originally, they would have posted a bond that would have paid off the floor.

Upon inquiry of Councilman Cloninger, City Attorney Oast explained how the lease is structured for the floor and any lease agreement will be reviewed and approved by him.

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cobb moved for the adoption of Resolution No. 98-90. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 440

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 9, 1998, AND THE WORKSESSION HELD ON JUNE 16, 1998

Councilman Cloninger moved for the adoption of the minutes of the regular meeting held on June 9, 1998, and the worksession held on June 16, 1998. This motion was seconded by Councilwoman Field and carried unanimously.

B. COMMENTS BY JERRY RICE

Upon inquiry of Mr. Jerry Rice, Councilwoman Field said that since Council has adopted the budget and the tax rate, if something changed, the Council can amend the budget but not change the tax rate.

C. BOARD OF ADJUSTMENT

Mr. Keith Thompson asked that the Board of Adjustment that is scheduled for June 24, 1995, be held in a larger room than the 1st Floor Conference Room in that a large crowd is expected for the meeting regarding variances on Merrimon Avenue.

D. COMMENTS BY JOE HAIGHT

Mr. Joe Haight, General Manager of InterMedia, appealed to Council to reconsider the ordinance granting the franchise to Brenmor Cable Partners L.P. (d/b/a InterMedia). The public hearing was held and a motion was made and seconded. If Council would reconsider this, it would put in place several things that have to happen in the very near future concerning the whole issue of franchise and going forward in business plans having to do with at home and other things. There has been a lot of planning and effort on their part leading up to tonight. He understands the situation with the Mayor and her request that the issues be postponed. He said that she will have the opportunity to vote on the second reading.

It was the consensus of Council to postpone both cable issues because City Council assured the Mayor they would honor her request that she be allowed to vote on the issues.

E. CLAIMS

The following claims were received by the City of Asheville during the week of June 5-11, 1998: Robert L. Stepp (Streets), Sandra Lively (Water), Robin Smith (Parks & Recreation) and Pat Pendorf (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. ADJOURNMENT:

Vice-Mayor Hay adjourned the meeting at 9:42 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

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Exhibit "A"

Comments on Proposed Cable Franchise Contract (June 23, 1998)

On behalf of Citizens for Media Literacy, I would like to thank the Mayor and City Council for this opportunity to comment on the proposed cable TV contract. I especially want to thank you for your patience and endurance in a process that is, for all of us, extremely complex and challenging -- and fraught with misunderstandings. Despite our misunderstandings, we're all here for the same purpose -- to ensure that Asheville reaps the greatest community and economic development benefits possible from this critically important contract.

Your patience and endurance is paying off. We have seen the length of the franchise reduced from 17 to 12 years. That's movement in the right direction, but in this age of rapid high-tech innovation -- and with our critical need to create and attract more high-paying jobs -- we need to get the franchise term down to 7 or 8 years to lessen our risk of being by-passed by the Information Highway economic boom.

We have also seen movement on the delinquent franchise fee settlement. By instructing staff to re-open negotiations last March, you all nudged Intermedia into putting an additional $25,000 on the table to settle its franchise fee debt. Again, that's money in the bank and movement in the right direction. Council and staff deserve credit for this progress. But with potentially more than $1 million in unpaid franchise fees at stake (based on a conservative estimate extrapolated from the consultant's 4-year analysis), it's clear that we have a long way to go to ensure that our community is fairly compensated for the many, many years of underpayment.

On other occasions, we have noted how important this franchise is for our community in ways that go far beyond simply delivering video channels to homes in our community. One of those ways is public access programming. We still do not know how much funding for the PEG access channels will actually be devoted to the public access channel, where local citizens and nonprofit groups can produce their own programming with the assisted of trained professionals using state-of-the-art equipment.

Usually, any available funding goes to the government and education channels first, with the public channel a distance third priority. That's why we're pushing so hard to obtain the largest possible settlement of the unpaid franchise fees, so that we can ensure that all three channels are adequately funded.

Too many franchise agreements have public access in the contract, but not enough funding to make public access a reality. This would be a tragedy of historic proportions, because I can't imagine a community more ready for public access than Asheville. At this moment in our history, Asheville has all the ingredients -- except funding -- for a first-rate public access operation. We have a wealth of talented and articulate local citizens -- artists and craftspeople, poets and entrepreneurs, young people and retirees, health educators and early childhood specialists, gardeners and nursery experts, auto mechanics and computers fanatics, as well as nonprofit agencies of all stripes -- all with important and interesting stories to tell.

In addition, we have a growing community of local film and video professionals who are already making important contributions to the local economy, but could always use more work in between major film and video productions. And we have media arts students in the city schools who need internships and other career development opportunities. But the handful of internships now available at WLOS are woefully inadequate for the number of available students.

In short, we have loads of local talent, and, in addition, we have empty studio spaces designed for video production at both Pack Place and at Asheville-Buncombe Community College. We have all the ingredients except adequate funding.

I would like to make one final observation about the benefits of public access, and I'm speaking now as a concerned parent of an 11-year old son. For the first time in human history -- the stories that shape the dreams and aspirations of our children are no longer told by parents and grandparents, ministers and teachers, and other community role models.

Instead, the stories that shape our children's view of reality are told by a handful of media conglomerates with something to sell rather than something to tell. We see this everyday. The authority figures our children look up to are sports heroes and Hollywood celebrities.

However, one of the greatest benefits of a well-funded public access operation is that our children get to see real people -- people they know -- doing real things. They get to see local role models and local heroes. . .

1. **Pass-through Costs to Subscribers**: This contract would have the City agree to a minimum of $1,088,316 in "pass-through" charges on subscriber bills. Here's the breakdown:

Support for PEG access channels: $340,000 over first three years, and a minimum of $50,000 a year for years 5 through 12 ($350,000). (There apparently is no funding for year 4.) All of this access-channel funding will be "passed through" to subscribers. **Total Cost to Subscribers: $790,000**

I-NET Construction Costs: The contract places construction costs at $398,316. This cost is only for bringing the fiber optic lines to City buildings. In addition, the City must pay for all hardware, software and related electronics -- and trained staff -- to make the I-NET operable. These costs have not been calculated. Intermedia may "pass-through" all construction costs to subscribers' bills. **Total Cost to Subscribers: $398,316**

Moreover, this contract is simply misleading in repeatedly stating that Intermedia "will provide" funding for PEG channels or for the I-NET, when in fact all this money "will be provided" by the citizens of Asheville who subscribe to cable TV.

Total Costs to Subscribers for PEG and I-NET: $1,088,316

2. **Delinquent Fees Settlement** -- Intermedia is offering to settle its delinquent fees liability of more than $1 million for a mere $175,000 over two years. This is only an increase of $25,000 over its offer of $150,000 last fall.

Intermedia argues that it shouldn't be responsible for debts incurred by prior franchise-holders, yet it ignores the business reality that when you purchase the assets of another company, you also purchase its liabilities.

City staff have stated that if the City were to take Intermedia to court, it's possible that the City could owe Intermedia money. This is a powerful and chilling possibility.

The reasoning is this: Intermedia and its predecessors have paid 6 percent of "gross revenue" as defined by the 1967 agreement. The 1967 agreement does not include premium channels, pay-per-view, home-shopping, advertising revenues, etc. In short, the local cable operators have paid 6 percent of a limited definition of "gross revenue."

In 1985, federal law capped cable franchise fees at 5 percent. But that law also implemented a broader definition of gross revenue. The argument assumes that the 6 percent (of limited gross revenue) is a sum possibly larger than the total local cable companies would have paid under the 1985 regulations (5 percent based on broader definition of gross revenue).

But to give any credence or validity to this possibility, one would have to assume that the cable companies missed an opportunity in 1985 to reduce their franchise fee payments. These companies are simply too sophisticated to miss such an opportunity. Clearly, local cable operators continued to pay the 6 percent based on the 1967 contract because it was cheaper to do so.

At any time, the cable operator could have invoked the 1985 federal regulation because, in the determination of franchise fees, federal law trumps local laws. Therefore, the argument that "the City could owe Intermedia money" if this dispute went to court is simply a scare-tactic and should be dismissed as such until someone brings forth detailed calculations to prove otherwise.

Intermedia needs to settle this debt in order to have clear title to its franchise. The company especially needs to settle before 1999. That's when stricter federal regulations governing franchise renewals kick-in.

What Intermedia fears most is a federal rule that would allow the city to hold the cable company in "non-compliance" for underpayment of franchise fees. This is a mighty big stick for the city. Holding Intermedia in non-compliance opens the door for the city to deny Intermedia a franchise renewal.

Denying the franchise renewal could be a major financial loss for Intermedia, which has made a substantial investment to upgrade Asheville's antiquated cable system.

Three years ago, Intermedia requested "early renewal" negotiations in order to avoid the stricter federal regulations. In this lax regulatory environment, Intermedia had hoped to quietly massage a deal through the city council. With little regulatory enforcement at its disposal, city staff had to negotiate on a playing field clearly tilted in Intermedia's favor.

All that changes in 1999. Each day that brings 1999 closer raises the stakes for Intermedia. Clearly, Intermedia knows that its debt is real. Last fall, the company offered $150,000 to settle its delinquency. It has now raised the offer to $175,000. Still, this is only a tiny fraction of the money owed our community.

Neither the city nor Intermedia wants this matter to end up in court. But until we toughen our stance, Intermedia will continue to low-ball its debt. At the June 2 work session, the city attorney raised the possibility of seeking an attorney specializing in cable litigation to take the case on contingency, thereby keeping the city's legal costs down. Bringing in such a legal specialist to review the case would be a reasonable and prudent step at this time.

Getting a second opinion would take some time, but some folks argue we don't have time. The sooner we get a new franchise agreement -- with tougher franchise fee language -- the sooner we begin collecting more revenue. The longer we wait, the more money we lose.

This argument, however, ignores the fact that Intermedia's debt continues to grow while negotiations continue. Any payments deferred while waiting for Intermedia to settle can still be recovered in a tougher-negotiated settlement. Indeed, the fact that Intermedia increased its original offer from $150,000 to $175,000 indicates that a waiting game is working.

Clearly, time is running out for Intermedia. The city should not fold an increasingly strong hand by settling with Intermedia prematurely, and by granting a franchise renewal this summer. Time is on our side.

3. **State of the Art Clause** -- This contract from the git-go has destroyed the meaning and intent of "state-of-the-art." We are deeply concerned with Intermedia's success in establishing and maintaining a "state-of-the-art" clause that ignores the reality of true state-of-the-art nationwide.

If you listen carefully to Intermedia's verbal gymnastics on this issue, they state that "digital compression" allows them to do with 550 Mhz the "same" that can be done with 750 Mhz. This is true.

But they refer only to digital compression "of video channels." Intermedia can indeed meet their video-channel expansion targets within 550 Mhz using digital compression.

But bandwidth is bandwidth. And that extra 200 Mhz of bandwidth deployed in 750 Mhz systems opens the door to a broad array of high-tech services for local business, industry and the public sector. Given the speed of telecom innovation, it's impossible to predict how this additional bandwidth will be used for local community and economic development in coming years.

4. **Internet Access for Schools, Libraries and Community Centers** -- The proposed new contract makes no mention of Internet access for schools and libraries, or for any City recreation/community center for after-school enrichment programs. No contract should be approved which omits this vital service to schools and libraries, which could save tens of thousands of taxpayer dollars in coming years. The City should also push to include Internet access for community centers.

5. **Ownership of the I-NET** -- Though cable subscribers will be charged $398,316 for construction of the institutional network -- and City taxpayers will foot the (still unspecified) bill for equipping, staffing, and activating the I-NET -- ownership of the I-NET will be retained by Intermedia.

While Intermedia is responsible for "maintenance" of its portion of the I-NET, the city is responsible for maintaining the equipment to activate the I-NET. Intermedia clearly gets the better end of this deal because little maintenance is required of "fiber in the ground." Indeed, Intermedia gets the best of both worlds -- they own the fiber that subscribers have paid for, and they're responsible only for that part of the I-NET which requires little or no maintenance.

Moreover, the City is prohibited from leasing or sharing any excess I-NET capacity, thereby excluding any uses of the I-NET for initiatives such as high-tech business incubation, video-conferencing for local nonprofits, etc. Indeed, has a comprehensive I-NET needs-assessment been conducted?

No mention is made of linking any City recreation center or community center to the I-NET. For example, could the Î-NET be used to help overcome the isolation of city housing facilties such as Hillcrest? Or could the I-NET serve as a small-business incubator for start-up firms capable of of creating high-paying jobs? Virtually no attention has been paid to the I-NET's community and economic development potential, or to its potential burden on taxpayers, or on city staff who may lack the expertise to operate and maintain it.

6. **No Performance Penalties** -- Intermedia promises to complete its rebuild by December, 1998. However, there appears to be no performance penalties to enforce this deadline. Most "rebuild" clauses in cable franchise agreements carry a $1,000-a-day fine to enforce the rebuild deadline.

7. **Late Fees and Senior Citizen Discounts** -- As with other utilities, Intermedia should be limited to charging a late fee of 1 percent of the outstanding balance. Instead, under the terms of this proposed contract, Intermedia is free to continue charging a $5 late fee plus steep reconnect fees.

Discounts for senior citizens, which have been negotiated in other communities, are not mentioned in this proposed contract.

SUMMARY: Intermedia has offered a contract that, in many ways, is worse than the original. The more restrictive "State of the Art" clause, the pass-through of $1,088,316 to subscribers, the ownership of the I-NET, no mention of Internet access for schools and libraries, and the absence of any real performance penalties -- plus the extremely low settlement offer on deliquent franchise fees -- all these flaws combine to make a cable contract that should be roundly rejected.

Tuesday - June 30, 1998
Burton Street Recreation Center
134 Burton Street

7:00 p.m. - Community Meeting

Present: Mayor Leni Sitnick, Presiding; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Edward C. Hay Jr. and Councilman M. Charles Cloninger

The following topics were raised by residents and addressed by City Council and City staff: removal of gate on Collins Street near Hall Fletcher School; lack of minority representation in the Asheville Police Department and need for retention and promotion of African American officers; Burton Street Recreation Center ("Center") needs air conditioning; the Center needs to be renovated; the Center's grounds need to be landscaped and work performed on the ballfield area ; the Center needs additional parking; there is a need for more fire hydrants in the Burton Street area; there is a need for mailbox in the Burton Street area; residents want more police patrol and presence in the area to help deter the selling and buying of drugs and other illegal and immoral activity that takes place; the Center needs to be painted on the inside; request for police officers to be stationed at the Center to help deter the selling of drugs at night at the Center; need for a stop sign at the intersection of Ivy and Boyd Street; water leak on Buffalo Street; request to legalize drugs to reduce crime; need for fire alarm boxes in the area; possibility of a police officer living in the community; suggestion for a citizens on patrol program being started in the area; request for personnel to be available in the West Asheville Resource Center; need for speed breaker on Burton Street; request for a permanent Director at the Center; suggestion that Police officers use cameras to catch criminal activity; need for more jobs for the youth; why the street paving stopped right before 87 & 89 Argyle Lane; request to see if the operation of a garage on Argyle Lane complies with the zoning designation; request to see why cars are being stored on Argyle Lane in conjunction with the garage located on that street; need to stop the commercial encroachment into the residential neighborhood at the head of Burton Street; request that the City Council contact legislators to abolish the Civil Service law which will help in the hiring of minorities in the Police Department; and the need for a cohesive plan to include African Americans in all aspects of economic development.

Mayor Sitnick adjourned the meeting at 9:00 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - July 14, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Tomes gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF ASHEVILLE FIREFIGHERS

Mayor Sitnick recognized Mr. Kevin Ponder and Mr. Paul Monroe, Asheville Firefighters, who just returned from helping battle the raging fires in Florida. Mr. Ponder and Mr. Monroe shared their experiences and presented Mayor Sitnick with a state flag which flew on their fire truck during their stay in Florida.

II. CONSENT:

A. MOTION SETTING A PUBLIC HEARING ON JULY 28, 1998, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ADD ENCLOSED BREEZEWAYS TO THE DEFINITION OF "BUILDING"

Vice-Mayor Hay moved to set a public hearing on July 28, 1998, to amend the Unified Development Ordinance to add enclosed breezeways to the definition of "building." This motion was seconded by Councilman Sellers and carried unanimously.

B. RESOLUTION NO. 98-91 - RESOLUTION PROVIDING FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1998 BELE CHERE FESTIVAL

Summary: The Bele Chere Strategic Plan which was presented to City Council at the annual retreat in 1997 established a Bele Chere Alcohol Task Force to address the alcohol issues surrounding the Bele Chere Festival. This Task Force continues to meet and address issues related to alcohol possession and consumption.

In May, 1996, Asheville City Council approved an ordinance prohibiting consumption and/or possession of open containers of malt beverages and unfortified wine on public streets and other property owned or occupied by the City of Asheville. In order to allow for the control of the sale and consumption of alcohol at Bele Chere, it is necessary for City Council to approve the resolution. Over the past several months, the Bele Chere Alcohol Task Force has been meeting to address concerns from downtown merchants, festival participants and Bele Chere Board members concerning alcohol at Bele Chere. The Task Force is made up of representatives from downtown merchants, City Council, Parks and Recreation staff, Legal Division, Asheville Police Department, the Alcohol Law Enforcement Board and Bele Chere Board. The resolution contains recommended actions by the task force, Bele Chere Board and various City Departments. This Task Force feels that the cooperative arrangement between all parties has been successful in trying to address the major issues relating to alcohol possession and consumption based upon past history of the festival.

The Parks and Recreation Advisory Board, Bele Chere Board, Bele Chere Alcohol Task Force, and the Parks and Recreation staff recommend approval of the resolution to allow alcohol during the Bele Chere Festival.

Upon inquiry of Councilman Sellers, Mr. Butch Kisiah said that the City is still following the Bele Chere Strategic Plan in that in 1999 the City will have no alcohol booths at Bele Chere.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Councilwoman Field moved for the adoption of Resolution No. 98-91. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 441

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING EIGHT LOTS OFF SWEETEN CREEK ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

ORDINANCE NO. 2499 - ORDINANCE TO REZONE EIGHT LOTS OFF SWEETEN CREEK ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 5:16 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that this is the consideration of an ordinance to rezone eight lots (1.9 acres) off Sweeten Creek Road from RS-4 Residential Single Family Medium Density to RM-8 Residential Multi-Family Medium Density.

Owners and applicants Timothy Vorst, Philip G. Cheney III, Willie and Barbara Eddins, Doris Luther, Myrtle Ammons, and Roger Chipman have requested a portion of PIN No. 9654-10-26-9946, and all of PIN Nos. 9654-10-36-1567, 9654-10-36-0862, 9654-10-36-1703, 9654-10-36-1634, 9654-10-36-2520 and 9654-10-36-1485 be rezoned from RS-4 Residential Single Family Medium Density to RM-8 Residential Multi-Family Medium Density.

The area proposed for rezoning is already functioning in a multi-family capacity, and fronts on Sweeten Creek Road . The traffic count in this area is above 11,000 cars per day, suggesting that this property is more suitable for multi-family use that for single family use. The property across Sweeten Creek Road, although not in the city, is also multi-family in use, and there are commercial districts directly to the north of this area, starting at Birch Court, (Zone is CB-I), and directly south across Royal Pines Drive (zone is CS (Limestone Township).

The proposed zoning will not intrude into the existing neighborhood as access to the property proposed for rezoning is from Sweeten Creek Road, and would not be allowed from Cherry Street in the existing neighborhood. The proposed zoning will not front on Cherry Street in the existing neighborhood.

The Planning and Development staff recommends approval of the rezoning request. Planning staff has received one letter of protest from an adjoining property owner. The Planning and Zoning Commission at it's meeting of June 3, 1998, recommended by a vote of five to zero that the petitioned rezoning be approved.

When Councilman Tomes questioned the proposed split zoning of one of the lots, Mr. Black said that generally split zoning is not something that Planning staff would recommend, however, in this case there are very clear old lot lines to follow.

Mayor Sitnick closed the public hearing at 5:26 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2499. This motion was seconded by Councilman Cloninger and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 86

B. PUBLIC HEARING TO CONSIDER A MODIFICATION FROM THE SUBDIVISION STANDARDS REGARDING A FLAG LOT FOR PROPERTY ON OLD HAW CREEK ROAD

Mayor Sitnick opened the public hearing at 5:27 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of setting a modification to the subdivision regulations which addresses flag pole lot length for property located on Old Haw Creek Road.

The Planning and Development Department received a request from owner Sophia Brooks to approve a modification to the required maximum length of a flag pole lot. The request is to increase the maximum length of the flag pole for this particular subdivision from 250 feet to 440 feet. This increase will allow the owner to sell approximately 1.25 acres of her 3.91 acres of land and meet all other subdivision requirements.

The staff presented the subdivision modification request to the Planning and Zoning Commission at their meeting on June 3, 1998. After review, the Commission voted to recommend approval of the flag pole lot length modification for this particular subdivision.

Upon inquiry of Councilman Cloninger, Mr. Ownbey explained the definition of a flag pole lot.

Mayor Sitnick closed the public hearing at 5:32 p.m.

Councilman Tomes moved to approve the modification from the subdivision standards to increase the maximum length of the flag pole length for the subdivision on Old Haw Creek Road from 250 feet to 440 feet. This motion was seconded by Councilman Cobb and carried unanimously.

UNFINISHED BUSINESS

Upon inquiry of Mayor Sitnick, it was the desire of Council to consider the ordinance granting the franchise prior to consideration of the settlement of the franchise fees. Mayor Sitnick noted that she personally would like to consider the settlement of the franchise fees issue first.

Councilman Cloninger moved to change the agenda and consider the ordinance granting the franchise at this time. This motion was seconded by Councilman Tomes and carried on a 6-1 vote, with Mayor Sitnick voting "no".

ORDINANCE NO. 2500 - ORDINANCE GRANTING A FRANCHISE TO BRENMOR CABLE PARTNERS, L.P. (D/B/A INTERMEDIA)

City Attorney Oast said that the public hearing on this matter was held on June 23, 1998, and stated that new terms and conditions have been negotiated and they were reviewed in detail during the June 2, 1998, worksession and clarified at the public hearing held on June 23, 1998, by Assistant City Attorney Meldrum. He recapped that after the June 23, 1998, public hearing a motion was made and seconded to adopt the franchise agreement. Mayor Sitnick then had a medical emergency and had to leave the meeting and asked that the issue be withdrawn from consideration at that time. He reminded Council that granting a franchise does require two votes and if Council does vote to award a franchise today, the second reading will take place on July 28, 1998. He stated that the term of the franchise ordinance specifies that the franchise will begin on July 1, 1998, however, that will be adjusted in the final version of the ordinance to July 28, 1998, if adopted.

Upon inquiry of Councilwoman Field, City Attorney Oast and InterMedia General Manager Joe Haight explained the impact of InterMedia being recently purchased by AT&T and how that would affect the City of Asheville.

City Attorney Oast and Mr. Haight responded to several questions and comments from Council, some being but are not limited to: why InterMedia requested to be relieved from the obligation to overbuild in certain areas and what would happen to Charter Cable and Marcus Cable if they don't want to enter into a franchise agreement to provide services within the City; billing should be simplified; what would InterMedia have to do to go into the telephone business; free Internet access service and free cable modem to each school and public library in the franchise area; and the agreement being a non-exclusive franchise.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cobb moved for the adoption of the ordinance granting a franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia) for the operation and maintenance of a cable system with the amendment to Section 12.E as follows: "In the event that franchisee elects to provide high-speed Internet access services by cable modems in the City, then at such time that franchisee begins to provide such Internet services to its subscribers on a commercial basis, franchisee shall provide free Internet access service and a free cable modem to each school and public library located within the franchise area and which are passed by the activated feeder cable for as long as franchisee decides, in its sole discretion, to continue to provide such Internet services to its subscribers in the franchise area. Such Internet access services and modems shall be provided when Internet service to franchisee's subscribers becomes available in the cable system node in which the school or public library is located and within thirty (30) days of a written request from the school or public library for such services and modem." This motion was seconded by Councilman Cloninger.

Councilman Tomes was concerned over the length of the franchise and felt it should be shorter.

Vice-Mayor Hay said that a lot of what Council has heard has to do with public access channels and how were they going to be administered and the amount of money earmarked for those channels rather than do they exist. The benefit to the City if they enter into the agreement now is that we get public access now. He understands that we need to take the franchise fee settlement into account while Council evaluates this ordinance but this ordinance should stand on its merits. He too is concerned about the pass through expenses and the 750 MHz system vs. the 550 MHz system but felt that the City needed to balance the benefits of the items they are not satisfied with and balance of items they are satisfied with. He is satisfied with the state-of-the-art clause in that it is the best the City can do to protect ourselves against the unanticipated developments over the next 12 years. He would like the agreement be a 5 or 3 year agreement but feels this agreement is the best that can be negotiated. Regarding the AT&T/TCI merger, what we are hearing is that there will be increased serves over the cable lines and the new agreement does take into account any revenues that are collected over those lines. He felt that the time is now to go ahead and move into a new agreement. He realized that the agreement is not perfect, but hoped that it is the best the City can do.

Councilwoman Field was concerned about the pass through and the people who may not be able to afford the additional amount of money. She would like to see the amount lowered, however, she has not heard any comments from the public concerned about the pass through. She was hoping for, and was waiting for, the people who are involved in public access to get together and come to Council with a plan regarding public access and what they need, what they will do and what they would like the City to do. She has not seen that. She said that since they have not been given that type of information, it is hard for her to negotiate for more funds for public access when she doesn't know what they need. She asked the people who want public access to tell the City what they need so that the City can figure out how to do it.

Councilman Sellers said that his big concern is the term of the agreement and he would like to see the shortest term possible.

Councilman Cloninger said that this agreement is much better that the 1967 agreement currently in effect and better than the proposal brought to Council in November of 1997. The term has been shortened; the definition of gross revenues will result in more revenues to the City; the state-of-the-art clause has been broadened; there will be free Internet access to all the schools in the City; the I-net sites have been expanded so that all libraries, high schools and the Board of Education offices will be included in the network; there will be more upfront funding for our peg channels and more on-going financial support for those channels; and there will be the opportunity for those industries that may want the 750 MHz system to receive that, however, they will pay for having that additional capacity rather than having the other Asheville subscribers pay for it who actually do not need it. The proposal floating around in the City that the City should consider owning their own cable system is not a practical idea because we don't have the expertise and don't have the money to run our own system. He said that Morganton, N.C., is one of about 75 cities across the Country that own their own system but in most of those cases, those cities also own their own their own electric system. There are some provisions in this agreement that he wished were stronger, however, there are other provisions that we made out better than we hoped. In business negotiations, neither side gets everything, but all in all, the agreement is best the City can do.

Mayor Sitnick stated that even though there are improvements to the November 1997 proposed agreement that Vice-Mayor Hay and Councilman Cloninger requested action be delayed for further consideration, she outlined several items she was still not comfortable with: no reductions for senior citizens; the refund by request provision; that the City's consultant said at the beginning that 750 MHz is what the City should be getting and she is concerned on whether the 550 MHz system is adequate given the technological advances; the City pays for the I-net system and yet TCI will continue to own it; there should be more balance with the pass through fees; the term of the contract is still too long in that it limits our bargaining power, if the community does not embrace public access television then the City has a 12 year contract that binds us to the using of public access that will cost the subscribers money, and the federal government changes its mind quickly regarding the competitiveness of the cable industry; customers should have basic and expanded without payment for any additional equipment; and all schools and libraries should have the potential of use of this technology. She felt that the City, in part, was derelict in its duties (maybe because of a poorly written 1967 franchise) to determine whether the were being paid on time and whether there should have been penalties levied for payments that were not in compliance. But, because the cable company did not pay us on time it cost the City money to audit and investigate about fees. She was very grateful to former City Manager Doug Bean who questioned whether the City was being dealt with fairly by the cable company. She desired to postpone this renewal in order to see what the federal government would change, maybe form an advisory board with some of the experts in this community to work with the City, and not move so quickly on a 12 year contract that may bind us beyond what we want to be bound by.

Mayor Sitnick thanked all the citizens who participated in this process and stated that she was proud of the Asheville community and their desire to participate in government. She also thanked City staff, Mr. Haight and his staff and City Council for their long hours of deliberation.

The motion made by Councilman Cobb and seconded by Councilman Cloninger carried on a 5-2 vote, with Mayor Sitnick and Councilman Tomes voting "no".

City Attorney Oast said that the second and final reading of the ordinance would be held on July 28, 1998.

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III. PUBLIC HEARINGS CONTINUED

C. PUBLIC HEARING RELATIVE TO AUTHORIZING THE CITY MANAGER TO EXECUTE A SETTLEMENT AGREEMENT WITH INTERMEDIA AND TCI REGARDING FRANCHISE FEES

Mayor Sitnick opened the public hearing at 6:21 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

City Attorney Oast said that this resolution will authorize the City Manager to execute a settlement agreement with InterMedia and TCI regarding franchise fees.

The 1967 franchise requires that the franchise holder pay to the City of Asheville 6% of the gross monthly service charges collected annually for providing the radio and television signals over the cable system within the corporate limits of the City of Asheville. Under the 1967 franchise, that payment was deemed to be full compensation for use of the City's property rights, services rendered, supervision and inspection of equipment and facilities.

Concerns had been raised by the City of Asheville regarding whether or not the City had been paid all of the fees due under the terms of the 1967 franchise. The City of Asheville and the current franchise holder, Brenmor Cable Partners, L.P. (d/b/a InterMedia), have reviewed the language of the 1967 franchise and franchise fee payments made to the City of Asheville during the last few years. As a result of discussions by the parties regarding this issue, a settlement was proposed and considered by the City Council at previous meetings. On March 3, 1998, at a worksession, the City Council instructed City staff to conduct further negotiations regarding the settlement. Those further negotiations have been concluded and a draft of the proposed new settlement agreement was presented to City Council at their worksession on Tuesday, June 2, 1998.

City Attorney Oast said that the negotiations were reviewed in detail during the June 2, 1998, worksession by Assistant City Attorney Meldrum. He then briefly reviewed the documents attached hereto as Exhibit "A", resulting with the proposed settlement of $175,000.

When Mayor Sitnick asked why the cable company continued to pay 6% when Congress said they only had to pay 5%, City Attorney Oast said that the franchise said that they were to pay 6% and the cable company was treating it as a contract. He speculated that they wanted to honor what they considered to be a contract knowing that the City was relying on the revenues and if that provision were to change, it could result in some other ramifications throughout the franchise ordinance.

Mr. Haight said that before 1984, 3% was the maximum amount that you could charge and you could add 2% more but that 2% had to go 100% to regulation of cable. In 1983 this system changed hands for the first time from Thoms to Daniels & Associates. At that time, John Jerose told him that there was a lot of discussion about whether to go ahead and change the percentages to 5% at that time or leave it at 6% because the revenue that would be derived at 6% far exceeded what would be derived at 5% including all sources of revenue. It was determined jointly by City Council, staff and the attorneys of Daniels & Associates, Thoms and the City that they would continue at 6% based on the collection of basic and expanded basic. The expanded basic was included because WGN, WTBS and WOR were broadcast channels at that time. When Daniels & Associates transferred to United Artists the same conversation took place and they went through the same discussions of whether 6% was more beneficial to the City than 5%. It was determined at that time also that 6% would bring in more revenue for the City than going to the 5% of gross. He pointed out that at that time, HBO and Cinemax were the only two premium channels that they offered and there was not a lot of revenue involved. In the 1990's premium service became more prevalent throughout the whole cable system and the revenue stream increased. He believed that until just recently the revenue derived from the 5% fee of gross would equal the 6% that has been given to the City all of these years.

Upon inquiry Mayor Sitnick, City Attorney Oast explained how the statute of limitations provision is not clear in North Carolina law and how he felt that issue is one that both sides would have a lot of trouble with winning.

City Attorney Oast pointed out and explained the major issues in this matter: (1) how much is a percentage we are entitled to collect from their revenue - the cable company contends it's 5%, the City contends it's 6%; (2) what is contained in the definition of revenues - the cable company contend it's only basic or expanded basic, the City contends it's everything including their premium and pay per view channels; and (3) what is the statute of limitations - the cable company contends it's three years, the City contends that it's indefinite which is back to about 1984.

City Attorney Oast said that if the vote is to authorize the settlement, he recommended that the motion be phrased in such a way to delay the effectiveness of your action pending the second reading of the ordinance granting the franchise.

Upon inquiry of Councilwoman Field, City Attorney Oast explained that if the City went into court, the City could expect that a counterclaim would be filed on the basis of overpayment of fees and the City could stand to lose money or have to pay the cable company.

When Mayor Sitnick said that the City was prepared to go to court to defend its position on the release of public records, why wouldn't the City be willing to go into court to collect revenues for the City that are due. She suggested the City hire a lawyer on a contingency basis.

City Attorney Oast responded that on the basis of the issues and explanations he has given Council, the complexity of the law involved and also the uncertainty of the law, he didn't think that any law firms that would be willing to take this on a contingency fee basis and he suspected the fees would be rather high. He felt that in any event, if the City decides to pursue this in court, the City would be looking at paying legal fees whether or not they win. Contingency fees are sometimes done in collection actions, but that is usually where the law is more clear than it is here.

Mayor Sitnick said that since the article appeared in the paper where the headline stated something like the City Council had decided not to pursue the ultimate franchise fee settlement, half of the letters, phone calls and e-mails she has received, people have criticized and condemned this Council for giving up so easily and not pursuing the people's money, etc. She stated that this Council's discussion today is the first discussion and it will be the first vote Council has have taken on this. We have had numerous presentations in worksessions, at public hearings, and at public seminars, but this Council has never voted prior to this meeting on whether it would or wouldn't pursue more or less of a franchise fee settlement.

When Councilman Cloninger asked what the City's chances were to recover $500,000 or more by going to court, City Attorney Oast said that the chances of the City prevailing on all of the issues, so we could recover that amount, is pretty remote.

Councilman Cloninger responded to Mayor Sitnick's earlier comment about the City's willingness to go to court to not release documents. He said that that the City had a better case in trying to keep from releasing those documents than we do on this cable issue, and we lost the document case.

Upon inquiry of Councilman Cloninger about how long it would take to litigate this matter, City Attorney Oast said that if the matter were to be filed in state court, which it probably would be given the favorable result in the Lexington, N.C., case, his estimate is 4-4/12 years until it is finally resolved.

When Councilman Cloninger asked, assuming the City would hire an attorney on an hourly basis, what could roughly be our attorney's fees over the next 4-5 years, City Attorney Oast said it was hard to estimate and unless we got a fairly quick settlement it could be substantially more than $175,000, depending on how far it goes. The point to be made is that when you get into a fight like this, you're just not taking on TCI but the entire cable industry because these issues are very important to them.

City Attorney Oast said that if City Council decides not to enter into this settlement agreement, then he would request that Council amend the vote on the granting of the franchise ordinance to include language that reserves the City's right to pursue this legal action. Assuming that Council adopts the franchise ordinance, this would not affect what we are able to get under that ordinance.

Councilman Cobb said that the 1967 franchise reads that "The Grantee shall pay to the City an annual sum of money computed upon the gross monthly service charge received by the Grantee for providing the radio and television signals over the system within the limits of the City of Asheville as follows: 6% of the gross monthly service charges collected." He felt the City should not settle for anything less than what the cable company owes us.

Mr. Bill Wald explained that the franchise fee is not InterMedia's money, it's the pass through of the subscribers money.

Mr. Haight thanked Council for working with them for the past two years on what they feel is a fair and reasonable settlement for all concerned. InterMedia is saying that as part of the entire package, they are willing to pay $175,000 to settle the issue once and for all - for TCI as well as for InterMedia. Quite frankly, by law, they have the right to go back and collect that $175,000. Instead, they have chosen to negotiate with Council with what they determine to be a fair settlement.

Councilwoman Field asked what would happen if the court awarded the City $528,000. Mr. Haight said that InterMedia would have the right to go back and collect it as an additional pass through to the subscribers.

Mr. Haight noted that the legal departments of four large companies and the legal staff of the City of Asheville have argued about this since at least 1983 and it has never been absolutely clear. He said the audit completed by the City consultant Rice, Williams is not agreed to by InterMedia by any means. However, he is only interested in putting this issue behind us and in going forward with the City of Asheville.

Mayor Sitnick referred to a letter dated February 8, 1994, from TCI Southeast Inc. that enclosed a franchise fee payment in the amount of $161,361.74 from July 1, 1993 - December 31, 1993. She could not understand how the City received a check for a six month period for $161,361 and we are now saying that for the last three years they only owe the City $175,000. She noted that the cable company has agreed to pay the City $25,000 more than in the original franchise fee settlement of $150,000 in November 1997.

Discussion then surrounded the math calculations on the $175,000.

Mr. Wally Bowen, representative of the Citizens for Media Literacy, said that in December 17, 1995, he and other members of the Citizens for Media Literacy and offered their assistance, help and input into this process and for the next two years they were ignored. He thanked this Council for opening up the process where they are able to participate. Using the formula of the City's consultant, he showed Council a spreadsheet of how his organization arrived at the cable company owing the community over one million dollars over a ten year period.

Councilman Cloninger said that he has a fax from the City's consultant Jean Rice and he asked her about that million dollar figure. She wrote that "a million dollars is too high for a conservative estimate of past due fees. Assuming the 5% franchise fee cap established by federal law, a ten year limitation and the results of the audit, a $600,000 estimate would be appropriate but not conservative."

Mayor Sitnick said that the cable company agreed to pay 6% on their services, but they didn't include all their services and that's why former City Manager Bean questioned whether the gross revenues that were being determined by the cable company were actually the full picture. In 1994 she and Chris Peterson questioned the City Manager at that time about this very issue. The fact of the matter is that the City has some responsibility here too. The document didn't provide for the authority for the City to levy a penalty for a late payment, but it did allow us to revoke the agreement within a certain period of time - and the City never did that. The City had some culpability also.

Upon inquiry of Councilman Cobb, City Attorney Oast said that one question to be resolved in litigation is whether our contract and their continuing to honor the 6% binds them to that figure until the contract expires or until we renew it.

Mr. Bowen questioned why a cable company that is the business to maximize its profits would voluntarily pay more money than the federal law required. His assumption is that they looked at the federal law and they looked at the contract and they realized that the contract allowed them to continue underpaying and they did that. He felt that it behooves the City Council to try to get a second opinion about this. He hoped that a fair franchise fee settlement for this community would help fund first rate, top quality public access. One concern they have about the franchise renewal is that all the PEG money is earmarked for equipment and there is no money to actually staff and operate it. They know of no public access operation that is all volunteer. If the City has a weak case, why give up the franchise renewal, which is good leverage, before the settlement is enacted. The franchise renewal is powerful leverage in order to maximize the money owed this community. He said that through a grant they have received from the Community Foundation of Western North Carolina to promote public access in this community, they are bringing in one of the top cable attorneys in the country this Thursday to talk about franchise enforcement and public access. He noted that in 1985 the City Council was concerned enough about the status of this franchise that it established a Commission chaired by Lou Bissette. They made some startling findings. One finding is that the 1967 franchise agreement was passed on July 26, 1967, by referendum, however, on July 4, 1967, the state legislature passed a law that forbid any municipality from granting a franchise longer than, he thought, 25 years. The Commission concluded that the 1967 agreement was illegal and suggested that the City Council abrogate the agreement at that point and renegotiate. The attorney they are bringing in has suggested that this agreement may have been illegal from the beginning and that may give us some additional leverage in litigation. Their attorney also questioned why, since the franchise renewal is with InterMedia, let TCI in on the settlement agreement since they are two different companies. There seems to be a lot of unanswered questions and he hoped that City Council will seek other professional opinions on this.

Mayor Sitnick closed the public hearing at 7:34 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Cloninger moved to authorize the City Manager to execute a settlement agreement with InterMedia and TCI regarding franchise fees. This motion was seconded by Councilman Sellers and failed on a 2-5 vote with Councilmen Cloninger and Sellers voting "yes" and Mayor Sitnick, Vice-Mayor Hay, Councilwoman Field and Councilmen Cobb and Tomes voting "no".

At the request of City Attorney Oast, in order to preserve our right under the new franchise to pursue this settlement, Councilman Cobb moved to reconsider his motion to adopt the ordinance granting a franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia) for the operation and maintenance of a cable system with the amendment to Section 12.E. This motion to reconsider was seconded by Councilman Cloninger and carried unanimously.

Councilman Cobb moved to adopt the ordinance granting a franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia) for the operation and maintenance of a cable system with the amendment to Section 12.E outlined above and an amendment to Paragraph 2 to preserve our right to pursue legal action to collect any unpaid franchise fees on the 1967 ordinance as outlined by City Attorney Oast. This motion to reconsider was seconded by Councilman Cloninger and carried on a 5-2 vote, with Mayor Sitnick and Councilman Tomes voting "no".

At 7:55 p.m., Mayor Sitnick announced a short break.

IV. UNFINISHED BUSINESS:

A. CONSIDERATION OF A CONDITIONAL USE APPROVAL AND PERMIT FOR A DUPLEX AT THE CORNER OF LONDON ROAD AND SHADY OAK DRIVE

Mayor Sitnick said that the public hearing on this matter was held on June 9, 1998.

Mr. Bruce Black, Urban Planner, said that the Technical Review Committee has reviewed an application from owner Emory Mitchell for a conditional use permit for a duplex on the corner of Shady Oak Drive and London Road (PIN No. 9647-12-96-1860). The Unified Development Ordinance ("UDO") specifies several conditions which must be met in order to be granted approval. All of these conditions, detailed below, other than number six, have been met. Condition number six, as a requirement of the UDO, would have to be complied with and it is recommended that compliance with number six below be one of the conditions attached to the permit if the project is approved.

1) The project is located in a District (RS-8) in which Duplexes are allowed as a Conditional Use;
2) The proposed use is more than 300 feet from any other multi-family use other than an accessory apartment;
3) The area of the lot on which the Duplex is to be located exceeds 125% of the minimum lot size for the district in which it is located (RS-8);
4) Parking is located in the rear of the building, and is screened from the neighbors by landscaping;
5) Structure has a single front entrance;
6) Structure will meet all applicable NC building codes. Please note that this will be a function of the building permit application and subsequent inspections by the Building Safety Department.

The proposed duplex is currently sheathed in asbestos shingles. These shingles fall into a Category II rating, and are not considered to pose a threat to health safety or welfare unless they are reduced to the point of dust. A permit from the Regional Air Pollution Control Agency is required prior to removal of all shingles. Work involving asbestos shingles may be required to be done by a certified asbestos contractor.

The UDO also contains seven criteria which are to be considered by the Council in the Conditional Use process. In order to approve the proposed project, the Council must find from the evidence and testimony received at the public hearing, or otherwise appearing in the record of this case that these criteria have been satisfied. Those criteria and staff's findings are set forth below:

1.That the proposed use or development of the land will not materially endanger the public health safety and welfare.

> There is no intrinsic diminution of the public health safety and welfare in the use of this property as a duplex.
>
> The lot is .32 acres in size, and is allowed two single family units under the current zoning, if all other development requirements of the city, Water Authority, and MSD could be met, and if the property were subdivided. Because of a sewer easement through the middle of the property, it is not likely that two single family homes could in fact be placed on the property, even though current zoning density would allow such.
>
> There appears to be no diminution in the public health, safety, and welfare in the presence of the asbestos shingles if proper precautions are taken in working with them, and a contractor certified to work with said shingles is used in that connection.

2. That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in it's basic community functions or by providing an essential service to the community or region.

> The proposed use will provide needed additional housing to the City. This duplex is currently slated by the developer to be rental housing.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

> This is in a large part dependent upon the quality of the development on the site. If the developer is able to build in keeping with the other units in the area, there may be no diminution in value in the area. However, it is not professionally ascertainable by staff, and may require the input of a professional appraiser.
>
> There are currently two other duplexes in the area, and one home that is known to be owned by an absentee landlord. Thus the precedent for rental homes in the area exists at this time.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood in which it is located.

> The proposed unit meets all setback and performance standards of the district in which it is located (RS-8).
>
> The proposed structure measures 24 by 60 for a total of 1440 square feet. The height of the unit is 17 feet 3 inches. There are two other duplex structures of the same size in the immediate area and there is one single family home in the area which is thirty six square feet smaller. The largest structures in the area are the two duplexes of 1440 square feet in each structure. The smallest structures

in the area are two homes of 896 square feet each. The proposed project is similar in bulk, scale, height, coverage, density to other existing structures in the area.

This area has a multiplicity of exterior finishes ranging from vinyl siding to brick and wood. The six other units in the study area, including the other duplexes, area are finished in vinyl clad siding. If the duplex is built in keeping with the exterior appearance and materials of other structures of it's size in the area, it should then not be out of character with the area's appearance.

5. That the proposed use or development of the land will generally conform with the comprehensive plan and other official plans adopted by the city.

The 2010 plan is the only official plan pertaining to this area. The 2010 plan calls for low density residential uses in the area. The area is zoned RS-8 as it reflects the approximate density of the area

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The use is located in a residential area currently served by the City of Asheville Police Department, Fire Department and Sanitation Division. Water supply is adequate for the area. There is currently no bus transportation in the area, thus the additional units will not impact transportation facilities.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The lot is located on the Corner of London Road and Shady Oak Drive, and is accessed from Shady Oak Drive. The access from the lot to the rest of the city could be from either road. Shady Oak Drive runs through the immediate neighborhood and is a residential street varying from eighteen to twenty feet in width. London Road runs along the edges of the immediate neighborhood and acts as a through street bearing both local traffic and through traffic running from Sweeten Creek Road to Hendersonville Highway via West Chapel Road. London Road averages pavement width of twenty feet.

There is currently no traffic count available for London Road. However, by observation, the road appears to flow smoothly with no delay due to traffic volume. Local information suggests problems with excessive speed on this road, as well as a curve which is designed so sharply that people frequently cross into the oncoming lane when they round the curve.

There are no traffic counts available for Shady Oak Drive. From observation, Shady Oak appears to be a residential street bearing traffic generated from residential uses along the road. The road appears to be lightly used.

Trip Generation Tables from the Institute of Transportation Engineers suggests a trip generation rate of approximately 9.57 Trips per unit per day. This trip generation rate is for single family detached units, and is generally higher than for multiple units. However, the Trip Generation rates for units similar to the proposed unit are unreliable due to the small number of samples used to derive the numbers. It is felt that the use of single family statistics is sufficiently conservative to exceed the trip generation rates for multiple units. Using the single family detached rates, and doubling them to account for two units on the lot, the total trip generation is estimated at 19.14 trips from this property per day on average. This will vary, with larger numbers occurring on Saturdays and lower numbers occurring on other days.

This number of trips is not seen to be sufficient to impact the traffic flow on either London Road, or Shady Oak Drive, nor impact the operation of the intersection of London Road or Shady Oak Drive.

The Planning and Development staff recommends that if the Council wishes to approve this duplex, that the following conditions be imposed:

1. That the Duplex meet all North Carolina Building Code requirements;
2. That all required permits to remove shingles or any other hazardous materials be obtained from the Regional Air Pollution Agency or other appropriate agencies prior to the issuance of a zoning permit;
3. That a contractor certified to remove asbestos materials as might be found in or on the proposed structure be retained to do all work involving the these materials in or on the proposed duplex;
4. That the driveway and parking areas be paved;
5. That the bushes planted around the property lines be as shown on the approved site plan and that said bushes be planted in number and type sufficient to create an effective year round screen from the neighbors;
6. That the exterior of the duplex be finished in a manner consistent with similar units from West Terrace Apartments and placed by the applicant at the corner of Ezell and Westwood Roads. Said finish should include, but is not limited to, similar roofing materials, similar window types and materials, shutters, a permanent masonry block foundation, wooden porches and decks, rain gutters with down spouts, utility vents located on the rear roof of the house, utility connections on side or rear of structure; and
7. That there be only one entrance to the structure on the front of the structure. Said entrance may be a foyer off of which other entrances not visible from the street are located.

At their meeting of April 20, 1998, the Technical Review Committee recommended unanimously to approve the proposed Duplex subject to the conditions that all grading and site plans must be submitted to MSD for review prior to construction or grading of any kind, and that the structure meet all applicable North Carolina Building Codes. These conditions should also be added to the list of conditions by the Council.

There has been a good deal of neighborhood reaction to this proposal. The reaction did not come to the attention of the Planning Division until May 26th. The concern appears to center on the value of the homes in the area being negatively affected by the placement of this particular duplex on the property. The building itself is being moved from the West Terrace Apartments site. The residents were given the applicants name and telephone number through a representative named K. Proctor.

The residents were given the applicants name and telephone number through a representative named K. Proctor. The applicant has been given the name and telephone number of Ms. Proctor and the name and telephone number of a member of the Shiloh Residents Association (Mr. Charles Williams). As of June 9, the date of the first review of this project by Council, neither party had been able to contact the other.

However, Mr. Williams and Mr. Mitchell (applicant) did talk on June 9 after the City Council meeting. They agreed to meet. This meeting took place on June 12. There was no reconciliation of differences between the parties at this meeting.

The Planning Department has attempted to contact members of the Shiloh Community Association with an offer of mediation between the parties involved. A message was left, and no response has been received. Continued attempts to contact Mr. Williams have failed. The Planning Department will continue to attempt to bring about a further meeting with the parties concerned until the date of the hearing on this Conditional Use application.

A table of selected neighborhood lot characteristics was reviewed that showed pictures of the houses in the area, the size of each structure surveyed, the area of the lot the structure is located on, the percentage of the lot that is occupied by the structure(s) on that lot, the date the structures were built, and the 1988 assessed value of the lot and structure. This data has then been tabulated by discrete category, and compared to the similar statistic that is an attribute of the proposed duplex. This is done to aid in establishing a context for the proposed duplex in the neighborhood.

He then reviewed the following report from Senior Planner Gerald Green which explains the potential dangers of asbestos found in the shingles that are presently on the proposed Duplex:

Asbestos shingles were a commonly used building material during the period 1940 to 1960, with some use of this material continuing into the early 1970's. The shingles are still found as siding on many buildings in Asheville. Asbestos shingles have an asbestos content of 20% or more, with the asbestos bound in cement. The technical name for asbestos shingle siding is transite. Undisturbed, transite is very stable and does not pose a problem to the environment or to humans. Rubbing, painting, rain, and other normal activity does not hurt transite or result in exposure to asbestos.

Recognition that asbestos can pose an environmental and health hazard led to the regulation of all asbestos containing materials. The Environmental Protection Agency has classified asbestos containing materials into 3 categories, with the classification related to the danger posed by the particular material. The categories, and materials in each category, are:

- Regulated Asbestos Containing Material (RACM)
    - Pipe insulation and plaster
    - Can be crumbled with hand
    - Most dangerous type

- Category I Non-friable
    - Roofing material, floor tile (linoleum)
    - Danger posed by improper removal

- Category II Non-friable
    - Transite siding shingles
    - Not regulated federally
    - Removal is regulated locally
    - Can be made friable - then regulated federally

No problem is created by asbestos shingles as long as they are not disturbed. Transite causes concerns when it becomes friable, that is, broken into small enough pieces to create dust. To be considered significantly friable for purposes of regulation, all shingles on a building must be broken. Each shingle must be broken several times in order for it to be considered friable by the local regulatory agency (Regional Air Pollution Control Agency). If the shingles are broken and made friable, the concern is for those workers/persons in the immediate vicinity. No danger would be posed to neighbors and others not in the immediate vicinity. Asbestos has a high dilution factor, meaning that it is quickly diluted by air, water, or other material. Once broken and made friable, the asbestos in transite poses no problem once the dust is settled.

A permit must be obtained from the Regional Air Pollution Control Agency prior to the removal of asbestos shingles. Transite must be removed in whole shingles, kept wet, wrapped in 6 mil poly, and taken to the landfill for disposal. Permits are not generally required for removal of a few shingles; the concern is with removal of all shingles on a structure.

Steve Heiselman, Inspector in the WNC Regional Air Pollution Control Agency, was asked if the situation with the structures on Brooklyn Road posed any sort of danger or problem. Mr. Heiselman stated that in his opinion the structures posed no problem.

Mr. Black corrected an earlier statement by saying that the units at Ezelle Avenue and Westwood were placed by Mr. Tom Ross, not the applicant Mr. Emory.

Mr. Black then passed out the following letter dated July 8, 1998, to City Council signed by Mr. Emory Mitchell: "Request for a duplex or multi family unit to be place on this lot. This letter is concerning the set-up of the duplex apartment. The intent of work to be done on the apartment building is as follows: replace siding, windows and brick veneer front. Build front & rear decks. The apartments that have been set up on 15 Ezelle Ave., West Asheville by Tom Ross is an example of the intent of work to be done on the apartment building for London Road.

Upon inquiry of Councilman Tomes, Mr. Black said that because there are no building plans and no building permit has been applied for, it is not possible for staff to determine if the structure meets all applicable North Carolina Building Codes. However, at the time of application, he would have to show that he is meeting those plans and certainly during the construction phases he would have to meet the North Carolina Building Code prior to the issuance of any certificate of occupancy.

Upon inquiry of Councilman Tomes, Mr. Black explained that two duplexes in the immediate vicinity are both finished in a vinyl-clad siding and they both look similar to the one on Ezelle Avenue. If the applicant would do the same job on this duplex as was done on Ezelle Avenue, it would fit in with the existing neighborhood.

Upon of Councilwoman Field, Mr. Black said that there are no other duplexes within 300 feet of the applicant's property measured along Shady Oak Drive or London Road.

Upon inquiry of Councilman Cobb about the asbestos, Mr. Terry Summey, Director of Building Safety, said that as long as they are not removing more than 160 feet of it, a permit is not needed. However, if they do remove it, the appropriate permits will need to be obtained and removed per the Air Pollution Standards. He thought the intentions of the applicant is that they will be covering the asbestos.

Councilman Sellers moved to re-open the public hearing at 8:40 p.m. This motion was seconded by Councilwoman Field and carried unanimously.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter. City Attorney Oast said that if someone was sworn in at the public hearing on June 9, 1998, they need not take the oath again.

Upon inquiry of Mr. Charles Williams, resident of Shiloh and spokesman for the neighborhood, Mr. Summey explained what is required under the N.C. State Building Code.

When Mr. Williams and requested a copy of the staff report Mr. Black prepared for Council, said report was copied and handed out. Mr. Black stated that he prepares the information for Council delivery on Friday afternoons and it is available in the Clerk's office at that time.

Mr. Williams then reiterated his statements on June 9, 1998, and requested on behalf of the Shiloh Residents Association that the conditional use permit be denied. He stated that their committee did meet with Mr. Mitchell and Mr. Mitchell, who is not an Asheville resident, said that this project would be good for the community and not to worry about it. They felt that this type of language reeks of colonialism and paternalism and this attitude is inappropriate in the 1990's. Despite this attitude, the meeting was cordial, however, no consensus was met and they referred the issue back to City Council. Again, they requested that the conditional use permit be denied.

When Councilman Cloninger asked if the community would object if Mr. Mitchell renovated the duplex to the same quality as reflected in the photographs of the duplex on Ezelle Avenue, Mr. Mitchell said that they have seen the pictures over a month ago and in their discussions with the Mitchells, they could come to no consensus of what would be agreeable to both parties.

When questioned further by Councilwoman Field, Mr. Williams explained that the only reason why this issue is before City Council is because it is a duplex and requires a conditional use permit. The community does not want a rental unit duplex coming into their community, specifically this particular unit. He said, however, that the issue is property taxes have been raised and they are trying to maintain some property values.

Mr. Lucy Hunter passed out to City Council pictures of properties that have been brought into the Shiloh community recently and explained a little history about some of the properties. She urged Council to deny the conditional use permit and asked for a moratorium on the relocation of any additional units in their community.

When Vice-Mayor asked if Ms. Hunter would object if Mr. Mitchell renovated the duplex to the same quality as reflected in the photographs of the duplex on Ezelle Avenue, she said that they would not accept it as a duplex because they believe in single-family ownership. However, she did acknowledge that if it looked like the photograph and was a single family home, she would not have a problem with it.

Ms. Pauline Seabrook, resident of the Shiloh area, stated that they want single family development in their area and not to bring in substandard housing that will demolish their community which they have worked long and hard to make a decent community.

Ms. Katherine Proctor, resident of the Shiloh community, commented on the role of staff in this case. She said the community has fought and struggled to preserve their property and urged Council to deny the conditional use permit.

Planning & Development Director Julia Cogburn responded to Ms. Proctor in that the issues have been addressed and in terms of a recommendation, staff did not recommend approval or disapproval of this particular project. What staff did recommend is that if City Council wished to approve the duplex with all the information that staff had given them, that the following conditions were those that staff would recommend to Council in approving the project.

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There was some discussion on the role of staff and City Council in this issue. Since one issue seemed to evolve around the information in the staff report, Mayor Sitnick asked that the next time this kind of situation arises that at the beginning of the meeting copies of the staff report be made available.

Ms. Frieda Nash urged City Council not to change the Shiloh community from single family homes to multi-family homes and not from home ownership to rental. She pleaded to Council not to use Shiloh anymore as a dumping ground.

Mayor Sitnick closed the public hearing at 9:17 p.m.

City Attorney Oast said that on June 9, 1998, Councilwoman Field raised a question about Finding No. 2 which reads "that the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region." Councilwoman Field's question, as he understood it, means does Council have to find that it's a public necessity. His response is that Council does not have to do that if they find that it reasonably enhances a significant public interest such as the public health or general welfare.

Upon inquiry of Mayor Sitnick of how to proceed, City Attorney Oast said that Council can discuss the issue and take a vote and then based on the evidence that has been presented and Council's comments preceding their vote, staff will put together an Order that contains findings and conclusions. Staff will bring that back to Council for approval of the findings and the conclusions.

Councilman Tomes expressed several concerns, in particular the damaged mailbox and the insensitivity of developers.

Councilman Cobb said that the Unified Development Ordinance designates this property as RS-8 Residential Single Family and did not feel comfortable in changing the home ownership in the area to rental.

Mayor Sitnick stated the following items in particular that bothered her in this conditional use permit: (1) Regarding Finding No. 1, she felt that the asbestos siding units are a danger from being moved around and cut in half; and (2) Regarding Finding No. 3, we may be able to ascertain by an appraiser that the surrounding property won't be diminished in value, however, after looking at the pictures and visiting the area, she has a real problem on relying on the developer who for convenience sake, significantly and severely damaged a tree on someone's private property to move a unit.

Councilman Cobb moved to deny the conditional use permit for a duplex at the corner of London Road and Shady Oak Drive. This motion was seconded by Councilman Tomes.

Vice-Mayor Hay said that part of the Unified Development Ordinance process was Council's decision that they really did want to provide housing opportunities all over town and so under certain conditions under the conditional use process, duplexes, quadraplexes and triplexes could go into RS-8. He said that he entered this process with the mind-set that this was one of those instances. However, after the last meeting, he spoke to Mr. Mitchell and told him that he had an open mind on this but he was going to have to sell him on this project (by showing him plans and pictures) because he did not want to vote on putting junk into this neighborhood. All he received was the letter presented today.

Councilwoman Field said that she believes in mixed use. She believed that the more we can mix single family with multi-family is the way an urban environment should be. It provides for walkable communities and provides for a mixture of economic levels and provides for a lot of diversity. She strongly supports affordable housing in this community. In many cases, duplexes are owned by someone who is elderly and who needs the money in order to be able to live themselves. Duplexes are totally appropriate and in character in a single-family neighborhood. However, she didn't think Mr. Mitchell did a very good job in convincing Council of what he is going to do.

The motion made by Councilman Cobb to deny the conditional use permit for a duplex at the corner of London Road and Shady Oak Drive and seconded by Councilman Tomes carried on a 5-2 vote, with Mayor Sitnick, Vice-Mayor Hay, Councilwoman Field and Councilmen Cobb and Tomes voting "yes" and Councilmen Cloninger and Sellers voting "no".

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 23, 1998, AND THE COMMUNITY MEETING HELD ON JUNE 30, 1998

Councilman Cloninger moved for the adoption of the minutes of the regular meeting held on June 23, 1998, and the community meeting held on June 30, 1998. This motion was seconded by Councilman Tomes and carried unanimously.

B. INTERVIEWS FOR PLANNING & ZONING COMMISSION VACANCY

City Council instructed the City Clerk to arrange for the following persons to be interviewed for a vacancy on the Planning & Zoning Commission: Priscilla Bass, Robert Euler, Linda Giltz, Lionel Williams, Susan Andrew, Barber Melton, Jerry Bailey, Chris Goodwin, Richard Reiss and Arthur Anderson.

C. LEGISLATION

City Attorney Oast said that Senate Bill 452, which gives the City more latitude to regulate sexually oriented businesses, was signed into law last week.

It was the consensus of City Council to direct the City Attorney to prepare a report to Council on appropriate options available to Council.

Mayor Sitnick also asked the City Attorney to look into how the City would go about banning drive-through bars at ABC Stores.

D. CITY COUNCIL MID-YEAR RETREAT

It was the consensus of City Council to bring this issue to the next worksession for further discussion and direction to the City Manager.

E. LITTER ROUNDTABLE

Mayor Sitnick said that the first Mayor's roundtable will focus on the problem of litter on Thursday, August 20, 1998, at 7:00 p.m. in the Public Works Facility. The roundtable will focus on solutions and it's going to be based on education, awareness, prevention and clean-up. They are targeting invitees as well as inviting the general public. She will prepare a memo for Council to see the outline proposed.

F. CLAIMS

The following claims were received by the City of Asheville during the week of June 12-25, 1998: Susan West (Traffic Engineering), Lisa Bollinger (Parks & Recreation), Namurah Blakely (Fire), David Parr (Water), Mary Bradford (Sanitation), Kyle Austin (Water) and Eli Herman (Water).

The following claims were received during the week of June 26-July 9, 1998: Darlene Worley (Parks & Recreation), Hazel Thomas (Traffic Engineering), Teresa Fisher (Sanitation), Mary P. Sellers (Police), Kathleen Burke (Police), Tommy Hall (Sanitation) and Vicky Taylor (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:52 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

EXHIBIT "A"

Franchise Fee Issue
and
Proposed Settlement

Issue: **Does the phrase "gross monthly service charges collected" in the 1967 franchise include premium services, revenues from home shopping networks and other revenue sources?**

Measures to Address Issue:

- Legal research on court interpretation of phrase or similar language
  - Problem North Carolina case - Lexington, North Carolina
- Legal research on federal regulations governing amount of franchise fees
  - 1967 franchise says 6%
  - federal law set cap of 5% in 1984 (effective January 1, 1985)
- Legal research on how far back could collect fees (statute of limitations)
  - Three Years
  - Ten Years
  - Unlimited
- Review amount of franchise fee payments made
- Review records of TCI Cablevision of Asheville, Inc. to determine amount of revenues from basic and expanded basic services, premium channels (HBO, Cinemax, etc.), installation charges and rental fees and home shopping networks
- Assemble report comparing amount of franchise fee payments made to revenue sources listed above

Chronology

1967 - Franchise approved; 6% franchise fee; basic service only

1980 - HBO (premium service) introduced by local franchisee

1984 - Disney (premium service) introduced by local franchisee

1985 - Expanded basic service began

Federal law limits franchise fees to 5%

1986 - Pay-per-view introduced by local franchisee

1988 - Showtime (premium service) introduced by local franchisee

1996 - Rice, Williams conducts franchise fee review

1997 - Franchise renewal and settlement first proposed

EXHIBIT "A"
page 2

Franchise Fee Issue
and
Proposed Settlement

IF "gross monthly service charges collected" ("gross") includes premium services, home shopping network revenues, etc.

THEN

For Four Years *

"gross" = $29,029,377 x 6% = $1,741,762.62

Amount paid = $20,223,852 x 6% = - 1,213,431.12

Difference (6%) = $ 528,331.50

* Rice, Williams contract was for a three year review; based on timing of review, fourth year could be included and was included in report.

BUT 5% Federal limit

For Four Years *

5% Federal Limit = $29,029,377 x 5% = $1,451,468.85

Amount paid = $20,223,852 x 6% = -1,213,431.12

Difference (5%) = $ 238,037.73

⇓

For Three Years **

= $ 178,528.29

* Rice, Williams contract was for a three year review; based on timing of review, fourth year could be included and was included in report.

** Information for three years determined in the event statute of limitations is three years.

Should Have Paid $29,029,377 x 5% = $1,451,468.85

Paid $20,223,852 x 6% = $1,213,413.12

Difference (4 years) = $ 238,037.73

Difference (3 years) = $ 178,528.29

Tuesday - July 21, 1998- 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

Mayor Sitnick introduced the Honorable Johnny Fender, Mayor of the City of San Angelo, Texas, who is visiting the Asheville area. Mayor Fender spoke briefly about the similarities of his City to Asheville.

CONSENT:

Grant Application for Five New Police Officers

Summary: On January 22, 1998, the Police Department submitted a grant application to the US Department of Justice, Office of Community Oriented Policing Services. This application requests federal assistance to the City to hire five new police officers. These new officers will be assigned to the South Market/Eagle Street and contiguous areas to provide an increased level of law enforcement and public services.

The application requested three years federal funding in the amount of $323,925. The granting agency requires a local matching contribution of $107,975 for a total project cost of $431,900 for the three year term. The first year's match is $19,075, second year is $41,840; and, third year is $47,060.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to accept a grant from the US Department of Department of Justice, Office of Community Oriented Policing Services, to fund five new police officer positions; and (2) a budget amendment to appropriate funds to the project.

Grant Application for Computer Equipment and Two Positions for Police Department

Summary: On June 11, 1998, the Police Department submitted a grant application to the US Department of Justice, Office of Community Oriented Policing Services. The application requests federal assistance to the City for the purchase of 106 in-car laptop computers for the police fleet, and funding for two new Police Service Technician (PST) positions. The computers will enable officers to have field based access to all systems currently residing on the Criminal Justice Information System, (CJIS). Field based CJIS access will increase officer efficiency through reducing officer "in the office" administrative time, and, thereby, allowing more time for community policing activities.

The PST positions are non-sworn positions. Once filled, the PSTs will provide various public, police services that do not require police certification, such as, traffic control, minor crime investigation, escorts, and security patrols. With the PSTs providing these services, police officers will have more time to commit to law enforcement operations. Costs for staffing PST positions are less that costs for staffing police officer positions.

The application requests federal funding in the amount of $744,640. The granting agency requires a local matching contribution of $245,814, for a total project cost of $990,454. A request for waiver of the local match was sent along with the application. This is a one year grant. However, pending future Congressional appropriation, second and third year funding for the PST positions may be available.

The City will receive notification regarding grant award before September 30. If there is an award, the matter will be presented to City Council at that time for approval and funding consideration.

Grant Application for Computers and Radar Equipment for Police Department

Summary: The Asheville Police Department requests approval for the City to submit a grant application to the N.C. Governor's Highway Safety Program. The application requests assistance to the City to purchase equipment to support the department's traffic safety program; specifically five in-car computers and five speed detection devices.

The application requests federal funding in the amount of $37,500. The granting agency requires a local match in the amount of $12,500, for a total project cost of $50,000. Second and third year funding may be available.

Mayor Sitnick asked to be kept up to date relative to the Criminal Justice Information System.

Grant Application for Master Street Tree Plan

Summary: The consideration of a resolution to apply for grant funds from the NC Dept. of Environment and Natural Resources to develop the first phase of the Master Street Tree Plan.

Funds are available through the State of North Carolina, Department of Environment and Natural Resources, Division of Forest Resources in the Urban and Community Forestry Grants Program, to improve urban forest resources.

The Parks and Recreation Department is responsible for developing a Master Street Tree Plan (MSTP) for street trees on City rights-of-way located within the City limits of Asheville. The existing inventory is almost fifteen years old and no longer accurately reflects the trees of the City. Phase I of the process will specifically identify the location, size, condition, and site conditions of trees located in the central district of Asheville. The MSTP will help serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community organizations.

The Parks and Recreation Department is requesting $10,000 in grant funds which requires a 100% match. Matching funds are currently available in the Park Maintenance and Public Facilities budget. In-kind match will include supplies, transportation, volunteer hours, and project management.

The Parks and Recreation Department recommends adoption of the resolution authorizing the City Manager to enter into this agreement if the City receives the grant award.

Grant Application for Greenway Trailhead and Ramp Segment on Broadway Greenway

Summary: The consideration of a resolution to apply for grant funds through the N.C. Dept. of Environment & Natural Resources to construct a greenway trailhead and ramp segment on the Broadway Greenway.

Funds are available through the State of North Carolina, Department of Environment and Natural Resources in the National Recreational Trails Fund Program (NRTFP) to provide trails for public use in North Carolina.

The Broadway Greenway represents the next section in the City of Asheville's urban trail corridor linking the University of North Carolina to the Downtown business district. Phase I of the corridor was completed in 1997 with the first section of the Weaver Blvd. Greenway. The next section of Weaver Blvd. will be completed in 1998/1999. The City has been working for some time to develop the Broadway Greenway along Reed Creek on the west side of Broadway. Eventually this corridor will link downtown neighborhoods to the Weaver Blvd./Glenn's Creek Greenway.

The focus of this grant will be the segment of greenway between Chestnut Street and Magnolia Street. The greenway begins at Chestnut Street where a large, five points intersection is located. The grade change from Chestnut Street to Reed Creek is very steep. A ramp will be needed to provide wheelchair and bicycle accessibility to the greenway. Since it is a large, busy area, the entrance will need a strong visual statement will need to be made to show where the greenway begins. The entrance will include signage, map, and benches. The funds from this grant will be set aside to assist with the construction of the trailhead and ramp, and to build a segment of the trail between Chestnut Street and Magnolia Street.

The Parks and Recreation Department is requesting $30,000 in grant funds which requires a 20% match. Matching funds are currently available in the Capital Improvement Project budget designated for Broadway Greenway, in the Park Maintenance and Public Facilities Division. In-kind match will include labor, equipment, and project management.

The Parks and Recreation Department recommends the adoption of the resolution authorizing the City Manager to apply for and enter into this agreement if the City receives the grant award.

Grant Application for Historical Markers at Riverside Cemetery

Summary: The consideration of a resolution to apply for funding through the Community Foundation of Western North Carolina for historical grave markers and an exhibit area at Riverside Cemetery.

Funds are available through the Community Foundation of Western North Carolina to provide educational and preservation opportunities.

Riverside Cemetery is designated as a National Historic Site, and a local historic site within the Montford Historic District. It is also designated as a Buncombe County Treasure Tree Preserve. Besides burial services, Riverside offers variety of activities such as tours, genealogy studies, tree, flower and animal identification, and grave marker rubbings.

Historical grave markers and the exhibit area will be part of the Riverside Cemetery Tour Program, and will offer visitors a greater opportunity to identify historic grave sites and utilize both guided and self guided tours. Over 2,000 visitors a year will experience a unique educational and cultural history lesson about many of Asheville's most prominent citizens, and their contributions to our community.

The Parks and Recreation Department is requesting $4,000 in grant funds. Supplemental funds are currently available in the Riverside Cemetery budget, and through private contributions. In-kind support will include labor and project management.

The Parks and Recreation Department recommends adoption of the resolution authorizing the City Manager to apply for and enter into this agreement if the City receives the grant award.

Withdrawal of Dedication for Miller Avenue

Summary: The consideration of a resolution finding the right-of-way known as Miller Avenue not part of an adopted street plan.

The right-of-way known as Miller Avenue as shown in Plat Book 32, Page 32, is not part of an adopted street plan in accordance with General Statute 136-66.2. Peggy M. Bridgeman has requested that City Council adopt a resolution stating such.

According to North Carolina General Statute 136-96, a right-of-way not utilized within 15 years of dedication can be abandoned through a recording of a Declaration of Withdrawal.

To proceed with this process, Peggy Bridgeman sole heir of Joel R. Miller and owner of PIN Nos. 9755.17-01-1345, 1236, 1138, 1120, 1023, 3353, 3255, 3156, 3049 and 3041 has requested that the City of Asheville verify if the specific rights-of-way are or are not part of the City's adopted street plan. The statute requires that the City adopt a resolution stating the right-of-way to be abandoned is or is not part of a proposed street plan. The unused right-of-way is not part of any such plan and is not a City maintained right-of-way; therefore, the City has determined that all necessary requirements of the statute will have been met by adopting the resolution, thus allowing Peggy Bridgeman to withdraw this specific right-of-way.

The Public Works Department staff finds that the right of way known as Miller Avenue from the intersection with Summit Avenue and Maude Avenue, in their entirety, as shown on Plat Book 32, Page 32 is not part of an adopted street plan and recommends the adoption of this resolution.

Setting a Public Hearing to Close an Unnamed Alleyway between Miller and Pond Avenues

Summary: The consideration of a resolution setting a public hearing to permanently close an unnamed alleyway between Miller and Pond Avenues.

A petition has been received from First Citizens Bank & Trust Company requesting that an unnamed alleyway between Miller Avenue and Pond Avenue be permanently closed to public use.

The petition received includes the affidavit of First Citizens Bank and Trust Company, owner of parcels 9654.05-09-7679,7851,8772, and 8970. First Citizens Bank and Trust Company owns all of the property with frontage on the unopened alleyway between Miller Avenue and Pond Avenue that has been petitioned to be closed.

Amendment to Comprehensive Parking Study to Include Transportation Corridor Analysis for Biltmore Village Area

Summary: The consideration of a resolution amending the contract for the Asheville Comprehensive Parking Study to include a Transportation Corridor Analysis for the Biltmore Village area.

The original contract cost for the Comprehensive Parking Study is $92,400.00 (Downtown, Biltmore Village and West Asheville areas). Due to the need for a Transportation Corridor Analysis for the Biltmore Village area, staff recommends that an amendment be issued to increase the contract by $34,833.19. This will revise the contract to $127,233.19. The funds to be used for the above amendment will be encumbered from account code 110-2501-418-3010.

The consultant will review and summarize the existing traffic and thoroughfare plans, conduct transportation analysis and develop recommendations and prepare a transportation plan which will compliment and extend the existing Biltmore Village Development Plan and the Asheville Thoroughfare Plan for this area..

School Crossing Guard Contract

Summary: The Asheville Police Department, through the use of a private contractor, provides school crossing guards at 22 sites in the City of Asheville. This service is during early morning hours and early afternoon hours, Monday through Friday.

Funds allocated in the line item 110-3503-421-3010C46201, Professional Services, in the amount of $75,800.00. The only bid received was from DAP Security in the amount of $74,527.20, for each academic year of 1998/99 and 1999/2000.

Acquisition of a Utility Billing System

Summary: The consideration of a resolution authorizing the acquisition of a utility billing system.

On November 25, 1997, the City entered into a Software License and Services Agreement with H.T.E., Inc. to acquire a computer hardware/software system to meet most of the City's central computer automation requirements and to ensure Year 2000 compliance/compatibility. That acquisition was financed through a master lease with Ontario Leasing which the City uses to acquire virtually all our computers and related equipment. The hardware has been installed and "live" operation of many of the software applications modules began on July 1, 1998. Implementation of the remaining application modules will continue through the remainder of 1998. The original Software License and Services Agreement included an option to acquire H.T.E.'s utility billing software at a later date at a guaranteed price.

The resolution authorizes the City Manager to execute a Supplement to H.T.E., Inc. Software License and Services Agreement which exercises the City's option to acquire the utility billing system. The resolution also authorizes the City Manager to add the utility billing system to the City's master lease agreement with Ontario Leasing.

The total cost of the utility billing system and associated training and technical support is $156,000.00. This cost will be spread over five years by the master lease. Funding for the first year of the lease has been appropriated in the FY 98-99 budget.

Staff recommends City Council adopt a resolution which authorizes the acquisition of a utility billing system.

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Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

IDENTIFICATION OF UNIFIED DEVELOPMENT ORDINANCE ANNUAL REVIEW ISSUES

Mr. Gerald Green, Senior Planner, said that as directed by Council at the time of adoption of the Unified Development Ordinance ("UDO"), an annual review is scheduled to discuss how the UDO is working, to review revisions already adopted, and to identify and discuss possible additional revisions.

At the time of adoption of the UDO, City Council directed staff to conduct an annual review of the UDO. The purpose of the review is to assess the effectiveness of the UDO, with particular attention to its level of success in directing growth and development to the advantage of the developer, the citizens, and the City as a whole. Among the items to be discussed during the review are how the various review processes established by the UDO are working, revisions already made to the UDO, and possible additional revisions.

In preparation for the annual review staff has compiled a list of the adopted revisions to the UDO and prepared a list of possible revisions for consideration as part of the review. The list of possible revisions reflects input from staff, Council members, and the public. This information is being provided for Council's review and consideration. At the appropriate time, Council may identify revisions which it wishes staff to incorporate into the UDO. This will require review and recommendation by the Planning and Zoning Commission and adoption by City Council. As part of the review and approval of any possible revisions to the UDO, both City Council and the Planning and Zoning Commission must hold public hearings.

He reviewed the Level I review process as follows:

- Residential Projects 3 - 7 units
- Commercial, Office and Institutional projects up to 35,000 square feet
- Industrial projects up to 100,000 square feet
- Staff level review, no formal meeting
- 10 working days turnaround
- 42 projects reviewed June to December 1997
- 75 projects reviewed January to July 1998
- Core Review Team meets every 6 to 8 weeks to assess process
- Problems assessed immediately
- No major concerns identified by community
- Staff reorganization assigned one staff person to Level I review

Level II Review:

- Residential Projects 8-50 units
- Commercial, Office and Institutional projects 35,000 to 100,000 square feet
- Industrial Projects from 100,000 square feet up to a site of 15 acres
- Review by staff
- Approval by Technical Review Committee ("TRC")
- Public notified of TRC meeting
- TRC meeting 2 weeks after submittal deadline
- 5 projects reviewed June to December 1997
- 5 projects reviewed January to July 1998
- No major problems identified with review process
- Concerns and problems addressed by TRC

Level III Review:

- Residential projects over 50 units
- Commercial, Office and Institutional projects over 100,000 square feet
- Industrial projects over 15 acres
- Review by staff
- Recommendation by TRC
- Public hearing held by City Council
- Decision regarding approval made by City Council
- Treated as conditional use
- Approximately 4-6 weeks from submittal to decision
- One Level III project submitted since UDO adoption
- No major concerns or problems identified with review process

He then reviewed the minor subdivision review process:

- Subdivisions requiring no new streets, utilities, easements and/or rights-of-way
- Review and approval by staff
- Typical review time 3-4 hours
- 25 subdivisions reviewed June to December 1997
- 30 subdivisions reviewed January to July 1998
- No problems or concerns identified
- Review staff has refined review process

Major Subdivision review:

- Subdivisions requiring new streets, utilities, easements and/or rights-of-way
- Review and recommendation of preliminary plat by TRC
- Approval of preliminary plat by Planning & Zoning Commission ("Commission")
- Neighboring property owners notified of hearing held by Commission
- Approximately 4 week review period for preliminary plat approval
- Final plat reviewed and approved by staff
- Typical review time for final plat is 2-3 days
- 5 major subdivisions reviewed June to December 1997
- 6 major subdivisions reviewed January to July 1998

This information is provided for Council's review and discussion at this time; it has not been reviewed by any other body and there is no recommendation.

Suggested Review Items:

The following possible revisions to the UDO have been identified by various boards, commissions, members of the public, and/or staff. Staff recommends further review and consideration of the following identified revisions:

Revise Office District - Revise the current Office District standards to reduce the permitted building size (currently 4,000 square feet footprint and 8,000 sq ft gross floor area) and create a new "medium range" Office District II to bridge the gap between the revised Office District and the Office/Business District, which permits buildings up to 30,000 sq ft gross floor area.

Create a Mixed Use Planned Unit Development District - The UDO includes a Planned Unit Development (PUD) overlay district designed to permit and encourage flexibility in site design for developments. Density bonuses are provided as an incentive in the residential developments to encourage the provision of affordable housing and protection of sensitive areas. Up to 10% of the land area may be developed for community businesses or offices serving the development and immediately surrounding areas. Requests have been presented for the development of a Mixed Use Planned Unit Development District which would permit developments containing a range of uses from mixed density residential to office to commercial designed in a unified manner. Design flexibility would be a key component of this district, with incentives provided to encourage the attainment of community goals (walkability, provision for alternative modes of transportation, etc.).

Create an Open Space/Park Zoning District - Develop a zoning district designed to accommodate public parks and open spaces. The proposed zoning district will permit the development of parks and related public facilities and serve to protect these resources. The Open Space/Park District will be applied to publicly owned properties; privately owned properties will not be assigned this designation.

Landscape Ordinance Revisions - Minor revisions to the Landscape and Buffering Ordinance are proposed. The following revisions have been identified by the Tree and Greenway Commission: (1) Require all parking spaces within a parking lot to be located within 30' of a tree instead of 60' as required in the current ordinance; (2) Require that trees and shrubs be planted within 8' of a vehicular use area, instead of 20', to count as parking lot landscaping; (3) Establish a time limit within which parking lot landscaping intended to buffer the lot from the street must meet the required 3' height and within which berms and grade changes must be covered with vegetation; (4) Establish a requirement for enhanced buffers where development abuts the interstate; and (5) Review the requirements for maintaining existing trees during the development process.

The following minor revision has also been identified: Establish a requirement for enhanced buffers where development abuts the interstate.

One other request has been brought to the staff's attention - that we review the requirements for maintaining existing trees during the development process. Under the current ordinance, credits for new trees are given for existing trees, with the number of credits related to the size of the tree (the larger the tree, the more credits) as an incentive to preserve existing trees. Cutting of trees on private property cannot be restricted, other than in local historic districts, without special enabling legislation.

Standards for Churches - Citizens have submitted a request that churches be limited to one sanctuary building and one classroom building per parcel of property in residential districts.

Underground Utilities - The UDO requires that utilities in new subdivisions be placed underground, but does not address the location of utilities in other developments. Staff has received comments stating that utilities in all developments should be required to be placed underground. It is argued that underground utilities would not only be more appealing aesthetically, but would not be subject to damage due to wind, snow, or accident. The initial cost of installing utilities underground is higher than installing overhead lines.

Broaden Permitted Uses in Community Business II District - The Community Business district, designed to provide areas for businesses serving several residential neighborhoods, should be sensitive to a significant pedestrian population while providing for adequate and safe vehicular access. A wide range of office, business, and service uses are permitted in the district including service stations and motor vehicle repair. A request from Realtors asks that the addition of mini-storage facilities and automobile dealerships to the list of permitted uses in this district be examined.

Identify Additional Neighborhood Business Zones - The Neighborhood Business District provides areas which are accessible to pedestrians for low intensity businesses which meet the daily convenience and personal service needs of the residential neighborhoods in which they are located. A group of Realtors has asked that additional areas which are appropriate for neighborhood commercial opportunities be identified for the application of this zoning district.

Advertising on buses and taxis

Extraterritorial jurisdiction research

Investigation of design guidelines in areas not designated as local historic districts

Make meetings/dialogue between developer and neighborhoods mandatory

Staff recommends that the following possible revisions not be considered at this time for various reasons, including the amount of research involved, impact on staff, etc. :

Landscape Ordinance Revisions - (1) Add improved standards for maintenance of landscaping planted to comply with landscape ordinance, including the requirement for a permit to remove, prune, thin, or otherwise alter vegetation planted to meet requirements of the landscape ordinance; and (2) Require all developments not in compliance with landscape requirements to comply with current landscape requirements, regardless of when the development was completed.

Environmental Impact Statement Requirement - Require all developments above a certain size to provide an environmental impact statement which would identify the impacts of the proposed development upon the environment and steps to mitigate the impacts. Currently, all developments are reviewed to assure availability of water and sewer services, those above a certain threshold must prepare erosion control and stormwater management plans, and a traffic impact analysis is required for developments generating more than 100 trips during the peak hour.

Zoning of Merrimon Avenue - Merrimon Avenue is currently divided primarily into three (3) business zoning districts, with small sections of residential and institutional zoning also present. The business districts are related to the type and scale of businesses presently found on different sections of the street, the capacity of the street to accommodate additional traffic, the scale of the neighborhoods near the street, and the type of development identified as desirable and appropriate for the street. While not permitting all types of development at all locations, the different business districts permit a wide variety of uses along Merrimon. Some members of the community have requested that the zoning of Merrimon Avenue be reviewed to assure that it is appropriate and capable of meeting the development needs of the area. The persons requesting this review are particularly concerned about the restrictions on building size and the prohibition on drive-through facilities in the Community Business I zoning district.

Grading Without An Approved Development Plan - Review the current standards for grading without an approved development plan (speculative grading). Currently, grading without an approved development plan is prohibited in all residential districts and in the River District. Grading without an approved development plan is permitted in all other zoning districts, provided that a landscape plan showing buffer plantings, street trees, and a permanent vegetative cover is submitted and approved prior to the issuance of the grading permit. A time period is identified within which the site must be landscaped as shown on the approved landscape plan.

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Zoning of Emma Road - Louisiana Road Area - A group of Realtors has requested that this area, currently zoned CB II and Office/Business be zoned for light industrial uses. Staff has concerns regarding the ability of the roads in this area to accommodate the heavy truck traffic which could be generated by industrial uses.

Revisions to the UDO approved in the past year

The following revisions to the UDO have been adopted by the City Council since its adoption May 27, 1998:

- Limitation on new off premises signs and clarification of requirements for existing outdoor advertising signs;
- Revisions to Hillside Area Development standards to better define grading as the term is used in the standards;
- Revision to clarify the definition of Assisted Living Facility;
- Adoption of River District Design Guidelines;
- Adoption of UDO minor revisions (various revisions clarifying definitions, procedures, and standards);
- Revision changing the threshold for requiring a Traffic Impact Analysis;
- Providing authority to Board of Adjustment to grant variances permitting up to 10% reduction in lot size and dimension;
- Clarification of restrictions on locating parking areas with regard to backing onto private roads or drives;
- Revised definition of family care homes
- Identification of adult uses as conditional uses;
- Revised definition of schools;
- Identification of day care centers as permitted use, subject to special requirements, in the Office District and establishment of standards for this use; and
- Identification of accessory structures as permitted use, subject to special requirements, in all residential districts and establishment of standards for this use.

The following revisions have been recommended by the Planning and Zoning Commission but not yet acted on by City Council:

- Revised definition of antenna;
- Identification of accessory structures as a permitted use, subject to special requirements, in all residential districts and establishment of standards for this use;
- Clarification of requirements for grading in the buffer area; and
- Revised definition of building (include breezeways).

Mr. Green responded to various questions from Council throughout his presentation.

Discussion surrounded whether there should be a public hearing to find out what revisions to the UDO the general public would like to see. It was determined that this annual review process was for Council to receive feedback from staff on how the UDO was working internally and what kind of feedback from the public they were receiving.

Mr. Mac Swicegood, President of the Council of Independent Business Owners ("CIBO"), read a letter, which points are as follows: (1) The most inadequate portion of the UDO is its purported claim to be favorable to affordable housing. The Council of Independent Business Owners strongly urges the City Council to take up this issue immediately in an effort to streamline the processes and to identify and approve areas for affordable housing development;

(2) The thresholds for development are still too low; (3) Height of building restrictions especially in the areas like the river district need to be eliminated; (4) Traffic studies on N.C. Dept. of Transportation ("NC DOT") highways should be eliminated if the NC DOT approves a project; (5) Traffic studies on City streets should be eliminated except where the City Engineer deems that a study is warranted - in that case, CIBO strongly urges the City to conduct its own study in-house at no charge to the landowner; (6) the standards and specifications manual should be reviewed to incorporate more user-friendly rules - CIBO suggests a workshop with City officials, Council members and developers to look at the effects of the manual on development; (7) Study the TRC and instruct them to act in a timely and efficient manner - decisions should be made within a 30-45 day period; (8) Grading should be allowed in all districts within the City if an approved landscaping plan is presented; (9) Current rules regarding attempts to address topographical problems of development in and around Asheville are unworkable; (10) Problems with provision in some districts that disallows parking in the front of businesses; and (11) Drive-through windows should be allowed in all commercial districts where lot and building size requirements can be met. He stated that the following two broader issues need to considered: (1) "the City's permitting process - 'one stop permit shopping' needs to be given more consideration to ensure that rules and groundwork are laid out up front for a development, instead of receiving surprises in the middle of the process; and (2) Council should consider waiving permit fees for a project is not acted upon within 30 days."

Mr. John Van Dyke, Chairperson of the Board of Realtors Legislative Committee, requested that Article 7-1-2 (Purpose) be amended to read as follows: "These regulations have been adopted ... in order to ... protect and conserve the heritage of the City of Asheville while recognizing and safeguarding individual private property rights"

Mr. Brian Peterson, President of the Coalition of Asheville Neighborhoods, asked (1) that City Council review the Level II process to see if those are the kind of projects City Council should look at or staff should look at - suggestion might be to lower the threshold or allow for more public input; (2) the UDO be amended to allow public input at the Technical Review Committee meeting; (3) the UDO be amended to require developers or Planning staff to meet with the neighborhood when there is a proposal; (4) that Council look at design review standards; and (5) to consider the problems with the Board of Adjustment and see if there is any kind of reform Council can take under that.

It was the consensus of Council to review this information and at the August 4, 1998, worksession at which time they will instruct staff which items they would like to pursue as possible revisions to the UDO.

REQUEST FROM BOARD OF ADJUSTMENT WITH RESPECT TO SIGNS AT INTERSTATE INTERSECTIONS

Ms. Julia Cogburn, Director of Planning & Development, said that the Board of Adjustment wishes to address Council with respect to signs at interstate interchanges.

At a meeting several months ago of the Board of Adjustment of the City of Asheville, the Board asked staff to bring a particular issue to City Council. The Board indicated at that time that it was concerned with the number of requests it is receiving for a certain type of variance. The particular variance request comes from businesses located in close proximity to interstate interchanges in the City of Asheville. The requests are typically for bigger and taller signs. The suggested hardship is the need to be visible from the interstate for the motoring public.

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Staff has advised the Board on this issue and they feel that these types of issues are best dealt with as variances on a case by case basis. It's very difficult to draft an ordinance that would apply across the board given all the different interchanges in the City of Asheville. The Board wishes to address Council. Their interest is in whether or not Council would consider some sort of direction -- perhaps through ordinance revision -- to allow taller and larger signs near the interchanges. The Board is particularly concerned with the interchange near Exit 44, the Enka-Candler Exit.

She reviewed a listing of the number of and disposition for the variance requests received of this type going back to 1980.

Even though there was no formal vote by the Board of Adjustment and no overall consensus on this, generally the Board the board ruled that they did not want to hear any of these issues come forward to them until this was brought to Council.

Discussion surrounded the process for getting signs placed on the large blue signs interstate signs regulated by the State.

Mr. David Young, member of the Board of Adjustment, spoke in favor of an ordinance revision that would set the height and size of a sign.

Mr. Dennis Hodgson, member of the Board of Adjustment, spoke against any across-the-board ordinance revision and felt that all cases should be decided on a case-by-case basis.

Several ideas were discussed, however, it was noted that we need to have some flexibility in the community given the terrain in Asheville. And, an important duty of the Board of Adjustment is to do a case by case analysis of each variance requested.

A representative from Popeye Chicken and Biscuits spoke in support of each variance request being dealt with on a case by case basis given the topography in the area.

It was the consensus of Council for the Board of Adjustment to continue their review of variances on a case by case basis.

PRITCHARD PARK DESIGN SERVICES CONTRACT

Mr. Alan Glines , Assistant to Landscape Architect, said that the Parks and Recreation Department was directed to select design services of an interdisciplinary firm to provide a complete scope of planning, design and construction drawings to redesign Pritchard Park. The Pritchard Park Task Force and staff have selected Genesis Group, Inc. through the request for proposal process.

Over the past several years with the discussion and eventual construction of the new transit center on Aston Street in downtown Asheville, interest in redesigning Pritchard Park has been rekindled. In August 1997, staff from the Parks and Recreation Department created a Task Force composed of citizens representing different interests in downtown. The Pritchard Park Task Force solicited citizen input in November 1997 during a public meeting before sending out a Request for Proposal for professional design services. After narrowing the field and interviewing four firms, Genesis Group, Inc. was selected as the most qualified firm and recommended the City enter into a contractual agreement for the requested design services. The following individuals were involved in the process of selecting the top ranked design consultants: Susan Roderick (Quality Forward), Adina Goodwin (Tree/Greenway Commission), John Rogers (Rogers Associates), Councilwoman Barbara Field, Al Kopf and Alan Glines (Parks and Recreation Department), Danie Johnson (Danie A. Johnson, AIA Architect), Alex Gourlay, (Chairman of the Pritchard Park Task Force), Lou Millin (Realtor), Jonathan Brown (City Seeds non-profit organization) and James Cheeks (former Traffic Engineer).

This resolution is to authorize Genesis Group, Inc. to begin a single contract, two part process to redesign Pritchard Park. The first part of the contract will provide public input opportunities via a public workshop and meetings for individuals and groups with specific interests to meet with the design consultants. Interim designs and a final park design solution will be presented to the public for input and eventually to City Council for approval The second part of the contract will provide drawing plans, specifications for materials, and construction documents for this final park design. After the contract is signed, Genesis Group Inc. has proposed a five month design process. The construction is expected to be completed by private contractors in July of 1999, prior to the Bele Chere festival . Funds set aside to construct the new park plan consist of a total of $200,000.

The fees for the execution of the contract include:

Services for public process, final design and construction drawings	$31,410
Reimbursable expenses (Not-to-Exceed)	$ 7,170
Sub-Consultants fees	$25,646
Total Fees for Services	$64,226

The Parks and Recreation Department recommends that authorization be given to the City Manager to enter into this contract with Genesis Group, Inc. for the redesign of Pritchard Park.

Upon inquiry of Councilman Cobb, Councilwoman Field briefly explained the background of why Pritchard Park is being redesigned.

Mayor Sitnick requested that since Adina Goodwin's term on the Tree/Greenway Commission is about to expire, she requested that another member of the Tree/Greenway Commission be involved in this process as a voting member.

When Mayor Sitnick noted that she was contacted by a local group that was disappointed they were not chosen for this contract, Councilwoman Field explained the procedure noting that the Task Force tried two different times to find someone local, however, for one reason or another they were not chosen.

Mayor Sitnick asked that we try to save the old trees that are in the current park, that the park area resemble the present area as much as possible, and staff begin looking at small spaces in the downtown area to develop a mini-park.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ZEALANDIA BRIDGE

Asheville-Buncombe Historic Resources Commission Chairman Paul Bidwell, referring to the Zealandia Bridge Stabilization report dated July 16, 1998, by the Commission, gave a brief history of the Zealandia Bridge. He urged Council to repair, stabilize and preserve the remaining fabric of this historic bridge.

At 5:25 p.m., Councilman Cloninger left the meeting for a prior commitment.

Mr. Jody Kuhne, Engineering Geologist with the N.C. Dept. of Transportation and Historic Resources Commission member, reviewed the stabilization report regarding his inspection of the bridge by outlining the current conditions and short and long term recommendations. He felt we should spend a small amount of money to get the structure cleaned up and then evaluate it realistically.

Mr. Bill Wescott, Structural Engineer, reviewed the stabilization report regarding his engineering opinion and recommended the City spend $8-10,000 to stabilize the bridge and then secure the necessary funds to preserve it. The $8-10,000 for Phase I remedial work bid was received by Dean Thorpe, President of Thorpe Construction, who did the Cherokee Wall Restoration Project for the City. His investigations over the last six months show no material from the bridge falling on the road but the hill raveling that is holding up the sides of it.

Public Works Director Mark Combs passed out a chronology of events concerning this bridge dating back to May of 1997. He noted that in June 1997 when Historic Resources Director Maggie O'Connor asked if they could photograph the bridge before any demolition occurs, until February of 1998, when the imminent demolition was advertised, no concerns were raised. And since May 22, 1998, he has not had any response from the Historic Resources Commission until their report was prepared for City Council on July 16, 1998. His concerns are (1) whether the Fire Department can get up there; and (2) there is a public potential safety hazard for people who drive under the bridge.

Mr. Jerry Carter, Professional Engineer with Vaughn & Melton, reviewed his inspection report of the Zealandia Bridge, noting that on May 14 they were contacted by the Street Superintendent to look at the bridge because of concerns of erosion around the bridge and debris falling from it. They were asked what was the most economical solution for the City and the health and safety of the public. Their recommendation to the City was it was more economically to tear it down. They also that due to the age of the structure and possible historic value, the bridge couple possibly be repaired, but not until a more extensive engineering analysis was performed by a group of professionals. The structure, in its entirety, would have to be exposed to allow for testing of all mortar joints, foundations, soil analysis, etc. Geotechnical investigations would have to be performed on the foundation material. The deck would have to be cleared of all trees, vines, etc. in order to allow testing to determine the actual composition and condition of the superstructure. All masonry would have to be repaired and/or replaced. It is their opinion that the structure would have to be torn down and rebuilt even after a more extensive analysis is performed.

Upon inquiry of Vice-Mayor Hay on the cost, Mr. Combs said that to tear the structure down would be approximately $5,000 using in-house forces. Mr. Carter said that in their method to shore up the bridge, the $8-10,000 figure might be reliable.

Mr. Robert Griffin, Architect, read the following letter from the Preservation North Carolina dated July 16, 1998, from Executive Director J. Myrick Howard to Mayor Sitnick: "I am writing to you about the historic Henry's Bridge that the City of Asheville intends to demolish. The bridge, designed by R.S. Smith, was constructed in 1907 as the original entrance to the Zealandia estate. Zealandia is listed on the National Register study list. The bridge is an important example of a stone, self-supporting, arched bridge. Preservation North Carolina supports the Preservation Society of Asheville and Buncombe County and the Historic Resources Commission in their efforts to prevent the demolition of the bridge, and instead to stabilize and eventually rehabilitate it. We encourage the City not to demolish the bridge, but to use the funds reserved for demolition to stabilize this important Asheville landmark. Our Foundation has a revolving fund for endangering historic properties North Carolina. Perhaps there may be a way that a portion of these funds and the balance of your demolition funds could be used to rehabilitate the bridge. Thank you for your consideration." He said that he would personally be happy to help in fundraising from private sources given the opportunity to stabilize the bridge.

Mr. Harry Weiss, Director of the Preservation Society, also spoke in support of repairing and stabilizing the structure and suggested that the bridge might be used as a greenway link to a possible Beaucatcher Reservoir Park. He suggested a logical source of funding might be ISTEA federal funds because they are for enhancements for transportation related projects, which includes greenways and it has specific uses for historic preservation.

Upon inquiry of Councilwoman Field, Mr. Dean Thorpe said that the $8-10,000 figure is just to clean the bridge up enough to find what needs to be done to stabilize it.

Mayor Sitnick asked Mr. Griffin to find out from Preservation North Carolina what their funds might provide.

Mr. Griffin said that if the City will spend $5,000 (from the demolition figure), and there is a bid for $10,000, he would personally underwrite $5,000 of it if the City will pick up the other half. City Manager Westbrook said that the City was going to use $5,000 of in-kind services of salaries and vehicles that we already have. The City does not have a project that is marked for that bridge for $5,000.

Upon inquiry of Councilman Tomes, Fire Chief John Rukavina said that if the road were to be closed, he would want it closed as short a time period as possible.

It was noted that all of City Council were concerned about liability and public safety. Therefore, it was the consensus of Council to instruct the City Manager to let Public Works determine whether the road needed to be closed on a temporary basis and then have the Public Works staff come back to Council at the August 4, 1998, worksession with information about hiring an engineer to tell us what needs to be done on a temporary basis to make the bridge safe and also an estimate for permanent repair of the bridge.

BRIEFING ON COMMUNITY ORIENTED GOVERNMENT

Ms. Robin Westbrook , Public and Community Information Coordinator, said that Community Oriented Government was established two years ago in Asheville to allow for better access, information, and coordination of city services to residents of this community.

In July 1996, Public and Community Information was developed, in part, to provide coordination for Community Oriented Government activities organized by departments throughout the City. The purpose of these activities is to increase awareness, coordination, and access to services provided by these departments.

The scope of activities provided through Community Oriented Government has increased in number and complexity since it's inception. The programs range from partnering with outside agencies to provide compost bins at reduced rates to citizens to communicating via fax machine with 453 citizens, companies, etc. on a monthly basis to provide news about the Building Safety Department. Many departments have developed unique, specialized programming to meet the needs of our diverse population. She outlined the many departmental accomplishments of departments.

One very successful aspect of Community Oriented Government is the way in which our departments now work together in a comprehensive manner with neighborhoods to address concerns specific to that neighborhood. A successful program that has been initiated as part of

Community Oriented Government is the Neighborhood Matching Grant Program. This program was started to assist neighborhood associations in Asheville with funding for improvements in their communities. It allows qualified neighborhood associations to apply for grants of up to $2000 to help fund a project that addresses a neighborhood need and improves the quality of life in that neighborhood. Last year, five Neighborhood Matching Grants were awarded totaling $9,500. In 1998, seven grants were awarded totaling $11,300. The purpose of this report is to provide City Council with an update on all of the accomplishments that have occurred as a result of Community Oriented Government, including an update of the Neighborhood Matching Grant Program, and an overview of goals that we plan to achieve in the future.

SCHEDULING DATES FOR ROUNDTABLES

Mayor Sitnick asked members of Council to submit ideas for roundtables in the future. She explained the idea of roundtables is to create partnerships and community groups to take on certain projects. The main point of roundtables will be for the public to work on some solutions.

It was the consensus of City Council to hold two roundtables and then evaluate their outcome. The first Mayor's roundtable is on litter on Thursday, August 20, 1998, at 7:00 p.m. in the Public Works Facility. It was the consensus that the second roundtable will be held on Thursday, November 19, 1998, with the topic to be determined at a later date.

Discussion surrounded the need for a public hearing on the I-26 corridor. It was the consensus of Council to invite the N.C. Dept. of Transportation to a worksession to update Council on the status of the I-26 project and then possibly hold a public hearing.

DISCUSSION OF CITY COUNCIL MID-YEAR RETREAT

It was the consensus of City Council to hold a mid-year retreat and that a paragraph summary of the Water Agreement, Airport Agreement, Transit Agreement and the Sewer Agreement be reviewed in order to begin the process to make sure that the agreements are in the best interest of the citizens of Asheville. City Council also decided to discuss the status of the ten City Council goals at the mid-year retreat.

Possible dates for the retreat include August 21, August 28, September 11, September 18 and September 25, 1998. The suggested retreat location is the Kellogg Facility near Hendersonville, North Carolina.

City Manager Westbrook said that he would send out a memorandum to all Council with a list of the possible dates and then announce the date most convenient for the majority of Council.

DISCUSSION OF SEXUALLY ORIENTED BUSINESS REGULATION

City Attorney Oast said that this is the consideration of a temporary moratorium on sexually oriented businesses in the City of Asheville.

On April 14, 1998, Council adopted an ordinance amending the UDO to temporarily converting adult establishments from use by right, subject to special requirements, to conditional uses. This is done in order to help preserve the status quo while Senate Bill 452 was being considered in the North Carolina General Assembly. You may recall that SB 452 was designed to return a measure of control over adult businesses to local governments. This bill has now been passed by both houses of the General Assembly and was sent to the Governor for signing on July 9.

Our temporary ordinance has a self-executing expiration date of 30 days after SB 452 becomes law. This means that the ordinance will expire in early August, and adult establishments will revert to uses by right, subject to special requirements. Accordingly, Council should consider taking some action soon.

One of the features of the new law is that it permits the enactment of a temporary moratorium of reasonable duration in order to preserve the status quo while appropriate studies are conducted and the scope of potential regulations is deliberated.

Under the prior law, the primary means of regulating adult establishments, including the adoption of moratoria, was through the zoning ordinance. Any zoning ordinance or amendment requires consideration of the proposed ordinance by the Planning Commission, notice and a public hearing. Recent North Carolina case law suggests that adult establishments may be regulated under the general police power, and the new law codified this. Accordingly, in order to enact a moratorium under the new statute, neither consideration by the Planning and Zoning Commission nor a public hearing are statutorily-required procedures.

The types of regulations that the new law permits a city to consider include: (a) clothing restrictions; (b) registration and disclosure requirements for owners and employees; (c) limits on hours of operation; (d) exterior advertising; and (e) age restrictions; among others.

With those things in mind, it appears that a moratorium may provide the City with the necessary "breathing space" to do the appropriate studies and draft some proposed regulations. Six months is probably a reasonable time to complete this work, and extensions are possible. Although a public hearing is not required, it may be advisable to schedule one in order to avoid due process-based challenges as much as possible.

Adoption of a general moratorium on sexually-oriented businesses or adult establishments located within the jurisdiction, and direct staff to report to Council before the end of the year with proposed new regulations. It is also recommended that a public hearing be held in connection with the adoption of such a moratorium.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REPORTS FROM BOARDS & COMMITTEES

Vice-Mayor Hay reported on the Airport Authority meeting and requested Council's consideration of appointing LaVerne Laney to the Future of the Civic Center Task Force.

Mayor Sitnick congratulated Vice-Mayor Hay and Civic Center David Pisha for the work they did at the Civic Center to receive national recognition in the magazine "Performance".

Councilwoman Field reported on the Metropolitan Sewerage District Board meeting.

Mayor Sitnick report on the WNC Regional Air Pollution Control Board meeting. It was the consensus of Council for the Mayor to write, on behalf of City Council, a letter to the Chair of the Board and the head of the agency expressing disappointment and chagrin over the process of choosing the Chair, the choice of the Chair, and the fact that Asheville was eliminated from the field because of whatever personal problems they were having.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:45 p.m.

Magdalen Burleson
CITY CLERK

Reni Sitnick
MAYOR

Tuesday - July 28, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; and Councilman Thomas G. Sellers; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman O.T. Tomes (participated in meeting by speaker phone from 6:07 p.m. - 6:40 p.m.)

INVOCATION

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SATURDAY, AUGUST 8, 1998, AS "VOLUNTEER AWARENESS DAY"

Mayor Sitnick read the proclamation proclaiming Saturday, August 8, 1998, as "Volunteer Awareness Day" in the City of Asheville. She presented the proclamation to Ms. Cindy McMahon, Volunteer Center Coordinator of the United Way, who briefed the Council on some of the activities taking place during the day.

II. CONSENT:

A. RESOLUTION NO. 98-92 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH GENESIS GROUP INC. FOR THE RE-DESIGN OF PRITCHARD PARK

Summary: The Parks and Recreation Department was directed to select design services of an interdisciplinary firm to provide a complete scope of planning, design and construction drawings to redesign Pritchard Park. The Pritchard Park Task Force and staff have selected Genesis Group, Inc. through the request for proposal process.

Over the past several years with the discussion and eventual construction of the new transit center on Aston Street in downtown Asheville, interest in redesigning Pritchard Park has been rekindled. In August 1997, staff from the Parks and Recreation Department created a Task Force composed of citizens representing different interests in downtown. The Pritchard Park Task Force solicited citizen input in November 1997 during a public meeting before sending out a Request for Proposal for professional design services. After narrowing the field and interviewing four firms, Genesis Group, Inc. was selected as the most qualified firm and recommended the City enter into a contractual agreement for the requested design services. The following individuals were involved in the process of selecting the top ranked design consultants: Susan Roderick (Quality Forward), Adina Goodwin (Tree Commission), John Rogers (Rogers Associates), Councilwoman Barbara Field, Al Kopf and Alan Glines (Parks and Recreation Department), Danie Johnson (Danie A. Johnson, AIA Architect), Alex Gourlay, (Chairman of the Pritchard Park Task Force), Lou Millin (Realtor), Jonathan Brown (City Seeds non-profit organization) and James Cheeks (former Traffic Engineer).

This resolution is to authorize Genesis Group, Inc. to begin a single contract, two part process to redesign Pritchard Park. The first part of the contract will provide public input opportunities via a public workshop and meetings for individuals and groups with specific interests to meet with the design consultants. Interim designs and a final park design solution will be presented to the public for input and eventually to City Council for approval The second part of the contract will provide drawing plans, specifications for materials, and construction documents for this final park design. After the contract is signed, Genesis Group Inc. has proposed a five month design process. The construction is expected to be completed by private contractors in July of 1999, prior to the Bele Chere festival . Funds set aside to construct the new park plan consist of a total of $200,000.

The fees for the execution of the contract include:

Services for public process, final design and construction drawings	$31,410
Reimbursable expenses (Not-to-Exceed)	$ 7,170
Sub-Consultants fees	$25,646
Total Fees for Services	$64,226

The Parks and Recreation Department recommends that authorization be given to the City Manager to enter into this contract with Genesis Group, Inc. for the redesign of Pritchard Park.

RESOLUTION BOOK NO. 24 - PAGE 445

B. RESOLUTION NO. 98-93 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION TO THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM FOR FIVE COMPUTERS AND FIVE SPEED DETECTION DEVICES

Summary: The consideration of a resolution to authorize the City Manager to file a grant application with the N.C. Governor's Highway Safety Program for five computers and five speed detection devices.

The Asheville Police Department requests approval for the City to submit a grant application to the N.C. Governor's Highway Safety Program. The application requests assistance to the City to purchase equipment to support the department's traffic safety program; specifically five in-car computers and five speed detection devices.

The application requests federal funding in the amount of $37,500. The granting agency requires a local match in the amount of $12,500, for a total project cost of $50,000. Second and third year funding may be available.

RESOLUTION BOOK NO. 24 - PAGE 446

C. RESOLUTION NO. 98-94- RESOLUTION FINDING THE RIGHT-OF-WAY KNOWN AS MILLER AVENUE NOT PART OF AN ADOPTED STREET PLAN

Summary: The consideration of a resolution finding the right-of-way known as Miller Avenue not part of an adopted street plan.

The right-of-way known as Miller Avenue as shown in Plat Book 32, Page 32, is not part of an adopted street plan in accordance with General Statute 136-66.2. Peggy M. Bridgeman has requested that City Council adopt a resolution stating such.

According to North Carolina General Statute 136-96, a right-of-way not utilized within 15 years of dedication can be abandoned through a recording of a Declaration of Withdrawal.

To proceed with this process, Peggy Bridgeman sole heir of Joel R. Miller and owner of PIN Nos. 9755.17-01-1345, 1236, 1138, 1120, 1023, 3353, 3255, 3156, 3049 and 3041 has requested that the City of Asheville verify if the specific rights-of-way are or are not part of the City's adopted street plan. The statute requires that the City adopt a resolution stating the right-of-way to be abandoned is or is not part of a proposed street plan. The unused right-of-way is not part of any such plan and is not a City maintained right-of-way; therefore, the City has determined that all necessary requirements of the statute will have been met by adopting the resolution, thus allowing Peggy Bridgeman to withdraw this specific right-of-way.

The Public Works Department staff finds that the right of way known as Miller Avenue from the intersection with Summit Avenue and Maude Avenue, in their entirety, as shown on Plat Book 32, Page 32 is not part of an adopted street plan and recommends the adoption of this resolution.

RESOLUTION BOOK NO. 24 - PAGE 447

D. RESOLUTION NO. 98-95 - RESOLUTION SETTING A PUBLIC HEARING ON AUGUST 25, 1998, TO CLOSE AN UNNAMED ALLEY BETWEEN MILLER AND POND AVENUES

Summary: The consideration of a resolution setting a public hearing to permanently close an unnamed alleyway between Miller and Pond Avenues.

A petition has been received from First Citizens Bank & Trust Company requesting that an unnamed alleyway between Miller Avenue and Pond Avenue be permanently closed to public use.

The petition received includes the affidavit of First Citizens Bank and Trust Company, owner of parcels 9654.05-09-7679,7851,8772, and 8970. First Citizens Bank and Trust Company owns all of the property with frontage on the unopened alleyway between Miller Avenue and Pond Avenue that has been petitioned to be closed.

RESOLUTION BOOK NO. 24 - PAGE 448

E. MOTION SETTING A PUBLIC HEARING ON AUGUST 11, 1998, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY THE REQUIREMENTS FOR GRADING ALONG PROPERTY LINES

F. MOTION SETTING A PUBLIC HEARING ON AUGUST 11, 1998, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY ACCESSORY STRUCTURES AS A PERMITTED USE, SUBJECT TO SPECIAL REQUIREMENTS IN ALL RESIDENSTIAL DISTRICTS, AND TO ESTABLISH STANDARDS FOR ACCESSORY STRUCTURES

G. MOTION SETTING A PUBLIC HEARING ON AUGUST 11, 1998, TO REZONE EIGHT LOTS ON MACE AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT

H. RESOLUTION NO. 98-96- RESOLUTION AMENDING THE CONTRACT FOR THE ASHEVILLE COMPREHENSIVE PARKING STUDY TO INCLUDE A TRANSPORTATION CORRIDOR ANALYSIS FOR THE BILTMORE VILLAGE AREA

Summary: The consideration of a resolution amending the contract for the Asheville Comprehensive Parking Study to include a Transportation Corridor Analysis for the Biltmore Village area.

The original contract cost for the Comprehensive Parking Study is $92,400.00 (Downtown, Biltmore Village and West Asheville areas). Due to the need for a Transportation Corridor Analysis for the Biltmore Village area, staff recommends that an amendment be issued to increase the contract by $34,833.19. This will revise the contract to $127,233.19. The funds to be used for the above amendment will be encumbered from account code 110-2501-418-3010.

The consultant will review and summarize the existing traffic and thoroughfare plans, conduct transportation analysis and develop recommendations and prepare a transportation plan which will compliment and extend the existing Biltmore Village Development Plan and the Asheville Thoroughfare Plan for this area..

RESOLUTION BOOK NO. 24 - PAGE 449

I. RESOLUTION NO. 98-97- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH DAP SECURITY FOR SCHOOL CROSSING GUARDS

Summary: The Asheville Police Department, through the use of a private contractor, provides school crossing guards at 22 sites in the City of Asheville. This service is during early morning hours and early afternoon hours, Monday through Friday.

Funds allocated in the line item 110-3503-421-3010C46201, Professional Services, in the amount of $75,800.00. The only bid received was from DAP Security in the amount of $74,527.20, for each academic year of 1998/99 and 1999/2000.

RESOLUTION BOOK NO. 24 - PAGE 450

J. RESOLUTION NO. 98-98 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES TO DEVELOP THE FIRST PHASE OF THE MASTER STREET TREE PLAN

Summary: The consideration of a resolution to apply for grant funds from the NC Dept. of Environment and Natural Resources to develop the first phase of the Master Street Tree Plan.

Funds are available through the State of North Carolina, Department of Environment and Natural Resources, Division of Forest Resources in the Urban and Community Forestry Grants Program, to improve urban forest resources.

The Parks and Recreation Department is responsible for developing a Master Street Tree Plan (MSTP) for street trees on City rights-of-way located within the City limits of Asheville. The existing inventory is almost fifteen years old and no longer accurately reflects the trees of the City. Phase I of the process will specifically identify the location, size, condition, and site conditions of trees located in the central district of Asheville. The MSTP will help serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community organizations.

The Parks and Recreation Department is requesting $10,000 in grant funds which requires a 100% match. Matching funds are currently available in the Park Maintenance and Public Facilities budget. In-kind match will include supplies, transportation, volunteer hours, and project management.

The Parks and Recreation Department recommends adoption of the resolution authorizing the City Manager to enter into this agreement if the City receives the grant award.

RESOLUTION BOOK NO. 24 - PAGE 451

K. RESOLUTION NO. 98-99- RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES TO CONSTRUCT A GREENWAY TRAILHEAD AND RAMP SEGMENT ON THE BROADWAY GREENWAY

Summary: The consideration of a resolution to apply for grant funds through the N.C. Dept. of Environment & Natural Resources to construct a greenway trailhead and ramp segment on the Broadway Greenway.

Funds are available through the State of North Carolina, Department of Environment and Natural Resources in the National Recreational Trails Fund Program (NRTFP) to provide trails for public use in North Carolina.

The Broadway Greenway represents the next section in the City of Asheville's urban trail corridor linking the University of North Carolina to the Downtown business district. Phase I of the corridor was completed in 1997 with the first section of the Weaver Blvd. Greenway. The next section of Weaver Blvd. will be completed in 1998/1999. The City has been working for some time to develop the Broadway Greenway along Reed Creek on the west side of Broadway. Eventually this corridor will link downtown neighborhoods to the Weaver Blvd./Glenn's Creek Greenway.

The focus of this grant will be the segment of greenway between Chestnut Street and Magnolia Street. The greenway begins at Chestnut Street where a large, five points intersection is located. The grade change from Chestnut Street to Reed Creek is very steep. A ramp will be needed to provide wheelchair and bicycle accessibility to the greenway. Since it is a large, busy area, the entrance will need a strong visual statement will need to be made to show where the greenway begins. The entrance will include signage, map, and benches. The funds from this grant will be set aside to assist with the construction of the trailhead and ramp, and to build a segment of the trail between Chestnut Street and Magnolia Street.

The Parks and Recreation Department is requesting $30,000 in grant funds which requires a 20% match. Matching funds are currently available in the Capital Improvement Project budget designated for Broadway Greenway, in the Park Maintenance and Public Facilities Division. In-kind match will include labor, equipment, and project management.

The Parks and Recreation Department recommends the adoption of the resolution authorizing the City Manager to apply for and enter into this agreement if the City receives the grant award.

RESOLUTION BOOK NO. 24 - PAGE 452

L. RESOLUTION NO. 98-100 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE COMMUNITY FOUNDATION OF WESTERN NORTH CAROLINA TO FOR HISTORICAL GRAVE MARKERS AND AN EXHIBIT AREA AT RIVERSIDE CEMETERY

Summary: The consideration of a resolution to apply for funding through the Community Foundation of Western North Carolina for historical grave markers and an exhibit area at Riverside Cemetery.

Funds are available through the Community Foundation of Western North Carolina to provide educational and preservation opportunities.

Riverside Cemetery is designated as a National Historic Site, and a local historic site within the Montford Historic District. It is also designated as a Buncombe County Treasure Tree Preserve. Besides burial services, Riverside offers variety of activities such as tours, genealogy studies, tree, flower and animal identification, and grave marker rubbings.

Historical grave markers and the exhibit area will be part of the Riverside Cemetery Tour Program, and will offer visitors a greater opportunity to identify historic grave sites and utilize both guided and self guided tours. Over 2,000 visitors a year will experience a unique educational and cultural history lesson about many of Asheville's most prominent citizens, and their contributions to our community.

The Parks and Recreation Department is requesting $4,000 in grant funds. Supplemental funds are currently available in the Riverside Cemetery budget, and through private contributions. In-kind support will include labor and project management.

The Parks and Recreation Department recommends adoption of the resolution authorizing the City Manager to apply for and enter into this agreement if the City receives the grant award.

RESOLUTION BOOK NO. 24 - PAGE 453

M. RESOLUTION NO. 98-101 - RESOLUTION APPROVING THE ACQUISITION OF A UTILITY BILLING SYSTEM

Summary: The consideration of a resolution authorizing the acquisition of a utility billing system.

On November 25, 1997, the City entered into a Software License and Services Agreement with H.T.E., Inc. to acquire a computer hardware/software system to meet most of the City's central computer automation requirements and to ensure Year 2000 compliance/compatibility. That acquisition was financed through a master lease with Ontario Leasing which the City uses to acquire virtually all our computers and related equipment. The hardware has been installed and "live" operation of many of the software applications modules began on July 1, 1998. Implementation of the remaining application modules will continue through the remainder of 1998. The original Software License and Services Agreement included an option to acquire H.T.E.'s utility billing software at a later date at a guaranteed price.

The resolution authorizes the City Manager to execute a Supplement to H.T.E., Inc. Software License and Services Agreement which exercises the City's option to acquire the utility billing system. The resolution also authorizes the City Manager to add the utility billing system to the City's master lease agreement with Ontario Leasing.

The total cost of the utility billing system and associated training and technical support is $156,000.00. This cost will be spread over five years by the master lease. Funding for the first year of the lease has been appropriated in the FY 98-99 budget.

Staff recommends City Council adopt the resolution which authorizes the acquisition of a utility billing system.

RESOLUTION BOOK NO. 24 - PAGE 454

N. RESOLUTION NO. 98-102 - RESOLUTION SETTING A PUBLIC HEARING ON AUGUST 11, 1998, TO CONSIDER AN ORDINANCE ESTABLISHING A MORATORIUM ON ADULT ESTABLISHMENTS

Summary: On April 14, 1998, Council adopted an ordinance amending the UDO to temporarily converting adult establishments from use by right, subject to special requirements, to conditional uses. This is done in order to help preserve the status quo while Senate Bill 452 was being considered in the North Carolina General Assembly. You may recall that SB 452 was designed to return a measure of control over adult businesses to local governments. This bill has now been passed by both houses of the General Assembly and was sent to the Governor for signing on July 9.

Our temporary ordinance has a self-executing expiration date of 30 days after SB 452 becomes law. This means that the ordinance will expire in early August, and adult establishments will revert to uses by right, subject to special requirements. Accordingly, Council should consider taking some action soon.

One of the features of the new law is that it permits the enactment of a temporary moratorium of reasonable duration in order to preserve the status quo while appropriate studies are conducted and the scope of potential regulations is deliberated.

Under the prior law, the primary means of regulating adult establishments, including the adoption of moratoria, was through the zoning ordinance. Any zoning ordinance or amendment requires consideration of the proposed ordinance by the Planning Commission, notice and a public hearing. Recent North Carolina case law suggests that adult establishments may be regulated under the general police power, and the new law codified this. Accordingly, in order to enact a moratorium under the new statute, neither consideration by the Planning and Zoning Commission nor a public hearing are statutorily-required procedures.

The types of regulations that the new law permits a city to consider include: (a) clothing restrictions; (b) registration and disclosure requirements for owners and employees; (c) limits on hours of operation; (d) exterior advertising; and (e) age restrictions; among others.

With those things in mind, it appears that a moratorium may provide the City with the necessary "breathing space" to do the appropriate studies and draft some proposed regulations. Six months is probably a reasonable time to complete this work, and extensions are possible. Although a public hearing is not required, it may be advisable to schedule one in order to avoid due process-based challenges as much as possible.

Adoption of a general moratorium on sexually-oriented businesses or adult establishments located within the jurisdiction, and direct staff to report to Council before the end of the year with proposed new regulations. It is also recommended that a public hearing be held in connection with the adoption of such a moratorium.

RESOLUTION BOOK NO. 24 - PAGE 455

O. RESOLUTION NO. 98-103 - RESOLUITON AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE U.S. DEPT. OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, FOR THE HIRING OF FIVE NEW POLICE OFFICERS

Summary: On January 22, 1998, the Police Department submitted a grant application to the US Department of Justice, Office of Community Oriented Policing Services. This application requested federal assistance to the City to hire five new police officers. These new officers will be assigned to the South Market/Eagle Street and contiguous areas to provide highly concentrated law enforcement and public services. The application has been approved and the grant award document has been received.

The award provides three years federal funding in the amount of $323,925. The granting agency requires a local matching contribution of $107,975, for a total project cost of $431,900 for the three year term. The first year's match is $19,075; second year is $41,840; and, third year is $47,060.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to accept a grant from the US Department of Department of Justice, Office of Community Oriented Policing Services, to fund five new police officer positions; and (2) a budget amendment to appropriate funds to the project.

RESOLUTION BOOK NO. 24 - PAGE 456

P. ORDINANCE NO. 2501 - BUDGET AMENDMENT IN SUPPORT OF A GRANT RECEIVED FROM THE U.S. DEPT. OF JUSTICE FOR THE HIRING OF FIVE NEW POLICE OFFICES

Summary: See Item "O" above.

ORDINANCE BOOK NO. 17 - PAGE 122

Q. MOTION APPOINT LAVERNE LANEY TO THE FUTURE OF THE CIVIC CENTER TASK FORCE

R. MOTION SETTING A PUBLIC HEARING ON AUGUST 11, 1998, TO REZONE 15 LOTS ON BURTON STREET FROM COMMERCIAL BUSINESS II TO HIGHWAY BUSINESS

S. RESOLUTION NO. 98-104 - RESOLUTION NAMING THE NEW BUS TRANSIT FACILITY ON COXE AVENUE AS THE "ASHEVILLE TRANSIT CENTER"

Summary: The City of Asheville and the Asheville Transit Authority have completed construction of a new transfer facility for their bus passengers and along with the North Carolina Department of Transportation and the Federal Transit Administration dedicated the new facility with a ribbon-cutting ceremony on July 23, 1998.

A sign has been erected with the name of the facility as the "Asheville Transit Center" where regular transit service began on July 24, 1998, the 20th anniversary of Bele Chere. Staff has drafted a resolution for Council consideration to officially name the facility "Asheville Transit Center."

The Asheville Transit Authority and the City Planning staff recommend that the City Council adopt a resolution in order to officially name the new transfer station as the "Asheville Transit Center".

RESOLUTION BOOK NO. 24 - PAGE 457

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and ordinances on the Consent Agenda and they will not be read.

Councilman Sellers moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ADD ENCLOSED BREEZEWAYS TO THE DEFINITION OF "BUILDING"

ORDINANCE NO. 2502 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ADD ENCLOSED BREEZEWAYS TO THE DEFINITION OF "BUILDING"

Mayor Sitnick opened the public hearing at 5:04 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that the current definition of Building does not allow for two buildings to be connected by an enclosed corridor and, for purposes of Structure Size Standards in the UDO, to be treated as separate buildings.

In order to clarify this to the user of the Unified Development Ordinance, it is proposed that the definition be edited as follows (*new language in italics*):

> BUILDING means any structure having a roof supported by columns or by walls, and intended for shelter, housing of enclosure of persons, animals, property or business activity, The connection of two buildings by means of an open porch, breezeway, passageway, carport or other such open structure with or without a roof shall not be deemed to make them one building.
>
> *The connection of two buildings by an enclosed corridor connector where the buildings connected are not less than fifty feet apart at all points, and the connecting corridor is not less than fifty feet in length nor more than fifteen feet in inside width, one story in height, and the outside walls of which contain not less than thirty percent glazing, shall not be deemed to make them one building provided the corridor has no other use than as a passage from one building to the next.*

The edited definition extends the same size calculation provisions for structures connected by an open corridor, breezeway etc. to structures connected by enclosed corridors meeting the provisions of the definition. These provisions are meant to preserve the bulk and massing of the particular zoning districts wherein the size of buildings is limited in the UDO, while still allowing some latitude in design, especially for those uses where two separate structures would be appropriate for the given site, but because of the nature of the intended end users, it is undesirable to allow them to be exposed to the elements in making necessary trips from one structure to the other.

Planning and Development staff recommend approval of the amendment as outlined herein.

At their meeting of July 1, 1998, the Planning and Zoning Commission voted unanimously to recommend this amendment to the Asheville City Council.

Upon inquiry from Vice-Mayor Hay, Mr. Black explained how the ordinance would be enforced.

Mayor Sitnick closed the public hearing at 5:15 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read..

Councilwoman Field moved for the adoption of Ordinance No. 2502. This motion was seconded by Councilman Cloninger and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 124

At 5:15 p.m., Mayor Sitnick announced that Council would take a short break in order to contact Councilman Tomes so he could participate by speaker phone on this issue. Unfortunately due to technical difficulties, Councilman Tomes could not be patched into the meeting.

B. PUBLIC HEARING RELATIVE TO REZONING 216 SHELBURNE ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY TO INSTITUTIONAL

Mayor Sitnick said that on July 27, 1998, the City Clerk received a letter from David R. Payne, attorney representing Trinity Baptist Church, which reads as follows: "Please be advised this is a formal request to continue this matter for two weeks. The church initially continued this matter as a result of a recommendation from the planning and zoning department."

Mr. Payne said that due to a matter that has required him to be out of state, he has not had an opportunity to discuss some issues he would like to with his client and also since there is a valid protest petition, he would like for all Council members to be present to hear his case.

Councilman Sellers moved to continue this public hearing, without further advertisement, until August 25, 1998. This motion was seconded by Councilman Cobb.

Ms. Ann Anderson, 147 Shelburne Road, said that the neighborhood could not afford an attorney and wondered if they needed one to settle this matter. She did not feel that this matter should be postponed since the neighborhood had only days within which to get a protest petition submitted. She said they have waited six months for this issue and would like Council to settle this matter today.

Mayor Sitnick said that the neighborhood does not need to hire an attorney and noted that the last time the matter was continued was to explore whether or not there could be a conditional use permit issued rather than a rezoning. That issue has now been settled and the only issue before Council is the rezoning.

Ms. Jessie Corpening, resident on Shelburne Road, urged City Council to hear this matter and vote today since the neighborhood has been waiting for six months.

Mayor Sitnick said that City Council is sensitive to the amount of time which has elapsed, but felt that they also need to honor the request of the attorney.

The motion made by Councilman Sellers and seconded by Councilman Cobb carried unanimously.

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 98-105 - RESOLUTION RELATIVE TO THE DISPOSTION OF CERTAIN CITY-OWNED REAL PROPERTY

Ms. Charlotte Caplan, Community Development Director, said that this is consideration of disposition of certain City-owned real properties acquired under redevelopment in light of current downtown market conditions.

City Council requested appraisals of the properties located at 5, 7 1/2, 9, & 11-13 Biltmore Avenue, the parking lot on the east side of South Lexington Avenue and the property at 135 Cherry Street following a report on the current status of the properties.

Appraisals have been obtained on the properties which reflect the following values:

Address	Market Value	Leased Fee Value
5 & 7 1/2 Biltmore Avenue	$340,000	$300,000
9, 11 & 13 Biltmore Avenue	$470,000	$380,000
E/S South Lexington Ave.	$65,000	No lease
Total Downtown Properties	**$875,000**	
135 Cherry Street	$105,000	No lease
Total All Properties	**$980,000**	

The Market Value represents the estimated unencumbered fee simple value. The Leased Fee Value represents the estimated value of the City's interest in the property subject to existing leases.

The highest and best uses of the properties are all commercial with the Biltmore Avenue properties best suited for retail, the South Lexington Avenue property best suited for parking and the Cherry Street property best suited for office.

The purpose of the appraisals was to assist in making the determination whether to sell the properties or to hold them the intent being to achieve the highest return to the City. The question of whether to offer the contiguous properties as one parcel also was put to the appraiser. It is the appraiser's opinion that no advantage would be obtained by combining the contiguous parcels. Each parcel is appraised and considered separately.

The Biltmore Avenue properties are located in a prime commercial area but, they are encumbered by below market leases. The effect of the leases on the value of the properties is reflected in the difference between the market value and the leased fee value. The leased fee value was determined by using the Discounted Cash Flow (DCF) or Present Value method. The DCF method calculates the present value of the cash flow plus the capitalized resale value realized by holding the properties for ten years as an investment less any refurbishment expenses. The DCF method takes into account the existing rents and assumes a discount rate of 13%. It also assumes an expenditure of $55,350. on 5 Biltmore Avenue and $21,970. on 9 Biltmore Avenue for refurbishment. The Biltmore Avenue properties are a good investment and therefore very marketable properties. However, since the current leases expire in the year 2000, that invites the question of whether to hold the properties for two years and then sell them. In such case if a value appreciation of 8% annually, a discount rate of 13% and a capitalization rate of 11.5% is assumed the present value of the future sale price plus the discounted cash flow for 5 - 7 1/2 Biltmore Avenue for a holding period of two years would be $347,616 or a 16% increase over the current lease fee value of $300,000. For 9 - 13 Biltmore Avenue, the present value of the future sale price plus the discounted cash flow would be $443,627 or a 17% increase over the current lease fee value of $380,000. Staff recommends holding the Biltmore Avenue properties until the current leases expire and then offering them for sale at that time. In the interim rental rates for those units not under lease should be increased to market rate incrementally over the two year period.

The parking lot on South Lexington Avenue is a metered lot and is currently being managed by Parking Services. Since the appraisal indicates that parking is the highest and best use for the property, staff recommends the lot be retained for parking.

The Cherry Street property is being used by Neighborhood Housing Services. It has been a part of the Head of Montford Redevelopment Project strategy to cooperate with NHS in the improvement of the Montford community. Provision of office space to NHS at affordable rates has been in the furtherance of a public purpose. With close-out of the Head of Montford Redevelopment Project in sight, staff recommends offering 135 Cherry Street for sale. The sale will be pursuant to provisions of the General Statutes.

Community Development staff recommends that: (1) 5 - 7 1/2 Biltmore Avenue (PIN 9649.18-40-2028) and 9 - 13 Biltmore Avenue (PIN 9649.18-40-1091) be held for 2 years before being offered for sale; (2) the parking lot on the east side of South Lexington Avenue (PIN 9649.18-40-1018) be retained for public use; and (3) 135 Cherry Street (PIN 9649.17-21-0243) be offered for sale.

Upon inquiry of Councilman Cloninger, Ms. Caplan said that it is the staff's responsibility to work with the present tenants to increase the rents incrementally over the two year period. Ms. Caplan said that staff is aware of Habitat's concern in that their rent has been low for the past eight years and now that their lease has expired, naturally they are concerned about whether their business can sustain a higher rate. She said that staff will be negotiating that rent with them and the rent will not suddenly increase to the maximum market rent. The state of the building will be taken into consideration and it is not in staff's interest to dispossess them and try to find another tenant for just two years.

When Ms. Caplan said that if an agreement on the rents could not be reached, staff would be prepared to come back to Council. Councilwoman Field felt that it would be a difficult precedent to set in that everyone who doesn't agree with negotiations of staff would come to City Council. Council has have never looked at rental properties, however, they have given some policy decisions.

Councilman Cloninger responded that the City is looking at the possibility of selling the property in two years and we are talking about a non-profit organization.

Vice-Mayor Hay asked that during the course of negotiations regarding the rent with Habitat, in particular, that staff report back to the Housing & Community Development Committee.

After a brief discussion, it was the consensus of Council that at the end of the two year period, City Council would consider selling the Biltmore Avenue properties. As a result, the resolution would be amended to read: (1) 5 - 7 1/2 Biltmore Avenue (PIN 9649.18-40-2028) and 9 - 13 Biltmore Avenue (PIN 9649.18-40-1091) not be offered for sale for a period of two years; (2) the parking lot on the east side of South Lexington Avenue (PIN 9649.18-40-1018) be retained for public use; and (3) 135 Cherry Street (PIN 9649.17-21-0243) be offered for sale.

Vice-Mayor noted that the proceeds from the sale of 135 Cherry Street will go back to program income for the Community Development Block Grant program.

When Mayor Sitnick asked if Neighborhood Housing Services has expressed an interest in purchasing 135 Cherry Street, Ms. Caplan said that she believed they are looking at that possibility.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Hay moved for the adoption of Resolution No. 98-105, as amended. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 458

B. RESOLUTION NO. 98-106 - RESOLUTION APPROVING ORDER ON CONDITIONAL USE PERMIT

City Attorney Oast said that is consideration of a resolution approving an Order containing Findings and Conclusions relative to the conditional use permit application for the proposed duplex on London Road in Shiloh. The proposed Order is based on information presented at the public hearing in this matter held on June 23 and continued to July 14, and should be self-explanatory.

He said the basis for the denial is that the proposed conditional use would tend to injure adjacent or abutting property values and would also not be in keeping with the character of the neighborhood as to appearance or quality of construction. He said those seemed to be the two factors that Council centered most on and those are the two he has indicated as the basis for denial. He felt that all the other criteria for a conditional use permit had been satisfied, but it only takes one reason to deny the conditional use permit.

In order to give effect to Council's vote to deny the permit, it will be necessary to make determinations relative to the conditional use standards. The Order is a proposal only, and can be modified to suit Council's particular desires. Once the findings and conclusions are finalized, adoption of the resolution is recommended.

City Attorney Oast said that a copy of the resolution and order was furnished to neighborhood representatives.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Hay moved for the adoption of Resolution No. 98-106. This motion was seconded by Councilman Cobb and carried on a 4-2 vote, with Councilmen Cloninger and Sellers voting no.

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C. SECOND READING OF ORDINANCE NO. 2500 - AN ORDINANCE GRANTING A FRANCHISE TO BRENMOR CABLE PARTNERS, L.P. (D/B/A INTERMEDIA)

RESOLUTION NO. 98-107 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SETTLEMENT AGREEMENT WITH BRENMOR CABLE PARTNERS, L.P. (d/b/a INTERMEDIA) AND TCI COMMUNICATIONS INC., REGARDING FRANCHISE FEES

Mayor Sitnick said that the public hearing on this matter was held on June 23, 1998, and the first reading was held on July 14, 1998.

Ms. Patsy Meldrum, Assistant City Attorney, said that on July 14, 1998, the City Council adopted on first reading the ordinance granting a cable television franchise to InterMedia. The City Council has previously been furnished with a copy of the ordinance with a drafting date of 6/2/98. The adoption on first reading included new language for Section 2 of the ordinance and a new Section 12.E.

The new Section 2 preserved the right the City has with respect to the possible non-payment or underpayment of franchise fees or franchise taxes under the 1967 cable television franchise. The new Section 12.E. included the language regarding Internet access to schools and public libraries.

The City Manager and the City Attorney's Office recommend consideration of the second reading of the ordinance granting the franchise to InterMedia.

At this time, 6:07 p.m., Councilman Tomes participated in the meeting via speaker phone.

Councilwoman Field said that she and Vice-Mayor Hay have met with the Attorney Joe Van Eaton (attorney brought in by Citizens of Media Literacy) and Paul Congo. Mr. Van Eaton said that he felt like basically the City had a good franchise agreement. Several questions arose which she has researched as follows:

(1) What is the impact of AT&T's takeover of TCI and will the City have the opportunity to approve the transfer and what are the implications? Answer: In talking to staff, the relationship with AT&T to TCI is so many steps back from our contract with Brenmor that more than likely we will not have the opportunity to approve the AT&T's takeover of TCI.

(2) The 1967 franchise requires free drops plus inside wiring for City Hall, Police and Fire Departments and schools. Was inside wiring ever installed, if not, the operator could be held in non-compliance. Answer: Our consultants, Rice, Williams, did a compliance survey, and found that they were in compliance with everything except the franchise fee.

(3) Internet access for schools and libraries. InterMedia could provide Internet access in some neighborhoods but not others. Amendment to franchise agreement obligates them to provide free Internet access only to those schools and libraries in sectors where the Internet is activated. Answer: In talking to staff, in the regulatory agreement in Section 34, it does not allow them to discriminate and only provide a service in one neighborhood and not the other. If we requested them to provide the service, they must provide it within the City limits equally.

(4) Proposed franchise does not specify a PEG access origination site or InterMedia's obligation to link to a PEG access origination site established by the City. This means that PEG access could only originate from InterMedia's premises. Answer: The origination sites are listed in Exhibit "A" and it does say that these origination sites and specifically that a PEG origination site will be provided for. There was some concern that it did not say "provide and activate" and I have checked with InterMedia and they are willing to add the words "and activate" so that all of the origination sites will be provided and activated.

(5) Only four fibers for I-net. Most I-nets are being built with 12 fibers, thereby enabling three pathways for voice, video and data - each requiring four fibers - two incoming and two outgoing. This allows simultaneous usage of I-net at maximum speeds for voice, video and data. If voice, video and data must share pathways, the performance is degraded. Answer: Councilwoman Field read what Rice, Williams has said: "I-net designs vary across the country with most franchising authorities not receiving I-nets in renewals. The designs vary based on local needs, topography of the city and cable plants and costs. Some I-nets provided by cable companies are designed with a backbone of 6-12 fibers. On these designs, all users share the same 6-12 fibers. The I-net in Asheville has a much more fiber-rich architecture with 4 fibers designed from the City Hall to each location. The backbone fibers varies by location but starts with 82 fibers and in many locations has 32 or more. Of the 21 sites, all sites are served by a backbone of at least 12 fibers, except for two sites with a backbone of 8 and two sites with a backbone of 6. If the sites on the distribution part of the I-net link from the backbone fiber to telephone junction box in the building should require access to more than four fibers, additional fibers can be connected to the larger backbone. This type of design is used in new I-nets and offers substantial capacity. The overall number of fibers in the backbone and distribution parts of the I-net and the redundancy built in the design is affected by real future needs and how much a community is willing to pay. Voice, video and date are often placed on the same fiber and the performance is not degraded."

(6) There is no I-net design specified. Purely designed I-net could lack redundancy if the site goes down it could bring down the entire network. Answer: From the description, there is indeed a design for the I-net.

(7) I-net opt out clause. If the N.C. Public Utilities Commissions or the FCC ever requires cable companies to register as common carriers for I-net service, InterMedia can opt out of the I-net requirement. The City will be faced with options of shutting down the I-net or contracting with InterMedia to apply for the common carrier fee. Answer: Assistant City Attorney

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Patsy Meldrum explained that in Section 15B there is language that if the City's use of the institutional network results in any unreasonable interference with the cable system or requires receipt of additional licenses or authorizations from any entity or governmental agency, including, without limitation, public service commission approval, then what happens is the cable company gives the City written notice. They give us notice and then the City has the opportunity to seek that license or that authorization. The City is the one with the option, not the cable company. If the City fails to do it, then the cable company can still do it themselves if they want. She also checked to see what the experience has been with utilities commissions in states requiring this. Rice, Williams informed us that there is a number of institutional networks that have been operating in North Carolina for a number of years and that so far the N.C. Utilities Commission has made no move to have requirements like this for institutional networks. Rice, Williams also serves other governmental authorities in a number of states and they are not aware of any other utility commission in the United States which has required this. If indeed a license if required in the future, the City is the one with the option, not the cable company. Councilwoman Field said that in order to clarify that, the cable company is willing to add language that they would make reasonable efforts to assist the City with securing the licenses or authorizations required.

(8) Cable companies will try to get away with $5 automatic late fees, but a case was just lost against the City of Baltimore on this issue. Their $5 late fee violates the state usury law. Answer: The cable company has a set way of dealing with late fees. Councilwoman Field's concern was that since the cable company bills in advance, at the end of 30 days you are not really late. The cable company has a policy (which they are willing to give us a copy of) that they don't even begin to issue the late fees until 45 days after the bill is late and then the first thing is they call you to tell you it's late. If you don't respond to that, then they send you a letter telling you are late. If you don't respond to that, they send a truck around and they put a door hanger on your door stating that they are about to cut off your cable. It takes about 90 days before they actually get to a point where they actually cut off your cable. She personally felt that if it costs $10 to write a business letter, she did not feel that $5 on an automatic late fee is that significant. Assistant City Attorney Meldrum said that she spoke with an attorney in the Consumer Protection Division of the N.C. Attorney General's Office who is of the same opinion that the state usury laws in North Carolina are limited to loans or extensions of credit and would not apply to cable bills. There is some language in there relating to the utilities commission and what the interest rate telephone companies can charge to customers when they refund payment, but not for cable companies and what their maximum rate is.

(9) There are other cities in the country that have TCI and InterMedia who have had some safety violations. Answer: Rice, Williams and their engineers did a full inspection of their physical plant and they found a few minor violations (some drop sites were built many years ago and the Electrical Code has changed). As a result of that, the City requested and the cable company has agreed to add language that upon completion of the rebuild the cable company will furnish the City with a report on the audit of the drop sites.

Mayor Sitnick said that with regard to the refund request requirement and the fact that subscribers pay in advance for the service, if you for some reason don't call for a refund, then in effect, the cable company is being paid for a service that has not been provided.

Councilwoman Field said that if she agreed with the franchise agreement then the issue for her became the franchise fee. Therefore, she received more information on the franchise fee and developed Exhibit "A" (unaudited), which is attached hereto, and reviewed it with the Council. The bottom lines are as follows:

(1) If we go back 7-1/2 years at 6% on everything (except home shopping, advertising and bad debts on basic only) there would be a fee owed to the City of $944,341.

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(2) If we go back 7-1/2 years at 6% on everything (except home shopping, advertising, bad debts on basic and installation/other - because the Court may rule that the description in our franchise reads that the City will get fees paid on all recurring expenses) there would be a fee owed to the City of $650,303.

(3) If we go back 7-1/2 years at 5% on everything (except home shopping, advertising and bad debts on basic only) there would be a fee owed to the City of $382,647.

(4) If we go back 7-1/2 years at 5% on everything (except home shopping, advertising, bad debts on basic and installation/other - because the Court may rule that the description in our franchise reads that the City will get fees paid on all recurring expenses) there would be a fee owed to the City of $137,616.

(5) If we go back 3 years at 6% on everything (except home shopping, advertising and bad debts on basic only) there would be a fee owed to the City of $236,656.

(6) If we go back 3 years at 5% on everything (except home shopping, advertising and bad debts on basic only) there would be a fee owed to the City of $103,379.

Councilman Field said that Mr. Van Eaton recommended that the City not to go court but if we did, we might win in State Court, but we would lose in Federal Court. To go to court we would have to spend at least $100,000 on lawyer's fees. She therefore, came to the conclusion that the cable company has agreed to pay $175,000 and the savings of $100,000 to go to court, plus the fact that it will take approximately four years to go through the court system, she wasn't sure what changes the City would have to get 6%. The federal law says that you cannot get more than up to 5% of their total revenues.

Upon inquiry of Councilman Tomes relative to the AT&T takeover, Ms. Meldrum said that the City does have in their regulatory ordinance some provisions about approval of transfers and what it depends upon is whether or not the ownership or a certain percentage of the control is affected. But, likely the type of merger that has been discussed, if it occurs, because AT&T has attempted to merge with other cable companies before and is has not happened, then the information that we have is that it is so far removed from the ownership or control of our own cable system that it would not trigger our transfer approval requirements. Based on the information we have, that type of merger of those two systems would not trigger our transfer approval clause.

Ms. Meldrum explained in detail the design of the institutional network.

At this time, 6:40 p.m., Councilwoman Field moved to excuse Councilman Tomes. This motion was seconded by Councilman Sellers and carried unanimously.

Mayor Sitnick noted that it was clear that the cable company was out of compliance with their fee payments and noted that the City did not charge them a late penalty fee.

Because Councilwoman Field feels that the franchise agreement is a good agreement and with the additional information she has received and reviewed at length, she moved to add the consideration of authorizing the City Manager to execute a settlement agreement with Brenmor Cable Partners, L.P. (d/b/a InterMedia) and TCI Communications Inc. regarding franchise fees to the agenda. This motion was seconded by Councilman Cloninger and carried unanimously.

Councilwoman Field said that she talked with representatives of InterMedia and they are unwilling to raise the settlement agreement more than their offer of $175,000. The cable company thinks they can win as does Mr. Van Eaton.

Mayor Sitnick then read the following letter dated July 23, 1998, from Adelaide Worth Daniels Foundation: "I am writing to indicate my willingness to fund a technical assessment of

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existing infrastructure and current and future community networking needs, so that the City Council, the City Manager, and the City's legal staff can have all the information they need to assure that the contract they negotiate for cable television service is the best one possible for our community. Through my efforts with the Community Resource Network, I am working on a major project that I hope will greatly improve services to children and families, and maximize the effectiveness of the many agencies and organizations that serve them. A key component of our effort is improving people's access to information. As you likely know, quite a bit of public and private investment is going into building a strong communications network across western North Carolina. The Institutional Network and Public, Educational & Governmental cable television access channels can complement the many initiatives under way and be key elements in helping us achieve our goals. Recent consultations with attorney Joseph van Eaton and public access executive Paul Congo have shown that there are many nuances to the relationship between a cable television provider and the community it serves. It would be a shame to have our community prematurely locked into a long-term agreement that could prevent us from reaching our full potential. I think our community would be well served if City Council delayed acting on the contract currently before them, and give us an opportunity to have an independent expert conduct an in-depth evaluation. We need clarify on numerous matters - our existing facilities and infrastructure, our needs for additional enhancements, the method by which the public is given access, and many others. Through the Community Resource Network I am prepared to contract with and pay for the appropriate expert to conduct an assessment to help us achieve this clarity. I realize that time is of the essence. I believe we can accomplish such an evaluation within 90 days. Please consult with the other City Council members and urge them to delay their action so that we can get all of the information we need." The letter was signed by Adelaide. She said that the Adelaide Worth Daniels Foundation is willing to pledge up to $25,000 to hire such a consultant to evaluate all of the questions and help us continue our evaluation.

Vice-Mayor Hay said that he voted against the franchise fee settlement on July 14, 1998, not because he thought the settlement was a bad one in light of all the different considerations, necessarily, but because he thought that the community believes that the City is giving the money away and that the City has not showed the community that this settlement is a good idea. He still felt that way. He said that our community advisors, including Joe Van Eaton, said that the franchise renewal is our major negotiating tool for increasing the amount of money the cable company is willing to pay in the franchise fee settlement. However, the message sent to the cable company today was that the franchise renewal issue is in jeopardy if they do not increase the franchise fee settlement proposal. The result was that the cable company did not offer any more.

Councilwoman Field also reviewed with Council Exhibit "B" attached hereto, which is a bare bones budget for public access. She tried to look at some possibilities of how we can get public access started with the money that we had in the present franchise agreement. TCI has committed to $340,000 over three years for equipment and maintenance and we can either take that in money or in-kind. She said that the cable company would be willing to spread the $400,000 over 9 years (instead of 8) which comes to about $45,000 a year. That $45,000 a year could be committed to public access and the public access community could raise the difference in money. She felt it would take at least a year to develop the public access portion with the public access community and the City. She was concerned about being put in a position where the City of Asheville pays for the entire infrastructure for public access and the I-net for the whole community and then a whole group of people take it over and use it. If the hospitals, schools or universities want to use our I-net then they need to bring some money to the table. Right now we have an I-net that will work for the City of Asheville.

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Mayor Sitnick agreed that we need to learn by our mistakes in the past regarding water and sewer and the fact that the Asheville taxpayer has indeed given a lot away and has subsidized the use of water and sewer by other entities. She would assume that whatever we do with the I-net there would be a fee for service and hook-up.

Councilman Cobb said that even though he made the motion to adopt the franchise on the first reading, he was agreeable to postponing taking action on it for 90 days to give the consultant hired by the Adelaide Worth Daniels Foundation time to review the language, making sure the franchise is clear, precise and understandable. He felt that (1) Asheville should have a state of the art system now with a 750 MHz system; (2) the cable company should pay the City 6% of all the money they bring in; (3) the cable company should not be charging a $5 late penalty fee; (4) the pass through to subscribers should be lower; and (5) there should be senior citizen discounts.

Mayor Sitnick said that with the hundreds of letters, phone calls and e-mails she has received on this issue, not one has been in support of this cable contract or in settling for the fee settlement offered to the City. She fully supported the Foundation's offer to explore whether or not what we are doing now will serve us in the next millennium, given the technological advances that are occurring. She would not be intimidated by the cable company telling us they will not negotiate further. Personally she had faith in Ms. Meldrum being able to re-negotiate for the City and not having to spend the money on an outside attorney. Her concerns were: (1) that the cable company was willing to pay more than Congress required of them because they didn't want the City to look into whether or not their assessment of gross revenues was accurate; (2) PEG channels may not be defined enough and wasn't sure if there is enough money up-front for PEG channels; (3) working with a company that says they will give it something free and then charge you; (4) there should be no $5 late fee especially because it hits the low income people; (5) there is no consideration for senior citizen rates: (6) not satisfied with the refund by request provision; (7) she doesn't like being billed in advance; (8) customers should have basic and expanded without paying for additional equipment; (9) problems with a company that causes the City to investigate and audit the fee settlement issues which cost the citizens and the rate payers money; (10) 12-year contract is too long given the way the telecommunication industry and the laws are changing too quickly; (11) the City is paying for the I-net and another company owns it; and (12) unhappy with the fee settlement; . She would like to see this renewal postponed for at least a minimum of 90 days and suggested Council postponed it January 1999. This would allow the consultant to work with our staff and, if nothing else, reassure us that this is the best we can do.

Councilman Cloninger felt strongly that City Council should approve both the franchise agreement and the fee settlement agreement for the reasons stated two weeks ago. He said that this agreement has been analyzed many, many different ways and he has not heard how this latest evaluation will be any different from what has already taken place. To postpone another 90 days will cost the City money because of the new definition of gross revenues.

Upon inquiry of Councilman Cloninger, Ms. Meldrum said that the City is losing about $30-40,000 revenue per year based on the change in definition.

Vice-Mayor Hay said that because the settlement agreement was voted down, he would support engaging outside counsel and filing suit.

Councilwoman Field felt that the cable company must be extremely confident of their position and the City may end up with very little or no money at all. She felt that if the City takes the $175,000, part of that can go to the PEG channels to get started. If given a chance, she would change her vote to approve the settlement agreement.

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Vice-Mayor Hay said that he talked to the expert the Foundation has offered to pay for and felt that the Foundation's offer is very generous and their expert is probably very capable, however, he didn't hear back from her any ideas that we would be in any different place in 90 days than we are right now. He would not be interested in postponing this action for that reason.

Councilwoman Field had the same experience as Vice-Mayor Hay did when she spoke with their expert.

Vice-Mayor Hay said that there is a role to be played in terms of engaging what the City is going to do with our cable franchise and the rest of the community.

Mayor Sitnick understood that the offer was centered around the capabilities of I-net, that structure and the community resource network and how best we could plug into that.

Councilwoman Field moved to approve the second reading of Ordinance No. 2500, with the following amendments: (1) Amend Section 6 to read "... and a new term of seven (7) years and eleven (11) months, for a total of twelve (12) years, commencing on August 1, 1998, and ending on July 31, 2010,..."; (2) Amend Section 14 (c) to read "... in a minimum amount of $45,000 per year or $.20 per Subscriber per month, whichever is greater, for years 4 through 12 of this Franchise...."; (3) Amend Section 14 (f) to read "Upon completion of the rebuild, the Franchisee agrees to provide and activate public, educational and/or governmental access origination points..."; and (4) Add a new sentence to Section 15 (b) prior to the sentence beginning "In the event..." to read "...The Franchisee shall use reasonable efforts to assist the City with securing the licenses or authorizations required." This motion was seconded by Councilman Cloninger.

Mayor Sitnick said that the 1967 agreement was voted on by the people and according to what she has been able to determine, the people would not be voting on this.

City Attorney Oast said that he has copies of the resolution and settlement agreement for Council's consideration.

The motion made by Councilwoman Field to adopt Ordinance No. 2500 with the amendments and seconded by Councilman Cloninger carried on a 4-2 vote with Mayor Sitnick and Councilman Cobb voting "no".

Councilwoman Field moved to adopt Resolution No. 97-107, authorize the City Manager to execute a settlement agreement in the amount of $175,000 with Brenmor Cable Partners, L.P. (d/b/a InterMedia) and TCI Communications Inc. regarding franchise fees. This motion was seconded by Councilman Cloninger.

Councilwoman Field said that this $175,000 for the settlement agreement would not be passed through to the subscribers.

Upon inquiry of Councilwoman Field about whether can the franchise fee be passed through the customers, Ms. Meldrum responded that it can. However, the $175,000 settlement amount will not be passed through to the subscribers if the matter is not litigated. If, however, the matter does goes to Court, it is her understanding that they would pass it through and they would use the FCC Order as a basis for that. Ms. Meldrum further stated that she reviewed the FCC Order and the City would argue that it should be distinguished on the facts But, FCC Orders have tended to favor the cable companies in those type of situations. If we win in Federal Court, they would probably try to get authority through the FCC to do that pass through.

The FCC would probably say that because they had not collected the fee, then why should they not be allowed to pass through the fee once they had to pay it. There is some language in there which would tend to support the cable company's view that they could pass it through.

Vice-Mayor Hay said that based on Ms. Meldrum's explaining the FCC Order, he would be in favor of changing his vote on the franchise fee settlement agreement.

The motion made by Councilwoman Field and seconded by Councilman Cloninger to authorize the City Manager to execute the settlement agreement was passed on a 4-2 vote, with Mayor Sitnick and Councilman Cobb voting "no".

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At 7:48 p.m., Mayor Sitnick announced a short break.

V. NEW BUSINESS:

A. RESOLUTION NO. 98-108 - RESOLUTION ACCEPTING THE REGIONAL WATER AUTHORITY'S RECOMMENDATION TO ABANDON A SMALL SECTION OF WATER LINE ACROSS THE PROPERTY OF THE SWANNANOA BAPTIST CHURCH

Mr. Tom Frederick, Water Resources Director, said that the Swannanoa Baptist Church has requested that the Water Authority abandon approximately a 325-foot section of existing 6-inch waterline on the Church's property in the former South Avenue in Swannanoa in order to accommodate the planned expansion of their building.

In 1990 the Authority installed a 6-inch waterline in South Avenue, in NCDOT right-of-way known as South Avenue, adjacent to the Swannanoa Baptist Church. In 1993 the Church petitioned NCDOT to abandon the section of South Avenue that runs through their property so that they could expand their building into the street right-of-way. NCDOT granted this request but failed to contact the City regarding the continued maintenance of the waterline. The planned Church expansion is over the existing waterline and the Church asked the Authority to abandon the 6-inch water through their property. Water Resources staff determined that the waterline could be abandoned without adversely affecting other customers and with marginal affect on fire flow in the area.

The Water Resources staff recommended to the Water Authority that the City of Asheville waterline on Church property be abandoned subject to the Church compensating the City for the depreciated value of the line and the Water Resources Department's cost of plugging the line as required to abandon it. This total cost was determined to be $5,465. The basis of the staff recommendation was to avoid setting a precedent of abandoning assets without compensation for its current asset value, and to allow reinvestment in the water system where there are needs. The Authority voted in favor of abandoning the waterline if the Church paid only the cost of abandonment, or $2,048, subject to the approval of City Council. The City of Asheville is the owner of the waterline.

Water Resources staff recommended to the Regional Water Authority and recommends to City Council adoption of a resolution to abandon an approximate 325-foot section of existing 6-inch waterline on the Swannanoa Baptist Church property, subject to the Church paying

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$5,465. The Regional Water Authority recommended adoption of the resolution, however, they recommended the Church pay only $2,048.

There was some discussion on the amount the Church should pay for the section being abandoned.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 98-108, subject to the Church paying $5,465. This motion was seconded by Councilman Cobb and carried on a 5-1 vote, with Vice-Mayor Hay voting "no".

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B. RESOLUTION NO. 98-109 - RESOLUTION APPOINTING A MEMBER TO THE PLANNING & ZONING COMMISSION

Vice-Mayor Hay said that Jim Torpey has resigned as a member of the Planning & Zoning Commission, thus leaving an unexpired term until August 14, 1999. City Council went through the interview process on July 21, 1998.

There was some discussion about applicants who currently serving on one board but would like to serve on a different one. It was determined that Council proceed as they have in the past and advise the applicant that if they are chosen to serve on the other board, that they would have to resign their position on the current board.

Mayor Sitnick nominated Susan Andrew.

Councilwoman Field nominated Lionel Williams.

Councilman Sellers nominated Jerry Bailey.

Susan Andrew received two votes, Lionel Williams received three votes, and Jerry Bailey received one vote. Another vote was taken with the results being Susan Andrew receiving two votes and Lionel Williams receiving four votes. The resolution will appoint Lionel Williams to serve the unexpired term of Mr. Torpey, term to expire August 14, 1999, or until his successors has been appointed.

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VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 14, 1998, AND THE WORKSESSION HELD ON JULY 21, 1998

Councilwoman Field moved for the adoption of the minutes of the regular meeting held on July 14, 1998, and the worksession held on July 21, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

B. I-26 CORRIDOR; WNC AIR POLLUTION CONTROL BOARD; HEALTH ADVENTURE; AFFORDABLE HOUSING

Mayor Sitnick said that she has talked with Gordon Myers about the N.C. Dept. of Transportation making a presentation to City Council. Mr. Myers said that in about 2-3 weeks, they would be prepared to make that presentation.

Mayor Sitnick entered the following letter dated July 23, 1998, to Doug Clark, Chairman of the WNC Regional Air Pollution Control Board from her into the minutes: "This is to inform you of our great disappointment and displeasure with the way the Board's election of the new Chairperson and Vice Chair was handled by former Chair Tom Rhodarmer. We want to take this opportunity to express the dismay that the Asheville City Council members and I had when you did not see fit to allow an Asheville appointee to assume the Chairmanship, as was agreed to a year ago by the Board. We find it unprofessional and immature to deny the right of Asheville to assume the Chairmanship because some members of the Board have a personal gripe against a fellow member. This is a very disturbing turn of events and the City of Asheville and its citizens have been done a great disservice. In addition, conducting an election by secret ballot only serves to further erode the Boards credibility and effectiveness. By way of this letter, the Mayor and members of City Council hereby request that you reconvene and revote, and allow the City of Asheville its due turn in the role of Chair. We feel both of our appointees are capable and competent to serve in that role."

At the request of Mayor Sitnick, it was the consensus of City Council that the she write a letter to our legislators on behalf of City Council to support funding for the Health Adventure.

Councilwoman Field asked that the City find out more about the Ford Foundation, along with Fannie Mae and the Self-Help Credit Union, having $200 Million they are putting together for affordable housing home ownership.

C. COMMENTS BY KEITH THOMPSON

Mr. Keith Thompson thanked Council and staff for their efforts in making sure that the decision for the Board of Adjustment was a clear one regarding the variance request on Merrimon Avenue. He said they had a petition with slightly under 800 signatures supporting the Unified Development Ordinance's protection of the provisions under Community Business I particularly regarding no drive-throughs in the CB I district and provisions that would limit adverse impact on safety on roads like Merrimon Avenue.

D. CLAIMS

The following claims were received by the City of Asheville during the week of July 10-16, 1998: Alice Peed (Streets), Ron Greene (Water), Rebecca P. Spencer (Water) and Rachel Miller (Water).

The following claims were received during the week of July 17-23, 1998: Linda Mitchell (Sanitation), Vicky M. Young (Police), John Young (Sanitation) and Julie Sibila (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:30 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

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EXHIBIT "A"

CALCULATION OF FRANCHISE FEE BASED ON 6% OF ALL REVENUES 6% - 71/2
EXCEPT HOME SHOPPING, ADVERTISING and BAD DEBT on Basic Only
For the period from January 1991 to June 1998 - SEVEN AND ONE-HALF YEARS (Unaudited)

	Ja-Jn '98	1997	*1996	1995	1994	1993	1992	1991
Total Basic	3,632,235	6,318,721	5,848,524	5,319,171	5,291,597	5,350,280	4,262,805	4,406,983
Total Premium	593,535	1,135,859	1,130,743	1,174,463	1,267,572	1,115,066	1,840,480	1,289,758
Total Pay/View	91,341	170,059	168,251	139,177	162,775	169,005	167,165	223,129
Total Installation/Other	345,557	634,108	588,899	549,443	555,116	680,353	816,781	730,377
Total Revenues	4,662,668	8,258,747	7,736,417	7,182,254	7,277,060	7,314,704	7,087,231	6,650,247
Total Revenues	4,662,668	8,258,747	7,736,417	7,182,254	7,277,060	7,314,704	7,087,231	6,650,247
6% Franchise Fee	279,760	495,525	464,185	430,935	436,624	438,882	425,234	399,015
Less Amount Paid **	217,934	379,123	350,911	319,150	317,496	321,017	255,768	264,419
Fee Owed per Year	**61,826**	**116,402**	**113,274**	**111,785**	**119,128**	**117,865**	**169,466**	**134,596**
Cumulative TOTAL of Franchise Fee Owed	**61,826**	**178,228**	**291,501**	**403,286**	**522,414**	**640,279**	**809,745**	**944,341**

* 1996 Total is estimated from ten months of data. ** Estimated, Due August 30th

CALCULATION OF FRANCHISE FEE BASED ON 6% OF ALL REVENUES 6% - 71/2
EXCEPT HOME SHOPPING, INSTALLATION/OTHER, ADVERTISING and BAD DEBT on Basic Only
For the period from January 1989 to June 1998 - SEVEN AND ONE-HALF YEARS (Unaudited)

	Ja-Jn '98	1997	*1996	1995	1994	1993	1992	1991
Total Basic	3,632,235	6,318,721	5,848,524	5,319,171	5,291,597	5,350,280	4,262,805	4,406,983
Total Premium	593,535	1,135,859	1,130,743	1,174,463	1,267,572	1,115,066	1,840,480	1,289,758
Total Pay/View	91,341	170,059	168,251	139,177	162,775	169,005	167,165	223,129
Total Revenues	4,317,111	7,624,639	7,147,518	6,632,811	6,721,944	6,634,351	6,270,450	5,919,870
Total Revenues	4,317,111	7,624,639	7,147,518	6,632,811	6,721,944	6,634,351	6,270,450	5,919,870
6% Franchise Fee	259,027	457,478	428,851	397,969	403,317	398,061	376,227	355,192
Less Amount Paid **	217,934	379,123	350,911	319,150	317,496	321,017	255,768	264,419
Fee Owed per Year	**41,093**	**78,355**	**77,940**	**78,818**	**85,821**	**77,044**	**120,459**	**90,773**
Cumulative TOTAL of Franchise Fee Owed	**41,093**	**119,448**	**197,387**	**276,206**	**362,026**	**439,071**	**559,529**	**650,303**

* 1996 Total is estimated from ten months of data. ** Estimated, Due August 30th

CALCULATION OF FRANCHISE FEE BASED ON 5% OF ALL REVENUES

5% - 71/2

EXCEPT HOME SHOPPING, ADVERTISING and BAD DEBT on Basic Only

For the period from January 1989 to June 1998 - SEVEN AND ONE-HALF YEARS (Unaudited)

	Ja-Jn '98	1997	*1996	1995	1994	1993	1992	1991
Total Basic	3,632,235	6,318,721	5,848,524	5,319,171	5,291,597	5,350,280	4,262,805	4,406,983
Total Premium	593,535	1,135,859	1,130,743	1,174,463	1,267,572	1,115,066	1,840,480	1,289,758
Total Pay/View	91,341	170,059	168,251	139,177	162,775	169,005	167,165	223,129
Total Installation/Other	345,557	634,108	588,899	549,443	555,116	680,353	816,781	730,377
Total Revenues	4,662,668	8,258,747	7,736,417	7,182,254	7,277,060	7,314,704	7,087,231	6,650,247
Total Revenues	4,662,668	8,258,747	7,736,417	7,182,254	7,277,060	7,314,704	7,087,231	6,650,247
5% Franchise Fee	233,133	412,937	386,821	359,113	363,853	365,735	354,362	332,512
Less Amount Paid **	217,934	379,123	350,911	319,150	317,496	321,017	255,768	264,419
Fee Owed per Year	**15,199**	**33,814**	**35,909**	**39,962**	**46,357**	**44,718**	**98,593**	**68,093**
Cumulative TOTAL of Franchise Fee Owed	**15,199**	**49,013**	**84,923**	**124,885**	**171,242**	**215,961**	**314,554**	**382,647**

* 1996 Total is estimated from ten months of data.

** Estimated, Due August 30th

CALCULATION OF FRANCHISE FEE BASED ON 5% OF ALL REVENUES

5% - 71/2

EXCEPT HOME SHOPPING, INSTALLATION/OTHER, ADVERTISING and BAD DEBT on Basic Only

For the period from January 1989 to June 1998 - SEVEN AND ONE-HALF YEARS (Unaudited)

	Ja-Jn '98	1997	*1996	1995	1994	1993	1992	1991
Total Basic	3,632,235	6,318,721	5,848,524	5,319,171	5,291,597	5,350,280	4,262,805	4,406,983
Total Premium	593,535	1,135,859	1,130,743	1,174,463	1,267,572	1,115,066	1,840,480	1,289,758
Total Pay/View	91,341	170,059	168,251	139,177	162,775	169,005	167,165	223,129
Total Revenues	4,317,111	7,624,639	7,147,518	6,632,811	6,721,944	6,634,351	6,270,450	5,919,870
Total Revenues	4,317,111	7,624,639	7,147,518	6,632,811	6,721,944	6,634,351	6,270,450	5,919,870
5% Franchise Fee	215,856	381,232	357,376	331,641	336,097	331,718	313,523	295,994
Less Amount Paid **	217,934	379,123	350,911	319,150	317,496	321,017	255,768	264,419
Fee Owed per Year	**-2,079**	**2,109**	**6,464**	**12,490**	**18,601**	**10,701**	**57,754**	**31,574**
Cumulative TOTAL of Franchise Fee Owed	**-2,079**	**30**	**6,495**	**18,985**	**37,586**	**48,287**	**106,041**	**137,616**

* 1996 Total is estimated from ten months of data.

** Estimated, Due August 30th

CALCULATION OF FRANCHISE FEE BASED ON 6% OF ALL REVENUES EXCEPT HOME SHOPPING, ADVERTISING, BAD DEBT for Basic Only 6% - 3
For the Period June 1995 through June 1998 - THREE YEARS (Unaudited)

	Ja-Jn '98	1997	*1996	Ju-De '95
Total Basic	3,632,235	6,318,721	5,848,524	2,671,633
Total Premium	593,535	1,135,859	1,130,743	565,468
Total Pay/View	91,341	170,059	168,251	76,315
Total Revenues	4,317,111	7,624,639	7,147,518	3,313,417
Total Revenues	4,317,111	7,624,639	7,147,518	3,313,417
6% Franchise Fee	259,027	457,478	428,851	198,805
Less Amount Paid **	217,934	379,123	350,911	159,536
Fee Owed per Year	**41,093**	**78,355**	**77,940**	**39,269**
Cumulative TOTAL of Franchise Fee Owed	**41,093**	**119,448**	**197,387**	**236,656**

* 1996 Total is estimated from ten months of data. ** Estimated, Due August 30th

CALCULATION OF FRANCHISE FEE BASED ON 5% OF ALL REVENUES EXCEPT HOME SHOPPING, ADVERTISING, BAD DEBT on Basic Only 5% - 3
For the Period June 1995 through June 1998 - THREE YEARS (Unaudited)

	Ja-Jn '98	1997	*1996	Ju-De '95
Total Basic	3,632,235	6,318,721	5,848,524	2,671,633
Total Premium	593,535	1,135,859	1,130,743	565,468
Total Pay/View	91,341	170,059	168,251	76,315
Total Installation/Other	345,557	634,108	588,899	246,434
Total Revenues	4,662,668	8,258,747	7,736,417	3,559,851
Total Revenues	4,662,668	8,258,747	7,736,417	3,559,851
5% Franchise Fee	233,133	412,937	386,821	177,993
Less Amount Paid **	217,934	379,123	350,911	159,536
Fee Owed per Year	**15,199**	**33,814**	**35,909**	**18,457**
Cumulative TOTAL of Franchise Fee Owed	**15,199**	**49,013**	**84,923**	**103,379**

* 1996 Total is estimated from ten months of data. ** Estimated, Due August 30th

EXHIBIT "B"

PUBLIC ACCESS BUDGET

Field Equipment:			
Camcorder Systems	4 @	10,000	$40,000
Lighting Kits	4 @	500	2,000
Audio, mics, mixers			2,000
Edit Systems:	2 @	15,000	30,000
Studio:			
Cameras	3 @	15,000	30,000
Switcher	1 @	6,000	6,000
Audio Mixer	1 @	1,000	1,000
Character Generator	1 @	2,000	2,000
Tripods	3 @	1,500	4,500
Monitors			4,000
VCR's	3 @	3,000	9,000
Playback:			
Router			3,000
VCR's	10 @	3,000	30,000
Videotext	1 @	2,000	2,000
TBC	1 @	2,000	2,000
Monitors	2 @	500	1,000
Mobile Studio:			
(See Studio above)			40,500
Truck (Used)			20,000
Sub Total			**$229,000**
Cable, Wiring, Misc @ 10%			22,900
TOTAL INITIAL EQUIPMENT			**$251,900**

TCI has committed to $340,000 over three years for equipment and maintenance.

Non Technical Costs:	
Facility Renovation	$100,000
Utilities	14,000
Insurance	2,000
Repairs	8,000
Sub-Total	**$124,000**

To be covered using City-Owned property, staff and resources.

Recuring Costs:	
Staff	$70,000
Supplies	10,000
Postage	1,000
Sub-Total	**$81,000**

To be covered by $45,000 per year from TCI and the rest from private fund raising and donations.

Tuesday - August 4, 1998- 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Budget Amendment re: Controlled Substance Excise Tax

Summary: The consideration of a budget amendment, in the amount of $30,000, to appropriate Controlled Substance Excise Tax receipts to enhance law enforcement activities in Fiscal Year 1998/99.

The Asheville Police Department receives a share of the proceeds from the State Controlled Substance Excise Tax. To date, approximately $40,000 has been received. These funds cannot be used to fund Police Department general operations and must be appropriated to enhance law enforcement activities. The Police Department has identified specific uses for approximately $30,000 of these funds, at this time. One use will be the preparation of an A.P.D. Recruitment Video. This action will establish a special appropriation within the Police Department Administration budget in the amount of $30,000. Use of the funds will be monitored to ensure compliance with State requirements.

City staff recommends City Council adopt the budget amendment, in the amount of $30,000, to appropriate Controlled Substance Excise Tax receipts to enhance law enforcement activities in Fiscal year 1998/99.

Amendment to Capital Project Ordinance - 35 Fund

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 82-25 to provide funding for the Rocky Ridge Project.

By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

The Rocky Ridge Road Project is an upgrade from an 8 inch line to a 24 inch line. This upgrade was recommended in the 1995 Water Distribution Master Plan prepared by Camp, Dresser and McKee. Our contribution toward this upgrade is $10,000. This project will improve domestic water service and fire protection to multiple facilities in the area including the Holiday Inn Express.

This project has been previously approved by the Water Authority; and this is a request to provide the funding for the project. There are available funds in the Reservoir/Tunnel Repairs. This project is being postponed and will be funded as part of the FY 98/99 Water Distribution System Improvements.

Staff recommends adoption of the budget amendment amending Capital Project Ordinance 82-25 to reprogram funds in the amount of $10,000 from the Reservoir/Tunnel Repairs to the Rocky Ridge Project.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

IDENTIFICATION OF UDO ANNUAL REVIEW ISSUES

Mr. Gerald Green, Senior Planner, said that on July 21, 1998, he reviewed in detail the list of possible revisions for consideration as part of the annual Unified Development Ordinance ("UDO") review. The list of possible revisions reflects input from staff, Council members, and the public. Council may identify revisions which it wishes staff to incorporate into the UDO. This will require review and recommendation by the Planning and Zoning Commission and adoption by City Council. As part of the review and approval of any possible revisions to the UDO, both City Council and the Planning and Zoning Commission must hold public hearings.

He reviewed briefly the possible revisions to the UDO have been identified by various boards, commissions, members of the public, and/or staff. Staff recommends further review and consideration of the following identified revisions:

Revise Office District - Revise the current Office District standards to reduce the permitted building size (currently 4,000 square feet footprint and 8,000 sq ft gross floor area) and create a new "medium range" Office District II to bridge the gap between the revised Office District and the Office/Business District, which permits buildings up to 30,000 sq ft gross floor area.

Create a Mixed Use Planned Unit Development District - The UDO includes a Planned Unit Development (PUD) overlay district designed to permit and encourage flexibility in site design for developments. Density bonuses are provided as an incentive in the residential developments to encourage the provision of affordable housing and protection of sensitive areas. Up to 10% of the land area may be developed for community businesses or offices serving the development and immediately surrounding areas. Requests have been presented for the development of a Mixed Use Planned Unit Development District which would permit developments containing a range of uses from mixed density residential to office to commercial designed in a unified manner. Design flexibility would be a key component of this district, with incentives provided to encourage the attainment of community goals (walkability, provision for alternative modes of transportation, etc.).

Create an Open Space/Park Zoning District - Develop a zoning district designed to accommodate public parks and open spaces. The proposed zoning district will permit the development of parks and related public facilities and serve to protect these resources. The Open Space/Park District will be applied to publicly owned properties; privately owned properties will not be assigned this designation.

Landscape Ordinance Revisions - Minor revisions to the Landscape and Buffering Ordinance are proposed. The following revisions have been identified by the Tree and Greenway Commission: (1) Require all parking spaces within a parking lot to be located within 30' of a tree instead of 60' as required in the current ordinance; (2) Require that trees and shrubs be planted within 8' of a vehicular use area, instead of 20', to count as parking lot landscaping; (3) Establish a time limit within which parking lot landscaping intended to buffer the lot from the street must meet the required 3' height and within which berms and grade changes must be covered with vegetation; (4) Establish a requirement for enhanced buffers where development abuts the interstate; and (5) Review the requirements for maintaining existing trees during the development process.

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The following minor revision has also been identified: Establish a requirement for enhanced buffers where development abuts the interstate.

One other request has been brought to the staff's attention - that we review the requirements for maintaining existing trees during the development process. Under the current ordinance, credits for new trees are given for existing trees, with the number of credits related to the size of the tree (the larger the tree, the more credits) as an incentive to preserve existing trees. Cutting of trees on private property cannot be restricted, other than in local historic districts, without special enabling legislation.

Standards for Churches - Citizens have submitted a request that churches be limited to one sanctuary building and one classroom building per parcel of property in residential districts.

Underground Utilities - The UDO requires that utilities in new subdivisions be placed underground, but does not address the location of utilities in other developments. Staff has received comments stating that utilities in all developments should be required to be placed underground. It is argued that underground utilities would not only be more appealing aesthetically, but would not be subject to damage due to wind, snow, or accident. The initial cost of installing utilities underground is higher than installing overhead lines.

Broaden Permitted Uses in Community Business II District - The Community Business district, designed to provide areas for businesses serving several residential neighborhoods, should be sensitive to a significant pedestrian population while providing for adequate and safe vehicular access. A wide range of office, business, and service uses are permitted in the district including service stations and motor vehicle repair. A request from Realtors asks that the addition of mini-storage facilities and automobile dealerships to the list of permitted uses in this district be examined.

Identify Additional Neighborhood Business Zones - The Neighborhood Business District provides areas which are accessible to pedestrians for low intensity businesses which meet the daily convenience and personal service needs of the residential neighborhoods in which they are located. A group of Realtors has asked that additional areas which are appropriate for neighborhood commercial opportunities be identified for the application of this zoning district.

Advertising on buses and taxis - The city's sign regulations do not currently address advertising on buses and taxis. The use of these vehicles for advertising purposes is becoming more prevalent. The request is to research ways in which standards may be imposed upon this type of advertising.

Extraterritorial jurisdiction research - The City of Asheville is authorized to exercise planning jurisdiction up to one mile outside the city limits without the approval of the County Commission. With the approval of the County Commission, this jurisdiction may extend up to three miles beyond the city limits. The request is to research the pros and cons of exercising extraterritorial jurisdiction, staff resources required to exercise this jurisdiction, and representation of this area on the Planning and Zoning Commission.

Investigation of design guidelines in areas not designated as local historic districts - Design guidelines are enforced in the city's 3 local historic districts and for local historic properties. Enabling legislation is not in place to regulate design in areas not designated as local historic districts or properties. Design is a key issue with many development projects.

The request is to evaluate the pros and cons of design guidelines and to research ways to implement design guidelines in other areas.

Make meetings/dialogue between developer and neighborhoods mandatory - Meetings with adjacent property owners and neighborhoods prior to the submittal of plans and applications for a development project are strongly recommended by the UDO. Some citizens have requested that these meetings be made mandatory.

Mr. Green then reviewed the additional items which were identified on July 21 by the Council of Independent Business Owners, the Board of Realtors and the Coalition of Asheville Neighborhoods.

Additionally, Mr. Green reviewed the following items that have been identified for consideration as possible revisions to the UDO since the initial discussion by Council of this issue on July 21.

Revisit the River District and draft changes to protect adjacent neighborhoods - The River District is mapped along the French Broad and the Swannanoa Rivers as they flow through the city. In an effort to promote economic development of this area, an almost unlimited range of uses are permitted in the River District. Three neighborhood associations have requested that the River District be revised to incorporate changes that will afford adjacent residential areas more protection.

Require construction of sidewalks and/or dedication of easements for all new developments - The UDO currently requires the construction of sidewalks for all new non-residential developments, for non-residential expansions and changes in use, for single family residential development of more than 20 homes or lots, and for multi-family residential developments of more than 10 units. In addition to these cases, sidewalks are also required if the development is within ½ mile of a pedestrian generating facility or connects to an existing sidewalk.

Remove restaurants from the list of permitted uses in the Office and the Office/ Business Districts - Small scale office uses (maximum 8,000 sq ft) are permitted in the Office District. The Office/Business District permits a range of medium scale office uses (maximum 30,000 sq ft) and some low intensity business uses. Restaurants are a permitted use, subject to special requirements, in both districts. The restrictions are that neither drive-through facilities nor outdoor speaker systems are permitted. Citizens have requested that restaurants be prohibited in each of these districts due to their hours of operation and the noise generated.

Require impact studies which address the impact proposed development will have on infrastructure (streets, water system, sewer system, schools, etc.) - The UDO currently requires the preparation of a traffic impact analysis for projects generating more than 100 trips per hour during the peak hour. All projects are reviewed to assure that water and sewer service are available, although no extensive review of the impact of the proposed development on the overall system is conducted. School systems are notified of proposed projects, but no impact analysis is conducted. The requested revision would require developers of projects above a certain threshold to identify the impact of the proposed development on these systems.

Develop an intermediate Community Business District - A Community Business I and a Community Business II district are included in the UDO. The Community Business I district permits buildings with a maximum footprint of 6,000 sq ft and a gross floor area of 12,000 sq ft; the Community Business II district permits buildings with a maximum gross floor area of

45,000 sq ft. There is a large gap between these two districts, with an apparent need for a intermediate Community Business district.

The process for proceeding with giving staff direction was then discussed.

Mayor Sitnick said that if the item making meetings/dialog between the developer and neighborhoods mandatory does not get on the final list, she would propose making meetings/dialog between the staff and the neighborhoods mandatory with meetings/dialog between the developer and neighborhoods strongly encouraged.

It was the consensus of Council to develop a complete list of the items City Council wanted staff to research for possible amendment to the UDO. A public input session would then be held at a formal meeting in September (after the list is printed in CityWorks) for comments and additional suggestions by the public. A vote could then be taken at that formal meeting on the items City Council wanted staff to research and begin the UDO amendment process.

It was the consensus of Council to advertise the following list:

- Revise Office District
- Create a Mixed Use Planned Unit Development District
- Create an Open Space/Park Zoning District
- Landscape Ordinance Revisions
- Standards for Churches
- Underground Utilities
- Broaden Permitted Uses in Community Business II District
- Identify Additional Neighborhood Business Zones
- Advertising on Buses and Taxis
- Revisit the River District and Draft Changes to Protect Adjacent Neighborhoods
- Require Construction of Sidewalks and/or Dedication of Easements for all new Developments
- Develop an Intermediate Community Business District

Mayor Sitnick asked that as a side item, staff present additional information on impact studies with pros and negatives.

Mayor Sitnick asked that a separate list be compiled of the items which did not receive consensus.

ZEALANDIA BRIDGE

Ms. Suzanne Molloy, Assistant Director of Public Works, reported that the Public Works Department and the Asheville-Buncombe Historic Resources Commission ("HRC") are working together on a scope of services with Vaughn & Melton Engineers ("V&M") in conjunction with soil and material engineers. They will prepare bid specifications and documents for the City to send out to the public for the short-term stabilization of the bridge. The previous report prepared by HRC and V&M mentioned some ideals for short-term stabilization, however, they would prefer to have a document signed and sealed by a professional engineer. The cost to do that is $4,400 which also includes them overseeing the work done out there once the bids come back in. Right now, the Public Works Department can cover the $4,400 in their budget and when the bids come back in for this work they may or may not need to come to Council for an allocation of funds. Again, the first step is to work with HRC Director Maggie O'Connor and Jody Kuhne, who is the technical engineer with the N.C. Dept. of Transportation, on the final scope of services. Hopefully V&M can start that work next Monday. The next step will be to send the scope of services out for bid and then back to City Council . The final step is to look at the bridge once it has been cleaned off and stabilized to see what needs to be done. At this time we cannot tell what it will cost to repair the bridge totally because it really does need to be cleaned off..

Mayor Sitnick reminded Council that the City does have a $5,000 pledge from the public.

Upon inquiry of Vice-Mayor Hay about how long it would take to stabilize the bridge, Ms. Molloy said that the scope of services will take about 2-3 weeks and depending on how they advertise, she imagined in the next 6-8 weeks they could be out there doing some work to temporary stabilize the bridge. Council will hear back in the fall what can be done about permanently repairing the bridge.

OUTSIDE AGENCY PROCESS BRIEFING

Ms. Cindy Miller, Finance Operations Manager, briefed City Council on the Outside Agency Grant process.

Below is a discussion of the current outside agency process and several staff concerns and recommendations.

Current Process

The Outside Agency Grant process for each fiscal year begins in the January prior to each fiscal year with the mailing of grant applications. Applications are mailed to each agency which requested funds for the current fiscal year and to any other agency requesting an application. The agencies have approximately four weeks to complete and submit the application to the Budget Office.

The Budget staff reviews each application and compiles the applications for the City Council Outside Agency Committee. The Committee first meets in March and receives a notebook of applications and also a preliminary estimate of the total amount of funding that might be available for outside agencies. In a series of three to four meetings, the Committee discusses each agency in-depth and determines which, if any, agencies from which the Committee would like to have a presentation. For the 1998/99 fiscal year, no agencies were requested to make a presentation to the Committee. The Committee determines its funding recommendations and presents such recommendations to the full City Council for inclusion in the annual budget ordinance.

After the budget has been adopted, City budget staff develop a contract between the City and each agency which includes sections on the Scope of Services to be provided, the payment arrangements and the reporting requirements. The contracts are reviewed by City legal staff and executed by the agency and the City Manager. Agencies are then paid according to the contract once reporting requirements are met. Typically, agencies submit quarterly reports and receive payment shortly thereafter.

Concerns

1. The City Council Fiscal Policy states in Item B. 8. that "It is the City's policy not to fund requests from outside organizations which provide social services or services which are County-wide in scope." At the present time, the City is funding agencies which provide County-wide services and services even beyond the borders of Buncombe County. Only one agency funded for 1998/99 operates entirely within the City of Asheville. Also, some might suggest that the City is funding agencies which provide social services. It is the opinion of staff that the Fiscal Policy statement be more specifically defined in the areas

of "social services" and "services which are County-wide in scope". Further, it is recommended that the policy statement be reviewed and revised as necessary to more accurately reflect City Council philosophy and provide more useful guidance to the Council.

2. Although agencies are required to complete an in-depth application, many agencies submit outcomes and goals which are not measurable or whose measures are not meaningful. It is staff's opinion that many agencies are not trained and/or staffed to develop and provide meaningful measures. Regardless, it is the recommendation of staff that the Council require meaningful measures of all agencies.

3. Agencies which are currently funded are funded in future years almost "automatically" without regard to the intended uses of City funds. The concern here is that the City's focus and interests may have changed and that the opportunity to influence the agency's direction is missed. For example, the City's funds for the Chamber of Commerce have been used to further tourism in the area for many years. The City might wish to have the Chamber re-direct the City portion of its funding to economic development and require measures in those areas. It is the recommendation of staff that the Council review the direction of agencies annually to ensure that the City's interests are being addressed.

4. Occasionally, an agency is funded by Council during the fiscal year. This agency then becomes an "incumbent" agency and receives funding as discussed in Item #3. Staff has a concern that the funding of an agency during the fiscal year encourages new agencies to circumvent the funding process, whereas the agency might not have been funded had it been required to compete for outside agency dollars.

5. As part of the normal payment process, each agency submits written reports quarterly. These reports are intended to address the agency's progress toward the Scope of Services outlined in the contract with the City. Currently, staff notes only that the reports are received. There is no process in place to review and compare the reports with the Scope of Services and to determine if satisfactory progress toward the Scope of Services is being made. It is staff's recommendation that a meaningful review process be developed and that each agency's progress be monitored during the fiscal year.

Staff recommends the City Council review its Outside Agency process and improve the process as the Council deems appropriate.

After discussion, it was the consensus of City Council to have the Outside Agency Committee review the concerns outlined and report back to City Council with suggested changes in the review process, if appropriate.

REPORTS FROM BOARDS & COMMISSIONS

Vice-Mayor Hay reported that the City Council Boards & Commissions Committee has made recommendations for the River District Design Review Committee, which recommendations will be presented at Council's formal meeting on August 25, 1998.

Vice-Mayor Hay reported that the Minority Business Commission has requested that City Council consider confirming new members to the Commission at the City Council meeting on August 11, 1998.

RETREAT

City Manager Jim Westbrook said that the mid-year City Council retreat will be held at the Kellogg Center, a UNC-A facility located outside of Hendersonville, N.C. from 1-6:00 p.m. As instructed, the agenda will consist of a review by staff of the ten goals adopted by Council at their annual council/staff retreat in January of 1998. Additionally, staff will provide summaries of the agreements with the Regional Water Authority, Metropolitan Sewerage District, the Asheville Transit Authority and the Asheville Airport Authority.

BOARD/COMMISSION VACANCIES

City Council instructed City Clerk Burleson to prepare the proper paperwork to reappoint Margie Liverman and Francis Black to the Americans with Disabilities Act Compliance Committee.

City Council instructed City Clerk Burleson to arrange for interviews for the following candidates for vacancies on the Asheville Downtown Commission: Brenda Sconyers, Steven Harrington, Forrest MacGregor, Monroe Moore, Alan Levy and Laura Anderson:

It was the consensus of City Council to appoint Councilman Cloninger to serve a three year term on the Asheville Film Board. Mayor Sitnick said that anyone not appointed will remain in the resource list which will be provided to AdvantageWest because the skills and technical expertise of all candidates are enormous. After Mayor Sitnick outlined the skills she would prefer to see in candidates, City Council instructed City Clerk Burleson to arrange for interviews for the following candidates for vacancies on the Film Board: Gayle Wurthner, Lee Nesbitt, Thomas L. Tucker, Steven Heller, Ashely Siegel, Peter Loewer, Sarah Blankenship, Lee Huebner, Kathleen Bobak, Eric Scheffer, Barbara Pasternack, John Cram, David Quinn, William Olsen, Pamela Turner, Bill Norwood, Jerry Birdwell, Rob Dame, Katherine Talbot and Curtis Gaston. Mayor Sitnick said that after six months, she hoped City Council would be willing to possibly expand the Board.

City Council instructed City Clerk Burleson to arrange for interviews for the following candidates for vacancies on the Asheville-Buncombe Historic Resources Commission: John Best, Karen Tessier, Allen Roderick, and Chris Slusher.

City Council instructed City Clerk Burleson to arrange for interviews for the following candidates for vacancies on the Metropolitan Sewerage District Board: Brady Blackburn, Luke Carpenter, Dee Williams and Ben Slosman.

City Council instructed City Clerk Burleson to arrange for interviews for the following candidates for vacancies on the Tourism Development Authority: Barbara McEwan and Chris Moutos.

City Council instructed City Clerk Burleson to arrange for interviews for the following candidates for vacancies on the Tree/Greenway Commission: Gerry Hardesty, Leonard Pardue and G. Leigh Wilkerson.

It was the consensus of City Council to appoint either Councilman Sellers or Councilman Tomes (both have expressed an interest) to serve on the Regional Water Authority:

City Council instructed City Clerk Burleson to arrange for interviews for the following candidates for vacancies on the Citizens/Police Advisory Committee: Jimmy Hungerford, Josefine Matty.

ANNOUNCEMENT

Mayor Sitnick noted that County Commissioner David Gantt has invited City Council to help cook hamburgers and hot dogs at the Governor's Western Residence on Saturday, August 8, 1998, at 10:30 p.m.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:45 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - August 11, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Cobb gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING AUGUST 21-23, 1998, AS "GOOMBAY FESTIVAL DAYS" IN THE CITY OF ASHEVILLE

Mayor Sitnick read the proclamation proclaiming August 21-23, 1998, as "Goombay Festival Days" in the City of Asheville. She presented the proclamation to Mr. Gene Ellison and Ms. Oralene Simmons who thanked Council for their support and briefed them on some activities taking place during those days.

II. CONSENT:

At the request of Councilman Cobb, Item C. was pulled from the Consent Agenda for discussion.

A. ORDINANCE NO. 2503 - BUDGET AMENDMENT TO APPROPRIATE CONTROLLED SUBSTANCE EXCISE TAX RECEIPTS TO ENHANCE LAW ENFORCEMENT ACTIVITIES

Summary: The consideration of a budget amendment, in the amount of $30,000, to appropriate Controlled Substance Excise Tax receipts to enhance law enforcement activities in Fiscal Year 1998/99.

The Asheville Police Department receives a share of the proceeds from the State Controlled Substance Excise Tax. To date, approximately $40,000 has been received. These funds cannot be used to fund Police Department general operations and must be appropriated to enhance law enforcement activities. The Police Department has identified specific uses for approximately $30,000 of these funds, at this time. One use will be the preparation of an A.P.D. Recruitment Video. This action will establish a special appropriation within the Police Department Administration budget in the amount of $30,000. Use of the funds will be monitored to ensure compliance with State requirements.

City staff recommends City Council adopt the budget amendment, in the amount of $30,000, to appropriate Controlled Substance Excise Tax receipts to enhance law enforcement activities in Fiscal year 1998/99.

ORDINANCE BOOK NO. 17 - PAGE 125

B. ORDINANCE NO. 2504 - BUDGET AMENDMENT TO AMEND MAJOR CAPITAL PROJECT ORDINANCE 82-25 (35 FUND) TO PROVIDE FUNDING FOR THE ROCKY RIDGE PROJECT

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 82-25 to provide funding for the Rocky Ridge Project.

By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

The Rocky Ridge Road Project is an upgrade from an 8 inch line to a 24 inch line. This upgrade was recommended in the 1995 Water Distribution Master Plan prepared by Camp, Dresser and McKee. Our contribution toward this upgrade is $10,000. This project will improve domestic water service and fire protection to multiple facilities in the area including the Holiday Inn Express.

This project has been previously approved by the Water Authority; and this is a request to provide the funding for the project. There are available funds in the Reservoir/Tunnel Repairs. This project is being postponed and will be funded as part of the FY 98/99 Water Distribution System Improvements.

Staff recommends adoption of the budget amendment amending Capital Project Ordinance 82-25 to reprogram funds in the amount of $10,000 from the Reservoir/Tunnel Repairs to the Rocky Ridge Project.

ORDINANCE BOOK NO. 17 - PAGE 127

C. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1998 GOOMBAY FESTIVAL

This item was removed from the Consent Agenda for further discussion.

D. MOTION SETTING A PUBLIC HEARING ON AUGUST 25, 1998, TO CONSIDER A REVISION TO THE APPROVED LANDSCAPE PLAN FOR THE ADDITIONS TO THE BROOKS-HOWELL DEVELOPMENT

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolution and ordinances on the consent agenda and they will not be read.

Councilman Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

RESOLUTION NO. 98-110 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1998 GOOMBAY FESTIVAL

Summary: The consideration of a resolution to allow alcoholic beverages at the 1998 Goombay Festival within the area known as City/County Plaza, S. Market Street, Eagle Street, Spruce Street, Wilson Alley, and Beaumont Street.

N.C. Gen. Stat. sec. 18B-300(c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and unfortified wine on public streets and on property owned, occupied or controlled by the City. The City Council of the City of Asheville has adopted an ordinance pursuant to that statutory authority. That ordinance, Section 11-11 in the Code of Ordinances, provides that the City Council may adopt a resolution making other provisions at special event or community festival. The 1998 Goombay Festival Board, YMI Cultural Center and the Parks and Recreation Department recommend that possession and consumption of malt beverages and/or unfortified wine be allowed at the 1998 Goombay Festival.

The Parks and Recreation Department recommends that City Council adopt the resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the 1998 Goombay

When Councilman Cobb expressed concern about selling alcohol on the street, Mr. Butch Kisiah, Superintendent of Recreation, explained how the City is phasing out the sale of alcohol at the Bele Chere festival. He said that there are no plans to phase alcohol at the Goombay Festival but noted that there is only one beer booth that operates during the Goombay Festival.

Mr. H.K. Edgerton felt that the community should direct the money they spend for beer to donations to the YMI Cultural Center so they don't have to sell beer at the Festival.

Vice-Mayor Hay said that the Bele Chere Strategic Plan addresses the sale of alcohol on the street but not the consumption of alcohol on the street. He felt those are matters that might need to be addressed in planning next year's festival.

Mayor Sitnick felt that all festivals should be treated the same and the matter will be discussed in the future.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 98-110. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 467

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE AS IT RELATES TO THE DEFINTION OF ANTENNAS AND TELECOMMUNICATION TOWERS

Senior Planner Gerald Green said that the City's consultant will present a draft telecommunication facilities ordinance at the September 1, 1998, worksession. Therefore, in order to not waste the Council's time now in considering only this proposed amendment, staff recommends City Council continue the discussion on this matter to the September 1, 1998, worksession, with the public hearing being continued until October 27, 1998. After City Council reviews the consultant's recommendations on September 1, the matter will be forwarded to the Planning & Zoning Commission for their recommendation at their October meeting. After the Commission's review, the issue will be re-advertised prior to the October 27, 1998, City Council meeting.

Councilman Cloninger moved to continue this discussion to September 1, 1998, with the public hearing being continued until October 27, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY THE REQUIREMENTS FOR GRADING ALONG PROPERTY LINES

ORDINANCE NO. 2505 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY THE REQUIREMENTS FOR GRADING ALONG PROPERTY LINES

Mayor Sitnick opened the public hearing at 5:23 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Senior Planner Gerald Green said that this is the consideration of an ordinance amending the Unified Development Ordinance ("UDO") to clarify the requirements for grading along property lines.

Currently the UDO requires the written approval of the adjacent property owner when any land disturbing activity occurs within ten (10) feet of the property line. Permission of the adjacent property owner is required for the disturbance of 100 square feet for a small storage building and for the grading of a 20 acre parcel. The current requirement is not closely related to the impact of the land disturbing activity, in that small land disturbing activities, even when located next to property line, typically have little impact on adjacent properties. In addition, the current requirement often places a burden on the applicant for small land disturbing activities. The proposed wording amendment revises the standards to require the acknowledgment of the adjacent property owner (proof of notice would be the return receipt from the acknowledgment letter) and the permission of the Planning & Development Director when grading occurs within ten (10) feet of the property line only for those land disturbing activities which require a formal erosion and sedimentation control plan (more than 10,000 square feet disturbed). The revised standard would tie the requirement for written acknowledgment by the adjacent property owner more closely to the impact of the land disturbing activity

The Planning and Zoning Commission recommended approval of this ordinance amendment by a 6-0 vote. The staff of the Planning and Development Department recommends approval of the ordinance amendment.

Upon inquiry of Councilman Tomes, Mr. Green said that the only way the property of the adjacent property owner could be disturbed is with their permission and their property being included in the erosion control plan and the development plan for that property.

When Vice-Mayor Hay asked what would happen if the adjacent property owner objected, Mr. Green said that not only could they voice their objections to staff who would to take extra steps to assure them their would be no impact on their property, but the Planning & Development Director must give permission as well. City Attorney Oast also said that the notice might also permit someone to appeal to the Board of Adjustment.

Upon inquiry of Mayor Sitnick, Mr. Green said that the buffer requirements are actually more stringent if the grading occurs within that area.

Mr. Green explained to Councilman Cobb how the land disturbed is calculated.

Mayor Sitnick closed the public hearing at 5:34 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2505. This motion was seconded by Councilwoman Field and carried unanimously.

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C. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY ACCESSORY STRUCTURES AS A PERMITTED USE, SUBJECT TO SPECIAL REQUIREMENTS IN ALL RESIDENTIAL DISTRICTS, AND TO ESTABLISH STANDARDS FOR ACCESSORY STRUCTURES

ORDINANCE NO. 2506 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY ACCESSORY STRUCTURES AS A PERMITTED USE, SUBJECT TO SPECIAL REQUIREMENTS IN ALL RESIDENTIAL DISTRICTS, AND TO ESTABLISH STANDARDS FOR ACCESSORY STRUCTURES

Mayor Sitnick opened the public hearing at 5:34 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Senior Planner Gerald Green said that this is consideration of an ordinance to amend the Unified Development Ordinance ("UDO") to identify accessory structures as a permitted use, subject to special requirements in all residential districts, and to establish standards for accessory structures.

Accessory structures are an important and often necessary component of residential development. These structures serve as garages, storage space, workshops, and other uses related to residential development. When developed appropriately and sensitively, accessory structures can be an asset to residential development. However, when developed inappropriately, accessory structures can have detrimental impacts upon adjacent residential uses. In an effort to prevent inappropriate development of accessory structures, the proposed wording amendment identifies accessory structures as permitted uses, subject to special requirements. Standards for accessory structures identified in the draft wording amendment are designed to limit the impacts that accessory structures could have on adjacent residential uses. The standards include:

- Limit on the maximum size of accessory structures
  - 600 square feet for single accessory structure
  - 100 square feet for all accessory structures
- Limit on the number of accessory structures;
  - structure on lots of more than 3 acres or bona fide not subject to size limits
  - accessory apartments not included in size limit calculation

- Limit on the height of accessory structures;
    - 20' height limit
    - Increase to 40' permitted with increased setback
- Location requirements for structures;
    - side or rear yard for non-corner lots, not in front of principal structure:
    - lots of more than 3 acres may be in front of principal structure but not in front yard
    - for corner lots, setback must be equivalent to front yard setback of adjacent lots
- Buffering requirements for accessory structures exceeding a certain size.
    - accessory structures of more than 600 square feet must be buffered from adjacent residential uses
    - no buffering required for accessory structures on bona fide farm and more than 24 feet from property line
    - accessory structures which provide common facilities for residential developments not subject to size standards or location standards.

The draft wording amendment would permit accessory structures while imposing standards to assure that the structures do not adversely impact adjacent residential uses.

The Planning and Zoning Commission recommended approval of this ordinance amendment by a 6-0 vote. The staff of the Planning and Development Department recommends approval of the ordinance amendment.

When Councilwoman Field asked if the height was measured from the eve line or the very highest point on the roof, Mr. Green said that it is from the floor level of the primary access for emergency services to the ceiling of the top floor - basically to the eve line.

Upon inquiry of Councilman Tomes about the infringement of property owner rights, Mr. Green said that staff tried to develop standards that would balance the property rights of the individual with the rights of the community as a whole and establish standards which would allow for reasonable accessory structures in all residential districts.

Mayor Sitnick closed the public hearing at 5:47 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cobb moved for the adoption of Ordinance No. 2506. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 130

D. PUBLIC HEARING RELATIVE TO REZONING 8 LOTS OFF MACE AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT

ORDINANCE NO. 2507 - ORDINANCE TO REZONE 8 LOTS OFF MACE AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT

Mayor Sitnick opened the public hearing at 5:48 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Urban Planner Carl Ownbey said that this is the consideration of an ordinance to rezone eight lots on Mace Avenue from RS-8 Residential Single Family High Density District to Office District.

The petitioner requested that six lots (PIN Nos. 9628.12-97-6289, 7330, 7364, 8337, 9327, and 9453) on Mace Avenue be rezoned from RS-8 to Office. A review by the Technical Review Committee at their April 20 meeting indicated that the existing street was narrow, dead end, and in need of repair. The Planning staff indicated that there was limited access to the lots to provide adequate off-street parking and there was a noticeable terrain separation between this residential area and the commercial uses along Patton Avenue.

The Planning & Zoning Commission could not come to a consensus on the rezoning request at their May 6, 1998, meeting but recommended that the petitioner review with the Planning staff the possibility of rezoning to RM-8 and come back to their next meeting. After further review by the petitioner, Planning staff, Engineering Department, and Public Works Department, a consensus was reached that the inefficiencies in the street could be corrected and that office uses would have less impact on the street than multi-family development. The petitioner obtained a petition from the property owners along Bellair Avenue (neighborhood directly behind) stating their preference for the Office zoning.

The petitioner decided to stay with his original request of Office and had a zoning petition to add the 2 lots (PIN Nos. 9638.09-07-0414 and 0463) at the end of the street.

Prior to the adoption of the Unified Development Ordinance, this area was zoned commercial. The 2010 plan outlines this area as commercial. This property is within the city limits of Asheville.

The Planning staff reviewed the rezoning request again and based on the same reasons recommended denial of the rezoning of the eight lots from RS-8 Residential Single Family High Density to Office. At the July 1, 1998, Planning & Zoning Commission meeting, the Commissioners still had a tie vote on the rezoning request, therefore, the request was forwarded to Council for their review.

Mayor Sitnick expressed concern regarding the turn-around for emergency vehicles on this narrow road which is a dead-end.

Ms. Mary Joe Butron, owner of one of the lots on Mace Avenue, spoke in support of rezoning the property to Office. They were disappointed that the Unified Development Ordinance ("UDO") rezoned their property to residential and they felt it would be a compromise to rezone their property which was Commercial Highway (prior to the adoption of the UDO) to Office.

Mr. George Love, petitioner, also spoke in support of rezoning the property to Office. He said that he would like to expand his accounting business and cannot do that unless the property is rezoned.

In response to Mayor Sitnick's concern about the turn-around for emergency vehicles, Ms. Butron said that she has owned her property for 12 years and has experienced no problem with the emergency vehicles turning around. She also noted that if the property is rezoned to office with parking lots, there would be plenty of places for the vehicles to turn around.

Mayor Sitnick closed the public hearing at 6:26 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved to adopt Ordinance No. 2507 which would rezone eight lots off Mace Avenue from RS-8 Residential Single Family High Density District to Office District. This motion was seconded by Councilman Tomes.

Councilman Cloninger spoke in support of the rezoning to Office because the Office designation would be a good transition district.

Councilman Tomes expressed concern over the residents not knowing that their property was being rezoned under the Unified Development Ordinance.

Vice-Mayor Hay agreed with Mayor Sitnick about the emergency vehicle issue, however, even if the property were not rezoned, that issue will still not be resolved.

Councilwoman Field felt that if the property were rezoned to Office, there will be parking areas for the vehicles to turn around and that should solve the problem with emergency vehicles. She suggested the City look into making improvements to upgrade that street.

Councilman Cobb felt that the street is undersized and is not suitable for office development. He felt that the area should remain residential.

The motion made by Councilman Seller and seconded by Councilman Tomes carried on a 5-2 vote, with Mayor Sitnick and Councilman Cobb voting no.

ORDINANCE BOOK NO. 17 - PAGE 134

E. PUBLIC HEARING RELATIVE TO AN ORDINANCE ESTABLISHING A TEMPORARY MORATORIUM ON SEXUALLY-ORIENTED BUSINESSES IN THE CITY OF ASHEVILLE

ORDINANCE NO. 2508 - ORDINANCE ESTABLISHING A TEMPORARY MORATORIUM ON SEXUALLY-ORIENTED BUSINESSES IN THE CITY OF ASHEVILLE

Mayor Sitnick opened the public hearing at 6:37 p.m.
6:37 public hearing opened

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

City Attorney Oast said that this is consideration of an ordinance adopting a temporary moratorium on the establishment or enlargement of sexually oriented businesses in the City of Asheville.

The Asheville City Council has for some time been interested in additional regulation of sexually-oriented businesses. The N.C. General Assembly recently enacted legislation that allows for cities to consider and undertake several specific types of controls, such as clothing restrictions, hours of operation, etc.

The new law also authorizes the adoption by ordinance of a moratorium on the establishment or expansion of these businesses, while the City considers the type of regulations that may be appropriate.

In land use situations, moratoriums of six or so months have been upheld; although a moratorium may be longer or shorter, the only limitation in the law is that it be "of reasonable duration."

Conversations with the Planning & Development Department have indicated that six months should be an adequate time to study the issue, with an additional one to three months to move any proposed regulation through the consideration process.

Adoption of the ordinance establishing a moratorium is recommended. Council should decide on a reasonable duration for the moratorium, a minimum of six months is recommended.

Vice-Mayor Hay said that he would be in favor of a nine month moratorium so that it would not have to be brought back to Council for an extension.

Ms. Sylvia Hitchcock, speaking on behalf of a large group of concerned citizens, appealed to Council to seriously consider choosing not to allow topless establishments to operate in Asheville. She encouraged City Council to set a standard for Asheville to reflect family values.

Mr. Morrison felt that the citizens of Asheville should be allowed to have the option of attending a topless establishment or not.

Mr. David Ericson said that human sexuality has been around since the beginning if time and if we allow sexuality to be open instead of hiding, perhaps we would have less rape and molestation.

Mayor Sitnick closed the public hearing at 6:51 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2508 with the duration of the moratorium being nine months. This motion was seconded by Vice-Mayor and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 136

F. PUBLIC HEARING RELATIVE TO REZONING 15 LOTS ON BURTON STREET FROM COMMUNITY BUSINESS II TO HIGHWAY BUSINESS

Mayor Sitnick said that the City Clerk received the following letter from Mr. Spiro Aliferis on August 11, 1998 (earlier in the day): "I would like to request that the hearing for the rezoning of Burton St. be postponed to the next meeting available because I am also scheduled to meet on the Charlotte Street Corridor meeting today. Thank you very much for your consideration."

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Councilman Cloninger was opposed to postponing this hearing since there is a large crowd here for this issue and Mr. Aliferis is also present.

Mayor Sitnick announced a short break at 6:50 p.m.

Mayor Sitnick opened the public hearing at 7:10 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Urban Planner Carl Ownbey said that this is the consideration of a an ordinance rezoning 15 lots on Burton Street from Community Business II to Highway Business.

The subject properties are approximately 5 acres. Staff recommends that lot 9638.10-45-7038 also be considered with this request to maintain consistent zoning pattern among the lots. The fifteen lots (PIN Nos. 9638.10-45-6187, 6027, 6285, 6365, 6477, 7033, 7356, 7038 and PIN Nos. 9638.14-44-5676, 6599, 6669, 6803, 6808, 7709, and 7928 are located on Burton Street just north of Haywood Road. The fifteen lots contain residential structures, commercial structures, and vacant lots. The 2010 Plan recommends this area be low density residential with some commercial on the southern fringe. The subject properties are surrounded on the north and west by residential, on the east by I-240, and on the south by commercial. Some of the existing commercial structures on the east side of Burton Street have been constructed after the area was rezoned in 1996 from R3 Residential to Commercial Service. The Unified Development Ordinance reclassified this area from Commercial Service to Community Business II and made most of the existing uses non-conforming. The petitioners have requested a rezoning that will allow them the opportunity to expand their commercial development.

The Technical Review Committee ("TRC") reviewed this request and commented that this was a narrow residential street with a sidewalk on one side. The street is not adequate to handle the large trucks associated with the permitted uses in the Highway Business District. The intersection of Burton Street and Haywood Road does not meet the minimum standards associated with turning movements of large vehicles. The on-street parking would need to be eliminated. Additional fire hydrants would be required. The need to contain any further commercial development into this neighborhood is important. The N.C. Dept. of Transportation has indicated that with the widening of I-240, most of these lots will be lost to right-of-way and construction.

The Planning staff reviewed the rezoning request and recommended denial based on the comments from the TRC. At the July 1, 1998, Planning & Zoning Commission meeting, the Commissioners voted unanimously to recommend denial of the rezoning of the fifteen lots.

The petitioners have appealed the Planning & Zoning Commission's denial to City Council.

The following residents spoke against rezoning the property to Highway Business for several reasons, some being, but not limited to: the present traffic on Burton Street is already dangerous; streets in the Burton Street area are small; that particular area on Burton Street is already an eye-sore; Mr. Aliferis has not complied with the requirements in other rezonings; there may be significant changes as a result of the Haywood Road Corridor small area plan; and the community has worked hard to make improvements and this rezoning would not be in keeping with those improvements:

Ms. Gloria Johnson, President of the Burton Street Community
Mr. H.K. Edgerton, President of the Asheville Branch of the NAACP
Ms. Martha Ligon, resident of Burton Street
Ms. Pauline Young, speaking on behalf of the Burton Street community
Mr. Brian Peterson, West Asheville resident
Ms. Zannie Davidson, life-long resident of Burton Street area

Mayor Sitnick closed the public hearing at 7:20 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved to deny the rezoning of 15 lots on Burton Street from Community Business II to Highway Business. This motion was seconded by Councilman Cobb and carried on a 6-1 vote, with Councilman Sellers voting "no".

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 98-111 - RESOLUTION CONFIRMING APPOINTMENTS TO THE MINORITY BUSINESS COMMISSION

Vice-Mayor Edward Hay said that on May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The composition of the Minority Business Commission consists of 13 members from various groups. The Buncombe County Commissioners approved the following list of members along with their terms on August 4, 1998:

Laura Thompson	American Institute of Architects (3 years)	8/1/2001
Wendell Howard	Associated General Contractors of America (3 years)	8/1/2001
Eugene Presley	Council of Independent Business Owners (3 years)	8/1/2001
Carol Hensley	Asheville Area Chamber of Commerce (3 years)	8/1/2001
Jill Arrington	Eagle/Market Streets Development Corp. (3 years)	8/1/2001
Lynn Staton	National Assn. of Women in Construction (3 years)	8/1/2001
Katherine DeBrow	DeBrow Construction Company (3 years)	8/1/2001
Vacant	Minority Business Alliance (3 years)	8/1/2001
Claudia Thomas	CAT Network Systems (2 years)	8/1/2000
Bonnie Habel	A-B Community Relations Council (2 years)	8/1/2000
Christy Credle	NAACP (2 years)	8/1/2000
Ronnie Blythe	Asheville Business Development Center (2 years)	8/1/2000
Vickie Gaddy	Tarheel Helping Hand (2 years)	8/1/2000

City staff recommends City Council adopt a resolution confirming the appointments to the Minority Business Commission.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Hay moved for the adoption of Resolution No. 98-111. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 470

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 28, 1998, AND THE WORKSESSION HELD ON AUGUST 4, 1998

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on July 28, 1998, and the worksession held on August 4, 1998. This motion was seconded by Councilman Cobb and carried unanimously.

B. MAYOR'S ROUNDTABLE; I-26 CORRIDOR BRIEFING

Mayor Sitnick invited everyone to the Mayor's roundtable on litter to be held on Thursday, August 20, 1998, at 7:00 p.m. in the William F. Wolcott Jr. Building (Public Works Facility) at 161 South Charlotte Street.

Mayor Sitnick said that the N.C. Dept. of Transportation will brief City Council on the I-26 Corridor on Tuesday, September 1, 1998, at 3:00 p.m. in the First Floor North Conference Room during City Council's worksession.

C. COPY FEE POLICY

Mr. Brian Peterson, Chairman of the Coalition of Asheville Neighborhoods, passed out to City Council information relative to public records and the provisions for copies of public records. He asked that City Council review their copy fee policy that allows the first ten copies free and then 10 cents per page. After researching the per cost per page allowed by the state statutes, he said that the City should be charging 2.6 cents per page and asked City Council amend their policy to reflect that charge.

City Attorney Oast said the City's copy fee policy is set up in such a way that the overwhelming majority of requests are fulfilled free. He said there is a provision in the policy that provides for the City to negotiate a fair fee for the kind of service (City Council agenda material weekly) Mr. Peterson is requesting and he would be happy to talk with him about that.

City Manager Westbrook said that City staff is looking for the budget work papers on this item just to find out the basis of the 10 cent per page charge was. However, since they have not found the information and based on the assumption that those papers cannot be located, he will have this matter researched and come up with a cost per page. He did state that the City Attorney feels the policy gives him sufficient flexibility to make some administrative changes and after a figure is arrived at, he would revisit the policy in total (not only the amount per page) and contact Mr. Peterson.

D. REQUEST FOR NON-ENFORCEMENT OF LAWS CRIMINALIZING CANNABIS USERS

Mr. Dan Waterman, representing a group of individuals, passed out some information to City Council and said they were concerned and distressed over the policies and laws of our government has adopted toward the cannabis hemp plant and its users. They are compelled to act at this time, because of laws prohibiting cannabis regularly deny them of their medicines of choice, their religious sacraments and their right to pursue private activities which cause no inherent harm to others. They have witnessed friends and family being arrested and subjected to prosecution and imprisonment solely because they chose to use one of nature's most beneficial plants. He read the following resolution "As citizens of Asheville, we declare our belief and understanding that the current prohibitive sanctions against our relationship with certain flora in our region and the United States defy the principles of freedom, liberty, and natural order. Furthermore, many of these plants provide various and substantial benefits in the form of medicines, agricultural and industrial products, and personal sacraments. The archetype of these plants is Cannabis hemp. We beseech the City Council of Asheville, North Carolina, to use their fiscal and administrative authority and their positions as civic leaders to create of Asheville a 'Community of Compassion.' We request that the City Council direct the Asheville Police Department and all law enforcement officers under their fiscal and administrative authority to cease expending valuable resources, time and money on the citing, arrest and imprisonment of citizens for the personal cultivation, possession, and use of Cannabis in all its various forms. We request that the enforcement of laws hindering the above stated personal uses of Cannabis be placed on a non-priority status. Abraham Lincoln said 'A prohibition law strikes a blow at the very principles upon which our government was founded.' Thomas Jefferson said, 'I have sworn upon the alter of God eternal hostility against every form of tyranny over the mind of man.' We, citizens of Asheville, concur."

Upon inquiry of Councilman Cobb, Mr. Waterman said that he would consider an adult anyone of voting age.

Councilman Cloninger felt that City Council did not have the authority to take the action to adopt the resolution and felt this was not the proper forum to make this request. However, if City Council did have that authority, he would be against this resolution because he felt we should enforce our drug laws.

City Attorney Oast said that it is a state law that our police are required to enforce and they don't have the discretion to not enforce the law. He would not advise this Council to take the step of directing our police to not enforce the drug laws or to give it a lower priority.

When Mayor Sitnick responded that City Council has an obligation to listen to our citizens, Councilman Cloninger felt Council should discuss their "other business" policy because City Council could spend hours and hours listening to people when City Council has no authority to do anything about their requests.

Approximately a dozen residents spoke in support of and gave reasons for adoption of the resolution proposal for non-enforcement of laws criminalizing cannabis users. Some felt government targets marijuana users unnecessarily and fills our jails with non-violent offenders, making it necessary to release others.

Mr. Steve Rasmussen presented Council with a copy of an article from the San Francisco Chronicle noting that State Attorney General Dan Lungren would leave it up to Oakland police to handle the city's new policy that allows medical marijuana users to store 1-1/2 pounds of the drug at home.

A citizen of Asheville presented each Council members with a video entitled "The Hemp Solution" and hoped City Council would view it with an open mind.

Mayor Sitnick said that Council appreciated all the comments and they have been taken seriously. The comments by the City Attorney are as valid as is the comments received by those who spoke. She asked that the residents understand the position City Council is in at this point. Mayor Sitnick said City Council would read this material and thanked them for their comments.

E. CLAIMS

The following claims were received by the City of Asheville during the week of: July 24-30, 1998: John Foster (Police), Wanda Huntsman (Streets), Judy Hyer (Sanitation) and Susan Blackmon (Water).

The following claims were received during the week of July 31 - August 6, 1998: Margaret Wythe (Police), Rebecca Petree (Water), Gabriel Holquin (Streets), Tammy Waddell (Water), Julie Ann McDowell (Sanitation), Carol Hartness (Traffic Engineering), Nancy Kern (Traffic Engineering), Richard Kingston (Water), Laura J. Murray (Streets) and David Neilsen (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

F. CLOSED SESSION

At 8:20 p.m., Vice-Mayor Hay moved to go into closed session for the following reasons: (1) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property - statutory authority is G.S. 143-318.11 (a) (5); and (2) to consult with an attorney employed or retained by the City Council in order to preserve the attorney-client privilege between the attorney and the Council. The parties in the lawsuit about which Council expects to receive advice are the State of North Carolina, City of Asheville, and Elijah U. Jones, d/b/a Jones Convenience Store - statutory authority is G.S. 143.318.11 (a) (3). This motion was seconded by Councilwoman Field and carried unanimously.

At 8:55 p.m., Councilman Tomes moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:55 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - August 18, 1998- 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

PROCLAMATION PROCLAIMING THE WEEK OF AUGUST 17-23, 1998, AS "KIDS CAFÉ' WEEK" IN THE CITY OF ASHEVILLE

Mayor Sitnick read the proclamation proclaiming the week of August 17-23, 1998, as "Kids Café' Week" and presented the proclamation to Revs. Terry and Ann Threadwell who briefed Council on the program and discussed ways to move this effort forward.

CONSENT:

Agreement with Neighborhood Housing Services

Summary: The consideration of a resolution to amend the sale contract with Neighborhood Housing Services of Asheville, Inc. for Disposal Parcels 6B & 6C of the Head of Montford Redevelopment Project.

On May 7, 1997, the City entered into a sale contract with Neighborhood Housing Services of Asheville, Inc. (NHS) for Disposal Parcels 6B & 6C of the Head of Montford Redevelopment Project for the amount of $248,900.00. The sale contract called for conveyance of both parcels upon payment of the purchase price in cash. Due to the difficulties encountered in securing financing for the project, NHS has requested an amendment to the sale contract which would allow them to take title in two stages with one parcel being conveyed at each stage. Disposal Parcel 6B would be conveyed no later than October 1, 1998, for the amount of $179,500.00 and Disposal Parcel 6C would be conveyed no later that October 1, 1999, for the amount of $69,400.00. In addition NHS has requested financing by the City of part of the purchase price for Disposal Parcel 6B. The amount to be financed would be $85,000.000 to be repaid over 240 months at 6.5% interest. The first payment would be due one year after closing with no interest due for the first 12 months after closing.

The question arose as to whether financing part of the purchase price would be allowed under N. C. Gen. Stat. sec. 159-30 pertaining to the Investment of Idle Cash. It is the opinion of Community Development staff, subject to confirmation by the City Attorney, that N. C. Gen. Stat. sec.159-30 does not pertain to this circumstance because the transaction does not constitute an investment of idle cash. Although cash and land are both assets they are not the same thing and are not treated the same under state law. The Sale and Disposition of property is covered by several other statutes. The Institute of Government's handbook *Local Government Property Transactions* by David Lawrence, 1987, states: "The several statutory procedures for disposing of property assume that the local government will establish various terms of sale, but procedures do not specify the kinds of terms contemplated or permitted. As with many matters, the specific terms associated with any sale will be a matter of discretion. Terms of sale commonly established by North Carolina local governments include: ..**Whether payment will**

be by cash or on some other basis. Only if terms of sale might be thought to restrict the number of buyers unreasonably or be thought to pursue goals extraneous to the property transactions involved, are they likely to be found an abuse of discretion."

It is the opinion of Community Development Staff that the proposed amendment will enable NHS to complete the purchase and redevelop the property in accordance with the Redevelopment Plan. Approval of the resolution will authorize the Mayor to execute the Amendment to the Sale Contract with Neighborhood Housing Services of Asheville, Inc.

Community Development staff recommends adoption of the resolution.

Budget Amendment re: Bridge Program

Summary: The consideration of a budget amendment to the Bridge Program to provide necessary additional funding to complete the Glendale Avenue Bridge Project.

The Glendale Avenue Bridge Project is nearing completion. An additional appropriation of $58,500 is necessary to cover actual construction costs. The N. C. Dept. of Transportation will still be covering 80% of the additional costs as per the Municipal Agreement.

The increased cost will be funded with $49,500 in additional state grant revenue and a $9,000 contribution from the Water Resources Department to cover their portion of the cost of this project.

The Public Works staff recommends adoption of the budget amendment to provide necessary additional funding to complete the Glendale Avenue Bridge Project.

Purchase of Mobile Computers and Related Equipment and Software for Police Department

Summary: The consideration of a resolution to approve the purchase of 30 each in-car mobile computers, modems and software links from the Public Safety & Justice Mobile Data Network Contracts established by the N. C. Division of Purchase and Contracts, Raleigh, N. C.

The N. C. Dept. of Administration, Division of Purchase and Contracts has established contract No. 701953 with IBM Corporation for computers and contract No. 603569 with Motorola, Incorporated for modems and software links. These contracts were established to provide State Contract pricing to all governmental agencies throughout N. C.

Funds for the purchase of this equipment will come from the U. S. Department of Justice Local Law Enforcement Block Grant Program, Account No. 116-3501-421-7004 Project GP9705 and GP9802. Police Chief Will Annarino and Larry Bopp, Information Services Director, concur with the purchase of this equipment.

Council adopt a resolution which authorizes computer equipment, software and related equipment to be purchased from the N. C. State Contract vendors as follows:

IBM Corporation, Fayetteville, N. C. - Contract No. 701953
    30 ea. IBM Ruggedized Laptop Computers, Model XC-6250 with vehicle docking cradle, touch screen/pen adder and (3) external diskette drives
    COST $160,671.00

Motorola Incorporated, Charlotte, N. C. - Contract No. 603569
30 ea. Motorola Modem Packages, Model No. VRM600 and (30) ea.
Wave Soft Link 100 software
COST $80,970.00

TOTAL COST $241,641.00

Use of Powell Bill Funds

Summary: Each year the State provides street aid allocations to incorporated cities and towns "for the purpose of maintaining, repairing, constructing or widening of any street or public throughfare including bridges, drainage, curb and gutter..." (N.C.G.S. 136-41.3).

The Statutes require that a sum be allocated to the qualifying municipalities equal to the amount produced during the fiscal year by 1-3/4 cents on each taxed gallon of motor fuel. Of the total amount to be allocated, 75% is proportioned among the municipalities on the basis of relative population and 25% on City-maintained street mileage.

The tax was first implemented in 1951 at one-half cent per gallon, and remained at that rate until 1971. From 1972 through 1981 the rate was one-cent per gallon, from 1982 to 1986 it was increased to 1-3/8 cents per gallon.

The City of Asheville participates in this program, and in the last reimbursement year (FY 1996-97) the total allocation was $2,206,397.96, which was allocated as follows:

Per Capita	$1,625,845.45 (68,339 population,$28.78 per capita)
Per Mile	$ 581,352.48 (344.34 eligible miles (16' min. width), $1688.31/mile)

(Note: Allocation rates Statewide (1995) were $22.70 per capita, $1,597.74 per road mile.)

Powell Bill Funds do not cover the total expenditures of the City of Asheville for maintenance activities. Disbursements are based upon the following detailed accounting:

Activity	Powell Bill Reimbursement	Total Expenditures
Right-of-way	$ 159,390.15	287,590.18
Engineering	non-reported	0
Paving and Resurfacing	$ 196,801.36	355,092.30
Maintenance	$ 63,416.79	114,423.91
Snow and Ice Removal	$ 74,144.46	133,780.02
Drainage & Storm Sewer	$ 259,947.68	469,027.71
Curb & Gutter	$ 11,624.77	20,974.75
Bridge Const. & Repair	$ 1,269.29	2,290.20
Traffic Control	$ 252,845.42	456,213.00
New Equipment	non-reported	0
New Construction	non-reported	0
Bikeways	non-reported	0
Debt Service Payment	$1,002,199.58	1,002,199.58
Sidewalks	$ 153,387.16	276,758.88
	$2,206,397.96	$3,924,435.51

The difference in actual work and reimbursement are allocated from the General Fund. Examples of specific projects and departmental initiatives for which Powell Bill funds are used include the Elizabeth Street culvert replacement ($73,875), Biltmore Avenue sidewalks

($75,291), Caribou Road re-surfacing ($54,384), Hilliard Avenue re-surfacing and sidewalks ($99,919), Deaverview Road re-surfacing ($22,665), Country Club Road re-surfacing ($33,521), and Michigan-Montana Avenue drain collapse ($15,l202).

Public Works staff is presenting this item for informational purposes only and Council action is not required.

Authority of Purchasing Director

Summary: The consideration of a resolution authorizing the City's Purchasing Director to purchase apparatus, supplies, materials or equipment with trade-ins.

The 1997 General Assembly enacted Sessions Law 1997-174 entitled "An Act to Update and Revise the Laws Affecting Local Government Contracting". Prior to the passage of that Act, North Carolina local governments were required to treat as separate procurement actions the disposal of surplus personal property and the purchase of new property - thus, for instance, precluding the trade-in of "old" police vehicles which are being replaced in a single contract to purchase the "new" vehicles. Among other things, that Act now allows local governments to include in specifications for the purchase of apparatus, supplies, materials or equipment an opportunity for bidders to purchase as trade-in specified personal property owned by the local government.

The resolution expands the authority which is presently delegated to the City's Purchasing Director to develop specifications, advertise, secure bids, award contracts, etc. in order to permit the Purchasing Director to include trade-ins in future procurements of apparatus, supplies, materials or equipment.

City Council adopt a resolution which authorizes the City's Purchasing Director to purchase apparatus, supplies, materials or equipment with trade-ins.

Hawthorne of Asheville Homeowners Association Street Improvements

Summary: The consideration of an agreement with the Hawthorne of Asheville Homeowners Association for improvements to the streets in Hawthorne Village Subdivision in the City of Asheville and acceptance of the streets for maintenance by the City.

Hawthorne of Asheville Homeowners Association requests that the City of Asheville Public Works Department make improvements to the infrastructure in Hawthorne Village. The Association agrees to pay the estimated costs for materials and equipment rental of any non-City owned equipment with the City providing the labor and City-owned equipment for the performance of this work. The materials and equipment cost is estimated at $99,960.00. This process has been used prior to this request, most recently in the Hills of Beaverdam.

The Association requests that the City take responsibility for ownership and maintenance of the roads as a result of this upgrade of the streets as a part of this project in Hawthorne Village. . All of the right-of-way needed for the City to accept the streets is common property belonging to the Association. The Association agrees to provide the right-of-way and to pay for a plat to be prepared and recorded to delineate this right-of-way. The streets included in this project are Elderberry Lane, Morning Glory Drive, Greenbriar Court, Windflower Way, Windflower Court, Foxglove Court, Trillium Court, Lakespur Court and Hedgerose Court.

The construction plans were prepared by the Engineering Department.

Staff recommends the adoption of the resolution authorizing the City Manager to execute and agreement with the Hawthorne of Asheville Homeowners Association for street improvements.

Change Glendale Drive to Hickman Drive

Summary: The consideration of a resolution to accept the new street name "Hickman Drive" and changing a duplicate street name from Glendale Drive to Hickman Drive.

John B. Hickman, owner of all lots located off of Sweeten Creek Drive, has petitioned the City of Asheville to adopt the street name change from Glendale Drive to Hickman Drive. Hickman Drive is located at Sweeten Creek Road and ends at the property line of W.P. Hickman Co.

Staff recommends adoption of the resolution.

Councilman Cloninger said that his firm does work for Mr. Hickman and his company and asked that this item not be placed on the next formal meetings Consent Agenda in case there is a conflict of interest.

Street Name Approval - Monty Street in Willow Lake Mobile Home Park

Summary: The consideration of a resolution to accept the new proposed street name "Monty Street".

Happy Hill Inc., agent Jerry Bowers, for all lots in Willow Lake Mobile Home Park, has petitioned the City of Asheville to accept the street name Monty Street. Monty Street is located in Willow Lake Mobile Home Park extending from Sand Hill Road in an easterly direction to a dead end. Staff recommends adoption of the resolution.

Street Name Approval - Rosemont Court

Summary: The consideration of a resolution to accept the new proposed street name "Rosemont Court".

Thomas Yurchenco, owner of all lots in Rosemont Subdivision, has petitioned the City of Asheville to accept the street name Rosemont Court. Rosemont Court would extend from Liberty Street to a dead end. Staff recommends adoption of the resolution.

Street Name Approval - Mill Stone Drive

Summary: The consideration of a resolution to accept the new proposed street name "Mill Stone Drive".

Timothy Swann, owner of all lots in Mill Stone Subdivision, has petitioned the City of Asheville to accept the street name Mill Stone Drive . Mill Stone Drive is located at the corner of Round Top Road in a southeast direction and ends in a cul-de-sac. Staff recommends adoption of the resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

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UPDATE ON HOUSING AUTHORITY ACTIVITIES

Ms. Annette Coleman, Chairman of the Housing Authority, updated City Council on the Housing Authority Board activity for the past year.

SISTER CITIES PROGRAM

Mr. Russ Martin said that the Sister City relationships provide an opportunity for pairs of cities around the world to further their international understanding. The Sister Cities Program unites communities with the goal of exchanging ideas and promoting cross-cultural awareness. He encouraged City Council for greater participation with the Sister Cities Program as it offers activities encompassing youth and education, technical and professional, cultural and economic and social relationships. He said that Asheville became affiliated with the Sister City Program in 1988 and we now maintain active relationships with four cities.

Each formal Sister City was described by a Sister City representative. The Sister Cities are: Vladikavkaz, Russia; Saumur, France; Karakol, Kyrgyzstan; and San Cristobal de Las Casas, Mexico.

Councilwoman Sitnick, who is the City Council liaison to the Sister City Program, said that Sister City members who visit our Sister Cities pay their own way. She noted the City only contributes $2,000 annually to the Sister Cities Program.

URBAN TRAIL - APPALACHIAN DANCE SCULPTURE AT CIVIC CENTER

Ms. Hojun Welker, Urban Trail Coordinator, said that this is the consideration of an agreement with Gary Alsum and the National Sculptor's Guild to create and install five bronze figures of Appalachian Dancers and Musicians in front of the Asheville Civic Center.

The Asheville Urban Trail was begun in 1991 by the City of Asheville as part of its ongoing program to improve the quality of life within the City through the display of public art. It is a "museum without walls" that illustrates and highlights the city's rich heritage through 30 interpretive "stations." The Trail was designed by volunteers and built entirely with donations from individuals, groups and organizations. By the end of the summer, 25 stations will be underway. The Urban Trail Committee continues to actively raise additional funds for each station.

Last year the Janirve Foundation donated $5,000 to the City to assist in the selection of an artist to complete five bronze figures of Appalachian Dancers and Musicians. Mr. Gary Alsum, included as a party to this agreement, and the National Sculptor's Guild was selected from over 50 artists who submitted portfolios. Mr. Alsum has considerable experience in completing works of similar complexity and character for public installations. Announcement of the selection and a preview of the models took place at this years Mountain Folk Festival over the July 4th weekend. It is anticipated that installation of the figures will be ready for dedication before July 1, 1999, before the Mountain Folk Festival event.

The Urban Trail budget approved by City Council included $160,000 for this station. The project includes bronze representations of two musicians, a fiddler and banjo player, a dancing young couple and a small child.

The Public Works Department staff recommends adoption of the resolution authorizing the Mayor to execute a contract for $160,000 with Gary Alsum and the National Sculptor's Guild for the creation and installation of five bronze figures of Appalachian Dancers and Musicians in front of the Asheville Civic Center.

Discussion surrounded the location of the figures due to the upcoming renovations at the Civic Center. Vice-Mayor Hay noted that since they will be installed next summer, the City should have a much better idea of where the figures will be located.

Mayor Sitnick noted that public art was one of Council's top 20 goals and felt this addition to the downtown was a perfect example of a positive enhancement.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

HAYWOOD ROAD CORRIDOR STUDY COMMITTEE

Mr. Carl Ownbey, Urban Planner, said that this is consideration of forming an advisory committee to work with staff from the Planning and Development Department on the Haywood Road Corridor Study (small area plan).

The Staff from the Planning and Development Department has met several times to compile information and define the process to develop a plan for the Haywood Road Corridor. Staff has drafted a time schedule and compiled a list the information required. Staff recommends that this project have an advisory committee to provide input during the process. This committee should be comprised of interested individuals who have an interest in this area. This committee will be available to advise the Planning staff on several aspects with regards to the development of this plan. The committee should have liaisons from several key boards, representatives from the business community and the neighborhoods, and resource staff from city, county and state departments.

The suggested make-up of the Committee is as follows: Council Co-Liaisons - Tommy Sellers and Earl Cobb; Planning & Zoning Commission liaison - Jan Davis; Historic Resources Commission liaison - pending; and the Preservation Society liaison - Harry Weiss.

Four representatives from neighborhoods and four representatives from businesses. Out of the eight representatives, there will be the following: one representative from banks; one representative from churches; one representative from schools; one representative from the Spanish community and two members at large. The total advisory committee will be around 10-12 members.

Resource staff (city, county, state) - Lauren Malinoff (Div. Community Assistance); Ken Putman (NCDOT); Cathy Ball (Engineer); Suzanne Molloy (Public Works); Wayne Hamilton (Fire Marshal); Bob Vickery (Building Safety); Peter Gentling (Tree and Greenway Commission); Sharon Allen (Code Enforcement); and others as needed.

As one of the members at large, Anne Valentine, landscape architect, prepared a streetscape plan for Haywood Road in 1997 and has expressed an interest in being on the committee.

Councilman Cloninger stressed the need for representation from the small business owners on Haywood Road.

It was the consensus of Council to endorse the composition of the advisory committee to assist the Planning staff in the development of the Haywood Road Corridor Plan with staff recruiting the members.

MALVERN HILLS WALKING TRAIL

Mr. Irby Brinson, Director of Parks & Recreation, said that this is the consideration of a resolution authorizing the Public Works Department and the Parks and Recreation Department to proceed with the development of a walking trail at Malvern Hills Park.

In an effort to address a community need in the Malvern Hills area, the staff of the Parks and Recreation Department and the Public Works Department have met to work cooperatively in the development of a walking trail at Malvern Hills Park. This walking trail will be constructed using combined resources from both departments with the funding for materials coming from the Public Works budget. The largest trail loop will be approximately ½ mile long and will meander throughout the park area. It is anticipated that the actual construction for the trail could begin as early as December, 1998, with the paving of the trail occurring in early spring of 1999. In addition, the parking located below the tennis courts will be paved and marked as well. This project represents a cooperative effort between two departments to maximize resources to their full potential and to provide a level of service as efficiently as possible to the citizens. It will not be necessary for funds to be reallocated to this project since materials can be charged directly to the Public Works budget. It is estimated that the total cost of this project will total $40,000.

The Public Works Department and the Parks and Recreation Department request City Council approval to proceed with the development of a walking trail in the Malvern Hills Park.

Councilman Cobb was very pleased with the development of this walking trail.

At the request of Councilman Cobb, Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the September 8, 1998, formal City Council agenda.

REPORTS FROM BOARDS AND COMMITTEES

Vice-Mayor Hay briefed Council on the Future of the Civic Center Task Force and the report received from the consultant regarding an upgraded and expanded conference component of the Civic Center. After the Task Force completes their review, they will bring the matter to City Council for their recommendation. At the next meeting, the Task Force will discuss soliciting input from the public on this document.

Councilwoman Field reported on the Downtown Commission's plan for training in-house staff to complete the planning process for a comprehensive downtown plan.

TIME LIMITS ON OTHER BUSINESS

Councilman Cloninger proposed that when a group of people come to a City Council meeting to speak during "Other Business" on a single issue, they be given two options. One, they could designate one person to speak on their behalf for ten minutes. Two, they could designate three people to speak for three minutes each. Council would not have to debate whether the particular issue the people want to speak about is related to City business - Council would simply give them those options and listen to what they have to say. This would give Council enough a flavor of what the group wants to communicate to Council that they can decide whether they want to take any action, such as referring the matter to staff, placing the matter on a worksession agenda, etc. He said that he is in no way seeking to limit the participation of speakers who come to speak on issues which are actually on the agenda, such as public hearings on rezonings, ordinance amendments, etc. His proposal pertains solely to matters raised during "other business" which are not on the agenda.

Councilman Sellers supported Councilman Cloninger's proposal.

Councilman Tomes supported the spirit of the policy and suggested one person be allowed to speak for ten minutes and then 5 people speak for 3 minutes each, on a single topic. This way he felt there would be a broader base of participation.

In response to Councilman Cobb's question if this applies to formal meetings as well as worksessions, City Attorney Oast read Sec. 9 from the City Charter which reads "All meetings of the Council shall be open to the public and the council, by rules, must provide for giving citizens reasonable opportunity to be heard at its meetings in regard to matters thereunder consideration."

Mayor Sitnick read from the City Council Rules of Procedure No. 7 (c) "At each 'regular' and each 'worksession' of the Council, at the conclusion of regularly scheduled business, any group or person wishing to address the Council on any matter may do so, subject to the time limits set forth hereinafter." She wondered if the City Council Rule No. 7 or if the City Charter should be amended so they would both be consistent.

Mayor Sitnick also noted that she receives several calls from different organizations asking for letters of support or letters of opposition from the Mayor's Office to bills or pieces of legislation that are coming up before the state legislature, house or senate in Washington. She imagined Council would need to decide how to handle those requests that come to Council through the Mayor's Office as well.

Councilman Cloninger said that he did not want to limit the topics at formal meetings and worksessions, only the number of speakers and the amount of time on a single topic. He said his proposal would require no change in the City Charter.

Vice-Mayor Hay supported the proposal noting that Council can always waive the rules.

City Attorney Oast said that Councilman Cloninger's would only require a change in the City Council's Rules of Procedure and he would be glad to draft some language and present it to Council at their September 1, 1998, worksession for further discussion.

Councilwoman Field felt it was appropriate to have rules for speaking under the "Other Business" section of the agenda.

Mayor Sitnick said that she received some advice from former Mayor Ken Michalove that if there is a personal grievance with a Council member, you talk to them about it and communicate one on one. She would appreciate in the future if members of Council have a problem with the way she is conducting a meeting or the subject matter of that meeting, that the Council member speak to her about it. She has an open door and open mind. She would appreciate if things were discussed professionally together rather than air it in the local news media.

Mayor Sitnick said that she believed that City Council has an obligation to listen to our citizens and one of the most beautiful parts of the democratic republic that we live is that people have an opportunity to address their government.

It was suggested that a handout be available at the meetings or in the City Clerk's Office outlining the rules for public comment.

It was the consensus of Council to instruct the City Attorney to prepare an amendment to City Council's Rules of Procedure incorporating Councilman Cloninger's proposal and that it be brought back to City Council for their consideration.

Mr. Morrison thanked Council, in particular Mayor Sitnick, for the way the City Council meeting was conducted on August 11, 1998, relative to the request brought to City Council for the non-enforcement of laws criminalizing cannabis users.

At 5:26 p.m., Mayor Sitnick announced a short break.

CLOSED SESSION

At 5:34, Councilwoman Field moved to go into closed session to establish or instruct the City's staff or negotiating agents concerning the price and other material terms for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in N. C. Gen. Stat. sec. 143-318.11 (a) (5). This motion was seconded by Councilman Cobb and carried unanimously.

At 5:58 p.m., Councilman Tomes moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:58 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - August 25, 1998 - 5:00 p.m.

Regular Meeting

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	Councilman Earl Cobb

INVOCATION

Vice-Mayor Hay gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

City Manager Westbrook requested Council's consideration of a budget appropriation relating to the agreement with the Hawthorne of Asheville Homeowners Association for street improvements as described in Item I under the Consent Agenda.

A. RESOLUTION NO. 98-112 - RESOLUTION TO AMEND THE SALE CONTRACT WITH NEIGHBORHOOD HOUSING SERVICES OF ASHEVILLE INC. FOR DISPOSAL PARCELS 6B & 6C OF THE HEAD OF MONTFORD REDEVELOPMENT PROJECT

Summary: The consideration of a resolution to amend the sale contract with Neighborhood Housing Services of Asheville, Inc. for Disposal Parcels 6B & 6C of the Head of Montford Redevelopment Project.

On May 7, 1997, the City entered into a sale contract with Neighborhood Housing Services of Asheville, Inc. (NHS) for Disposal Parcels 6B & 6C of the Head of Montford Redevelopment Project for the amount of $248,900.00. The sale contract called for conveyance of both parcels upon payment of the purchase price in cash. Due to the difficulties encountered in securing financing for the project, NHS has requested an amendment to the sale contract which would allow them to take title in two stages with one parcel being conveyed at each stage. Disposal Parcel 6B would be conveyed no later than October 1, 1998, for the amount of $179,500.00 and Disposal Parcel 6C would be conveyed no later that October 1, 1999, for the amount of $69,400.00. In addition NHS has requested financing by the City of part of the purchase price for Disposal Parcel 6B. The amount to be financed would be $85,000.000 to be repaid over 240 months at 6.5% interest. The first payment would be due one year after closing with no interest due for the first 12 months after closing.

The question arose as to whether financing part of the purchase price would be allowed under N. C. Gen. Stat. sec. 159-30 pertaining to the Investment of Idle Cash. It is the opinion of Community Development staff, subject to confirmation by the City Attorney, that N. C. Gen. Stat. sec.159-30 does not pertain to this circumstance because the transaction does not constitute an investment of idle cash. Although cash and land are both assets they are not the same thing and are not treated the same under state law. The Sale and Disposition of property is covered by several other statutes. The Institute of Government's handbook *Local*

Government Property Transactions by David Lawrence, 1987, states: "The several statutory procedures for disposing of property assume that the local government will establish various terms of sale, but procedures do not specify the kinds of terms contemplated or permitted. As with many matters, the specific terms associated with any sale will be a matter of discretion. Terms of sale commonly established by North Carolina local governments include: ..**Whether payment will be by cash or on some other basis.** Only if terms of sale might be thought to restrict the number of buyers unreasonably or be thought to pursue goals extraneous to the property transactions involved, are they likely to be found an abuse of discretion."

It is the opinion of Community Development Staff that the proposed amendment will enable NHS to complete the purchase and redevelop the property in accordance with the Redevelopment Plan. Approval of the resolution will authorize the Mayor to execute the Amendment to the Sale Contract with Neighborhood Housing Services of Asheville, Inc.

Ms. Tamara Dozier Jones, representing Shirley and Clifton Dozier, asked that Item A. be taken off the Consent Agenda for further discussion. She read a letter dated August 24, 1998, which letter reads in part: "Prior to the bid from Neighborhood Housing Services, we had expressed interest in this lot and were told by Mr. Vess that we could not purchase this lot unless we had plans approved and finances in place to carryout such a plan. Was this required from Neighborhood Housing Services and, if so, why haven't they developed this lot and why are they now wanting to change the sale? ... If the City is to sell only a portion of this lot, it will require that the front portion be subdivided from the one acre. If the acting Planning Director signs his approval of such a plat, will this not be a conflict of interest, since he also serves on the Board of Directors of Neighborhood Housing Services? Also those who recommend such approval via the Montford Advisory Committee's recommendation, such as Dora Dawkins, who also serves as Chairman of the Neighborhood Housing Services shouldn't this be considered a conflict of interest. Also, your Building Safety Division is still harassing us with threats of demolishing our house at 52 Short Street and placing a lean on our property ... We appeal to you to correct all of the illegal wrongs and to end the harassment that we have suffered since the original illegal down zoning in 1984."

Mr. Vess said that there is no subdivision of the property involved because there are two separate parcels. Neighborhood Housing Services ("NHS") is asking to close on one parcel this year and one parcel next year. Regarding the plans for the property and finances, he said they did require that a plan be submitted at the time NHS submitted a bid and NHS showed a financial statement which was reviewed and approved. He said that the process for submitting a bid requires a submittal of a preliminary plan for the property and the submission of financial capability in the form of a financial statement. He said that is required of all developers on redevelopment property. He said that the Doziers were given the same opportunity as was given to NHS to bid on the property, nothing that the property was advertised for upset bids when NHS submitted a bid.

Upon inquiry of Councilwoman Field relative to the conflict of interest question regarding Assistant City Manager Spell, City Attorney Oast said that based on what he has heard today, he did not think that represents a conflict of interest such that Council could not vote on this amendment and he didn't think it represents a conflict for Mr. Spell either.

Ms. Shirley Dozier said that they expressed interest in the property before NHS put their bid in. They were told by Mr. Vess said that they had to have a plan and the money to buy it and the money to develop it. She felt that NHS is just now coming up with a plan and is asking the City to finance it. Had they known that the City was going to finance NHS, they would have expected the City to finance them as well.

Councilwoman Field pointed out that the Doziers are not registered as a 501 C 3 non-profit corporation.

RESOLUTION BOOK NO. 24 - PAGE 471

B. ORDINANCE NO. 2509 - BUDGET AMENDMENT TO PROVIDE NECESSARY ADDITIONAL FUNDING TO COMPLETE THE GLENDALE AVENUE BRIDGE PROJECT

Summary: The consideration of a budget amendment to the Bridge Program to provide necessary additional funding to complete the Glendale Avenue Bridge Project.

The Glendale Avenue Bridge Project is nearing completion. An additional appropriation of $58,500 is necessary to cover actual construction costs. The N. C. Dept. of Transportation will still be covering 80% of the additional costs as per the Municipal Agreement.

The increased cost will be funded with $49,500 in additional state grant revenue and a $9,000 contribution from the Water Resources Department to cover their portion of the cost of this project.

The Public Works staff recommends adoption of the budget amendment to provide necessary additional funding to complete the Glendale Avenue Bridge Project.

ORDINANCE BOOK NO. 17 - PAGE 138

C. RESOLUTION NO. 98-113 - RESOLUTION TO ACCEPT THE STREET NAME "MONTY STREET" LOCATED IN WILLOW LAKE MOBILE HOME PARK EXTENDING FROM SAND HILL ROAD

Summary: The consideration of a resolution to accept the new proposed street name "Monty Street".

Happy Hill Inc., agent Jerry Bowers, for all lots in Willow Lake Mobile Home Park, has petitioned the City of Asheville to accept the street name Monty Street. Monty Street is located in Willow Lake Mobile Home Park extending from Sand Hill Road in an easterly direction to a dead end. Staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 24 - PAGE 472

D. RESOLUTION NO. 98-114- RESOLUTION TO ACCEPT THE STREET NAME "ROSEMONT COURT" LOCATED AT LIBERTY STREET TO A DEAD END

Summary: The consideration of a resolution to accept the new proposed street name "Rosemont Court".

Thomas Yurchenco, owner of all lots in Rosemont Subdivision, has petitioned the City of Asheville to accept the street name Rosemont Court. Rosemont Court would extend from Liberty Street to a dead end. Staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 24 - PAGE 473

E. RESOLUTION NO. 98-115 - RESOLUTION TO ACCEPT THE STREET NAME "MILL STONE DRIVE" LOCATED AT THE CORNER OF ROUND TOP ROAD IN A SOUTHEAST DIRECTION AND ENDS IN A CUL-DE-SAC

Summary: The consideration of a resolution to accept the new proposed street name "Mill Stone Drive".

Timothy Swann, owner of all lots in Mill Stone Subdivision, has petitioned the City of Asheville to accept the street name Mill Stone Drive . Mill Stone Drive is located at the corner of Round Top Road in a southeast direction and ends in a cul-de-sac. Staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 24 - PAGE 474

F. RESOLUTION NO. 98-116 - RESOLUTION AUTHORIZING THE PURCHASE OF 30 MOBILE COMPUTERS, SOFTWARE AND RELATED EQUIPMENT FOR THE POLICE DEPARTMENT

Summary: The consideration of a resolution to approve the purchase of 30 each in-car mobile computers, modems and software links from the Public Safety & Justice Mobile Data Network Contracts established by the N. C. Division of Purchase and Contracts, Raleigh, N. C.

The N. C. Dept. of Administration, Division of Purchase and Contracts has established contract No. 701953 with IBM Corporation for computers and contract No. 603569 with Motorola, Incorporated for modems and software links. These contracts were established to provide State Contract pricing to all governmental agencies throughout N. C.

Funds for the purchase of this equipment will come from the U. S. Department of Justice Local Law Enforcement Block Grant Program, Account No. 116-3501-421-7004 Project GP9705 and GP9802. Police Chief Will Annarino and Larry Bopp, Information Services Director, concur with the purchase of this equipment.

Council adopt a resolution which authorizes computer equipment, software and related equipment to be purchased from the N. C. State Contract vendors as follows:

IBM Corporation, Fayetteville, N. C. - Contract No. 701953
    30 ea. IBM Ruggedized Laptop Computers, Model XC-6250 with vehicle docking cradle, touch screen/pen adder and (3) external diskette drives
    COST $160,671.00

Motorola Incorporated, Charlotte, N. C. - Contract No. 603569
    30 ea. Motorola Modem Packages, Model No. VRM600 and (30) ea. Wave Soft Link 100 software
    COST $80,970.00

TOTAL COST $241,641.00

RESOLUTION BOOK NO. 24 - PAGE 475

G. RESOLUTION NO. 98-117 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE APPALACHIAN DANCE SCULPTURE AT THE CIVIC CENTER

Summary: The consideration of an agreement with Gary Alsum and the National Sculptor's Guild to create and install five bronze figures of Appalachian Dancers and Musicians in front of the Asheville Civic Center.

The Asheville Urban Trail was begun in 1991 by the City of Asheville as part of its ongoing program to improve the quality of life within the City through the display of public art. It is a "museum without walls" that illustrates and highlights the city's rich heritage through 30 interpretive "stations." The Trail was designed by volunteers and built entirely with donations from individuals, groups and organizations. By the end of the summer, 25 stations will be underway. The Urban Trail Committee continues to actively raise additional funds for each station.

Last year the Janirve Foundation donated $5,000 to the City to assist in the selection of an artist to complete five bronze figures of Appalachian Dancers and Musicians. Mr. Gary Alsum, included as a party to this agreement, and the National Sculptor's Guild was selected from over 50 artists who submitted portfolios. Mr. Alsum has considerable experience in completing works of similar complexity and character for public installations. Announcement of the selection and a preview of the models took place at this years Mountain Folk Festival over the July 4th weekend. It is anticipated that installation of the figures will be ready for dedication at next year's Mountain Folk Festival event.

The Urban Trail budget approved by City Council included $160,000 for this station. The project includes bronze representations of two musicians, a fiddler and banjo player, a dancing young couple and a small child.

The Public Works Department staff recommends adoption of the resolution authorizing the Mayor to execute a contract for $160,000 with Gary Alsum and the National Sculptor's Guild for the creation and installation of five bronze figures of Appalachian Dancers and Musicians in front of the Asheville Civic Center.

RESOLUTION BOOK NO. 24 - PAGE 476

H. RESOLUTION NO. 98-118 - RESOLUTION DELEGATING AUTHORITY TO THE PURCHASING DIRECTOR TO PURCHASE APPARATUS, SUPPLIES, MATERIALS OR EQUIPMENT WITH TRADE-INS PURSUANT TO CHAPTER 143 OF THE N.C. GENERAL STATUTES

Summary: The consideration of a resolution authorizing the City's Purchasing Director to purchase apparatus, supplies, materials or equipment with trade-ins.

The 1997 General Assembly enacted Sessions Law 1997-174 entitled "An Act to Update and Revise the Laws Affecting Local Government Contracting". Prior to the passage of that Act, North Carolina local governments were required to treat as separate procurement actions the disposal of surplus personal property and the purchase of new property - thus, for instance, precluding the trade-in of "old" police vehicles which are being replaced in a single contract to purchase the "new" vehicles. Among other things, that Act now allows local governments to include in specifications for the purchase of apparatus, supplies, materials or equipment an opportunity for bidders to purchase as trade-in specified personal property owned by the local government.

The resolution expands the authority which is presently delegated to the City's Purchasing Director to develop specifications, advertise, secure bids, award contracts, etc. in order to permit the Purchasing Director to include trade-ins in future procurements of apparatus, supplies, materials or equipment.

City Council adopt a resolution which authorizes the City's Purchasing Director to purchase apparatus, supplies, materials or equipment with trade-ins.

RESOLUTION BOOK NO. 24 - PAGE 477

I. RESOLUTION NO. 98-119 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH HAWTHORNE OF ASHEVILLE HOMEOWNERS ASSOCIATION FOR STREET IMPROVEMENTS

Summary: The consideration of an agreement with the Hawthorne of Asheville Homeowners Association for improvements to the streets in Hawthorne Village Subdivision in the City of Asheville and acceptance of the streets for maintenance by the City.

Hawthorne of Asheville Homeowners Association requests that the City of Asheville Public Works Department make improvements to the infrastructure in Hawthorne Village. The Association agrees to pay the estimated costs for materials and equipment rental of any non-City owned equipment with the City providing the labor and City-owned equipment for the performance of this work. The materials and equipment cost is estimated at $99,960.00. This process has been used prior to this request, most recently in the Hills of Beaverdam.

The Association requests that the City take responsibility for ownership and maintenance of the roads as a result of this upgrade of the streets as a part of this project in Hawthorne Village. . All of the right-of-way needed for the City to accept the streets is common property belonging to the Association. The Association agrees to provide the right-of-way and to pay for a plat to be prepared and recorded to delineate this right-of-way. The streets included in this project are Elderberry Lane, Morning Glory Drive, Greenbriar Court, Windflower Way, Windflower Court, Foxglove Court, Trillium Court, Lakespur Court and Hedgerose Court.

The construction plans were prepared by the Engineering Department.

Staff recommends the adoption of the resolution authorizing the City Manager to execute and agreement with the Hawthorne of Asheville Homeowners Association for street improvements.

RESOLUTION BOOK NO. 24 - PAGE 479

J. MOTION ENDORSING THE ASHEVILLE URBAN AREA METROPOLITAN PLANNING ORGANIZATION AGREEMENT TO BECOME A TRANSPORTATION PARTNER WITH THE CENTER FOR LIVABLE COMMUNITIES

K. MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 8, 1998, TO REZONE A PORTION OF PROPERTY ON TOLULA LANE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE BUSINESS

L. ORDINANCE NO. 2510- BUDGET AMENDMENT RELATIVE TO IMPROVEMENTS TO THE STREETS IN HAWTHORNE VILLAGE SUBDIVISION

Summary: See Item "I" above.

ORDINANCE BOOK NO. 17 - PAGE 140

Councilwoman Field moved to adopt the entire Consent Agenda. This motion was seconded by Councilman Sellers.

Mayor Sitnick said that it has been Council's habit that if someone requests an item be withdrawn from the Consent Agenda to be discussed individually that a vote is taken on that item separately.

The motion made by Councilwoman Field and seconded by Councilman Sellers to adopt the entire Consent Agenda passed on a 5-1 vote with Mayor Sitnick voting "no." Mayor Sitnick noted that she would have voted to adopt Item A separately.

City Attorney Oast said that City Council's rules specify that the Consent Agenda shall only be adopted by unanimous vote of those Council members present at the meeting.

When Mayor Sitnick asked the City Attorney if Council had to vote on an item separately if it is pulled from the Consent Agenda by a member of the public, he said that it has been Council's habit to do that; however, Council does not have to. He did state though when a Council member asks for it to be removed from the Consent Agenda for discussion, then Council has to vote on the matter separately.

Therefore, Councilwoman Field moved to reconsider. This motion was seconded by Councilman Sellers and carried unanimously.

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and ordinances on the Consent Agenda and they will not be read.

Councilwoman Field moved for the adoption of the entire Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING 216 SHELBURNE ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY TO INSTITUTIONAL

Mayor Sitnick said that Councilman Cobb was on vacation on the coast of North Carolina, and at his request, intended for him to participate in this public hearing via speaker phone. Unfortunately due to the weather, he was ordered to evacuate and we are now unable to have him participate in this meeting.

Mayor Sitnick said that last week she and Councilman Cobb met with the City Attorney and some members of the Planning Department about possibly coming up with a concept to address the specific needs of Trinity Baptist Church. Interim Planning & Development Director S. Douglas Spell has prepared a memorandum which outlines a concept proposal for a conditional use permit for the Church. She said this proposal would allow for a more consensus oriented solution to the request by the Church for an Institutional zoning that would allow the Church to use its property, that would protect the neighborhood with some conditions that this Council felt could be placed on the development, and would allow protection in the future should the Church have to move to a different campus. She asked City Council if they were interested in considering this concept.

Councilman Sellers felt that if City Council considered a conditional use permit, it would be more conducive to a win-win situation for the neighborhood and the Church and not leaving any doors open for the future if the Church moved for any reason.

Mayor Sitnick said that the conditional use permit concept (1) would provide City Council an opportunity to review each request, (2) would allow appropriate conditions to be attached to each project, (3) allow the merits of each project to be weighed on a case by case basis, and (4) allow City Council to review the site plans during the consideration of the request.

When Councilman Cloninger asked if this proposal would apply to this Church alone, City Attorney Oast said that it would not apply to only this Church or any particular church or any particular piece of property. He explained that the difference between this and the conditional use zoning concept is that this mechanism already exists within the Code - City Council already has some conditional uses. The expanded ministry that some churches are moving toward would be the subject of the conditional use permit. Right now, churches, in the traditional sense, are a sanctuary and a rectory and they are permitted as uses by right subject to special requirements in any residential zone. This concept is for anything beyond that and it would require a conditional use permit. We have not had much opportunity to develop this, however it is an idea we have discussed.

City Attorney Oast said that Councilman Cobb indicated a strong desire to participate in this particular vote and since he was unable to participate, he requested this matter be continued for at least two weeks, preferably four weeks, as a courtesy to him. City Attorney Oast noted that there is a valid protest petition filed with respect to this matter which would mean that 3/4 of the City Council, or six out of the seven members, would have to vote in favor of the rezoning in order for it to pass.

Mayor Sitnick also stated that when the public hearing was last scheduled, there was some concern on the part of the petitioner that there was a member missing, and he probably took that into consideration to be sensitive to the discussion.

Councilman Tomes stressed that churches are moving to a holistic concept and ministry that deals with the total person, not just a Sunday and Wednesday process. If Council is going to be fair, they need to look at, from a holistic point of view, the merging role of religious institutions as we move toward the new millennium. He would like to see a partnership between neighborhood and churches where we can have a win-win situation. However, if we look at it in a narrow focus, we will continue to come back and be haunted with our understanding on what church is about in today's world.

Mayor Sitnick opened the public hearing at 5:35 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Councilman Cloninger said that Council is faced with three options: (1) vote to postpone at the request of Councilman Cobb; (2) have a full public hearing and vote on the matter; or (3) Trinity Baptist Church can withdraw their petition, in which case if we amend the ordinance and come up with a conditional use permit, the Church can then re-file their petition and their petition would be subject to the amended ordinance.

City Attorney Oast pointed out that City Council can take whatever action it decides to today and if that action were to deny the rezoning or continue it - anything but allow it - that would not stop the process for pursuing the conditional use designation. In fact, those two processes could go on at the same time. He did note, however, that the Church would have to apply for a conditional use permit.

City Attorney Oast said that the consideration of the continuance is really (1) to accommodate the wishes of Councilman Cobb and (2) to consider the possibility of allowing staff to develop the conditional use language and coming back to Council with that designation. He said that it would take approximately two months to adopt the ordinance changes necessary to implement the conditional use permit process.

Other than adhering to Councilman Cobb's request, Councilman Cloninger pointed out that there would be no point in continuing the public hearing in order for City Council to consider a conditional use amendment to the ordinance because the rezoning petition cannot be subject to any amended ordinance passed in the future. The only way their petition could be subject to the amended ordinance would be for the Church to withdraw their petition at this point and re-institute it after the ordinance has been amended.

When Mayor Sitnick asked what would happen with the protest petition if the Church were to withdraw their rezoning petition, City Attorney Oast said that the protest petition would have to be re-filed again.

Mayor Sitnick relayed to Council that Councilman Cobb feels strongly that the Church should be allowed to continue functioning as it wishes and that the neighborhood deserved as much protection as possible. She said he was very clear in expressing his support for the conditional use process.

Mr. Carl Ownbey, Urban Planner, said that the conditional use would be a revision to the Unified Development Ordinance ("UDO") which would outline the requirements for a conditional use permit. It would then be reviewed by the Technical Review Committee and then forwarded onto City Council for their consideration. This would be on a case by case basis and for churches as indicated. He was told that the ordinance revision process would take approximately six months, not two, because of the other Unified Development Ordinance revisions Council has requested. However, the process time could be shortened depending on the priorities of Council.

Councilman Tomes suggested that, during the process of developing this revision, if Council would be amenable to having some people from the faith community to sit down as an ex officio person to give some input. Speaking as a clergyman, unless you understand the language and the intent of the faith community, some inappropriate constraints can be put in place.

As confirmed by Mr. Ownbey, Councilwoman Field said that the project under construction at that site now would continue whether or not the rezoning was approved or withdrawn. If City Council took six months for the conditional use process amendment, it would not mean that the contractor would have to stop. Trinity Baptist Church has met all the requirements for development of their project and they are under construction.

At this time Mayor Sitnick asked for comments from the opposing attorneys relative to the issue of continuing the public hearing.

Mr. David Payne, attorney representing Trinity Baptist Church, said that his clients have waited a long time and they have a lot of plans to make. He felt the furtherance of this issue does not lend itself to the best interest of his client. Therefore, he would object to continuing the public hearing.

Mr. Frank Goldsmith, attorney representing a group of residents of the Shelburne Road area, said that his clients have also waited a long time for resolution of this matter. He said that all of the parties who are most affected by this issue would like to see it put to rest. Therefore, they would like to see the issue resolved tonight and would object to continuing the public hearing.

Mayor Sitnick said that it is the Council's habit that when we have a request from a Council member, that we consider it seriously and that is why we have had this discussion. We have, however, tried unsuccessfully several different way to involve Councilman Cobb in the discussion.

Vice-Mayor Hay felt this was a unique situation in that we have a Council member who planned to participate in this hearing and because of no fault of his own, he is unable to do that. Vice-Mayor Hay said that, personally, he would be disappointed if Council did not continue the public hearing. He said that he would be interested in seeing the conditional use permit language. He agreed with Councilman Tomes that the UDO does not take into account the kind of church ministries that we are dealing with now and can expect to deal with in the future. Regardless of what City Council does with the Trinity Baptist Church rezoning issue, this is an opportunity for City Council to take a step forward so we can deal directly with issues as they arise, with respect to churches. He would like to apply that thinking to this issue as well. He feels that City Council is not trying to stand in the way of what Trinity Baptist is doing, but they are having trouble reconciling that proposal with the way the UDO is written and this gives us a chance to do amend the UDO. If we postponed it pursuant to Councilman Cobb's request, it would also give City Council a chance to deal with the conditional use permit concept.

Mayor Sitnick said that the conditional use permit concept would give City Council some discretion on a case by case basis.

When Mayor Sitnick asked if Council votes against continuing the public hearing and the public hearing proceeds on the Church's rezoning request, can the Council place conditions on the outcome of the vote without this conditional use permit concept being a part of the UDO. City Attorney Oast replied no.

Councilman Cloninger followed up by saying that the only way the Church's rezoning petition could be subject to the conditional use permit, would be if they withdraw their petition and re-file after the UDO is amended with the conditional use permit language.

City Attorney Oast said that the Church would have to apply for a conditional use permit. He said that if City Council were to conduct the public hearing tonight and the requested rezoning did not pass, there would be nothing to prevent the staff from pursuing the conditional use permit concept or to prevent Trinity Baptist Church from taking advantage of that in the future, if it were made part of the ordinance.

Upon inquiry of Councilman Cloninger, City Attorney Oast said that City Council cannot subject the Church to the conditional use permit process, unless they applied for it.

Vice-Mayor Hay said that the Church now has two options in that they can continue with the rezoning application to Institutional and they also have this new conditional use permit concept.

When Councilman Cloninger asked if Council voted the rezoning petition down, would the Church have to wait a year to re-file or could they file for a conditional use permit within the year. City Attorney Oast said that there would be nothing to prevent them from filing for a conditional use permit immediately after Council adopts the amended language in the UDO. He also said that Council could consider the rezoning upon a 3/4's vote.

Councilwoman Field said that several times City Council has been unsuccessful in trying to get the neighborhood and the developers to meet and come to a compromise. She felt like the conditional use process would put City Council in the position of coming up with some compromises.

Mr. Payne said that in order to properly counsel his client in relation to possible change in position, he needs to know certain things, for instance, is Council going to place a high priority on the conditional use permit concept . He noted that in January of this year, his client wrote to the City Attorney and requested a study be done in relation to conditional use. And now, there is an additional six month possible time limit for adoption of the amended UDO. He also said that in April he sent Council a letter outlining their position in relation to consequential and incidental damages as a result of a pulled permit. He felt Councilman Tomes suggestion for clergy participation in the process was excellent.

When Mayor Sitnick questioned the conditional use issue which came up six months ago, City Attorney Oast said that the request was for staff to study and present to Council the concept of conditional use zoning, which does not currently exist in the UDO. Conditional use permits are entirely a different thing and that mechanism does exist in the UDO.

Mayor Sitnick asked if the church withdrew their rezoning petition and Council amended the UDO within 60 days, could City Council waive the one year limit or any additional permit fees that would be required for the Church to reapply? City Attorney Oast said that the one year limitation would not apply because they are not asking for rezoning and the conditional use permit is a different thing entirely. As far as the waiver of fees, he thought Council could take some action in that respect, but at this time he did not know what action that would be.

Mayor Sitnick said that City Council is committed to finding the best solution for all. Some issues of the conditional use permit concept would be (1) identification of the uses permitted, including both principal and ancillary uses; (2) buffering requirements to protect adjacent residential uses; (3) traffic impact on adjacent streets, particularly residential streets; (4) protection of adjacent and surrounding residential neighborhoods; and (5) restricting uses on the church site to church related uses.

Councilman Tomes said that since there are models in ministry, and if we are creative enough to look at those models, then we can compliment the efforts of staff in coming up with language where we would not have to worry about that issue in the future.

Mayor Sitnick agreed in that City Council wants to find something creative for our community that addresses the concerns and the needs of all parties involved. She felt that creative solutions are the way of government. She noted that City Council, when considering a zoning request, cannot vote on the request according to the use that is proposed. They must vote on the request according to whether it is appropriate and meets the infrastructure requirements that are within Council's purview to consider.

Mr. Goldsmith explained why he felt the issue of the conditional use permit is irrelevant as it pertains to the needs of a continuance.

Vice-Mayor Hay said that Councilman Cobb might think that if there was a conditional use permit option available, it would make a difference to him in how he would vote on the request to rezone to Institutional.

Vice-Mayor Hay moved to continue the public hearing until September 22, 1998, as requested by Councilman Cobb. This motion was seconded by Councilwoman Field.

Discussion surrounded whether one month would be sufficient time for staff to develop the language; present it to the Planning & Zoning Commission for their review, public hearing and action; and then back to City Council for their public hearing and action. Or, is the one month just for staff to develop the conditional use concept for City Council's review prior to sending it to the Planning & Zoning Commission for their appropriate actions.

Vice-Mayor Hay felt that within one month, the Church will know what the conditional use permit language will be and that might affect what they do with their application. Also at that time they can see what kind of time frame City Council is looking at for adoption and that the amendment basically had Council's stamp of approval. He understood that the on-going projects are underway and what we are talking about are projects that may or may not be on the drawing board at this point.

Councilman Cloninger said that he would vote against the motion to continue the public hearing because the people deserve an answer tonight. However, if the motion passes to continue, City Council should commit to voting on the issue when it comes back before them.

When Mr. Goldsmith asked when the draft of the conditional use permit language would be available, City Attorney Oast said that the proposed draft will be made available to the interested parties as soon as possible.

Mayor Sitnick said that because she wants to create a win-win solution and out of respect for Councilman Cobb, she would support the motion to continue but will be happy to listen to the public comments should the motion fail.

Mayor Sitnick confirmed that the public hearing on September 22, 1998, would only be on the rezoning request, not on the conditional use permit language.

The motion made by Vice-Mayor Hay and seconded by Councilwoman Field to continue the public hearing for one month failed on a 3-3 vote with Mayor Sitnick, Vice-Mayor Hay and Councilwoman Field voting "yes" and Councilmen Cloninger, Sellers and Tomes voting "no".

Mr. Carl Ownbey said that this is consideration of rezoning three lots (20 acres) on Shelburne Road from RM-6 Residential Multi-Family Low Density to Institutional. The property of Trinity Baptist Church (PIN Nos. 9628-20-81-5544, 7717, and 8232) contains structures that support a church, family life center, and Bible College. The property is at the intersection of Shelburne Road and Sand Hill Road and surrounded on all sides by low density residential. The composition of the surrounding area is an established residential neighborhood with two other neighborhood churches. These three churches exist as a conditional use in a residential neighborhood.

The 2010 Plan indicates the surrounding area to be low density residential which the current zoning permits. The UDO definition of church is "a place where religious worship is conducted and shall not include day care, educational, recreational, and other facilities which are incidental to the place of worship."

The Institutional District is a district established to reserve land for the development of major facilities, major medical facilities and other complementary and supporting uses such as health related developments, office developments, and public services which would not be compatible with the existing residential character of the surrounding area.

The Technical Review Committee states that this area has major water and sewer transmission lines along the south property line. This property is within the city limits of Asheville.

The Planning staff reviewed the rezoning request and recommended denial from RM-6 Multi-Family Residential to Institutional. However, at their January 7, 1998, Planning & Zoning Commission meeting, the Commissioners voted 4-3 to approve the rezoning request from RM-6 Multi-Family Residential to Institutional.

A protest petition was filed on January 22, 1998, and after investigation, the petition was found to be valid.

Upon inquiry of Councilwoman Field if this would constitute an illegal spot zoning, City Attorney Oast said that only a court can determine whether it is a spot zoning or not. He said the factors that a court would consider is the use to which the property is already devoted, the size of the tract and it's relation to other types of institutional uses that may be in the area.

When Councilwoman Field asked what the zoning was prior to adoption of the UDO, Mr. Ownbey said it was split zoned with R-3 and R-2 residential districts.

In response to Councilwoman Field, Mr. Ownbey said that the proposed plan showed a ballfield; however, that was taken off of any consideration and the Sunday School nursery on the site is not considered day care.

Upon inquiry of Councilman Sellers, Mr. Ownbey said that the Planning Department has gone back at least 15 years and it has always been zoned residential.

Mr. Payne spoke in support of rezoning the property to institutional. He said his client has been at this site for 28 years as an institution. His clients attended the UDO meetings as advertised but they were never informed that their rights in relation to the institutional use of their property would be in question or would be taken away. Even though Mr. Ownbey stated that the Church's location has always been in a residential zoning, having known this Church his whole life, he has no recollection of any enforcement agency coming to the Church and saying they are not in compliance. Now they are being told they are an existing non-conforming use. He said in the early 1990's his clients submitted a development plan, permits were applied for and work was commenced. He said that without the institutional zoning, the Church will be severely limited in growth.

Mr. Frank Goldsmith stated that this is not a case about hostility to religion, not a case about hostility to the Church's right to conduct it's mission as it sees fit, and not a case about this proposed use. He cited several institutional uses that could be placed on the property and imposed in the neighborhood if rezoned. He was concerned that if the Church needed to expand further in the future and they sell the property, City Council would be powerless to prevent any other institutional use from establishing itself right in the middle of this neighborhood. He said Council would be setting a dangerous precedent if you allow this rezoning on this particular Church property. There are many religious institutions in this City and they may desire to expand their ministry. How could Council deny their requests if this is granted, and allow multiple institutions to spring up in residential districts. He said that there could be no possible prejudice to the Church's interests if their petition to rezone this property as institutional were denied. As previously discussed, Council is interested in moving forward with some alternate plan that would allow them legitimately to consider the specific proposed use that the Church intends to make of its property. He urged City Council not to rezone the property to institutional in that the down-side to the neighbors is severe, whereas, the down-side to the Church is not as severe as they have an alternate remedy. He felt there is very little question that the Courts would find this property an unlawful spot zoning if rezoned to institutional. He handed out Council a memorandum dated August 25, 1998, in which one point he covers is the potential spot zoning issue. He said that if the problem in the UDO is the definition of "church", then there is a better way to address that problem than to rezone this piece of property to institutional. He said the people believe they have a right to continue to live in, as promised in the 2010 Plan, a low density residential neighborhood. He felt this is an overkill approach to a very sensitive issue to impose in this neighborhood an institutional district.

Mr. John Cort, architect for Trinity Baptist Church, handed out a booklet with contained excerpts from the 2010 Plan and UDO. He spoke about land use. He said that they presented the entire case and linked it to the law and the Planning & Zoning Commission recommended this rezoning to City Council. That is the only way the Church's problem can be addressed under the existing law. He said it was not unusual at all to see an institutional zoning in a residential district, i.e., UNC-Asheville. He said spot zoning is not an issue. Regarding infrastructure, the Church is located on an existing minor thoroughfare, on a public transit route, and the Church is located on the major water and sewerage plan maps. He pointed out that on the existing land use map of the 2010 Plan, the Church's property is recognized as an institutional use. He urged Council to zone the property institutional.

Rev. Jerry Young, Associate Pastor of Trinity Baptist Church, noted that the Church's development process has been on-going for the past five years and work commenced in 1994 and 1995. Now, according to the UDO, all their planned uses are non-conforming. He noted a letter dated August 13, 1998, from the City's Development Code Enforcement Administrator which states that they have "received complaints of the Church's property being used for outside catering, dinners, model train exhibits and other special events not related to church activities as defined" in the UDO. The Church as a long history of holistic ministry and they have been caring for the needs of the Asheville community for 28 years. They can only continue to do that if the rezoning to institutional is allowed. If the rezoning is denied, many of the present ministries of the Church will be shut down. He said the Planning Department will close their Bible College and their family life center because the uses are non-conforming. He urged Council to support rezoning the Church's property to institutional.

Mr. Ownbey said that the Planning Director instructed him, as a result of complaints received, to check all of the activities going on with the Church. He called Rev. Young and asked him to explain those activities to him. He then talked with Ms. Allen, Code Enforcement Administrator, and the City Attorney to discuss the issues in order to determine if there were any violations. The only one they could not make a determination on whether it was in violation of the UDO, was the catering activities. Ms. Allen sent a letter to Mr. Young asking for clarity. He said at no time did they threaten to shut the Church down.

Rev. Ralph Sexton, Pastor of Trinity Baptist Church, felt this was a first amendment issue - the right of a church to be a church. He reiterated that the infrastructure in the area exceeds the requirements. He said that their project cannot continue because they don't know if they have a future. Rev. Sexton stressed that the Church cares about their neighborhood.

Mayor Sitnick again stressed that City Council must consider all of the potential uses permitted under the Institutional district, not what the Church has plans for.

Upon inquiry of Vice-Mayor Hay, Mr. Ownbey said that the projects that have been approved and are underway now will not be stopped.

Mr. Payne said that the Church had submitted all of their documentation in relation to their full plan and it was their position that they had done so prior to the implementation of the UDO. Subsequently that permit was pulled and they were stopped. He gave his clients two options: (1) file a lawsuit and try to fight for what you already think you have; or (2) attempt to comply under the UDO. He said that since he was losing $1,000 a day interest on his bonds alone waiting for something to be done, he counseled his clients to attempt to comply with the UDO. He requested that their full plan be grandfathered in. Since the Church does not have an option at this time, he requested Council rezone the property to institutional.

The following people spoke in favor of rezoning the Church's property for various reasons: some needed ministries (like to the young people), will not conform to the UDO; Trinity Teen Church is a vital ministry that reaches out to our community; and a bigger facility is necessary to accommodate the additional people coming into the community:

Rev. Jerry Dykes, Pastor of the North Asheville Baptist Church
Mr. Matthew Templeton, 26 year member of Trinity Baptist Church
Ms. Bonnie Contreras, downtown and West Asheville business owner
Rev. Tim Brady, Youth Pastor at Trinity Baptist Church
Mr. Shawn Manning
Ms. Beverly Parrish
Rev. Wendell Runion, President and Director of International Baptist Outreach Missions
Ms. Pat Atkinson, 203 Shelburne Road

The following people, who mentioned several times they are not anti-church, spoke against rezoning the Church's property for various reasons: if the property is rezoned to institutional, anything allowed under that zoning can be placed on that land and Council has no authority to regulate it; the Church might outgrow this piece of property and when they move, the property will be left zoned institutional; the neighborhood does not want a Thomas Wolfe Auditorium size building on that property; traffic is already heavy; if Council rezones this property for the Church to expand, the other two Churches on Shelburne Road might also want to expand eating up residential property in the area; barrels and cones are needed so often for traffic control they are not put away; there are no more mature trees in the area; with the exception of the Sextons, these people do not live on Shelburne Road - they only come to visit and they are trying, as visitors, to dictate what zoning can be done on the neighborhood's streets; this has been a residential community for over 40 years and it should remain residential; the noise level would be significant; residents already have trouble getting in and out of their driveways due to the traffic; the new proposed building would block the view Mt. Pisgah; the neighborhood did not oppose the Church when they requested variances; this is a community of over 30 families; lights from the parking lot shine into the homes; and the City will be losing at least 66-70 residential homes due to the I-240 widening:

Ms. Ann Anderson, 147 Shelburne Road
A resident on Sand Hill Road
Ms. Lou McCarthy, 243 Shelburne Road
Mr. Norman Anderson, 147 Shelburne Road
Ms. Jesse Corpening, 152 Shelburne
Ms. Jean Jennings, 251 Shelburne Road
Mr. J.D. Jennings, 251 Shelburne Road
Ms. Norma Price, 26 Zephyr Road (passed out a letter dated August 25, 1998)

Reverend Young said that the Church's position had been adequately made. He said they would not waste Council's time in bringing their supporters forward to speak on the Church's behalf to rezone it's property institutional.

Mayor Sitnick closed the public hearing at 8:08 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved to rezone 216 Shelburne Road from RM-6 Residential Multi-Family Low Density District to Institutional. This motion was seconded by Councilman Tomes.

Councilman Sellers said that he does understand the long term effects if the Church moved for any reason. However, they have existed at that location for 28 years and have been good neighbors. He respected the Planning & Zoning Commission's recommendation and agreed with the information from the 2010 Plan Mr. Cort presented. He did feel that the infrastructure was in place for this rezoning.

Councilman Tomes said that religious institutions, churches, must be viewed and understood in the context of a seven day a week ministry. Given the governmental cutbacks and social programs cut out that have been proposed, traditionally religious and secular charities will not be able to take up the slack. The Christian church traditionally has always played an important role promoting positive values in our communities. He was disturbed when we try to make strategic option appear to be in conflict when in fact they can be made to blend with a reasonable sense of balance. Therefore he suggested that neighborhoods and faith communities partner in community building. He read a clipping from a community that had met this balance.

City Attorney Oast reminded City Council that there is a valid protest petition filed with respect to this matter. This would require all six Council members present to vote in favor of the motion to approve the rezoning.

Mr. Payne objected to the voting requirements, in that they do require a unanimous vote of the Council. He said that unduly burdens his client. He made a formal objection to the requirement in the UDO which requires a simple majority and in this sense a majority vote.

City Attorney Oast pointed out that what is in the UDO is an almost word for word reproduction of what State law provides.

Councilman Cloninger very much respected the good work the Church is seeking to accomplish. He would also like to find a way to have a blended approach to this matter. He could not, however, vote in favor of changing the zoning to institution because, as was brought out earlier, in reviewing this rezoning proposal, Council has to consider all the potential uses of the property and not just the use that the Church wants to make of it. The institutional zoning would allow a variety of commercial uses that, in the future if the Church were to decide to relocate, would not be suitable for that neighborhood. However, he does look forward to working on a revision to the UDO that allows for a conditional use process with respect to churches. He was hopeful that Council would pass a conditional use amendment that will allow Council to arrive at a blended approach so that we can allow the Church to go forward with its work in a manner that is acceptable to them as well as to the neighborhood in that area. He did note that all of the current projects of the Church will be able to go forward while we are looking at revising the UDO.

Upon inquiry of Rev. Sexton, Councilman Cloninger said on behalf of City Council, that it is not the intention of the City to shut down any of the Church's ministries. Mayor Sitnick said that City Council will look into their concern of being shut down and will make sure that communications in the future are clear, precise and understood.

Councilwoman Field said that she believes strongly in the separation of church and state. She asked the City Attorney, with a slip of paper at the meeting, to help her understand what separation of church and state means in relationship to zoning. Because it was too long and complicated, he could not give her a brief answer. Therefore, she would have to put that issue aside. She supports mixed-use and not isolating neighborhoods into little ghettos. If the City is going to have walkable communities and our churches are going to provide day care and recreational facilities for our children, then there are serious problems with the UDO. She felt the community needed neighborhood churches, neighborhood commercial, walkable communities, and multi-family mixed with single-family. Therefore, she would vote for the institutional zoning even though it is probably not the most appropriate zoning for the area. She voted to delay this so we could get a better definition of churches and possibly come up with some kind of win-win situation. She said she would vote on what she felt was best for land use.

Vice-Mayor Hay said that if the law is not right, it's up to City Council to change that law. He hoped that Council would move forward purposely and quickly on the whole issue of a conditional use amendment. He believes in the mission of Trinity Baptist Church and it is the kind of thing we want going on in this City. However, he feels bound to follow the law which says that he can't take into account the proposed use of this property. He explained that he comes from a family of church builders and he understands about mission and about calling. Good things are going on in your church when a church grows. He said he would have to vote against the rezoning but wanted to say how sincere he was in wanting to change the law so that Trinity's mission can take place in the way we believe that it should.

Mayor Sitnick was very committed to being creative in this matter in trying to find a way to accommodate the needs of all of the constituents she cares about. She has not received one letter, in the stacks of mail received on this issue, from anybody who opposes what Trinity Baptist Church does and what it does for this community. The concerns revolved around traffic and buffering. Their main concern was as Trinity grew and outgrew it's current campus and had to move, that one of the other uses permitted in the industrial zone could invade that neighborhood and cause worse traffic. Her concern was making sure that the projects the Church is undergoing now are able to continue, and we have been assured that that is the case. She is committed to coming up with a creative approach for all churches to be able to grow sensitively and appropriately within the communities they are located in. With great pain in her heart, she would vote against the institutional. She requested staff immediately draft language to address the minimal conditions that she would like to see placed on the church as it continues its projects that are already underway, that will allow it to continue building the buildings it has for the future, and that will protect the neighborhood a little bit more. She requested updates from staff as that language is being drafted to make sure that the entire Council agrees and to make sure that we don't impede what the Church is already doing. She hoped that the Church will come back to Council for a conditional use permit for the Church to grow and outreach and serve the community.

The motion made by Councilman Sellers and seconded by Councilman Tomes died on a 3-3 vote, with Councilwoman Field and Councilmen Sellers and Tomes voting "yes" and Mayor Sitnick, Vice-Mayor Hay and Councilman Cloninger voting "no".

At 8:32 p.m., Mayor Sitnick announced a short break.

B. PUBLIC HEARING RELATIVE TO CLOSING AN UNNAMED ALLEY BETWEEN MILLER AND POND AVENUES

RESOLUTION NO. 98-120 - RESOLUTION TO PERMANENTLY CLOSE AN UNNAMED ALLEY BETWEEN MILLER AND POND AVENUES

Mayor Sitnick opened the public hearing at 8:55 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Suzanne Molloy, Assistant Public Works Director, said that a petition has been received from First Citizens Bank & Trust Company requesting that an unnamed alleyway between Miller Avenue and Pond Avenue be permanently closed to public use.

The petition received includes the affidavit of First Citizens Bank and Trust Company, owner of parcels 9654.05-09-7679,7851,8772, and 8970. First Citizens Bank and Trust Company owns all of the property with frontage on the unopened alleyway between Miller Avenue and Pond Avenue that has been petitioned to be closed.

The Public Works Department staff recommends adoption of the resolution to permanently close the unnamed alleyway between Miller Avenue and Pond Avenue be adopted.

Mayor Sitnick closed the public hearing at 9:00 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Tomes moved for the adoption of Resolution No. 98-120. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 480

C. PUBLIC HEARING RELATIVE TO AN APPROVED LANDSCAPE PLAN FOR THE ADDITIONS TO THE BROOKS-HOWELL DEVELOPMENT

Mayor Sitnick opened the public hearing at 9:01 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Mike Matteson, Urban Planner, said that this is the consideration of a motion to revise the approved landscape plan for the additions to the Brooks-Howell development.

In August of 1997, City Council approved a group development consisting of 11 residential units at the Brooks-Howell Home on Hillside Street. Additionally, a variance to allow an alternate landscape buffer plan was approved by City Council in September, 1997. This alternate buffer plan was designed to meet the intent of the buffering requirement while being more sensitive to the adjoining property.

The original buffer plan was approved by City Council as part of a group development plan. Two large existing trees, which were part of the proposed buffer plan, were later removed by Brooks-Howell Home following the recommendation of a tree pathologist. Because the removal of these trees was contrary to the approved plan, a revised buffer plan is required.

The new proposal is to add a number of evergreens and two large hardwood trees in the location of the removed trees. He understood that the architect and the Brooks-Howell representatives have worked out this amended plan with the affected property owner, not only to the amended plan itself, but also with regard to the selection of tree species.

At their August 5, 1998, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the amended landscape buffer plan with the condition that the final selection of tree species be selected prior to the City Council meeting at which this item will be presented.

Mayor Sitnick closed the public hearing at 9:02 p.m.

Councilman Sellers moved to adopt the approved landscape plan for the additions to the Brooks-Howell development. This motion was seconded by Councilman Tomes and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 98-121 - RESOLUTION TO ACCEPT THE STREET NAME "HICKMAN DRIVE" AND CHANGE A DUPLICATE STREET NAME FROM GLENDALE DRIVE TO HICKMAN DRIVE

Councilman Cloninger said that his firm represents Mr. Hickman, therefore, Vice-Mayor Hay moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilman Tomes and carried unanimously.

Summary: This is the consideration of a resolution to accept the new street name "Hickman Drive" and changing a duplicate street name from Glendale Drive to Hickman Drive.

John B. Hickman, owner of all lots located off of Sweeten Creek Drive, has petitioned the City of Asheville to adopt the street name change from Glendale Drive to Hickman Drive. Hickman Drive is located at Sweeten Creek Road and ends at the property line of W.P. Hickman Co. Staff recommends adoption of the resolution.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Hay moved for the adoption of Resolution No. 98-121. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 481

B. RESOLUTION NO. 98-122 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS FOR EXCESS LIABILITY COVERAGE FOR THE CITY'S SELF-FUNDED PROGRAM FOR LIABILITY

Mr. John Miall, Risk Manager, said that this is the consideration of a resolution to authorize the City Manager to execute agreements for excess liability coverage for the City's self-funded program for liability, which program covers general, auto, law enforcement, public officials, and dams liability.

Upon self-funding its liability program in 1993, the City stopped purchasing insurance, and began a program for partial self-funding protected by excess only coverage. This type of program is structured to limit the City's exposure to catastrophic losses.

The last year the City was fully insured in 1992 its lowest bid premium costs were approximately $1,300,000 annually. Since that time through negotiated renewals the costs for the excess only program were $380,000 for the current year.

By allowing the two incumbent agents who qualified through an agency/brokerage process in 1993 to seek renewal proposals from interested markets, the City has received renewal proposals this year of approximately $255,000. These rates are guaranteed for three years, and will not increase annually more than $3,000 per year.

He said that they have just renewed the worker's compensation excess program for the coming year at a $30,000 reduction in premium. They are looking in the neighborhood of $210,000 less in premiums in the coming year.

Staff recommends the City Manager be authorized to execute the required agreements to secure the excess coverage's for the City's self-funded excess liability program.

Upon inquiry of Councilwoman Field, Mr. Miall explained that under the agreement between the Asheville Claims Corporation, the City's commitment is to keep its dollars at 1993 levels. Any savings that accrue to that will build up in the Risk Management Fund. The agreement was for a 10 year program and we are now half-way through. At the end of that time, he expected that the City will purchase little or no insurance of any kind.

Upon inquiry of Vice-Mayor Hay, Mr. Miall said that the City Hall building is insured at a replacement cost plus artistic value.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Hay moved for the adoption of Resolution No. 98-122. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 482

C. RESOLUTION NO. 98-123 - RESOLUTION REAPPOINTING MEMBERS TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Vice-Mayor Hay said that the terms of Margie Liverman and Francis Black expired on August 22, 1998. This resolution will reappoint Mr. Black to serve an additional three year term. His term will expire on August 22, 2001, or until his successor has been appointed.

Vice-Mayor Hay said that Ms. Liverman was not interested in being reappointed and the vacancy left by her will be advertised at the next quarterly appointment process.

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 98-123. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 483

D. RESOLUTION NO. 98-124 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE DOWNTOWN COMMISSION

Vice-Mayor Hay said that Beth Lazer and Victor Trantham have resigned their positions on the Asheville Downtown Commission, leaving two unexpired terms. One expired term is until December 31, 1999, and the other unexpired term is until December 31, 2000.

On August 11, 1998, City Council interviewed Monroe Moore, Steve Harrington, Brenda Sconyers. Alan Levy was interested in the position, however, he was unavailable to interview at the times available.

Councilwoman Sitnick nominated Brenda Sconyers and Alan Levy.

Vice-Mayor Hay nominated Steve Harrington.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, each Council member voted two candidates: Brenda Sconyers received four votes; Alan Levy received six votes and Steve Harrington received two votes. Therefore, the resolution will (1) appoint Alan Levy to fill the unexpired term of Beth Lazer, term to expire December 31, 2000, or until his successor has been appointed; and (2) appoint Brenda Sconyers to fill the unexpired term of Victor Trantham, term to expire December 31, 1999, or until her successor has been appointed.

RESOLUTION BOOK NO. 24 - PAGE 484

E. RESOLUTION NO. 98-125 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Vice-Mayor Hay said that the term of Brian Peterson expired on July 1, 1998, and Mr. Peterson was not interested in serving another term. The term of office is three years, with term expiring on July 1, 2001.

On August 11, 1998, City Council interviewed John Best, Allen Roderick and Chris Slusher.

Councilwoman Field nominated Chris Slusher and John Best.

Mayor Sitnick nominated Allen Roderick.

Vice-Mayor Hay said that he talked to Mr. Slusher about resigning from his current appointment on the Civic Center Commission if appointed to the Historic Resources Commission. Mr. Slusher stated that he would like to remain on the Civic Center Commission.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, each Council member voted. John Best received no votes, Allen

Roderick received five votes and Chris Slusher received one vote. Therefore, the resolution will appoint Allen Roderick to serve a three year term, term to expire July 1, 2001, or until their successor has been appointed.

RESOLUTION BOOK NO. 24 - PAGE 485

F. RESOLUTION NO. 98-126 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS

Vice-Mayor Hay said that Mr. Larry Casper has resigned as a member of the Metropolitan Sewerage District Board of Directors, leaving an unexpired term until January 19, 1999.

On August 11, 1998, City Council interviewed Ben Slosman, Luke Carpenter, Dee Williams and Brady Blackburn.

Councilman Sellers nominated Brady Blackburn.

Mayor Sitnick nominated Ben Slosman.

Councilman Tomes nominated Dee Williams.

Vice-Mayor Hay reminded Council that Mr. Slosman recommended City Council appoint Mr. Blackburn and that he serve in an advisory capacity.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, each Council member voted. Brady Blackburn received five vote, Ben Slosman received no votes and Dee Williams received one vote. Therefore, the resolution will appoint Brady Blackburn to serve Mr. Casper's unexpired term until January 19, 1999, and then a full three year term, term to expire January 19, 2002, or until his successor has been appointed.

RESOLUTION BOOK NO. 24 - PAGE 486

G. RESOLUTION NO. 98-127 - RESOLUTION APPOINTING A MEMBER TO THE TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Hay said that the term of Loyd Kirk expires on August 30, 1998, and Mr. Kirk was not eligible to serve another term. This position must be filled by an owner or operator of a hotel, motel or other taxable tourist accommodation with 100 or fewer rental units. The term of office is three years, with term expiring on August 30, 2001.

On August 11, 1998, City Council interviewed Barbara McEwan and Chris Moutos.

Mayor Sitnick nominated Barbara McEwan.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Barbara McEwan was unanimously appointed to serve a three year term, term to expire August 30, 2001, or until her successor has been appointed.

RESOLUTION BOOK NO. 24 - PAGE 487

H. RESOLUTION NO. 98-128 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE TREE/GREENWAY COMMISSION

Vice-Mayor Hay said that the term of Dennis Wilson expired on August 1, 1998, and Mr. Wilson was not eligible to serve another term. This position is for a three year term, with term expiring on July 1, 2001.

On August 11, 1998, City Council interviewed G. Leigh Wilkerson and Gerry Hardesty.

Councilwoman Field nominated Gerry Hardesty.

Vice-Mayor Hay nominated G. Leigh Wilkerson.

Vice-Mayor Hay noted that Mr. Hardesty said that he was more interested in serving specifically on a Greenway Commission.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Gerry Hardesty received no votes and G. Leigh Wilkerson received six votes. Therefore, the resolution will appoint G. Wilkerson to serve a three year term, term to expire July 1, 2001, or until her successor has been appointed.

RESOLUTION BOOK NO. 24 - PAGE 488

I. RESOLUTION NO. 98-129 - RESOLUTION REAPPOINTING A MEMBER TO THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON

Vice-Mayor Hay said that the term of Kevin Green expires on September 30, 1998. This position is for a three year term, with term expiring on September 30, 2001.

Vice-Mayor Hay noted that at the beginning of the quarterly appointment process Mr. Green was not interested in being reappointed; however, he has since changed his mind and would now like to be reappointed to the Regional Water Authority.

Mayor Sitnick nominated Kevin Green.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Kevin Green was unanimously reappointed to serve a three year term, term to expire September 30, 2001, or until his successor has been appointed.

RESOLUTION BOOK NO. 24 - PAGE 489

J. RESOLUTION NO. 98-130 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Vice-Mayor Hay said that Dick Rice has resigned his position on the Citizens/Police Advisory Committee, leaving an unexpired term until June 30, 1999. The position must be filled by a west Asheville representative.

On August 11, 1998, City Council interviewed Jimmy Hungerford and Josefine Matty.

Councilman Cloninger nominated Jimmy Hungerford.

Councilman Sellers nominated Josefine Matty.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, each Council member voted. Jimmy Hungerford received five votes and Josefine Matty received one vote. Therefore, the resolution will appoint Jimmy Hungerford to fill the unexpired term of Mr. Rice, term to expire June 30, 1999, or until his successor has been appointed.

RESOLUTION BOOK NO. 24 - PAGE 490

K. RESOLUTION NO. 98-131 - RESOLUTION APPOINTING MEMBERS TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Vice-Mayor Hay said that City Council adopted Ordinance No. 2437 amending the Unified Development Ordinance regarding river district design review. In said ordinance, a River District Design Review Committee was established. The City Council Boards and Commissions Committee recommend the following:

Gail McCarthy and Laura Webb - Two members of the RiverLink Board of Directors;
E. Benson Slosman and Hunt Mallett - Two owners of property located within the River District;
Kimberly Hodges - One of two design professionals including, but not limited to, architects, engineers, or qualified artists; and
Edward Metz - One member selected at the Council's discretion.

All members shall serve a three year term, said terms to begin September 1, 1998.

Vice-Mayor Hay said that the vacant position of a design professional will be included in the next quarterly appointment process.

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Mayor Sitnick moved for the adoption of Resolution No. 98-131. This motion was seconded by Councilman Tomes and carried unanimously.

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VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 11, 1998, AND THE WORKSESSION HELD ON AUGUST 18, 1998

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on August 11, 1998, and the worksession held on August 18, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

B. RIVER MASTER PLAN

Councilman Cloninger said that during the budget process, one of the items which had to be deleted was $50,000 for the River Master Plan. He asked if Council would consider looking to bring that back into the budget as a result of some insurance savings, and also with some funds from the cable agreement. He said that there is some other money potentially available for the

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development of a master plan that will be contingent upon the City's $50,000. He asked this matter be placed on a worksession agenda in the near future and inviting the relevant parties to the meeting.

After a short discussion on the five unfunded requests, it was the consensus of City Council to bring these matters back to Council at their September 15, 1998, worksession for further consideration.

C. PUBLIC HEARING AMENDING THE UNIFIED DEVELOPMENT ORDINANCE AS IT RELATES TO THE DEFINITION OF ANTENNAS AND TELECOMMUNICATION TOWERS

City Attorney clarified the motion made on August 14, 1998, relative to the public hearing on the amendment to the Unified Development Ordinance. The City Council continued their discussion on this matter to the September 1, 1998, worksession, with the public hearing being continued until October 27, 1998.

D. AMENDMENT TO THE UDO RE: CONDITIONAL USE PERMIT; CITY COUNCIL PROCEDURAL CHANGE

Mayor Sitnick reiterated that City Council needs to act hastily on the conditional use permit for churches.

Mayor Sitnick asked that the two draft procedural changes be placed on the September 1, 1998, worksession agenda. One draft change is from Councilman Cloninger and one is from Mayor Sitnick.

E. REQUEST FOR NON-ENFORCEMENT OF LAWS CRIMINALIZING CANNABIS USERS

Mayor Sitnick explained the reason why she will ask for a motion to suspend the rules and limit the debate on this issue for one speaker for 10 minutes or two speakers for 5 minutes is because City Council has no authority to rule on this matter.

Councilman Sellers moved to suspend the rules and limit the debate for this issue only to one speaker for 10 minutes or two speakers for 5 minutes. This motion was seconded by Councilman Tomes and carried on a 4-2 vote, with Mayor Sitnick and Councilwoman Field voting "no".

Mr. Steve Rasmussen, spokesman for the people labeled 'People for Cannabis', said that there is in fact no such organization or formal group, Instead, they are a wide cross-section of individual citizens and voters and members of various organizations. He said that earlier there were scores and scores of people who wanted to address Council. But, because they were understandably moved outside and some were harassed by the police, not many chose to remain. They asked to direct the police force, which in America is to remain under the control of the citizenry and it's elected representatives, to stand back in whatever way possible, minimize Asheville's involvement in the persecution of this herb called hemp,. Cannabis, marijuana. Many other cities have passed legal ordinances, i.e., Breckenridge, Colorado, San Francisco, California. Although they are committed to the intent of the ordinance, they are flexible about the means and it's particular wording is not carved in stone. They want to work with Council on this and are willing to meet them half-way. Doctors have unofficially prescribed marijuana to them when they found that this natural herb was the only effective medicinal treatment for their life-threatening illnesses. Their patients are routinely arrested and harassed and their property and medicine seized. There are huge potential economic and environmental benefits of a re-legalized hemp industry.

Mayor Sitnick said that it is her discretion to limit speakers tonight to three minutes each.

When Mr. Rasmussen asked if the Mayor would add this item to an upcoming agenda, Mayor Sitnick replied that she would not. She again stated that City Council has no authority to rule on this request.

Mr. Rasmussen said that there are many ways which City Council does have authority to action on their request. They could simply issue a declaration of support.

Mayor Sitnick said that it is the consensus of this City Council to not ask our police force to not uphold the law or to discriminate in their drug enforcement procedures.

Mr. Dan Waterman was distressed to see the actions being taken at a particular group of citizens. He said they are not looking for easy agreement but assurance that Council would be willing to work with them, even if the resolution is rejected.

Mayor Sitnick asked why they are not going to the body of government that can address their request. Mr. Waterman said that something can be done at this level of government if just Council would just want to. He noted that every city has obsolete laws they don't enforce.

Mr. Waterman said that he paid his State marijuana tax and to enact a tax and then enact a criminal penalty is double jeopardy.

Mr. Dave Mittler questioned why their group was being filmed outside the City Hall Building. He said that City Council has a chance to set precedence and they are closing their minds to it. They deserve to be worked with and not rejected. He said they are patient and they are willing to wait until they are heard and Council is willing to work with them.

Ms. Dixie Dearman was expressed at what she considered to be excessively punitive reaction to our resolution.

F. CLAIMS

The following claims were received by the City of Asheville during the week of August 7-13, 1998: Tilden White (Police), BellSouth (Water), Frederick L. Harper (Water) and Suzanna Biro (Water).

The following claims were received during the week of August 14-20, 1998: Dulcie McKenzie (Civic Center) and Lisa Ramsey (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

G. LAWSUITS

The City of Asheville received an Amended Complaint on August 12, 1998, which is generally described as follows: Tera A. Taylor, et al., v. Tim Ray Goodridge, et al. The nature of the proceeding is for the purpose of adding parties as co-defendants. The complaint seeks compensatory and punitive damages for the death of David Thomas Lushbaugh.

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The City received an Amended Complaint on August 25, 1998, which is generally described as follows: Betty Underwood v. City of Asheville. The nature of the proceedings is negligence due to a dislocated water meter lid.

Both of these matters will be handled by an outside attorney.

VII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:52 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - September 1, 1998 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT AGENDA:

Contract for Infrastructure Improvements for Twin Springs Subdivision

Summary: The consideration of a resolution authorizing the City Manager to accept the lowest responsible bid of Tennoca Construction Company for the infrastructure construction of Twin Springs Subdivision.

Mattern & Craig Consulting Engineers, on behalf of the Community Development Division, opened bids for the infrastructure construction of Twin Springs subdivision on August 12, 1998. Infrastructure construction will include, but not be limited to, water, sanitary sewer, storm drainage lines including appurtenances, street, sidewalk, curb and gutter, and minor landscaping. The lowest bid received for the project was in the amount of $498,537.00 from Precision Contracting, Inc. However, Precision Contracting, Inc. is properly licensed in North Carolina to do construction work to a limit of $500,000.00. Precision's total work would not be allowed to exceed its licensing capabilities, which could effect performance on the contract should change orders be required. The amount of funds available for the project is $544,512.00.

Community Development staff recommends rejecting the low bid from Precision Contracting, Inc. in accordance with N. C. General Statute Section 143-129 and awarding the contract to the next lowest responsible bidder, Tennoca Construction Company. Tennoca's bid was in the amount of $511,153.50. Tennoca Construction Company, Inc. has an unlimited license in North Carolina. The City Attorney's office has concurred with the engineer's recommendation against accepting the bid from Precision Contracting, Inc. due to the bid amount compared to the limit of their contractor's license. Approval of the resolution will award the contract to Tennoca Construction Company for the infrastructure construction of Twin Springs subdivision.

The Community Development staff recommends adoption of the resolution authorizing the City Manager to accept the lowest responsible bid of Tennoca Construction Company for the infrastructure construction of Twin Springs Subdivision.

Asheville Metropolitan Planning Organization Public Involvement Process

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract for assistance in developing a public involvement process specific to transportation related planning efforts.

As the Lead Planning Agency (LPA), the City of Asheville plays an integral part in how the Asheville Urban Area Metropolitan Planning Organization (MPO) functions. Since the administrative functions of the MPO are conducted from the Planning and Development Department, it is essential that requests for professional services go through City Council for approval. The Federal Highway Administration (FHWA) and the N. C. Dept. of Transportation (NC DOT) will reimburse the City of Asheville 80% of the cost of the contract.

The public involvement process are the result of over two years of effort on the part of the Citizen's Transportation Advisory Committee (C-TAC) to place a higher emphasis on how we solicit and gather input from the public. It is the desire of the C-TAC that with such a process in place, the recommendations made to the NC DOT, the FHWA and other agencies will be more reflective of the needs, wants and desires of the public in our area.

The contract is to assist in development of the process and train local citizens, staff and public officials in the process. Should we desire to solicit help from consultants to actually conduct the process, then we would prepare a contract specific to that endeavor.

The staff from the Planning and Development Department recommends adoption of the resolution authorizing the City Manager to enter into a contract with Parsons, Brinckerhoff, Quade & Douglas Inc. to provide for planning assistance to the MPO for the development and implementation of a public involvement program.

Set Public Hearing to Close Wilson Alley located between Hendersonville Road and Summit Street

Summary: The consideration of a resolution to set a public hearing to permanently close Wilson Alley between Summit Street and Hendersonville Road.

A petition has been received from Janet L. Young and Paul M. Young requesting that an Wilson Alley between Summit Street and Hendersonville Road (U.S. Route 25) be permanently closed to public use.

The petition received includes the affidavit of Janet L. Young and Paul M. Young, owners of parcels 9647-07-77-2987 and 4803. Janet L. and Paul M. Young own all of the property with frontage on the unopened alleyway between Summit Street and Hendersonville Road that has been petitioned to be closed.

Wilson Alley is a paper street and has never been used as a alleyway. There are no plans to utilize this alleyway. All utility companies will be contacted, the resolution of intent to close Wilson Alley will be advertised in a local paper, and the location will be posted with the resolution of intent to close.

The Public Works Department staff recommends adoption of the resolution of intent to permanently close Wilson Alley from Hendersonville Road to Summit Street.

After School Program Grant

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N. C. Dept. of Health and Human Services to provide food service in the After School Program.

The Parks and Recreation After School Program provides supervised licensed child care, recreation, enrichment activities, and food service to children ages 5 to 12 during after school hours, teacher work days, and holidays at six program sites. Sites are located at Claxton, Dickson, Hall Fletcher, Jones, and Vance Elementary Schools; and Reid Community Center. Sites are licensed by the State of North Carolina with a child/staff ratio of 1 to 25. Snacks are provided in the afternoon, and breakfast and lunch is provided on holidays and teacher work days. Activities include arts and crafts, games, sports, science, music, homework time, and special events. Fees are based on the number of children from each family and frequency of attendance. Parks and Recreation will contract with Asheville City Schools for food service at a rate of $0.95 per breakfast, $1.75 per lunch and $0.65 per snack. The grant will reimburse Parks and Recreation approximately one third of the cost of providing food service in the After School Program. The number of meals will vary based on the total meals actually served each month.

The Parks and Recreation Department recommends the City of Asheville to apply for the grant funds through the Child and Adult Care Food Program.

Spivey Mountain Reservoir Project

Summary: The consideration of a resolution approving the Regional Water Authority's recommendation to award a contract to Taylor and Murphy Construction Company for the Spivey Mountain One Million Gallon Reservoir.

Sealed bids were received for the Regional Water Authority's Spivey Mountain Reservoir. This is the last phase of the Master Plan Phase II Project that will alleviate periodic water pressure problems in the extreme western section of our water distribution system, provide more reliable water service in the Leicester section of our water system and allow for future growth and development in both these areas. Contracts have already been awarded to Cooper Construction Company and Haynes Electric Construction Company for the pumping station and waterline installation components of this project.

Four bids were received with Taylor and Murphy Construction Company of Asheville, North Carolina submitting the low base bid and alternate bid of $ 577,340 and $ 532,340 respectively. All the bids received are listed below in the order of their bid:

COMPANY	BASE BID	ALTERNATE BID
Taylor & Murphy Construction Co., Asheville, NC	$ 577,340	$ 532,340
Hobson Construction Co., Arden, NC	$ 634,000	$ 582,500
Cooper Construction Co., Hendersonville, NC	$ 640,000	$ 596,000
Wheeler Construction Co., Weaverville, NC	$ 750,000	$ 750,000

The Regional Water Authority approved award of this contract to Taylor and Murphy Construction Company on August 18, 1998, subject to the approval by the Office of Minority Affairs. City staff recommends City Council's concurrence with the Authority's action.

Sale of Alcoholic Beverages at Great Smokies Craft Brewers Invitational

Summary: The consideration of a resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the Great Smokies Craft Brewers Invitational at the Martin Luther King Jr. Park on September 19, 1998.

The Great Smokies Craft Brewers Invitational is a unique celebration of the art of brewing beer in the spirit of Oktoberfest with a smokey mountain twist. The Asheville Downtown Association in conjunction with Barley's Tap Room, the Radisson Hotel, Asheville Parks and Recreation and other local businesses have developed this festival to highlight the quality beers of the region. Over 30 brewers have been invited to present their high quality beers in a festival atmosphere at the Martin Luther King, Jr. Park on September 19, 1998. Local entertainment and food will be available from 1:00 p.m. - 6:00 p.m.. Proceeds from the event will benefit the Asheville Urban Trail project. The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during this event on City property.

The Asheville Parks and Recreation Department recommends adoption of the resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

I-26 CORRIDOR BRIEFING

Mr. Gordon Myers, N.C. Board of Transportation member, along with other N.C. Dept. of Transportation ("NC DOT") representatives, updated City Council on the process NC DOT has been through the past seven years on the I-26 Corridor Project. NC DOT will be holding public hearings in November and January or February of next year on the specific routes of the proposed connector. He said the use of federal funds in this project necessitated a very distinct process that NC DOT went through with regard to choosing of the corridor. The decision on the corridor was not made by NC DOT but a group of citizens in the Asheville area in cooperation with the Transportation Advisory Committee. He said NC DOT was reacting to what has been recommended by the Committee and approved by the City Council.

Mr. Blake Norwood, NC DOT Planning Branch, passed out a timeline of the project and highlighted some specific points while reviewing the history of the project. He said the Asheville Connector Advisory Committee ("ACAC") recommended on a 6-3 vote to the Transportation Advisory Committee Alternative "A" (which is a widening of I-240 with a short connector by the Smoky Park over the river and tying into US 19-23). The three dissenting members were not opposed to the selection of "A" as the corridor of choice but expressed opposition to segments of the proposed project and voted against the motion. The summary of the rationale upon which recommendation was made was Alternative "A" (1) is the shortest, least disruptive route to residences; (2) is the least expensive in regard to right-of-way and construction costs; (3) will have the least adverse impact on environmental concerns; (4) is the only route that is a true, direct "connector" to I-26 and US 19-23; and (5) will do more to ease the traffic congestion on Smoky Park Bridge. He pointed out that if they were to go back and look at all alternatives again, they are looking at another five years added onto the life of this project. He felt NC DOT has moved forward cooperatively with the City of Asheville and the Asheville area with the desired alternative. He then explained the decision to make the Corridor eight lanes instead of six. He said that in 1996 NC DOT was talking about six lanes, however, the traffic volume that they were projecting was right on the line between six and eight lanes. The traffic projection analysis was re-done for a new design year and that analysis clearly shows over a six lane capacity on I-240.

Mr. Tom Kindig, NC DOT Planning and Environmental Branch, said they are working on the environmental assessment. He explained that as part of the environmental process they will be looking at noise impact, the air quality impacts of the project, and trying to reducing impacts on the relocations of residences and businesses affected by the project. All of the studies are on-going and hopefully they will follow-up with some of that information with a public workshop later this year. He said there will be a public hearing on the design based on the design plans. He said that construction on the first phase is scheduled to go to contract in the year 2002. He then pointed out some impacts related to six lanes versus eight lanes. He said there are several situations that do not meet the standards for an interstate highway and those will be corrected. There is a total of approximately 68 relocations through the section of the existing I-240. If we were to narrow back to six lanes, essentially we will only be reducing the right-of-way impacts on each side by about 12 feet. Some preliminary studies for a six lane facility show there would still be at least 58 relocations necessary.

Representatives from the NC DOT answered various questions and comments from Council, some of those being: will there be any provisions for noise walls or retaining walls; at what stage in the process will design decisions be made and will the community have input into those design standards; has any thought been put into air quality; are other cities subject to interstates going right through their towns; what information does the State use to assess the population growth and traffic projections; can there be a direct access from the interstate to the river; since there is a Housing Authority project that will be reamed with interstates, can we work with the Housing Authority to relocate those units of housing within scattered sits within the community, and then work with NC DOT to take that land and use it for some commercial use or something more appropriate for interstate activity; and what different routes the three alternative consist of.

Councilman Cobb stated his disappointment in the Alternative "A" route and felt that Alternative "K" route around the City was the best choice.

Mayor Sitnick felt that NC DOT should re-think the alternatives for the routes. Alternative "A" will transect a community that is already divided from the City by a river and an existing interstate.

Councilwoman Field hoped for an opportunity for creativity into the detailing of the bridge or structures. Mr. Norwood said that the City would probably be asked to participate in some of the cost but felt the idea was a good one.

Mr. Blake said that now is the time for the City to transmit to the NC DOT the City's desires, particularly with regard to the detailing on the bridges and the Housing Authority project. He did reiterate again that the City would need to be willing to participate financially.

Mayor Sitnick thanked Mr. Myers for the Wildflower Program on our interstates. She asked that if more roads are built, that the NC DOT look into the possibility of purchasing machinery necessary to vacuum the highways before they are mowed, thus helping to eliminate the litter on our interstates.

Vice-Mayor Hay felt that it would be interesting and beneficial to hear from the original Asheville Connector Advisory Committee. It was the consensus of Council to instruct the City Manager to schedule a worksession with ACAC representatives.

DISCUSSION OF TELECOMMUNICATION FACILITIES ORDINANCE

Councilman Cloninger introduced Mr. Paul Rosa, who is the consultant that City Council hired earlier this year to help improve our telecommunications ordinance. Mr. Rosa has been working on the past several months with staff with several goals in mind: (1) protest the aesthetic quality of the City; (2) assure serve to all areas of the City; (3) promote stealth technology; (4) reduce the permitted height of telecommunications towers; (5) promote location of antennas on existing structures; (6) promote co-location of antennas; and (7) permit telecommunication facilities in more locations but in ways that do not make them unduly conspicuous or intrusive.

Mr. Rosa said that he has found out that the communities that have successful aesthetic outcomes regarding wireless issues is when there is (1) leadership; (2) clear vision of what is the aesthetic outcome they desire and the technical and wireless service levels they want in the community and (3) the political will to move in the direction of that vision. He then gave Council an overview of the features of the draft ordinance and how it achieves the goals set by City Council.

Upon inquiry of Councilwoman Field about the possibility of the City offering sites so we could have more control over them and also as a possible revenue source, Councilman Cloninger said that there is a public property provision in the ordinance.

Mr. Rosa answered various questions from Council as they related to wireless telecommunications facilities.

It was the consensus of Council to send the draft ordinance to the Planning & Zoning Commission for their review, which will include a public hearing to gather input. The Commission will then make a recommendation to City Council based upon its review. This item has been scheduled to come back before City Council in the form of a public hearing on October 27, 1998.

RESOLUTION NO. 98-132 - RESOLUTION AMENDING THE RULE OF PROCEDURE FOR THE ASHEVILLE CITY COUNCIL WITH RESPECT TO THE TIME LIMITATIONS FOR PUBLIC ADDRESS TO CITY COUNCIL

At Councilman Cloninger's request, City Attorney Oast drafted a resolution adopting amendments to Rule 7 of Council's Rules of Procedure regarding public address to the Council. Council's current rules for speaker time limits are the same for any item coming before Council, whether it is a scheduled public hearing, or a matter not appearing on the agenda. This was brought into focus during the discussion at the August 11 meeting regarding enforcement of marijuana laws, which came up under "Other Business."

The idea discussed at the August 18 worksession was to limit the time spent at meetings on issues coming before Council from members of the public, which do not otherwise appear on the agenda. The proposal was to limit to three the number of speakers on any one issue, and to limit those speakers to three minutes each. Alternatively, a spokesperson for a group would be allowed up to 10 minutes, but individuals would not be allowed to speak on the same issue.

The proposed amendments to Rule 7 do two things:

(1) Differentiate between (a) items of business that are on the agenda for Council consideration or action, and (b) unscheduled items coming before Council from the public.

(2) Establish different rules for each situation.

For items appearing on the published agenda, which are matters of Council business, the rules remain as 10 minutes for a group spokesperson and 3 minutes for an individual, with an unlimited number of speakers. He proposed amending paragraph (b) of Rule 7 to include a reference to new proposed paragraph (c) to make it clear that the usual time limits apply to items on the published agenda.

For items that do not appear on the published agenda, but are brought to Council by members of the public at the meeting, the proposed limits are no more than three speakers at no more than three minutes each or a spokesperson who is limited to no more than ten minutes.

Rule 7 (d), which provides that the Mayor may allow additional comments or additional time, as "appropriate for the orderly conduct of business," would continue to apply to all public address situations, as would Rule 9 d(b) which provides for the Mayor to insist that speakers be courteous and to consider and rule on Council members' objections made on this basis. This is generally consistent with the State law, G.S. 160A-67 and 160A-69, and the City Charter, Sec. 10, which establish the Mayor as the presiding officer of the Council.

Proper Use of "Other Business.": Another issue that Council may wish to discuss in connection with these proposed changes is whether "Other Business" is the appropriate place to receive general public comment. Typically, under regular parliamentary procedure, "Other Business" is the opportunity for members of the deliberative body (in this case the City Council), to bring up and discuss matters of interest or potential interest to the deliberative body.

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Examples would be the scheduling of roundtables and special worksessions, and requests for staff assistance or information on a matter of City business. Other Business is thus (conceptually, at least) distinct from matters brought to Council by members of the public.

Since Council's rules provide in Rule 8 for a place on the agenda for "Informal discussion and public comment," it appears that Council's original intent in the Rules was consistent with the concept of distinguishing between "Other Council Business" and other matters of interest to members of the public, but not necessarily Council business. In drafting the proposed amendments, he has observed this distinction and suggest that the "Informal discussion and public comment" section be included on the published agenda (some councils call this "public information"). Public comment is currently, asked for at the close of each meeting, so this addition to the agenda will conform to Council's current practice.

Technical Amendment to Rule 8: As a technical amendment, he has proposed adding "Consent Agenda" to the Order of Business established in Rule 8. This is consistent with Council's current practice.

It is recommended that Council differentiate in its Rules between matters of Council business or City business appearing on the published agenda, and matters brought before Council outside of the published agenda. The mechanism for doing this already exists, but Council needs to adjust its current practice. If Council wishes to impose different time limits for agenda items and non-agenda items, adoption of the proposed changes, or some variation of them, is recommended.

He said Mayor Sitnick submitted an alternative proposal which same time limitations and number of speakers would apply but only to matters that are not City Council business or that City Council can do nothing about. Mayor Sitnick said that she offered it as an alternative proposal to Councilman Cloninger's, but it is not the kind of change in the Rules of Procedure that she would like to see personally.

Councilman Cobb stated that City Council is not trying to limit people from coming to the meetings to speak, just trying to keep the meetings orderly. He felt that ten minutes is ample time for the person to state their case and for City Council to determine if the matter should be referred to a worksession, formal meeting, to City staff for further review, or if it is a matter which City Council has no control over.

City Attorney Oast said that regardless of which proposal, if any, is adopted, City Council can waive their rules and allow someone to speak for a longer time.

Vice-Mayor Hay did not see this proposal as a limitation on the public's access to City Council at all. If the expectation is a ten minute presentation, then the meeting can be more organized.

Councilman Cloninger felt his proposal actually encourages more people to participate in City Council under Other Business because they know they will not have to wait all night long to have an opportunity to speak.

Mayor Sitnick believed it is the people's right to address their government no matter what. She absolutely felt City Council should have time limits but in a democratic republic it is the responsibility of the government to listen to the public. Her concern is who do you pick, how many do you pick, who do you eliminate and how do you make that judgment. She didn't think that is what government is about.

Councilwoman Field felt that limiting an issue to ten minutes is certainly not inappropriate. She's willing to listen to anyone for any length of time, however, City Council meetings can go for several hours and it's not humanly possible to make reasonable decisions and have intelligent thoughts when the meetings are so long. She could support the ten minute per issue proposal noting that people can come back as many times as they wish. She pointed out that City Councilmembers can be reached by phone or invited to meetings where the public can talk to them for any length of time.

Mayor Sitnick said that if a group of citizens come to speak to City Council, there might be occasions to serve all of us better to listen to them, hear them out and then take the appropriate action and be done with it. She felt if we can't have totally open government with the time limits, then she would want the proposal before us for one ten minute speaker or three/three minute speakers to only apply to issues that City Council can't do anything about and not to citizens that come before Council with issues that do pertain to City business.

Councilman Tomes hoped Council would be willing to suspend the rules and to be sensitive to that. He did not want to put up any barriers to people who want to address City Council.

Mayor Sitnick said she believed in totally open government with time limits and she believed we should hear from anybody and as many people in public comment period who want to speak to City Council.

Councilman Cloninger moved to suspend the rules and take formal action on this matter. This motion was seconded by Councilman Sellers and carried on a 6-1 vote, with Mayor Sitnick voting "no". Mayor Sitnick explained her negative vote in that she did not feel City Council should take official action at a worksession.

Councilman Cloninger moved to adopt Resolution No. 98-132 which amends Rule 7 of the "Rules of Procedure for City Council" as follows:

1. By redesignating paragraphs "(c)" and "(d)" as paragraphs "(d)" and "(c)", respectively, and placing those paragraphs in alphabetical order.

2. By amending new paragraph (d) to read as follows:

    (d) At each "regular" meeting and each "worksession" of the Council, under the "Informal discussion and public comment" section of the agenda, any group or person wishing to address the Council on any matter not previously considered during the meeting may do so. For matters coming before Council pursuant to this paragraph, the following limitations apply:

        (i) No more than three persons (one at a time) may address the Council on any one issue, and no person may take longer than three minutes to complete a presentation.

        (ii) In lieu of the limitation set forth in (i) above, a group may elect to designate a spokesperson who may take no longer than 10 minutes to complete a presentation on any one issue.

As used herein, "presentation" means all forms of address, including speaking, use of audio or video materials, and distribution of literature. For presentations that cannot be completed within the limitations of this paragraph, written comments or other information may be delivered to the Council through the City Clerk.

3. By amending the first clause of paragraph (b) to read "Subject to the time limitations set forth in paragraph (c) below, ..."

- Amend Rule 8 of the "Rules of Procedure for City Council" as follows:

  By adding "Consent Agenda" to the order of business set forth in Rule 8. It should appear between "Proclamations" and "Public Hearings."

This motion was seconded by Councilman Sellers.

After each Councilmember reiterated their feelings on the issue, said motion carried on a 5-2 vote with Mayor Sitnick and Councilman Tomes voting "no".

Mayor Sitnick said that on August 12 she sent a memorandum to City Council asking for suggestions on how City Council can shorten the length of the City Council meetings, both the formal and the worksession. She followed up with a memorandum on August 19 in which she proposed several ideas to shorten the meetings. She has not heard to date from any Councilmember and asked the City Manager to place this item on the City Council's mid-year retreat agenda for a brief discussion.

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COMMUNITY MEETING

After discussion, it was the consensus of the City Council to schedule the Tuesday, September 29, 1998, community meeting in the South area. Because the MED Week banquet is scheduled on the same evening, the community meeting may be held earlier than the normal 7:00 p.m. meeting time.

Mayor Sitnick said that she would submit a revised list of suggested roundtable items to City Council on Friday and they can add to the list. She asked that they be prepared to suggest a topic for the next Mayor's roundtable which will be Thursday, November 19, 1998.

It was the consensus of City Council to postpone and/or possibly cancel the City Council worksession scheduled for Tuesday, October 20, 1998, until Wednesday, October 21, 1998, at 3:00 p.m., in the 1st Floor North Conference Room, due to the N.C. League of Municipalities meeting held in Charlotte, N.C.

REPORTS FROM BOARDS & COMMISSIONS

Upon inquiry of Vice-Mayor Hay, it was the consensus of City Council to place on the September 8, 1998, consent agenda a resolution confirming the appointment of Bonnie Love as the representative of the Minority Business Alliance to the Minority Business Commission.

Vice-Mayor Hay reported that there will be a series of public input sessions on the consultant's report regarding the future of the Civic Center.

On behalf of Councilman Cloninger and herself, Mayor Sitnick asked City Council consider expanding the Film Board membership from six members (and the City Council representative) to eleven members (and the City Council representative) to allow the Board more people to chose from when tasks are assigned.

Mayor Sitnick asked that any Council member who may be late to pre-arranged board and commission interviews advise the City Clerk at least ½ hour before the first interview.

CLOSED SESSION

At 5:58 p.m., Councilman Cloninger moved to go into closed session to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the price and other material terms of a contract for the acquisition of real property - pursuant to G.S. 143-318.11 (a) (5). This motion was seconded by Councilwoman Field and carried unanimously.

At 6:10 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:10 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

CITY OF ASHEVILLE

CITY COUNCIL

BOARD MINUTES

Volume: 69

Year(s): 9-8-98 THRU 5-11-99

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Tuesday - September 8, 1998 - 5:00 p.m

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Edward C. Hay Jr.

INVOCATION

Councilman Sellers gave the invocation

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE MONTH OF SEPTEMBER, 1998, AS "LEAVE A LEGACY MONTH" IN THE CITY OF ASHEVILLE

Mayor Sitnick read the proclamation proclaiming the month of September, 1998, as "Leave a Legacy Month" in the City of Asheville. She presented it to Ms. Lee Mulligan, Mr. Ross Drown and Mr. Andy Strauss who briefed the Council on some activities that would be taking place during the month.

B. PRESENTATION OF CERTIFICATE OF APPRECIATION TO CITY OF ASHEVILLE FOR FIREFIGHTING ASSISTANCE IN FLORIDA

Mr. Charles Curtis, representing North Carolina Insurance Commissioner Jim Long, presented to City Council a Certificate of Appreciation for the assistance of Asheville firefighters in Florida this past July. The primary responding firefighters were Kevin Ponder and Paul Monroe; their "backups" were Darren Gillespie and Herb Roberson.

Mayor Sitnick thanked Mr. Curtis for the Certificate and also commended our firefighters for their work.

II. CONSENT:

At the request of City Manager Westbrook, Item E. was removed from the Consent Agenda.

A. RESOLUTION NO. 98-133 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH TENNOCA CONSTRUCTION COMPANY FOR INFRASTRUCTURE CONSTRUCTION OF TWIN SPRINGS SUBDIVISION

Summary: The consideration of a resolution authorizing the City Manager to accept the lowest responsible bid of Tennoca Construction Company for the infrastructure construction of Twin Springs Subdivision.

Mattern & Craig Consulting Engineers, on behalf of the Community Development Division, opened bids for the infrastructure construction of Twin Springs subdivision on August 12, 1998. Infrastructure construction will include, but not be limited to, water, sanitary sewer, storm drainage lines including appurtenances, street, sidewalk, curb and gutter, and minor

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landscaping. The lowest bid received for the project was in the amount of $498,537.00 from Precision Contracting, Inc. However, Precision Contracting, Inc. is properly licensed in North Carolina to do construction work to a limit of $500,000.00. Precision's total work would not be allowed to exceed its licensing capabilities, which could effect performance on the contract should change orders be required. The amount of funds available for the project is $544,512.00

Community Development staff recommends rejecting the low bid from Precision Contracting, Inc. in accordance with N. C. General Statute Section 143-129 and awarding the contract to the next lowest responsible bidder, Tennoca Construction Company. Tennoca's bid was in the amount of $511,153.50. Tennoca Construction Company, Inc. has an unlimited license in North Carolina. The City Attorney's office has concurred with the engineer's recommendation against accepting the bid from Precision Contracting, Inc. due to the bid amount compared to the limit of their contractor's license. Approval of the resolution will award the contract to Tennoca Construction Company for the infrastructure construction of Twin Springs subdivision.

The Community Development staff recommends adoption of the resolution authorizing the City Manager to accept the lowest responsible bid of Tennoca Construction Company for the infrastructure construction of Twin Springs Subdivision.

RESOLUTION BOOK NO. 25 - PAGE 1

B. RESOLUTION NO. 98-134 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH PARSONS, BRINCKERHOFF, QUADE & DOUGLAS INC. TO PROVIDE FOR PLANNING ASSISTANCE TO THE METROPOLITAN PLANNING ORGANIZATION FOR THE DEVELOPMENT AND IMPLEMENTATION OF A PUBLIC INVOLVEMENT PROCESS

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract for assistance in developing a public involvement process specific to transportation related planning efforts.

As the Lead Planning Agency (LPA), the City of Asheville plays an integral part in how the Asheville Urban Area Metropolitan Planning Organization (MPO) functions. Since the administrative functions of the MPO are conducted from the Planning and Development Department, it is essential that requests for professional services go through City Council for approval. The Federal Highway Administration (FHWA) and the N. C. Dept. of Transportation (NC DOT) will reimburse the City of Asheville 80% of the cost of the contract.

The public involvement process are the result of over two years of effort on the part of the Citizen's Transportation Advisory Committee (C-TAC) to place a higher emphasis on how we solicit and gather input from the public. It is the desire of the C-TAC that with such a process in place, the recommendations made to the NC DOT, the FHWA and other agencies will be more reflective of the needs, wants and desires of the public in our area.

The contract is to assist in development of the process and train local citizens, staff and public officials in the process. Should we desire to solicit help from consultants to actually conduct the process, then we would prepare a contract specific to that endeavor.

The staff from the Planning and Development Department recommends adoption of the resolution authorizing the City Manager to enter into a contract with Parsons, Brinckerhoff, Quade & Douglas Inc. to provide for planning assistance to the MPO for the development and implementation of a public involvement program.

RESOLUTION BOOK NO. 25 - PAGE 2

C. **RESOLUTION NO. 98-135 - RESOLUTION SETTING A PUBLIC HEARING FOR OCTOBER 13, 1998, TO CLOSE WILSON ALLEY LOCATED BETWEEN HENDERSONVILLE ROAD AND SUMMIT STREET**

RESOLUTION BOOK NO. 25 - PAGE 3

D. **RESOLUTION NO. 98-136 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF HEALTH & HUMAN RESOURCES TO FUND THE AFTER SCHOOL FOOD SERVICE PROGRAM**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N. C. Dept. of Health and Human Services to provide food service in the After School Program.

The Parks and Recreation After School Program provides supervised licensed child care, recreation, enrichment activities, and food service to children ages 5 to 12 during after school hours, teacher work days, and holidays at six program sites. Sites are located at Claxton, Dickson, Hall Fletcher, Jones, and Vance Elementary Schools; and Reid Community Center. Sites are licensed by the State of North Carolina with a child/staff ratio of 1 to 25. Snacks are provided in the afternoon, and breakfast and lunch is provided on holidays and teacher work days. Activities include arts and crafts, games, sports, science, music, homework time, and special events. Fees are based on the number of children from each family and frequency of attendance. Parks and Recreation will contract with Asheville City Schools for food service at a rate of $0.95 per breakfast, $1.75 per lunch and $0.65 per snack. The grant will reimburse Parks and Recreation approximately one third of the cost of providing food service in the After School Program. The number of meals will vary based on the total meals actually served each month.

The Parks and Recreation Department recommends the City of Asheville to apply for the grant funds through the Child and Adult Care Food Program.

RESOLUTION BOOK NO. 25 - PAGE 4

E. **RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE REGIONAL WATER AUTHORITY TO AWARD THE BID FOR THE SPIVEY MOUNTAIN RESERVOIR PROJECT TO TAYLOR & MURPHY CONSTRUCTION COMPANY**

This item was removed from the Consent Agenda.

F. **RESOLUTION NO. 98-137 - RESOLUTION ALLOWING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE GREAT SMOKIES CRAFT BREWERS INVITATIONAL ON SEPTEMBER 19, 1998**

Summary: The consideration of a resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the Great Smokies Craft Brewers Invitational at the Martin Luther King Jr. Park on September 19, 1998.

The Great Smokies Craft Brewers Invitational is a unique celebration of the art of brewing beer in the spirit of Oktoberfest with a smokey mountain twist. The Asheville Downtown Association in conjunction with Barley's Tap Room, the Radisson Hotel, Asheville Parks and Recreation and other local businesses have developed this festival to highlight the quality beers of the region. Over 30 brewers have been invited to present their high quality beers in a festival atmosphere at the Martin Luther King, Jr. Park on September 19, 1998. Local entertainment and food will be available from 1:00 p.m. - 6:00 p.m.. Proceeds from the event will benefit the Asheville Urban Trail project. The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during this event on City property

The Asheville Parks and Recreation Department recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 5

G. **RESOLUTION NO. 98-138 - RESOLUTION CONFIRMING THE APPOINTMENT OF BONNIE N. LOVE AS THE MINORITY BUSINESS ALLIANCE REPRESENTATIVE ON THE MINORITY BUSINESS COMMISSION**

RESOLUTION BOOK NO. 25 - PAGE 7

H. **MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 22, 1998, TO REZONE 196 DEAVER STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO COMMUNITY BUSINESS II**

I. **MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 22, 1998, TO REZONE FOUR LOTS ON LOUISIANA AVENUE FROM COMMUNITY BUSINESS I TO HIGHWAY BUSINESS**

J. **MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 22, 1998, TO REZONE 1720 AND 1724 OLD HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY TO OFFICE**

K. **MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 22, 1998, TO CONSIDER A MODIFICATION TO THE SUBDIVISION STANDARDS FOR A NON-RESIDENTIAL SUBDIVISION IN ORDER TO PERMIT MORE THAN FIVE LOTS TO BE ACCESSED BY A PRIVATE DRIVE FOR CENTREPARK BUSINESS PARK (FORMERLY PARK TERRACE EAST) LOCATED ON PINEY MOUNTAIN ROAD**

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions on the Consent Agenda and they will not be read.

Councilman Sellers moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING A PORTION OF TOLULA LANE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE BUSINESS

Mayor Sitnick said that on August 28, 1998, she received a letter from Mr. Philip G Carson, attorney representing Victoria Investment Company, in which he advised her that he will be out of town on September 8, 1998, and asked that the public hearing be continued until September 22, 1998

Councilman Cloninger moved to continue the public hearing until September 22, 1998, without further advertisement. This motion was seconded by Councilwoman Field

Mr. Gary Schwartz and Mr. George Young each felt that the continuance should not be granted

Mayor Sitnick said that since this is the first time the petitioner has requested the public hearing be continued and since a statement was inserted on the notice sent to the property owners that a continuance was requested, she would support the request to continue.

The motion made by Councilman Cloninger and seconded by Councilman Sellers carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 98-139 - RESOLUTION AUTHORIZING THE PUBLIC WORKS DEPARTMENT AND THE PARKS & RECREATION DEPARTMENT TO PROCEED WITH THE DEVELOPMENT OF A WALKING TRAIL AT MALVERN HILLS PARK

Mr. Irby Brinson, Director of Parks & Recreation, said that this is the consideration of a resolution authorizing the Public Works Department and the Parks and Recreation Department to proceed with the development of a walking trail at Malvern Hills Park.

In an effort to address a community need in the Malvern Hills area, the staff of the Parks and Recreation Department and the Public Works Department have met to work cooperatively in the development of a walking trail at Malvern Hills Park. This walking trail will be constructed using combined resources from both departments with the funding for materials coming from the Public Works budget. The largest trail loop will be approximately ½ mile long and will meander throughout the park area. It is anticipated that the actual construction for the trail could begin as early as December, 1998, with the paving of the trail occurring in early spring of 1999. In addition, the parking located below the tennis courts will be paved and marked as well. This project represents a cooperative effort between two departments to maximize resources to their full potential and to provide a level of service as efficiently as possible to the citizens. It will not be necessary for funds to be reallocated to this project since materials can be charged directly to the Public Works budget. It is estimated that the total cost of this project will total $40,000

The Public Works Department and the Parks and Recreation Department request City Council approval to proceed with the development of a walking trail in the Malvern Hills Park

Councilman Cobb said that he has been working on getting a walking trail at Malvern Hills Park for several years and was especially pleased to see that this will be developed.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cobb moved for the adoption of Resolution No. 98-139. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 8

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO AWARD A BID FOR THE CIVIC CENTER SOUND EQUIPMENT

At the request of the City Manager, this item was removed from Council's consideration.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 28, 1998, AND THE WORKSESSION HELD ON SEPTEMBER 1, 1998

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on August 28, 1998, and the worksession held on September 1, 1998. This motion was seconded by Councilwoman Field and carried unanimously

B. CLAIMS

The following claims were received by the City of Asheville during the week of August 21-27, 1998: Charles O. Pine (Parks & Recreation) and Leslie Auger (Water).

The following claims were received during the week of August 28-September 3, 1998: Charles Stevens (Water), Lee Frank Peak (Water), Bertha N. Jones (Water), M.W. Curtis (Water) and Roger Garrett (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

C. LAWSUITS

The following lawsuit was received by the City of Asheville on August 25, 1998: Richard R. Gilbert v. City of Asheville. The nature of the proceeding is negligence due to a defective water meter box near 3 Howland Road.

The following lawsuit was received by the City of Asheville on August 27, 1998: Jennifer Jacobs v. City of Asheville. The nature of the proceeding is appeal to Superior Court from Civil Service Board decision upholding disciplinary dismissal.

Both of these lawsuits will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Mickey Mahafee invited City Council to attend a discussion that is held every Sunday at Trinity Episcopal Church on Church Street. The Church serves a meal at 3:00 p.m.

every Sunday and then at 4:00 p.m. there is a roundtable discussion with the homeless to discuss some of the problems they are experiencing. Mr Mahafee also asked how he could become more involved in the fight against litter. Mayor Sitnick responded that various departments and agencies are working on combating litter and she would be happy to talk with him about participating.

Ms. Jean Moore, District Administrator for the Guardian Ad Litem Program in the 20th Judicial District which encompasses all of Buncombe County, stated that it was brought to her attention that Mr. Dan Waterman, a speaker at a previous meeting who advocated the relaxation of marijuana laws, said that he was a guardian ad litem. After investigation through as far back as their records go, she has learned that at no time in the State of North Carolina, or in the surrounding areas, has Mr. Waterman been a volunteer for the program She said that they work very hard to maintain their credibility in the community and in the Court system

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5: 28 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - September 15, 1998 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Pipeline Replacement Program Change Order

Summary: The consideration of a resolution authorizing the City Manager to execute a change order with Wheeler Construction Company (for work performed by contractor requested by the Engineering Department) for the project known as Pipeline Replacement Program Phase II - Contract A, South Asheville/South Buncombe Water Line.

The Regional Water Authority of Asheville, Buncombe and Henderson approved $1,078,389.11 for the construction of these improvements. This project is known as Pipeline Replacement Program Phase II Contract A South Asheville/South Buncombe Water Line.

The final adjusting change order for this project is in the amount of $102,582.95. This additional cost represents the additional qualities of bituminous pavement and other miscellaneous appurtenances that were necessary to comply with requirements and request by the Public Works Department and Water Maintenance Division of the Water Resources Department. Approximately 18% of the additional cost of bituminous pavement has been reimbursed by the Public Works Department as per agreement.

Staff recommends that City Council accept this change order to increase the total contract price for the Pipeline Replacement Program Phase II Contract A South Asheville/South Buncombe in the amount of $102,582.95 and the City Manager to execute all necessary documents for this contract.

Public Auction October 17, 1998

Summary: The consideration of a resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction.

The resolution authorizes the City's Purchasing Division to hold a public auction to dispose of motor vehicles, transit buses, off-road equipment, and other miscellaneous property declared as surplus by various City departments. The auction to be held Saturday, October 17, 1998 at 10:00 a.m. in the Public Works Complex, 161 S. Charlotte Street.

Sale of Alcoholic Beverages at 1998 Greek Festival

Summary: The consideration of a resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the Asheville Greek Festival at the City-County Plaza on October 2-4, 1998.

The Asheville Greek Festival is a unique celebration of Greek heritage and traditions. The Festival this year will be held at City-County Plaza on October 2-4, 1998. Local entertainment, food, and vendor displays will be available daily.

Voting Delegates for the 1998 Annual N.C. League of Municipalities Meeting

Summary: Motion designating Councilwoman Barbara Field as the voting delegate and Mayor Sitnick as the alternate voting delegate for the 1998 Annual League of Municipalities Business Meeting on October 19, 1998.

Mayor Sitnick asked that the record show that City Council has received this information and instructed the City Manager to place these items on the next formal City Council agenda.

UPDATE ON SCHOOL BOARD ACTIVITIES

Ms. Susan Fisher, Chairman of the Asheville School Board, and Dr. Karen Campbell, Superintendent, updated City Council on the School Board's accomplishments for the past year and outlined their goals. The mission of the Asheville City Schools is to provide quality education in which we respect students' individual and cultural differences, develop their talents in partnership with family and community, and ensure that they possess the life skills necessary for personal success and civic responsibility. The following four goals were discussed along with objectives to meet the goals: (1) increase student achievement in Asheville City schools; (2) provide orderly, safe, clean, drug-free schools; (3) recruit, develop and retain a highly skilled work force; and (4) forge strong partnerships through effective communication.

Council Members asked various questions and because some were of a statistical nature, they were asked to put the questions in writing and detailed responses would be sent accordingly.

DISCUSSION OF UNFUNDED BUDGET ITEMS

Pursuant to City Council's request, City Manager Westbrook presented the unfunded requests in the current budget. He noted that revenues were not sufficient to support these requests during the budget process.

During the budget meetings with City Council for the Fiscal Year 1998-1999 budget, staff listed a number of programs that were not able to be funded because requests for funding exceeded the City's financial ability. Listed below are the five programs that were not included in the budget, along with a brief description of each.

1. River District Development Plan - Cost: $50,000

   The river core area of the City (that area along the French Broad River from Lyman Street north to the Norfolk and Southern trestle) is currently not a significant economic asset of the City. The potential exists to create a significant economic and cultural asset to the community of that area, and the City as a whole. To begin the process, we need to develop a plan. Staff suggests we partner with the RiverLink organization, which has been able to raise approximately $100,000 ($11,000 of the $100,000 is from the City). The City would need to budget an additional $50,000 for a total contribution of $61,000 ($11,000 is already committed). RiverLink would commit $89,000 toward the study, for a total budget of approximately $150,000. This is the current estimate of what the study would cost, to be provided by an outside, independent consultant. Once funding is committed by the City, staff would develop an agreement between the City and RiverLink outlining responsibilities, expectations and a plan that would insure comprehensive participation by all existing interested groups and individuals. Staff has identified this as our number one priority.

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2. Update of the Growth Plan (2010 Plan) - Cost: $50,000

   The current growth plan was adopted by the City of Asheville in 1987. With over ten years having passed since its adoption, changes in the needs of the community and new development patterns, there is a compelling need to update the plan. The update of the plan would encompass work by staff in many areas, and the use of a consultant to advise staff and Council and to design a public participation process. The growth plan is now recommended for funding during the Fiscal Year 1999-2000 budget process. There is a lot of background information which staff is currently gathering from various other cities and service providers in the area. Additionally, if the update had been funded this year with the current work load and focus on UDO amendments, the Haywood Road Corridor Small Area Plan, the Broadway Small Area Plan, and the Swannanoa River Small Area Plan, he was not sure that we would have had the staff capacity to work on the plan.

3. Downtown Development Plan - Cost: $50,000

   The Downtown Commission's top priority is to develop a downtown plan for Asheville's next stage of development. A master planning committee was established to guide the process from the Commission's standpoint. After researching costs of downtown plans created for other cities, staff recommended $50,000 for the project, with any costs above $50,000 being raised in the private sector. Staff recommends this study be added to the Fiscal Year 1999-2000 budget based on available funding.

4. Stormwater Regulation Study - Cost: $125,000

   On December 15, 1997, a proposed rule was signed which would require all cities with a population less than 100,000 and more than 5,000 to develop an Illicit Discharge Program. This program is proposed to consist of approximately six different requirements. The rule is scheduled to be effective on March 1, 1999. All cities will be expected to be in compliance by June 1, 2002. The $125,000 was requested to have a consultant prepare this Illicit Discharge Program for the City. In short, the consultant would provide the mapping necessary for the program, draft necessary ordinances, develop public awareness programs, etc. He recommended funding for this program in the Fiscal Year 1999-2000 budget since the effective date appears to be March 1, 1999.

5. Traffic Calming Initiatives - Cost: $50,000

   This funding was requested to begin implementing some traffic calming devices in neighborhoods. The devices could include building round-abouts, concrete islands to narrow the travel lanes, etc. The traffic calming policy has been put on hold awaiting the new Traffic Engineer's review and comment. We anticipate hiring a Traffic Engineer by January 1, 1999. Since any projects we might want to start would begin during the second half of the fiscal year, rather than placing funds in the budget at this time, he recommended that staff request a special appropriation on a project-by-project basis as needed.

At the time the budget was adopted the City had not yet settled the franchise negotiations with InterMedia. Since that time the negotiations have been completed, and as a result the City will receive unprogrammed revenue as a result of the new franchise agreement and resolution of a dispute between the City and InterMedia concerning past cable television payments. The amount we expect to receive during Fiscal Year 1998-1999 is approximately $70,000. That amount is available for appropriation.

He said that should Council want to fund one of the five above programs, staff recommended funding the River District Development Program at a cost of $50,000.

Mayor Sitnick reported that she has received a number of phone calls from the community expressing a curiosity about the fact that they remember that the 175,000 franchise fee settlement was going to be dedicated to public, educational and governmental access channels.

City Manager Westbrook explained that this is not a diversion of the PEG money.

Ms. Karen Cragnolin, Executive Director of RiverLink, and Mr. Doug Wilson, Chairman of the Board of RiverLink, spoke in support of the City funding the River District Development Plan. Mr. Wilson also presented Council with a letter from Mr. Jerry V. Sternberg which letter supported a land use study and projection for the River District.

Mayor Sitnick said that she has asked the N.C. Dept. of Transportation to undertake a project at the River to re-do all roads, to create sidewalks, tree lawns, curbs and gutters and pave the streets in order to inspire some economic development in that area.

Councilman Cloninger strongly supported the City's funding of the River District Development Plan because (1) the timing is right because there is a cross-section of owners along the river and others interested in the river who otherwise have different philosophies all wanting to see this development plan go forward, and (2) there is tremendous untapped economic development potential on the river and it's time that we start tapping into that potential.

It was the consensus of Council to authorize the City Manager to place a budget amendment to fund the River District Development Program at the cost $50,000 on the next formal City Council agenda.

PARKING STUDY REVIEW

Ms. Cathy Ball, City Engineer, introduced Mr. Lee Bourque from Carl Walker, Inc., and Mr. Rick Day, from Dan Wilburn Associates, Inc., who presented the recommendations from the Comprehensive Parking Study of the Downtown, Biltmore Village, and West Asheville areas.

On August 19, 1997, the City of Asheville entered into an agreement with Carl Walker, Inc. to prepare a Comprehensive Parking Study for the Downtown, Biltmore Village, and West Asheville areas.

The purpose of the study was to: (1) Quantify current parking demand and supply by type; (2) Project future parking demand for 1, 5, 10 and 20 year intervals; (3) Offer options for servicing demand within the areas under study; (4) Interview various property owners; (5) Give options for reorganizing the existing surface lots; (6) Conduct statistically valid surveys through observation and documentation of travel modes, attitudes and preferences toward parking; (7) Review the existing parking enforcement program; and (8) Review the current administration of parking services enforcement, collections, signs and publicity.

Mr. Bourque reviewed the Downtown study area recommendations which included: (1) develop 550 additional spaces in facility in grove arcade; (2) develop 60 to 80 additional parking spaces near the city-county plaza; (3) consider City-County lots along new shuttle route to relieve additional near term needs; (4) increase rates for on-street meters; and (5) educate business regarding meter parking abuse. Mr. Day then reviewed the traffic and transportation issues related to the Downtown study area.

Mr. Bourque then reviewed the Biltmore Village study area recommendations which included: (1) develop new 100 and 40 spaces surface parking lots; (2) encourage employee use of off-street lots; (3) consider advanced on-street meter system; and (4) identify location of

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prospective railroad station and secure space for required 45 plus parking spaces for potential intermodal train station/garage/welcome center. Mr. Day then reviewed the traffic and transportation issues related to the Biltmore Village study area.

Mr. Bourque then reviewed the West Asheville study area recommendations which included: (1) mark on-street spaces to expand identified on-street parking from 24 to 212 spaces; (2) encourage employee use of rear parking; and (3) develop and provide standard parking sign design templates for area business. Mr. Day then reviewed the traffic and transportation issues related to the West Asheville study area.

Throughout the presentation, Council members asked and the consultants responded to various questions, comments and suggestions as they related to each of the study areas.

Ms. Ball said that staff recommends that Council set a public hearing in approximately 45 days (October 27, 1998) to allow input from citizens, residents, etc. regarding the recommendations of the Parking Study.

Mayor Sitnick asked that the record show that City Council has received this information and instructed the City Manager to place this item on the next formal City Council agenda.

BRIEFING ON THE YOUTH COUNCIL

Mr. Irby Brinson, Director of Parks & Recreation, said that in 1984, as part of the Water Agreement, the Asheville-Buncombe Youth Council was transferred to Buncombe County Recreation Services.

In an effort to inform City Council of the present status of the Asheville-Buncombe Youth Council, Ms. Chris Webb, Coordinator of the Youth Council and employed by Buncombe County Recreation Services, updated City Council on current activities and initiatives by the Youth Council.

On behalf of City Council, Mayor Sitnick thanked Ms. Webb for her work and the work of the Youth Council.

DISCUSSSION OF AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATIVE TO CONDITIONAL USE PERMIT LANGUAGE

Mr. Gerald Green, Senior Planner, said that at the City Council meeting on August 25, 1998, City Council directed staff to begin a review of possible revisions to the Unified Development Ordinance ("UDO") to permit churches to include related uses, such as day care, educational and recreational facilities, in residential areas while protecting residential neighborhoods from adverse impacts.

He said that churches are permitted, subject to special requirements, in residential neighborhoods. Churches are defined in the UDO as the place where religious worship is conducted; related facilities such as day care, school and recreational facilities, are not included in the definition. These facilities are reviewed separately and subject to development standards which are the same regardless of who develops them. Some churches would like to include those facilities on their properties which are located in residential districts.

Residential neighborhoods are concerned about the adverse impacts of large churches and related facilities upon the neighborhoods in which they are located. They would like to have development standards designed to minimize these adverse impacts.

Council has directed Planning and Development Department staff, with assistance from the City Attorney's Office, to review the standards for churches and develop recommendations for amendments to the standards which would allow larger churches with those other facilities as conditional uses in residential areas.

Mr. Green then reviewed the following background regarding churches as conditional uses:

THE ISSUE - Some churches would like to include related uses, such as day care, school and recreational facilities, on properties located in residential districts. Residential neighborhoods are concerned that large churches, with these related facilities, can have adverse impacts on residential neighborhoods.

BACKGROUND - Churches are defined in the UDO as "a place where religious worship is conducted. The term church does not include day care, educational, recreational, and other facilities which are incidental to the place of worship." Churches meeting this definition are permitted in all residential zoning districts provided they meet certain standards. These standards are:

- Minimum lot size - 1 acre. Churches constructed prior to August, 1977 are not subject to this requirement.
- Minimum setbacks
    - Front - same as for other permitted uses in the respective district
    - Side and rear - 30 feet
    - Minimum setback for parking and other activities - no parking in front setback; no parking or other activity shall be located less than 30 feet from any property line. Provided, however, the Planning and Development Director may allow parking or other activity within 15 feet of a property line upon finding that adequate buffering exists or is proposed, that surrounding properties will not be adversely affected, and existing trees over 4 inches within the reduced buffer must be retained.
- Impervious surface shall not exceed 75% of the total lot area;
- Offices associated with the church will occupy no more than 25% of the total floor area of buildings on the lot;
- Public address systems shall not be permitted except within buildings;
- Access onto church property from local streets shall be limited to a total of 2 driveway access points onto all surrounding local streets; and
- When repositories for ashes are located on the church site, the church shall issue a statement which would guarantee maintenance of the repository in perpetuity.

Under the provisions of the UDO, day care, school, recreational, and other facilities are treated the same whether they are developed by a church or any other developer. This is based upon the belief that these facilities have the same impact on a residential area (traffic, noise, lights, etc.) regardless of who develops them. These other facilities are treated as follows:

- Day care facilities are permitted in all residential districts, with small day care homes (up to 8 children) permitted in all residential districts and child care centers (up to 79 children) permitted only in the RM-16 district.
- Schools are permitted in all residential districts provided they meet a minimum lot size requirement (2 acres) and setback requirements, and parking and recreation areas are not located in required setbacks.
- Certain recreational uses (golf courses, tennis courts, swimming pools, playgrounds, and clubhouses with indoor recreational facilities) are permitted in all residential districts provided they are operated on a membership basis.

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- Colleges, convention centers, and other large, institutional-like uses are permitted only in the more intense zoning districts where their impacts on neighboring uses can be mitigated.

PROPOSED ACTION - The following actions would offer churches more flexibility, while protecting residential neighborhoods from the adverse impacts associated with large development:

- Continue to use the current definition of church as stated in the UDO;
- Identify churches of less than a certain size (Wilmington sets the threshold at less than 200 seats) as permitted uses, subject to special requirements in all residential districts. The requirements for churches of this size should remain the same as currently established by the UDO, with the additional requirement that primary access not be provided by a local (residential) street.
- Identify all other churches as conditional uses in residential districts with the following conditions related to size and access:
    - Churches of a medium size (Wilmington defines these as having less than 1,000 seats) must locate on a lot with access from a collector street or a major or minor thoroughfare;
    - Large churches (Wilmington defines these as having more than 1,000 seats) must locate on lots with access from a major thoroughfare.
- Continue to treat daycare, school, recreational, and related facilities separately from churches, but review the standards to assure that the needs of the community are being met. The review should include:
    - Consideration of permitting day care centers, with a limit on the number of children, in all residential districts if certain standards governing lot size, access, and buffering are met;
    - Consideration of permitting small colleges as well as schools in all residential districts if certain standards regarding lot size, access, and buffering are met; and
    - Consideration of expanding the types of recreational facilities permitted in residential districts.
- When churches of any size which include day care, school, recreational, and/or related facilities in their development plans are proposed in residential zoning districts, treat them as conditional uses to assure that they meet all standards and do not adversely impact the area in which they are to be located.

Councilman Tomes hoped that with the inclusion of the religious community in drafting the proposed amendment, some of his concerns would be addressed, specifically relating to how churches need to administer to the total person.

Councilman Cobb felt that the definition of church should be re-defined in the UDO. He stressed that the Asheville community wants their churches and government should not try to tell a church what ministries it can and cannot perform. Churches' ministries need to meet the needs of the community. He did feel that other ordinances relating to such things as noise, buffering, parking, traffic, etc. should be enforced.

It was the consensus of City Council for staff to meet with the religious community, residential neighborhoods, and other interested parties in order to draft an ordinance amendment to assure that all concerns are addressed. After an ordinance has been drafted, the draft ordinance will be presented to the Planning & Zoning Commission. The Planning & Zoning Commission must hold a public hearing to receive public input and following the public hearing they will provide a recommendation to City Council regarding the proposed amendment.

Following the recommendation of the Planning & Zoning Commission, City Council must also hold a public hearing to solicit public input prior to consideration of the amendment.

WATER CRISIS

Water Resource Director Tom Frederick updated City Council on the two water supply reservoirs. The Regional Water Authority has a policy of instituting restrictions when the water levels in the two reservoirs are a combined 60 feet below the spillways. The total distance has dropped to 32 feet. He said that voluntary restrictions on water use might be necessary and if the dry weather continues, mandatory restrictions will be instituted.

MEDIA RELATIONS

Ms. Margot Christensen, Public Affairs Director from the N.C. League of Municipalities, covered briefly (1) the relationship between the news business and Council's role as elected officials; (2) some things that Council may find helpful that other people have found helpful when they work with reporters and (3) some decisions you may be looking at as governing board members concerning the news media.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:55 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - September 22, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Tomes gave the invocation.

INTRODUCTION OF GUESTS

Mayor Sitnick welcomed Ms. Nancy Wilson and Ms. Debbie Brown and their 6th grade students from Carolina Day School.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE WEEK OF SEPTEMBER 26-OCTOBER 3, 1998, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Mayor Sitnick read the proclamation proclaiming the week of September 26 - October 3, 1998, as "Minority Business Development Week" in the City of Asheville. She presented the proclamation to Mr. Ronnie Blythe and Elena Williams, who briefed City Council on some activities taking place during the week.

B. PROCLAMATION PROCLAIMING OCTOBER, 1998, AS "ASHEVILLE SISTER CITIES MONTH"

Councilwoman Field read the proclamation proclaiming the month of October, 1998, as "Asheville Sister Cities Month" in the City of Asheville. She presented the proclamation to Mr. George Yates, President of Asheville Sister Cities, Inc., who briefed City Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING OCTOBER, 1998, AS "NATIONAL BREAST CANCER AWARENESS MONTH" AND OCTOBER 16, 1998, AS "NATIONAL MAMMOGRAPHY DAY"

Mayor Sitnick read the proclamation proclaiming the month of October, 1998, as "National Breast Cancer Awareness Month" and October 16, 1998, as "National Mammography Day" in the City of Asheville.

D. PROCLAMATION PROCLAIMING OCTOBER 5, 1998, AS "THE BOYS CHOIR OF HARLEM DAY"

Mayor Sitnick read the proclamation proclaiming October 5, 1998, as "The Boys Choir of Harlem Day" in the City of Asheville. She presented the proclamation to Ms. Connie DeLand, President of the Asheville Community Concert Association Inc., who briefed City Council on some activities taking place during that day.

E. PROCLAMATION PROCLAIMING THE WEEK OF OCTOBER 4-10, 1998, AS "MENTAL ILLNESS AWARENESS WEEK"

Vice-Mayor Hat read the proclamation proclaiming the week of October 4-10, 1998, as "Mental Illness Awareness Week" in the City of Asheville. He presented the proclamation to Mrs. Jack T. Benning, Past President and Board Member of the NAMI Western Carolina Inc., and Mr. Dan Lane, President of the NAMI Western Carolina Inc., who briefed City Council on some activities taking place during the week.

II. CONSENT:

At the request of City Manager Westbrook, he asked that Exhibit A under Item D. be amended to delete from the auction list the 1977 American LaFrance Pumper CE175656 - Fixed Asset Number 13872.

A. RESOLUTION NO. 98-140 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH WHEELER CONSTRUCTION COMPANY FOR THE PROJECT KNOWN AS PIPELINE REPLACEMENT PROGRAM PHASE II - CONTRACT A, SOUTH ASHEVILLE/SOUTH BUNCOMBE WATER LINE

Summary: The consideration of a resolution authorizing the City Manager to execute a change order with Wheeler Construction Company (for work performed by contractor requested by the Engineering Department) for the project known as Pipeline Replacement Program Phase II - Contract A, South Asheville/South Buncombe Water Line.

The Regional Water Authority of Asheville, Buncombe and Henderson approved $1,078,389.11 for the construction of these improvements. This project is known as Pipeline Replacement Program Phase II Contract A South Asheville/South Buncombe Water Line.

The final adjusting change order for this project is in the amount of $102,582.95. This additional cost represents the additional qualities of bituminous pavement and other miscellaneous appurtenances that were necessary to comply with requirements and request by the Public Works Department and Water Maintenance Division of the Water Resources Department. Approximately 18% of the additional cost of bituminous pavement has been reimbursed by the Public Works Department as per agreement.

Staff recommends that City Council accept this change order to increase the total contract price for the Pipeline Replacement Program Phase II Contract A South Asheville/South Buncombe in the amount of $102,582.95 and the City Manager to execute all necessary documents for this contract.

RESOLUTION BOOK NO. 25 - PAGE 9

B. MOTION SETTING A PUBLIC HEARING ON OCTOBER 27, 1998, RELATIVE TO A COMPREHENSIVE PARKING STUDY FOR DOWNTOWN, BILTMORE VILLAGE AND WEST ASHEVILLE AREAS

C. ORDINANCE NO. 2511 - BUDGET AMENDMENT APPROPRIATING $50,000 FOR RIVER DISTRICT DEVELOPMENT PLAN

Summary: The consideration of a budget amendment, in the amount of $50,000, to fund the River District Development Plan.

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City staff recommends that the City of Asheville partner with RiverLink to develop the river core area of the City along the French Broad River from Lyman Street North to the Norfolk and Southern Trestle. To begin the process, a development plan/study should be undertaken. RiverLink has been able to raise approximately $100,000 ($11,000 of the $100,000 is from the City). The City would need to budget an additional $50,000 for a total City contribution of $61,000. RiverLink would commit $89,000, for a total budget of approximately $150,000.

Staff recommends funding the additional $50,000 contribution by appropriating $50,000 in additional revenue from the cable franchise fee settlement agreement. This additional revenue is available due to a recent settlement with InterMedia regarding a dispute over the amount of franchise fees which should have been paid under the 1967 cable franchise agreement.

Staff recommends City Council appropriate an additional $50,000 in expenditures and revenues for the River District Development Plan to be funded from the cable franchise fee settlement.

ORDINANCE BOOK NO. 17 - PAGE 142

D. RESOLUTION NO. 98-141 - RESOLUTION AUTHORIZING THE PURCHASING DIRECTOR TO SELL SURPLUS MOTOR VEHICLES, TRANSIT COACHES, OFF-ROAD EQUIPMENT AND OTHER SURPLUS PROPERTY AT PUBLIC AUCTION ON SATURDAY, OCTOBER 17, 1998, BEGINNING AT 10:00 A.M. AT THE PUBLIC WORKS COMPLEX, 161 SOUTH CHARLOTTE STREET

RESOLUTION BOOK NO. 25 - PAGE 10

E. MOTION SETTING A PUBLIC HEARING ON OCTOBER 13, 1998, TO REZONE THREE LOTS LOCATED ON BURTON STREET AT BUFFALO STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS

F. MOTION SETTING A PUBLIC HEARING ON OCTOBER 13, 1998, TO REZONE 418 AND 422 MCDOWELL STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL

G. RESOLUTION NO. 98-142 - RESOLUTION ALLOWING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1998 GREEK FESTIVAL ON OCTOBER 2-4, 1998

Summary: The consideration of a resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the Asheville Greek Festival at the City-County Plaza on October 2-4, 1998.

The Asheville Greek Festival is a unique celebration of Greek heritage and traditions. The Festival this year will be held at City-County Plaza on October 2-4, 1998. Local entertainment, food, and vendor displays will be available daily.

RESOLUTION BOOK NO. 25 - PAGE 11

H. **RESOLUTION NO. 98-143 - RESOLUTION MODIFYING SCHEDULED CITY COUNCIL MEETING TO ANNOUNCE A COMMUNITY MEETING ON TUESDAY, SEPTEMBER 29, 1998, FROM 3:30 P.M. TO 5:30 P.M. AT THE SKYLAND VOLUNTEER FIRE DEPARTMENT LOCATED AT 9 MILLER ROAD, ASHEVILLE, N.C.**

RESOLUTION BOOK NO. 25 - PAGE 13

I. **MOTION DESIGNATING COUNCILWOMAN BARBARA FIELD AS THE VOTING DELEGATE AND MAYOR SITNICK AS THE ALTERNATE VOTING DELEGATE FOR THE 1998 ANNUAL LEAGUE OF MUNICIPALITIES BUSINESS MEETING ON OCTOBER 19, 1998**

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinance on the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda, with Item D being amended per the City Manager's request. This motion was seconded by Councilman Sellers and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC INPUT SESSION TO IDENTIFY UNIFIED DEVELOPMENT ORDINANCE ANNUAL REVIEW ISSUES

Mayor Sitnick opened the public hearing at 5:34 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, said on July 21, 1998, the Asheville City Council identified a number of items which were brought to their attention by the public, the Planning and Zoning Commission, and staff. City Council set a date to receive public comment on those identified items and instructed City staff and the Planning & Zoning Commission to study the feasibility of each item and come back to City Council with recommendations.

City Attorney Oast stated that after staff researches the issue and prepares a draft ordinance amendment, if appropriate, then the Planning & Zoning Commission will hold a public hearing and send their recommendation onto the City Council for their public hearing and action.

Mr. Green noted that this information is provided for Council's review and consideration during the public input session and that it has not been reviewed by any other body and there is no recommendation. He then gave a brief description of each of the items identified for consideration follows:

- **Revise Office District**
  - Reduce size of buildings permitted in the Office District (currently 4000 sq ft footprint and 8000 sq ft total building size) and create a new Office II District which would permit a building size between that permitted in the Office District and that permitted in the Office/Business District (30,000 sq ft).

- **Create a Mixed Use Planned Unit Development District**
    - Create a Mixed Use Planned Unit Development District which would permit developments containing a range of uses from mixed density residential to office to commercial designed in a unified manner.
    - Design flexibility would be a key component of this district, with incentives provided to encourage the attainment of community goals (walkability, provision for alternative modes of transportation, etc.).

- **Create an Open Space/Park Zoning District**
    - Develop a zoning district designed to accommodate public parks and open spaces.
    - The proposed zoning district will permit the development of parks and related public facilities and serve to protect these resources.
    - The Open Space/Park District will be applied to publicly owned properties; privately owned properties will not be assigned this designation.

- **Landscape Ordinance Revisions**
    - Require all parking spaces within a parking lot to be located within 30' of a tree instead of 60' as required in the current ordinance.
    - Require that trees and shrubs be planted within 8' of a vehicular use area, instead of 20', to count as parking lot landscaping.
    - Establish a time limit within which parking lot landscaping intended to buffer the lot from the street must meet the required 3' height and within which berms and grade changes must be covered with vegetation.
    - Establish a requirement for enhanced buffers where development abuts the interstate.
    - Review the requirements for maintaining existing trees during the development process

- **Standards for Churches**
    - Limit churches to one sanctuary building and one other building per parcel of property in residential districts.

Staff recommended this be incorporated into the research they are doing on churches in residential areas. Regarding the small committee which will be looking at that, Councilman Cobb has agreed to serve on that committee, as well as Rev. Jerry Young, Trinity Baptist Church, and the minister of Malvern Hills Presbyterian Church. He will be looking for one more member of the religious organizations to be on that committee, as well as three members of the neighborhood to represent residential areas of the City and one person on the Planning & Zoning Commission. He said they hope to start meeting in the first half of October and move on this quickly so the Church and the rest of the community can move on with the decision regarding Trinity Baptist Church and other churches located in residential areas. He did note again that after the Committee makes the recommendation, it must go to the Planning & Zoning Commission for their review and recommendation and then to City Council for their review and action. He said that if the Committee finishes it's work at the end of October, the issue will not be before the Planning & Zoning Commission until their December meeting.

- **Underground Utilities**
    - Require utilities in all developments to be placed underground.

- **Broaden Permitted Uses in Community Business II District**
  - Consider the addition of mini-storage facilities and automobile dealerships to the list of permitted uses in this district.

- **Identify Additional Neighborhood Business Zones**
  - Additional areas which are appropriate for neighborhood commercial opportunities should be identified for the application of this zoning district.

- **Advertising on buses and taxis**
  - Research ways in which standards may be established for advertising on buses and taxis.

- **Revisit the River District and draft changes to protect adjacent neighborhoods**
  - Revise the River District to incorporate changes that will afford adjacent residential areas more protection. Included in this review will be an examination of the uses permitted in the River District.

Mr. Green said that a representative of the property owners along the River contacted him and asked that we not consider any revisions to the River District until the RiverLink Master Plan for the River Core area was completed, so that we can incorporate any recommendations of that planning effort into the revisions to the River District.

- **Require construction of sidewalks and/or dedication of easements for all new developments**
  - Investigate the feasibility of requiring the construction of sidewalks or the dedication of sidewalk easements for all new development, both residential and non-residential.

- **Develop an intermediate Community Business district.**
  - Develop an intermediate Community Business District to bridge the gap between the Community Business I District (6000 sq ft footprint, 12,000 sq ft gross floor area) and the Community Business II District (45,000 sq ft gross floor area).

He said that staff has identified some priorities based on comments from the public and Council and will discuss some of these items at the October Planning & Zoning Commission meeting. The high priority items for staff are: (1) issue dealing with churches in residential districts, (2) the creation of an Office II zone; (3) the creation of a Mixed Use Planned Unit Development District; and (4) the creation of an intermediate Community Business District. He said that closely following that is the creation of an Open Space/Park Zoning District. The other items will depend on the amount of research needed and the amount of time it takes for the Planning & Zoning Commission to review the working papers, the background information, etc.

Vice-Mayor Hay said that one reason to revisit the River District was the concern of the people who live along the Swannanoa River about the River District and how it affects their neighborhoods. He didn't think the RiverLink Master Plan would extend that far up the river. Mr. Green said that staff is working on a corridor plan for the Swannanoa River between Biltmore Village and Tunnel Road, but even that will not extend that far up. He felt that this portion of the item should remain on the list for consideration. Mr. Green said that he would place that in the second tier of priorities.

Councilman Cobb felt that the definition of church should be changed as it was prior to adoption of the Unified Development Ordinance ("UDO") and Council needs to let staff and the Planning & Zoning Commission know what City Council wants the definition of church to be. Mr. Green said that with that pre-UDO definition, the interpretation was made by the Planning Director that that definition did not include day care, schools, etc. They were subject to the standards established under the old ordinance for day care, schools, recreation facilities, etc. The issue that we have to approach this time is to assure that churches can operate those facilities but that we are not upsetting that balance and creating a preferential treatment for them that we do not give other developers of those facilities.

Mr. Green said that the Committee (religious community, neighborhood representatives, etc.) will look at everything from the definition of church to the standards for churches in residential districts.

Upon inquiry of Councilman Cloninger, Mr. Green said that just because staff is looking at these items identified above, does not mean staff would draft an ordinance amendment, or the Planning & Zoning Commission would recommend approval, or City Council would adopt the ordinance. It is just a review of the request that has been presented from the community.

Upon inquiry of Councilwoman Field, Mr. Green clarified what research would be done with regard to reducing the size of buildings permitted in the Office District.

Councilman Sellers asked how long the small committee would take to study the standards relative to churches since City Council has asked that this item be looked at quickly in order to accommodate Trinity Baptist Church and the community. Mr. Green said that he would advise the committee that this is a very high priority, however, he could not predict when, or if, some type of compromise could be reached. He said that all the issues addressing churches would be studied at one time.

It was agreed to by City Council that the study relative to churches should receive the highest priority and put on the fastest track for reviews and recommendations and then be brought back to City Council. Mr. Green said that he already has on the October Planning & Zoning Commission agenda a discussion of this so it may be possible that they will be able to give direction to the small committee that will be studying this issue. The Planning & Zoning Commission may then be able to act on something as quickly as their November meeting.

In response to Councilman Tomes, Mr. Green said that the Committee will look at all uses that are developed and operated by a church.

Vice-Mayor Hay said he would like to see the committee set as a goal to have a recommendation to the Planning & Zoning Commission at their November meeting.

Mr. Dave Payne, attorney representing Trinity Baptist Church, said that since they are attempting to provide information to assist the committee, etc., in relation to making decisions and recommendations, he said that his law firm, as well as Gibbs & Craze in Florida and Ohio, are more than willing to provide any of the requisite legal memorandums in relation to possible establishment, clause violations, etc. He said that they will attempt to get that information early next week so the City will have a good legal framework from where the Church is coming from. They are also concerned about the definition of church. Also, in order to assist the Planning & Zoning Commission and pursuant to a request by the City Attorney, last week he provided City Council with a letter wherein they made three suggestions in relation to a potential amendment to the definition. He encouraged the Planning & Zoning Commission to look at these potential definitions because they establish public policy in the State of North Carolina. (1) "A private,

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non-profit, tax-exempt institution, devoted solely to religious purposes." That definition was in place prior to adoption of the Unified Development Ordinance; (2) This definition, which excerpts a portion a N.C. Gen. Stat. sec. 105-278.3 (d) (1), is as follows: 'Church' means a place where religious worship is conducted. Although worship is the most common religious purpose, the term encompasses other activities that demonstrate and further the beliefs and objectives of a given church or religious body." He stated that the second sentence of this definition is established public policy in the State of North Carolina; and (3) "Church is a structure or group of structures whose primary use is the furtherance of a religious purpose. A religious purpose is one that pertains to practicing, teaching, and setting forth a religion. Although worship is the most common religious purpose, the term encompasses other activities that demonstrate and further the beliefs and objectives of a given church or religious body." He again said that this definition is verbatim from the State Statutes. He said that there will possibly be a further request in relation to a possible amendment, and that will have to be brought up by one of the Council members at another time. He strongly encouraged the Planning & Zoning Commission to look at these definitions, as well as the memorandums which they plan to submit in an effort to expedite this process.

Rev. Wendell Runion, Director and President of International Baptist Outreach Missions, said that the Christian community is very concerned that the City would be discussing the definition of a church. Churches have been a positive effect on our community, not a detriment. The definition of a church is the biggest problem, and they should be given the liberty to operate as they have for the past 200+ years.

Ms. Lou McCarthy, resident on Shelburne Road, felt like the City spent seven years on the Unified Development Ordinance and everyone should have to abide by them. We must have laws and abide by them.

Ms. Laurel Eide, representing her neighborhood, responded to Councilwoman Field's inquiry about office zoning. She suggested an amendment to the Unified Development Ordinance to make restaurants in the Office Business districts comply with the daylight hours of 7:00 a.m. to 7:00 p.m. With this change, the neighbors would not hear loud noises, music, loud cars and possibly intoxicated people.

Mr. Mickie McHaffee encouraged the people of the Christian community to work with City Council.

President of the Cloisters Homeowners Association urged City Council to proceed with revisiting the River District as it relates to the concerns of the people who live along the Swannanoa River.

Mr. Larry Holt, Realtor with Tessier Associates and Vice-Chairman of the Legislative Committee of the local Board of Realtors, passed out to Council an article entitled "Home From Nowhere" written by James Howard Kunstler and published in The Atlantic Monthly. He summarized the article by reading the following portion "Post-War urban and suburban development in the United States can be summed up as follows: almost everywhere laws have prohibited the building of the kinds of places in which human beings have traditionally felt good and can afford to live. We know enough now to begin designing our way our of this situation and some architects and planners are trying to do so." He also recommended the City review the City Plan prepared by John Nolan in the 1920's which point he makes is that we need to develop a sustainable City. The Board of Realtors stands ready to work with the City in working through some of the difficulties they have with the Unified Development Ordinance.

Upon inquiry of Ms. Carol Collins, member of the Community Council for Biblical Values, City Attorney Oast said that there will be at least two more opportunities for the public to comment on any proposed amendment to the Unified Development Ordinance relative to churches. One will be a public hearing before the Planning & Zoning Commission and the other will be a public hearing before City Council.

Ms. Collins encouraged the City make an effort to communicate with the religious community and the various churches making them aware of these meetings. She specifically asked that the Community Council for Biblical Values be given information on the meetings.

Upon inquiry of Mayor Sitnick relative to the number of comments from the community relative to the definition of church when the Unified Development Ordinance was being drafted, Mr. Green said that he did not recall a lot of comments during the public hearings. He said that a lot of the standards for churches grew out of the year or more that the Merrimon Avenue Baptist Church spent in mediation with representatives of the surrounding neighborhood. They were the ones that essentially drafted the definition and the standards for churches in residential areas. Those standards were first placed in the old Zoning Ordinance through an amendment to that ordinance. Then, they were placed verbatim in the Unified Development Ordinance. Again, since the church definition was not a "hot topic", the only meeting he recalled was where there were representatives from the neighborhood around the Merrimon Avenue Baptist Church to make sure that those standards remained in the Unified Development Ordinance.

Rev. Jerry Young, Trinity Baptist Church, felt that there weren't many comments about the standards for churches was because churches were not notified. He said the changes were made without notice to the churches. He said he worked with the Planning & Zoning Commission in 1993-1995 and with City Council on their project on Shelburne Road and they were never notified that there was any indication that the standards for churches would be changed. He questioned Planning & Zoning when the advertisements were done and when the churches were notified and they could not tell them. He said most of what was done regarding the Unified Development Ordinance was done without notice. He said the only thing that was done was a public advertisement. He said there was no notice given to property owners. He urged City Council to restore their rights as a church.

Mayor Sitnick said that she recalled the Unified Development Ordinance meetings were uniformly advertised. She said that maybe some press releases can be done that clearly state everybody is impacted in the community by the Unified Development Ordinance and we encourage everyone to attend the public hearings.

Rev. Randy Young, Pastor of Parkway Baptist Church, stated the following three primary concerns: (1) the present definition of church is a First Amendment violation because of the limitations placed upon them; (2) regarding a conditional use permit, it is not City government's place to tell the Church whether they can receive a permit or not receive a permit; and (3) limit of one sanctuary and one other building per parcel.

Councilman Sellers suggested Pastor Randy Young be considered as the third member for the religious organization to be on the small committee looking at the churches in residential areas. Mr. Green said that he would be happy to consider Rev. Young along with others who have been identified.

Ms. Barber Melton, Vice-President of the Haw Creek Community Association and Vice-President of the Coalition of Asheville Neighborhoods, said that the church seems to be concerned with their limitations on growth, but their growth is an infringement on the neighborhoods. Churches need to be treated like any other business that outgrows their parcel - they go to where a parcel is located where they are not taxing the infrastructure and not infringing on safety with traffic. They will support Council on a conditional use and they will try to help come to a peaceful solution. This does not only affect Trinity Baptist, it affects every neighborhood in the City and County as well.

Mr. Gene Covan, speaking on behalf of a local church, said that churches do a lot of good for a community but the laws will eventually start shutting churches down.

Ms. Ann Anderson felt that if the church doesn't have to obey the laws, then why should anyone obey the laws. Churches should set the example. She felt that churches should take a long hard look at how it's leading it's people to question laws that are trying to be fair to all people.

Mayor Sitnick closed the public hearing at 6:50 p.m.

Councilman Cobb said that it's a sad day when neighborhoods and churches don't get along. He said that everyone has rights and that the City should not be infringing on what the churches rights are. He said that Trinity Baptist Church, as far as he knows, has been a good neighbor for a lot of years. He hoped this can be resolved where everybody's right is protected.

Mayor Sitnick said that City Council and staff will welcome any comments as this process enfolds.

B. PUBLIC HEARING TO REZONE A PORTION OF PROPERTY ON TOLULA LANE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE BUSINESS

Mayor Sitnick opened the public hearing at 6:55 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Councilman Cloninger asked the City Attorney if there would be a conflict of interest for him since one of his partners in the law firm of which he is a partner in is married to a doctor who is also an owner in Victoria Investment Company. City Attorney Oast said that based on the information provided, he did not think were would be a conflict of interest. It does not appear to concern his own financial interest.

Mr. Mike Matteson, Urban Planner, said that this is the consideration of an ordinance rezoning a portion of property located on Tolula Lane from RS-8 Residential Single-Family High Density to Office Business District.

Victoria Investment Company is requesting a rezoning of a portion of a property on Tolula Lane from RS-8 Residential Single-Family High Density to Office Business.

The property totals approximately 2.3 acres, approximately 2 acres of which is requested to be rezoned. They have left out of their request a five foot strip along Tolula Lane and a ten foot strip along Choctaw Street. Both of those strips would remain zoned RS-8. The property is currently vacant and owned by the City of Asheville. Victoria Investment Company has an option to purchase the property. The topography of the site varies from sloping (from Tolula Lane) to nearly level. There is a stream which runs along the eastern boundary of the property, separating it from the commercial properties along McDowell Street.

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The RS-8 zoning district is a high density single-family residential district which permits residential development at a density not to exceed eight units per acre. The Office Business zoning district is intended for medium scale office uses and a limited range of business uses.

The Planning and Development staff is recommending denial of the rezoning request for the following reasons:

- Staff feels that introducing a commercial use or uses to the property would have a negative affect on the neighborhood, particularly the properties on the west side of Tolula Lane;
- The property and the existing trees which straddle the stream currently act as an effective buffer between the residential uses on Tolula Lane and the commercial uses on McDowell Street; and
- This is publicly owned property that has potential for future use as housing and/or public open space.

At their August 5, 1998, meeting, the Planning & Zoning Commission voted 5-1 to recommend denial of the rezoning request.

The petitioners have appealed the Planning & Zoning Commission's denial to City Council.

Councilman Tomes said that several years ago there were several black businesses and homes in that area. The City was moving through the urban renewal process and displaced all of the African Americans. Now the area has been taken over by commercial businesses and offices. He felt the City should stop infringing and uprooting African Americans and displaying them and then complaining because it becomes another slum area.

When Councilman Sellers asked if the City could put restrictions on the publicly owned property before it is sold, City Attorney Oast said that it is the City's property and one way that any property owner has to control the use of the property is to put deed restrictions on it, which we can do before it is purchased by Victoria Investments. The contract that we have with them right now does not contain that provision and if Council were to direct him to do that, the contract would have to be re-negotiated. Even so, they would still need the rezoning they are requesting and Council cannot condition their rezoning on that, but they can provide for limitations on the use of the property through private deed restrictions.

Upon inquiry of Mayor Sitnick about if the City could do a conditional use permit for the property to be used only for parking, City Attorney Oast said that many cities have conditional uses available for non-residential off-street parking in residential zones. He doesn't believe the City has that, but it is certainly possible to amend our ordinance to include that type of language. If Council is considering that, he recommended that Council do it with more in consideration than just this particular parcel because that would affect future uses.

Mr. Phil Carson, attorney representing Victoria Investment Company, said that in May Council approved an option to purchase this property. His client has consulted with several of the neighbors and recognizes that the neighbors do have very real concerns. Because the neighbors said they did not want any traffic coming off Choctaw, they purposely left a way that there could be no access from Choctaw. They also left a five foot barrier between Tolula Lane and the property so that there could never be any access from this property to Tolula Lane if you granted the rezoning request. Victoria Investment Company is a good neighbor to the St. John's Church of God where they share parking with the Church. They are now in negotiations with them to continue that good relationship. Victoria Investment Company does not want the property for anything but parking and Council has the ability to restrict the property for that reason. Council also has the ability to restrict the property in other ways that are reasonable, i.e. saving the trees. Their architect has prepared a plan to save those trees. He urged Council to rezone the property so the medical center can have a place for their staff and doctors and patients to park. They are willing to work with the City and the neighborhood.

Vice-Mayor Hay asked if when the deed comes back to the City, would his client be willing to grant back to the City an easement for greenway development through that property. Mr. Carson said that as long as it's reasonable, they would be glad to do that.

Councilman Cloninger asked if Council is looking to rezone the property, would the procedure be that we would rezone it contingent upon certain deed restrictions plus an amendment to the option agreement currently in effect between Victoria Investment Co. and the City. City Attorney Oast said that if that is the course Council wants to pursue, then he would recommend Council continue the rezoning for a month to allow staff to develop the changes to the contract. He reminded Council that they can't consider specific uses for any rezoning and if they do allow the presentation by the architect, he suggested Council limit their consideration of that as to whether they want to direct staff to re-draft the contract.

Mr. Robert Camille, architect representing the doctors at the Mountain Neurological Center and Victoria Investments, passed out a drawing of the proposed parking lot. He said that before they ever approached the City about purchase of this property, they tried to contact every house along Tolula Lane and spoke to four out of six people. They asked if they would have any objection to the proposed parking lot and if so, what their concerns were. He felt they have made a good faith effort to work with the neighbors in terms of what they would like to see. He said the parking on the drawing is strictly diagrammatic. He said surface does not have to be asphalt, the parking can be more free flowing and the trees can be interspersed into the parking lot. He said they would be willing to put those into the contract. He said they are trying not to impact the trees along the Nasty Branch Creek. They do plan to put a foot bridge across the creek which would benefit not only the doctors, but also the church next door. He said they would like to continue to work with the neighborhood and develop this plan in any way they think is acceptable.

Upon inquiry of Mayor Sitnick, Mr. Camille said that they are asking for approximately 42 additional spaces. He said that the Church is getting ready to tear down their existing church and build a new church. Their new church doesn't have enough parking to satisfy their zoning requirements and this parking would be important to them as well.

The following persons spoke against the rezoning for several reasons, some being, but are not limited to: the parking lot will ultimately destroy the community by taking away family oriented neighborhoods; a five foot buffer will not be enough space between the parking lot and the neighborhood (1) to control noise from the heating and cooling units, (2) to abate the heat from the asphalt parking lot, and (3) to buffer the excessive noise from the traffic on McDowell Street because the trees will be removed; the views will not be green for nature but concrete office buildings; all property on Asheland Avenue has been rezoned to allow offices and businesses and they do not want commercial and business to encroach into the neighborhood; the Victoria Investment Company has not yet replaced the trees taken down to build the present parking lot; there is a clear showing by the neighborhood that they do not want a parking lot on the property, even with restrictions; the neighborhood is well-kept; a parking lot will represent a foot in the door for more encroachment into the neighborhood; the quality of the neighborhood will not change for the better; Victoria Investments removed about 150 feet of mature trees that acted as an excellent buffer from McDowell Street; a parking lot will mean run-off of oil into the

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creek; there doesn't seem to be a need for additional parking now because there are a lot of vacant spaces in the present parking lots; the trees won't protect the neighborhood from the pollution; housing should be placed on the property; the neighborhood was not aware that a protest petition could be filed and staff should make an effort to inform people of their options; all the housing on Asheland Avenue is gone and the neighborhood does not want that to happen on Tolula Lane; and the African American neighborhood is well-established and the heritage should continue:

Ms. Shirley Young, East Riverside Urban Renewal Committee
Ms. Blanche Glenn, resident on Blanton Street
Mr. Gary Schwartz, property owner on Tolula Lane
Ms. Cynthia Steele, 317 Old Asheland Avenue
Mr. Brian Peterson, President of the Coalition of Asheville Neighborhoods
Ms. Clara Jeter, resident on Tolula Lane
Ms. Bishop, area property owner

Mr. John Silver, a partner in Victoria Investment Corporation, said that he felt they have done a good job with addressing some of the concerns the residents expressed, i.e., there is no access to Choctaw and they have kept a fairly significant buffer. He said they have put forth a significant effort financially and time-wise to preserve the original Sun Oil building and they will continue to keep this parking area as acceptable to the neighbors as they can.

At 7:32 p.m., Mayor Sitnick announced a short break.

Mayor Sitnick closed the public hearing at 8:03 p.m.

Councilwoman Field said that when looking for a connection between downtown and the river, she felt this property would be a good place for a greenway to be. She felt there should be creative ways to make this work. She sees this as an opportunity to use some paving tiles that grass can grow through, or the parking lot might be a playground for the children when the lot is vacant. She felt this was a zoning issue and not a racial issue. She asked that this matter be postponed until she has had an opportunity to visit the property.

Vice-Mayor Hay said that if Council decides to postpone the matter, he would like to see City staff put together an amendment to the option agreement that takes into account the concerns that Council wants addressed, so when it comes back for a vote, Council will have that option in front of them at the same time.

Upon inquiry of Councilman Cobb about the property being possibly used for a mini-park, City Attorney Oast said that when Council approved the option to sell the property that that question was put to the Parks & Recreation Department staff and they identified no need for it. Vice-Mayor Hay also noted that when Council checked about possible housing on the property, they were told that it had a very slim possibility of being used for housing.

Mayor Sitnick said that she had no problem with Council's request for a continuance in order to view the property, but just because the property exists doesn't mean it has to be built on and doesn't mean it has to be developed. As the property currently exists, it does seem like a good buffer between what is becoming a major thoroughfare and this neighborhood. She also pointed out that when the new McDowell Street bridge is completed, there is going to be an effort on the part of the N.C. Dept. of Transportation to re-route as much traffic off of Biltmore Avenue at the south end to McDowell Street and to make it a major connector to the downtown. That will significantly increase traffic on McDowell Street. When she visited the property she noticed that not only did the six residences on Tolula Lane have a chance of being heavily impacted by whatever happens on this piece of property, but the houses that share backyards with the houses on Tolula Lane will be severely impacted as well. She said that she would vote to deny the rezoning request for all the reasons she outlined, in addition to the Planning staff and the Planning & Zoning Commission's recommendation of denial.

Councilman Tomes said that he pastors in that area and is not trying to make this a racial issue, however, he has historical data and fact to back up his concerns. He felt that the property could be developed into a neighborhood park for neighborhood children. He will not support rezoning the property.

Councilman Field moved to continue this matter until October 13, 1998, without further advertisement, and that an amendment to the option agreement that takes into account the concerns that Council wants addressed be presented to Council at the same time. This motion was seconded by Councilman Cloninger.

City Attorney Oast said that he will have the amended option before Council on October 13, however, because this is an upset bid process, there may be an additional advertising time after that.

Councilman Cloninger hoped that the potential amended option would be a result of meetings which take place between the neighborhood and the architect. He did stress that City Council is not prepared to approve an amended option with deed restrictions, but just that Council just wants to look at it as a potential option.

City Attorney Oast said that any vote that Council takes now or in the future would be to rezone and not to rezone for a particular use, however, you can deed restrict it. He said that he would draft the deed restriction to run with the land.

The motion made by Councilwoman Field and seconded by Councilman Cloninger carried on a 6-1 vote, with Mayor Sitnick voting "no".

C. PUBLIC HEARING TO REZONE 196 DEAVER STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II

Mayor Sitnick opened the public hearing at 8:15 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of a request to rezone 196 Deaver Street from RM-8 Residential Multi-Family Medium Density District to Community Business II.

A petition has been received to rezone 196 Deaver Street (PIN No. 9638.15-74-0519) from RM-8 Residential Multi-Family Medium Density District to Community Business II.

The Technical Review Committee (TRC) reviewed this request and commented that direct access to this lot was from a 10 foot wide residential street with no right-of-way for widening. The street is not adequate to handle the traffic flow that may be generated from the permitted uses in the Community Business II District. The intersection of Deaver Street and Howard Street has sight distance limitations. Water service is inadequate and sanitary sewer service is not available for Deaver Street. The lot size is 0.25 acre.

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The lot is currently being used for commercial parking from the business that fronts on Haywood Road. A mixture of commercial and residential structures exists in the surrounding area.

The Planning staff reviewed the rezoning request and recommended denial based on the comments from the TRC. At their August 5, 1998, Planning & Zoning Commission meeting, the Commissioners voted unanimously to recommend denial of the rezoning of 196 Deaver Street from RM-8 Residential Multi-Family Medium Density District to Community Business II.

The petitioners appealed the Planning & Zoning Commission to City Council.

Mayor Sitnick closed the public hearing at 8:18 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cobb moved to deny rezoning 196 Deaver Street from RM-8 Residential Multi-Family Medium Density District to Community Business II. This motion was seconded by Councilman Tomes and carried unanimously.

D. PUBLIC HEARING TO REZONE FOUR LOTS ON LOUISIANA AVENUE FROM COMMUNITY BUSINESS I TO HIGHWAY BUSINESS

ORDINANCE NO. 2512 - ORDINANCE TO REZONE FOUR LOTS ON LOUISIANA AVENUE FROM COMMUNITY BUSINESS I TO HIGHWAY BUSINESS

Mayor Sitnick opened the public hearing at 8:19 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of an ordinance to rezone four lots on Louisiana Avenue from Community Business I to Highway Business.

The owner/applicant Emmett Ramsey has requested four lots (PIN Nos. 9638.05-18-9647, 9794, 9933 and 9638.05-28-0885) on Louisiana Avenue be rezoned from Community Business I to Highway Business.

The Technical Review Committee reviewed the request for rezoning to Commercial Business II (which was the initial rezoning request) and commented that direct access to these lots would be from Louisiana Avenue and the street is currently inadequate to handle the traffic flow that exists. It should be noted that uses in the Highway Business District would be more intense and comments from Technical Review Committee on the previous request would be relevant to this request. To increase the volume of traffic that would be generated from the permitted uses in either Community Business II or the Highway Business District would require the developer to make improvements to the infrastructure (street). Since Louisiana Avenue is a state street, the N.C. Dept. of Transportation was contacted and the Transportation Improvement Plan indicates that Louisiana Avenue is just under a feasibility study and there is no target date for doing any widening. The property was zoned Commercial Highway prior to the adoption of the Unified Development Ordinance.

The petitioner indicates that if his lots were rezoned to Highway Business, it would permit him to construct a warehouse for storage of equipment for repair and servicing of manufactured homes and decrease his truck deliveries from 1 - 2 trucks per day to 1 - 2 trucks per month (or about 220 truck deliveries per year).

The Planning staff reviewed the rezoning request and recommended denial based on the comments from the Technical Review Committee. At the August 5, 1998, Planning & Zoning Commission meeting, the Commissioners voted to table any action until their September meeting and have staff review the Highway Business District with the petitioner. Staff met with the petitioners on site on September 1, 1998, and reviewed the uses allowed for he various zoning classifications. At the September 2, 1998, Planning & Zoning Commission meeting, the Commissioners voted 4 to 2 to recommend approval of the rezoning to Highway Business.

Mr. Emmett Ramsey, petitioner, spoke in support of the rezoning so he can expand his business and build a warehouse. He stressed that when the warehouse is built, the number of trucks that travel on Louisiana Avenue coming and going from his business would be decreased.

Councilman Tomes asked if the warehouse were built, would it have to conform to the neighborhood. Mr. Ownbey responded that Mr. Ramsey would have to submit a site plan for a Level I review by the Planning & Development Department, which would include a review for buffering, parking, etc. Due to the topography, you would not be able to see the warehouse from the street.

Mr. Brian Peterson, resident in West Asheville, urged City Council to contact the N.C. Dept. of Transportation and urge them to start making improvements to Louisiana Avenue as well as Hazel Mill Road and Emma, because of more and more development in the area.

Mayor Sitnick closed the public hearing at 8:37 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2512. This motion was seconded by Councilman Tomes.

Mayor Sitnick said that whether or not City Council rezones this property, the City Council should make a request to the N.C. Dept. of Transportation that they look at improvements to Louisiana Avenue as soon as possible.

City Attorney Oast reminded Council that if the property is rezoned, it is being rezoned to allow all uses available in the Highway Business District.

The motion made by Councilman Sellers and seconded by Councilman Tomes carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 144

E. PUBLIC HEARING TO REZONE 1720 AND 1724 OLD HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE DISTRICT

ORDINANCE NO. 2513 - ORDINANCE TO REZONE 1720 AND 1724 OLD HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE DISTRICT

Mayor Sitnick opened the public hearing at 8:37 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of an ordinance to rezone 1720 and 1724 Old Haywood Road from RM-8 Residential Multi-Family Medium Density District to Office District.

The owners/applicants Phyllis Patton/Betty Boyte, William Godfrey and William Taylor have requested 1720 and 1724 Old Haywood Road (PIN Nos. 9628.17-22-0183 and 2095) be rezoned from RM-8 Residential Multi-Family Medium Density District to Office District.

During the Planning staff review, discussions indicated that this area has begun its transition from the rural residential area to non-residential uses. With the development of the Lowe's superstore directly adjacent to these lots, the Office District would provide a transitional zoning pattern between the new commercial development and the established residential area.

The Planning staff reviewed the rezoning request and recommended approval. At the September 2, 1998, Planning & Zoning Commission meeting, the Commissioners voted 5-1 to recommend approval of the rezoning request.

Mayor Sitnick closed the public hearing at 8:42 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2513. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 146

F. PUBLIC HEARING TO CONSIDER A MODIFICATION OF THE SUBDIVISION STANDARDS FOR A NON-RESIDENTIAL SUBDIVISION IN ORDER TO PERMIT MORE THAN FIVE LOTS TO BE ACCESSED BY A PRIVATE DRIVE FOR CENTREPARK BUSINESS PARK LOCATED ON PINEY MOUNTAIN ROAD

Councilwoman Field asked if she had a conflict of interest because one of the owners, Mr. Johnson, occupies the same building as her employer. City Attorney Oast said that he felt there was no conflict of interest.

Councilman Cloninger asked to be excused from voting due to a conflict of interest because the firm of which he is a partner in is doing the real estate work for Centrepark Business Park. Therefore, Councilman Sellers moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

Mayor Sitnick opened the public hearing at 8:44 p.m.

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City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of a modification of the subdivision standards for a non-residential subdivision in order to permit more than five lots to be accessed by a private drive for Centrepark Business Park located on Piney Mountain Road.

The applicant/owner Danie Johnson/R.L. Coleman have requested a modification of the subdivision standards in order to provide additional lots for the development of the business park. The project was reviewed by the Technical Review Committee at their meeting on August 17, 1998. The petitioner outlined the 1994 group development known as Park Terrace East which indicated twelve separate buildings within the business park. After review, the Technical Review Committee recommended approval of the subdivision modification for a maximum of twelve lots.

The Planning staff reviewed the request and after review by the Technical Review Committee, recommends that the modification to the subdivision requirements be approved for a maximum of 12 lots. At the September 2, 1998, Planning & Zoning Commission meeting, the Commissioners voted unanimously to recommend the subdivision modification for a maximum of 12 lots.

Mr. Danie Johnson, architect and representative of the owners of the property, spoke in support of the modification request.

Mayor Sitnick complimented the developer, builder and architect for working with the neighborhood before any problems existed.

Mayor Sitnick closed the public hearing at 8:50 p.m.

Councilman Cobb moved to approve a modification of the subdivision standards to permit for a maximum of 12 lots to be accessed by a private drive for Centrepark Business Park. This motion was seconded by Councilman Tomes and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 2514 - ORDINANCE AMENDING THE MEMBERSHIP OF THE ASHEVILLE FILM BOARD

RESOLUTION NO. 98-144 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE FILM BOARD

Mayor Sitnick said that on April 28, 1998, City Council adopted Ordinance No. 2465 establishing an Asheville Film Board. Councilman Cloninger was appointed as the member of City Council to the Board to serve a three year term.

On August 25, 1998, City Council interviewed Sarah Blankenship, Eric Scheffer, David Quinn, Lee Huebner, Peter Loewer, Curtis Gaston, Barbara Pasternack, Lee Nesbitt, Pam Turner, William Olsen and Gayle Wurthner.

On September 8, 1998, City Council interviewed Kathleen Bobak, John Cram, Rob Dame, Ashely Siegel, Jerry Birdwell, Bill Norwood and Katherine Talbot.

Mayor Sitnick said that the idea to establish an Asheville Film Board was (1) to have local board members to work hand-in-hand and in cooperation with the Western North Carolina Film Commission and the N. C. State Film Commission. It has also been formed in order for the City of Asheville to create a board of people in our community to act as liaison to film crews that come to Asheville, either to film movies, television shows or commercials, and to act as ambassadors on behalf of the City to that industry. We hope (1) with time we will be able to do more marketing of the City of Asheville for the film industry; (2) to be able to do more of a aggressive job of recruiting films to the City of Asheville, again, working with the regional and state film commissions; (3) at some point to get a private developer to build and establish a film studio here, a post-production facility, so that as film crews come to Asheville to do their outdoor and indoor shots they can also consider wrapping their films here instead of taking their crews back to California or New York and wrapping them there; (4) at some point, to be to create a resource guide that specifically establishes the entities within the City that are here to work hand-in-hand with the film industry whether it's catering facilities, limousine facilities, seamstresses, costume makers, make-up artists, etc. There is that opportunity, again, to work with the regional commission to develop that resource guide; (5), in the future, to maybe lure a television series here, like Northern Exposure; and (6) to be able to also work with the local schools, the high schools and colleges in the region, to establish some training and some workshops for screen writers and scrip writers and actors and technicians. The movie industry has become very high tech, so we hope that becomes a part of our efforts. There are other things as time goes on, but those are the basic reasons for the City Council to establish an Asheville Film Board. She thanked the Council for their support of it.

She said that there were over 53 applicants for this Board and City Council interviewed 18 people for the Film Board. Council was quite amazed at the talent and the pool of people that exist in Asheville, who are currently working full-time in the film industry and who have relocated to Asheville mainly because they fell in love with Asheville. In an effort to help form this Board, she and Councilman Cloninger met and reviewed the applicants and the interview process. They have created a slate that they would like to recommend City Council. Their slate consists of: Kathleen Bobak, Ashely Siegel, Jerry Birdwell, Bill Norwood, Eric Scheffer, David Quinn, Peter Loewer, Curtis Gaston, Barbara Pasternack, Lee Nesbitt, Pam Turner, and Gayle Wurthner.

City Attorney Oast said that if there was an even number of the Board, City Council should designate that a quorum would be, in this case, seven or eight - either 50% of the Board or 50%-plus one.

After a short discussion, it was the consensus to add Katherine Talbot to the slate. It was also the consensus to add Mr. Steven Heller (who was unable to come in for an interview) to the slate as well.

Councilman Cloninger moved to expand the membership of the Asheville Film Board from seven members up to fifteen members. This motion was seconded by Councilman Sellers and carried unanimously.

It was the consensus of Council to leave the quorum at a simple majority, which would be eight on a fifteen member board. City Attorney Oast said that when the Board adopts their own rules or by-laws, they should state that on votes a simple majority would prevail.

City Attorney Oast also said that the terms of office in the ordinance are staggered, and City Council will need to determine who will be given three year terms and who will be given two year terms.

Councilman Cloninger moved to appoint seven members shall be appointed to serve a two year term and eight members shall be appointed to serve a three year term, to be decided by the Board at its first meeting and to advise the City Clerk when the terms are assigned. This motion was seconded by Councilman Tomes and carried unanimously.

Councilman Tomes moved to approve the slate recommended by Mayor Sitnick and Councilman Cloninger. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 14

ORDINANCE BOOK NO. 17 - PAGE 148

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 8, 1998, AND THE WORKSESSION HELD ON SEPTEMBER 15, 1998

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on September 8, 1998, and the worksession held on September 15, 1998. This motion was seconded by Councilman Cobb and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the week of September 4-10, 1998: Delbert Tochterman (Traffic Engineering), Robert P. Anderson (Streets), Bernice Hammonds (Water), William Campbell (Water), Melba Wilson (Sanitation) and Linda Mitchell (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. DEFINITION OF CHURCH IN THE UNIFIED DEVELOPMENT ORDINANCE

Rev. Jerry Young, Trinity Baptist Church, asked if one of the members of City Council would sponsor one of the three definitions of church, referred to in the letter Mr. Payne sent to the City Attorney, as an amendment to the Unified Development Ordinance ("UDO") thus expediting the process of resolving the issue concerning churches.

City Attorney Oast said any amendment to the UDO has to be reviewed by the Planning & Zoning Commission first. City Council cannot act on it independently. He also said that a member of Council may direct staff to introduce amendments to the UDO.

Councilman Cloninger felt the small committee, which will be looking at the entire subject of churches in residential areas, should look at all three definitions in addition to any other definitions.

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Councilman Sellers asked if there was some way the definition of church issue can be addressed separately from the churches in residential areas issue.

In response to Councilman Sellers' request, Rev. Young said that they understand what they are presently doing, they have full authority to do and they intend to continue their grading and develop the site. However, until the issue is settled, they are not sure if they want to spend $3 Million for another building if they can't other buildings on the site. If the definition of church is left to the small committee to decide, debate, and come back, and have another hearing on, then it just strings them out further and increases the anxiety in their congregation. He said that Rev. Sexton pleaded with Council to not put Trinity Baptist Church in the place that they would have to seek legal action to solve the problem. He urged City Council to adopt one of the three definitions presented earlier by their attorney.

Councilman Cloninger didn't understand how a definition change would change the situation of Trinity Baptist Church since their rezoning request was denied. Rev. Young replied that if Council changes the definition of what a church it, it lifts the restrictions against day care, educational facilities and recreational facilities.

City Attorney Oast said that it is not required that City Council initiate text amendments, the Church can do that itself. They have to go to the Planning Department and fill out the appropriate form. However, he said that he cannot guarantee that it will come before City Council any quicker than it would otherwise.

Councilman Sellers said that if the definition were changed, he understands that Trinity would relax the lawsuit process. He said that since they are talking about spending $3 Million today, but their overall 5-10-20 year plan is a $16 Million plan. They don't want to put $3 Million in not knowing if they can go with the $16 Million plan. He thinks that if they can feel comfortable with the definition, they would feel better to go on with their project.

City Attorney Oast said he received the proposed definitions on Thursday or Friday and they have not had an opportunity to go through them to see whether they would accomplish what the Church wants to or not. The issue all along has been what non-worship type of activities the ordinance permits on church property if its in a residential neighborhood. He thinks what the church wants is a broader definition than currently exists in the Code.

Councilwoman Field said that day care is allowed in residential districts limited in size, recreational areas are allowed in residential areas and schools are allowed in residential communities by either conditional uses or uses by right subject to special requirements. She then asked the City Attorney if he had any opinion on whether any of the definitions submitted by Mr. Payne are part of the statutes. City Attorney Oast said that doesn't doubt that any of them are part of the statute, however, they are part of the tax statutes which have different consequences, than zoning ordinances.

Upon inquiry of Councilman Tomes about expediting the process with the definitions presented by Mr. Payne and the forthcoming legal memorandums, City Attorney Oast said that he would want to do his own research on this issue, however, any information he receives will be helpful.

When Councilman Tomes asked what some options would be to expedite the process, City Attorney Oast said that it is possible for City Council or Trinity Baptist Church to initiate a zoning ordinance text amendment that would put it on a separate tract from the UDO amendments Council directed Senior Planner Gerald Green to begin working on earlier, and it may be a faster tract.

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Rev. Young requested that City Council initiate the text amendment because he felt the Planning & Zoning Commission would respond quicker to City Council than to the Church.

Councilman Cloninger said that he could not knowledgeably recommend one definition over another at this meeting.

Councilman Cobb wanted City Council to define church and send it to the Planning & Zoning Commission.

Councilwoman Field agreed that one of the serious problems is the definition of church and Councilman Tomes indicated that the activities and the ministries of church are changing. She wanted to move forward as quick as possible to get this resolved. Therefore, she moved to direct the staff to come back to City Council at a worksession with a recommendation on the best way to move this forward as quickly as possible. This motion was seconded by Councilman Tomes.

Mayor Sitnick said that since the next meeting of Council is a community meeting and since City Council wants to do this as quickly as possible, she suggested the City Attorney to create some language and that he fax it to the members of Council. City Council can then get back to the City Attorney with their thoughts and opinions on that language. Then, the City Attorney can have the language prepared and at least seen by Council prior to the meeting in two weeks, which may occur around the same time the small committee will be meeting.

Rev. Young said that they are spending thousands of dollars to have this matter researched and the definitions presented by Mr. Payne are the definitions for churches that have existed. He questioned what is unique to Asheville that they cannot agree on one of the three definitions.

Councilman Cloninger reminded Council that if any amendments are made to the UDO that the amendment will pertain to all churches, not just one. He felt that it would be quicker if Council tells the small committee to look at all three definitions along with anything that staff may recommend.

Councilwoman Field said that after talking with Planning staff, they feel that their definition of church is what they want it to be. They have checked with other definitions in other development ordinances in the state and they feel like their definition is fine. Their concern is that if you allow churches to be defined as having activities such as day care or recreation that are done by the for-profit sector, that the non-profit sector will have an advantage over the for-profit sector. She personally believed that churches do more than that, but if it is sent to the staff, it would come back to City Council basically the way that it is now. She suggested that the City Attorney look at it and not staff and not a committee.

Councilman Tomes said that if you look at church as a business entity in the context that we understand secular businesses, we will never come to a definition of a church. You cannot look at the church in the context as we look at secular business. He stressed that we are dealing with spiritual concerns here that may include business skills and management, but it is not a business in the sense as we understand business in the American culture.

Mayor Sitnick said that she understands the biggest concern is expediency as it addresses the language that the Church would like to see addressed. This will take a specific amount of time and it's not going to take any more time than necessary because this Council and staff has been working very hard to create some kind of way for Trinity and other churches to do their business while taking care of our neighborhoods as well. Our purpose is not to delay this or to keep Trinity waiting or paying attorney fees. We would hope that the Church would allow City

Council the little bit of time they need to come up with the proper group to work this out. Council can't do this tonight and if a member of Council wants to sponsor the request that Rev. Young is making, she will ask Council to do that now. Otherwise, let's ask the City Attorney to come back to Council with some kind of language and let the small committee come up with some kind of language. Then Council can review them both and come up with some language that is good for everybody. She did not think it could happen any sooner than two or three weeks anyway - no matter how it's done.

Rev. Young said that he was not concerned with two or three weeks, but he was concerned with three months to a year later, noting that this is what the Church asked for back in January.

Councilwoman Field said right now Trinity Baptist believes they are operating illegally because what they do is not as defined in the UDO. However, they are grandfathered in.

When Rev. Young suggested that the City tell their code enforcement offices that the Church is grandfathered, City Manager Westbrook responded that the letter received from the City to Trinity Baptist Church was responding to complaints from neighbors. One of the zoning enforcement officers called the Church and asked if they were doing some of the activities the neighbors alleged. The Church responded that they were. The letter from the City to the Church asked that they clarify exactly what they were doing because that was not allowed in the current zoning classification.

Councilwoman Field clarified her motion to direct the City Attorney to come back to City Council with a recommendation on the best way to move this forward as quickly as possible, whether he recommends that we do all the church issues at one time, that City Council should define church and send it to the Planning and Zoning Commission, or that the small committee should deal with these issues.

Vice-Mayor Hay and Councilman Cloninger said that they would vote against the motion because they believe that the small committee process will be just as expeditious and will give Council better results than being on two different tracts at the same time.

Councilman Cobb said that in the 2010 Plan, the church is defined as a private non-profit, tax-exempt institution devoted solely to religious purposes.

The motion made by Councilwoman Field and seconded by Councilman Tomes carried on a 5-2 vote with Vice-Mayor Hay and Councilman Cloninger voting "no".

B. REQUEST FOR NON-ENFORCEMENT OF LAWS CRIMINALIZING CANNABIS USERS

Mr. Dan Waterman, speaking on behalf of a group of concern citizens, addressed the issue of violation of their constitutional rights at the August 25, 1998, City Council meeting. He offered Council the option of placing their issue on the next open City Council's agenda.

When Mayor Sitnick asked what they wanted placed on the agenda, he responded that they wanted their resolution they presented to City Council on August 11. Mayor Sitnick said that she is not willing to place that matter on the agenda and when she asked other members of Council if they were willing to place it on an agenda, she heard no response.

Mr. Waterman said that their constitutional rights were violated on August 25, 1998, when they gathered at the Vance Monument in preparation to attend the City Council meeting. There were a large group of Asheville police officers there, one of which was filming them. They

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marched from the Monument to the City Hall Building. Because of the large group of people at the meeting on a separate issue before Council, the Fire Marshal stated that some people would have to leave the floor. Realizing that they were going to be recognized at the end of the meeting, they volunteered to move downstairs. While in front on the City-County Plaza, they were filmed by an undercover officer who later followed the group into the Council Chamber and filmed them there. He said that he went up to the officer and obstructed the view of his camera and the officer threatened him with arrest for obstructing and impeding an investigation. When he inquired who was being investigated, the officer remained mute. Since that time, they have inquired at the Police Department if there was an investigation going on and the Police Department claims there was no investigation. The Police Department said that officer was there to ensure their safety. He noted that the other group of people at the Council meeting that night were not being filmed.

Mr. Waterman said that this is the third time they have appeared before Council and asked for a response from Council. Even if Council does not agree with them, they certainly deserve to hear Council's voices and they have not heard them. They are tired of trying to elicit those voices from them. Because City Council has failed to respond to them, they have had to enlist legal help and hire legal counsel. City Council has the resolution, the information they have previously furnished to Council on cannabis, as well as their concerns. They have not received one indication that City Council is concerned with their concerns - not that Council is in agreement with their concerns, but just that Council is concerned with their concerns. They are giving City Council an opportunity, again, to respond to their resolution and concerns. If City Council cannot pass their resolution, then they asked that City Council come up with an alternative way in which the Council can work with them and expand the dialog that they have opened up as far as their concerns. If City Council fails to respond to them, their next step will be to advise their legal counsel to draft a list of demands which will be sent to City Council. If Council fails to respond to their demands promptly and properly, it will cause them to take the other legal options that they have at their disposal. He said that any average citizen, especially with the topic as controversial as theirs, who shows up to give voice to their concerns and finds that they are put under the unfair and unbalanced scrutiny of the Asheville Police Department and filmed, might be deterred from exercising their right to free speech, their right of assembly, and their right to redress grievances. He did note that he was a former guardian ad litem but he was not willing to divulge where because apparently someone has been investigating him.

Mayor Sitnick said that a number of weeks ago, Mr. Waterman called and said they wanted to come in and speak with her because they wanted to introduce this resolution to Council. She explained why it took three weeks to get an appointment with her, noting that she is booked well into 1999. She also requested the City Manager block out an hour of his time as well to meet with them as well. She said Mr. Waterman, along with three or four other people, met in her office and talked about this resolution for an hour. Their voice was heard. Mr. Waterman's second statement was that City Council failed to respond - that we didn't have to agree with the group or adopt the resolution, but at least you wanted Council to respond. She said that the City Manager and her were very clear with them that day and they did respond to them. They were told that they did not chose to put this item on the City Council agenda for several reasons and she was very clear about those reasons. This City Council and this City did not have the authority to do what they were asking, nor would they ask the City's law enforcement officers to discriminate in the enforcement of the law. In Mr. Waterman's statement on why the City couldn't come up with suggestions, she noted that not only did they come up with several suggestions at the meeting in her office on that day, but at the first meeting when the group came to City Council, they came up with some suggestions. She has talked to a number of people who were there that night and who spoke, and have given them suggestions as well. As a matter of fact, several of them have come to her and said they didn't know why people were continuing to pursue this in front of City Council. She said that she believes so strongly in democracy that even though she didn't want to put it on City Council's agenda, she suggested that if Mr. Waterman could approach each Council member and if he could get a majority of them to agree with him, she would place it on the agenda.

Upon inquiry of Mr. Waterman on if City Council used this procedure in the past, Mayor Sitnick could not recall a specific instance, but did remember there were a couple of times when City Council didn't want to hear something unless there was a majority of Council who were interested. In fact, there have been Mayor's over the years who wouldn't put anything on the agenda unless there was a majority of Council interested in dealing with the issue.

Mr. Mickie McHaffee said that as a result of this issue being brought up, the downtown street people are taking the brunt from the Asheville Police Department.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:58 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - September 29, 1998
Skyland Volunteer Fire Department
9 Miller Road

3:30 p.m. - Community Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Council M. Charles Cloninger

The following topics were raised by residents and addressed by City Council and City staff: opposition to annexation in the south; numerous curb cuts on Hendersonville Road; request for sidewalks on Hendersonville Road as well as pedestrian friendly areas; speed limit on Hendersonville Road is too high; grading by Fugazy Travel is getting worse; lighted sign at 1700 Hendersonville Road is out of compliance; noise from cleaning K-Mart Shopping Center parking lot at night and noise from bar near K-Mart is disturbing homes in the Crowfields development; sanitation workers leave garbage cans in the streets; dead animals need to be picked up near the Parkway entrance on Hendersonville Road; request to help City combat litter; I-26 Corridor should be built out of town; and noise from CP&L plant is very disturbing to those who live near the plant.

Mayor Sitnick adjourned the meeting at 5:00 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

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Tuesday - October 6, 1998- 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger (arrived at meeting at 3:30 p.m.); Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Blanket Easement to Carolina Power & Light Company for Rankin Heights Subdivision

Summary: The consideration of a resolution authorizing the Mayor to convey to Carolina Power and Light Company (CP&L) a blanket easement for the installation and maintenance of electric facilities necessary to provide service to Rankin Heights Subdivision.

Rankin Heights Subdivision is located at the intersection of Stewart Street and Kentucky Drive and consists of seventeen residential lots being developed for single family home ownership.

In order to install underground electric service to all seventeen homes to be constructed in the subdivision, CP&L has requested a blanket easement. The proposed blanket easement will enable the facilities to be placed in "mutually suitable locations." The actual locations will be determined between the owner and CP&L at the time service facilities are installed.

Approval of the resolution will authorize conveyance of the easement to CP&L for the installation and maintenance of electric service facilities.

Community Development staff recommends adoption of the resolution authorizing the Mayor to convey to CP&L a blanket easement for the installation and maintenance of electric facilities necessary to provide service to Rankin Heights Subdivision.

VA Fire Protection Agreement

Summary: The consideration of a resolution renewing Oteen VA Medical Center's fire protection contract with the City of Asheville for a term of up to three years.

For more than fifteen years, the City of Asheville has furnished fire protection services under contract to the Oteen VA Medical Center. The present contract for such services will expire in October. VA Medical Center staff have requested renewal at the same terms presently in place—a payment of $30,000 per year for Asheville Fire Department fire response, fire prevention activities and fire safety education for VA staff.

Oteen VA Medical Center has petitioned City Council in previous years for annexation, so that full City services would be available to the VA Medical Center at no cost to the Center. The present contract—and the proposed contract—provide for termination of the contract if annexation of the Oteen VA Medical Center were to occur.

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City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a new fire protection contract with the Oteen VA Medical Center.

Budget Amendment relative to Senior Center Appropriations

Summary: The consideration of a budget amendment, in the amount of $13,514, to establish a budget for funds received from the North Carolina General Assembly for improvements at Harvest House and the Senior Opportunity Center.

The Senior Center Appropriation is designed to provide funds to senior centers throughout North Carolina for a variety of services including capital improvement, supplies, equipment, and staff. The funds will be used at the Harvest House to remodel the reception area and office, and to renovate two outdoor shuffle boards and shelters. Senior Opportunity Center will purchase a new ceramic kiln and commercial kitchen equipment to update the existing kitchen.

The Parks and Recreation Department staff recommends City Council accept the legislative appropriation for improvements at Harvest House and the Senior Opportunity Center.

Budget Amendment relative to Master Street Tree Plan, Phase I

Summary: The consideration of a budget amendment in the amount of $9,873 to establish a budget for funds received from the N.C. Dept. of Environment and Natural Resources for the development of a Master Street Tree Plan, Phase I.

The Parks and Recreation Department is responsible for developing a Master Street Tree Plan (MSTP) for street trees on City rights-of-way located within the City limits of Asheville. The existing inventory is almost fifteen years old and no longer accurately reflects the trees of the City. Phase I of the process will specifically identify the location, size, condition, and site conditions of trees located in the central area of Asheville. The MSTP will help serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community organizations.

If funding is available, future phases of the Master Street Tree Plan will identify the location, size, condition, and site conditions for street trees in the north, west, south, and east areas of Asheville.

The Parks and Recreation Department staff recommends City Council accept the grant funds for the development of the Master Street Tree Plan, Phase I.

Budget Amendment relative to Establishing a Project Budget for Heating, Ventilation & Air Conditioning System at Shiloh Community Center

Summary: The consideration of a budget amendment, in the amount of $30,000, to establish a project budget for replacement and/or improvement to the Heating, Ventilation and Air Conditioning (HVAC) system at the Shiloh Community Center.

In a prior budget year, City Council appropriated $30,000 to the City's Capital Reserve Fund for Parks & Recreation to undertake various HVAC replacement and improvement projects. Thirty thousand dollars was then transferred from the Capital Reserve Fund to the City's General Capital Projects Fund to provide funding for HVAC projects. To officially appropriate the cash received from the Capital Reserve Fund, and to properly establish an

HVAC project budget, a budget ordinance amendment authorizing a $30,000 increase in budgeted revenues and expenditures in the General Capital Projects Fund needs to be approved by City Council. This is not a request for additional funding since funds were initially authorized and budgeted in the City's Capital Reserve Fund.

The Parks and Recreation Department requests City Council amend the City's General Capital Projects Fund by appropriating revenues and expenditures in the amount of $30,000 for HVAC replacement and improvements at the Shiloh Community Center.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

ECONOMIC DEVELOPMENT THROUGH HISTORIC PRESERVATION

Ms. Pam Nickless, Professor of Economics at UNC-Asheville and member of the Historic Resources Commission, explained that the historic preservation movement is well known for its efforts to preserve old buildings and historic neighborhoods, but there is more to the preservation movement than preserving the historical and architectural resources of our community. Less understood is the impact of historic preservation on economic development. While the foes of preservation often paint us as anti-development or anti-growth, the economic impact of preserving historic neighborhoods and buildings is often overlooked. A 1997 study commissioned by Preservation North Carolina found that the economic impact of preservation is both positive and substantial. In summary of those study results, she briefed Council on some of the benefits of preserving our built environment to North Carolina, Asheville, and Buncombe County.

Impact on Tax-Base

Perhaps the simplest and easiest way to assess the impact of preservation is to take a good look at the increase in property values in the historic districts. Residential properties in Montford show significant increases in appraisal values after renovation. In addition, as renovation and increases in property values occur, new construction takes place on once vacant lots further increasing the tax base. Of particular interest is the commercial development taking place in Biltmore Village. Development here was clearly influenced by the creation of a historic district. Property values on Boston Way increased by incredible 248% from 1990-98 while the lowest increase (Brook St.) was a respectable 49%. Even a casual drive through the area will reveal a vibrant commercial district in sharp contrast to even fifteen years ago.

Studies consistently show that not only does designation as an historic district increase property values, it consistently encourages reinvestment.

Job Creation

By any measure, historic preservation "excels as a creator of jobs and as a generator of local economic growth." According to Rypkema's study of the impact of preservation in NC, "a million dollars spent in rehabilitating an older building creates 41.4 jobs--22 in the construction industry and 19 elsewhere in the economy." That's 5.5 more jobs than the same amount spent on new construction. Too often people think rehabilitation projects add more jobs to the economy because they are more expensive but this is not so--rehabilitation adds more jobs because it is more labor-intensive, not because it costs more! (Often rehabbing an old building is cheaper than tearing down and re-building.) The additional jobs are created because rehabilitation relies on local craftspeople and suppliers. With new construction, there is more off-site assembling that uses fewer workers and much of this off-site work is done out-of-town or even out-of -state. The benefits also go beyond the construction trades to local architects, engineers and designers.

Historic preservation also creates more household income for North Carolina residents than dollars spent on new construction. When local craftspeople or architects or engineers are employed, the dollars they earn are spent in the community generating more income for the people from whom they buy their groceries, cars and shoes. (Economists call this the multiplier effect--every dollar spent generates more dollars in income and the effect is multiplied through the economy.) Because rehabilitation creates more jobs locally, the impact of a million spent on rehab will create more household income than a million spent on new construction.

For Asheville, the creation of jobs in tourism is also of great importance. Historic preservation attracts tourists. To put it bluntly, we sell our historic community to tourists. Two studies prepared for the Asheville Area Chamber of Commerce in 1996 and 1997 point to the importance of historic sites for visitors to Asheville and Buncombe County. To quote from the study by Arthur Anderson "The primary purposes for travel to Asheville are for crafts, history, architecture, nature, fall foliage, the Biltmore Estate..." In 1996, according to D.K. Shifflet and Associates, 39% on the visitors to Asheville listed visiting historic sites as a reason for their visit. This was the reason most given and it is increasing in importance. Over and over both studies argue that Asheville's strengths include her built environment. Specifically both studies cite the revitalization of downtown, Biltmore Village, the Grove Park Inn and, of course, the Biltmore Estate as reasons people come and return. These are all historic preservation projects! In addition in the winter season when tourism declines, the visitors still attracted to Asheville are primarily here to visit historic sites. These visitors also spend more money since they tend to be college-educated couples. Preserving our historic community is absolutely necessary if we are to continue to attract tourism.

Another important reason folks come to Asheville and Buncombe County is crafts. The HandMade in America project has garnered nation-wide attention. While the craft industry is not strictly speaking historic preservation, the preservation of traditional crafts and historic buildings and communities often go hand in hand. HandMade in America not only includes historic sites and lodging in their The Craft Heritage Trails of Western North Carolina, they are also working on a pilot program with four historic mountain towns that will use a preservation-based downtown revitalization strategy.

The topic of job creation would be incomplete without a mention of the film industry. North Carolina leads the nation in film industry growth and several films have been shot in Asheville. "The film industry comes here for films that need period towns and buildings." Our historic buildings and neighborhoods are an important, money-making asset.

Tax Credits and Economic Revitalization

Of great importance to the economic revitalization of historic buildings has been the use of the Federal Historic Rehabilitation Investment Tax Credits available for income-producing historic buildings since 1976. In North Carolina, there have been 732 private-sector projects undertaken from 1976-1996. They have totaled nearly $325 million in private investment. If the same amount had been spent on new construction there would have been 1800 fewer jobs and $26 million less in household income for North Carolina citizens.

In Asheville and Buncombe County, 105 projects have been completed for a total of $45 million. These projects include the rehabilitation of the Manor Inn and Cottages, the Drhumor Building, the Jackson Building and many others. One key to our recent downtown renaissance has been the ability to use these tax-credits for downtown rehabilitation. Every dollar spent on revitalization creates jobs and generates incomes for our residents--and attracts more tourists!

We can expect even more development in our historic districts in the future. In 1997, the State created new tax credits for historic rehabilitation for owner-occupied housing. This should increase the rehabilitation of privately owned eligible housing in years to come.

Better Use of Infrastructure

As everyone knows growth is expensive, it requires an expansion of basic services such as water, sewage, utilities and fire and police protection. When we rehabilitate our historic neighborhoods we experience economic growth without the corresponding increase in expensive services. Because the historic neighborhoods already have infrastructure in place it is much cheaper to provide new residents with basic services. Although services in historic neighborhoods may need upgrading, it is certainly less expensive and less damaging to the environment than expanding services to new areas.

Allowing older neighborhoods to deteriorate while providing expensive new public infrastructure for suburbs is simply not fiscally responsible.

Quality of Life

Although quality of life is last on our list, it is certainly not last in its impact on economic development. Attractive well maintained historic neighborhoods make our city a better and more comfortable place to live and attract the kind of people with a sense of history and place that make good neighbors. The revitalization of downtown has not only provided tourists with entertainment, shops and restaurants but made the quality of life in Asheville-Buncombe County better for all residents. Concerns about the sense of community and the quality of our built environment are not the concerns of a cultural elite but should be considered our main asset. As the Anderson Report put it, "Don't change the face of Asheville."

City Council thanked Ms. Nickless for her efforts and the efforts of the entire Asheville-Buncombe Historic Resources Commission as well as the efforts of the Preservation of Asheville-Buncombe County.

HOUSING ACTION PLAN

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of a Housing Action Plan which recommends specific actions to be taken by the City and its partner agencies in 1998/99 to increase the production of affordable housing in Asheville and Buncombe County.

In October 1997, the City commissioned a study of the affordable housing market in Asheville from Housing and Community Insight, Inc. The study was completed in February 1998 and in June Council approved the Study's eight broad strategies and instructed staff to develop an action plan based on its detailed recommendations.

The Housing Action Plan was developed by staff of the Planning and Development Department. Input was invited from 37 organizations concerned with housing issues, including non-profit agencies, banks, realtors and developers. The first draft of the plan was reviewed by the Housing and Community Development Committee on September 15, and discussed at a public meeting on September 24 attended by about 25 persons. It was generally well-received, and some suggestions for amendments were made, most of which have been incorporated into this final version.

The Plan sets out a response to each of the study's recommendations, concentrating on those actions that can be implemented by June 30, 1999. Short narratives explain the reasons for the actions being proposed, but to understand the Plan fully it should be read in conjunction with the original Affordable Housing Market Study, which contains a wealth of data and analysis not repeated in the Plan.

At the end of the Plan is a table summarizing all the actions proposed. This takes the place of an Executive Summary.

Staff recommends that City Council approve the Housing Action Plan.

Ms. Caplan then reviewed the eight broad strategies and briefly reviewed some actions that can be implemented within the first year, i.e., June 30, 1999. She noted that in many cases, implementing action is already underway, or even completed (e.g., fee waivers for affordable new construction).

Councilwoman Field commended Ms. Caplan for her work and the work of the many groups involved in developing this Plan. She said that the Housing & Community Development Committee recommends City Council adopt the Housing Action Plan and let staff begin implementing the actions.

Councilman Tomes expressed concerned about how the City will address the action of researching under-representation of African-American home buyers in the market.

Ms. Caplan responded to various questions from Council regarding affordable housing.

Mayor Sitnick asked if Ms. Caplan could put together a list to be given to private developers which contains information about tax credits, programs and federal agencies they can apply for to help when they are interested in building affordable housing.

Mayor Sitnick suggested City Council start writing to our state and federal representatives about re-prioritizing some parts of the state and federal budgets in order to target more monies to help cities, like Asheville, that seem to attract people in need.

Mayor Sitnick said that whatever formal City-County collaboration on housing takes place, to make sure that the City is recognized as part of Buncombe County.

Councilwoman Field said that a letter needs to be written to our state representatives urging them to fully fund the Housing Trust Fund.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

PARKS & RECREATION MASTER PLAN & GREENWAYS MASTER PLAN

Mr. Irby Brinson, Director of Parks and Recreation, said that staff was given direction by City Council to examine the draft of the Parks and Recreation Master Plan and to bring back recommendations for prioritization of needs for the next five to seven years.

On May 12, 1998, staff presented to City Council the Comprehensive Master Plan for Parks and Recreation. During that meeting, City Council directed staff to carry out the following objectives and to report back to City Council at a later date their recommendations. These directives included the informal agreement to the concept of the Master Plan, making sure the Parks and Recreation Master Plan is coordinated with the Greenway Master Plan, properly prioritizing needs for the next five to seven years, instructing staff to move toward a bond referendum, and reporting back to City Council their recommendations. In an effort to achieve the above objectives, staff expanded the Parks and Recreation Master Plan Steering Committee to include a greater diversity of representation on the Committee. This Steering Committee is made up of over 75 members of the community and has been working since June to develop the recommendations which are presented in this report. The process has been inclusive and based upon input from a broader range of community interest.

Ms. Susan Roderick, Chair of the Steering Committee, spoke in support of the Master Plan and spoke about how the plan will be an asset for the neighborhoods as well as for the economy.

Mr. Brian Peterson, Assistant Chair of the Steering Committee, also spoke in support of the Master Plan and outlined the process which took place to come to a consensus on all of the items. He stated that there is a high level of support for greenways and passive parks in Asheville and said that the Steering Committee strongly endorsed the process.

Mr. Brinson then summarized the Plan by saying that the Steering Committee is recommending the following elements to be included in an $18 million bond referendum.

New Facility Development	$6.4 million
- Richmond Hill Community Park	
- Lake Craig Community Park	
- White Fawn Park	
- French Broad River Park	
- Aquatics Facility at Asheville High	
- Construction of Tot-Lots	
Renovations and upgrades to existing facilities	$6.6 million
- Burton Street Center and Park	
- Ray Kisiah Park	
- Roger Farmer Park	
- Memorial Stadium & Mountainside	
- Shiloh Center and Park	
- Montford Center and Complex	
- Reid Center and Park	
- Senior Center Renovations	
- Valley Springs Park	
- Murphy-Oakley Park	
- Montford Park	
- Malvern Hills Park	
- Charlie Bullman Park	
- West Asheville Park	
- Vance School Park	
- Livingston Street Park	
- Weaver Park	
Greenway Development	$3.0 million
Land Acquisition	$2.0 million

Mr. Brinson said that there are several collaborative efforts underway, for example, the Kiwanis Club, the Kenilworth and Montford neighborhoods, Quality Forward, RiverLink, the school system, UNC-A, etc. He hoped that there will continue to be a general fund contribution, noting that grants will continue to be actively pursued as well as sponsorships and donations, and fees and charges will continue to be collected.

He said that order to meet the objective for coordinating the Parks and Recreation Master Plan with the Greenway Master Plan, Greenways Inc. and Trust for Public Land will be presenting the final draft of the Greenways Master Plan in conjunction with this presentation. The Parks and Recreation Master Plan Steering Committee recommends including the Greenway Master Plan as an addendum to the Parks and Recreation Master Plan.

The Parks and Recreation Master Plan Steering Committee, the Greenway Steering Committee, and staff from both Parks and Recreation Department and Planning and Development Department recommend City Council's adoption of the Parks and Recreation Master Plan and the Greenway Master Plan.

Mr. Will Abberger, representative of the Trust for Public Land, outlined the process which took place during the planning process for the Greenways Master Plan which began in October of 1997. A site evaluation of the City of Asheville and potential greenway corridors was undertaken first, along with the creation of the Citizen's Advisory Committee (CAC), which included over 30 individuals representing a broad range of interests. The formation of a vision, goals and objectives took place next, crafted by comments received from the CAC and participants of two community workshops. Preliminary recommendations for greenways in Asheville were then developed and presented to members of the City Council Greenways Subcommittee, CAC and participants in two community workshops for review. Recommendations were revised and presented once again for review by the general public, by the CAC and by the City Council Greenways Subcommittee before final recommendations were made.

Mr. Abberger outlined the benefits of greenways to a community (environmental, economic, recreational, etc.) and reviewed the 14 proposed corridors as follows: Hominy Creek, Brevard Road, French Broad River, Haywood Avenue, Swannanoa River, Haw Creek, Beaverdam Creek, Kimberly Avenue, Town Mountain Road, Sweeten Creek, Emma Road Stream, Nasty Branch, Biltmore Avenue and Reed Creek/Broadway. He said that the Plan sets priorities among the proposed corridors, and provides guidance regarding the design, construction, maintenance and operation of greenways. He reviewed the funding sources and noted that implementation should be a public/private partnership. He recommended a Greenways Advisory Committee be appointed to oversee the Plan.

Upon inquiry of Councilman Cloninger, Mr. Abberger said that a bond referendum could possibly be held in the spring or fall of 1999.

Councilman Field wanted to make sure that the Pedestrian/Bikeways Master Plan which will be coming to City Council soon, needs to be incorporated into the Greenway Master Plan. Mr. Abberger said that they have been working with the Public Works Department to coordinate the two plans.

City Council members expressed their appreciation to the community, staff and everyone associated with developing these plans. Councilman Cloninger felt the best way for City Council to acknowledge the work is not to just adopt the Master Plan, but to instruct staff to begin working with the public to set up a bond referendum.

Mayor Sitnick suggested some green spots in downtown Asheville which might contain some grass, flowers or benches, similar to the spot next to the Rankin Street Parking Garage. She felt that green spots may be a good way to work collaboratively with downtown businesses.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda for a public hearing on adoption of the Master Plan along with the appropriate information regarding authorizing the retention of bond counsel.

REQUEST FOR ZONING STUDY - WOODSIDE HILLS SUBDIVISION

Mr. Carl Ownbey, Urban Planner, said that the Planning and Development Department has received a petition for a zoning study which includes 6 properties in the Woodside Hills Subdivision.

City staff has been directed to conduct a zoning study of 6 properties in the Woodside Hills Subdivision. The 6 properties total approximately 21.4 acres. The petition received by City Council included signatures of individuals who own five of the six properties. These five properties total approximately 18.7 acres or 87% of the total acreage of the requested study.

Section 7-7-2 of the Unified Development Ordinance states that "a zoning study of a defined area may be requested upon submittal to the Planning and Development Department of a petition signed by 51% of the property owners in the defined area for which the zoning study is requested who own at least 51% of the property (acreage) in the defined area for which the zoning study is requested". The petition does meet the above referenced criteria.

Council is asked to determine whether a zoning study should be initiated for this defined area (or a portion thereof). The concern of residents in the Woodside Hills Subdivision stemmed from the proposed development of a duplex on the property designated as PIN No. 9617.05-07-4718. Both this parcel, as well as the majority of PIN No. 9617.09-17-5215, are zoned RM-6. This zoning district allows a duplex as a permitted use. The areas adjacent to Woodside Hills Subdivision are zoned RS-4. This zoning district allows duplexes as a conditional use. The property owner has applied for a building permit for the duplex, noting that the wastewater allocation, the water allocation, and letters relative to the building of a culvert have been received and approved for this property.

City Council may direct staff to initiate the zoning study, elect not to initiate the zoning study, or reduce the size of the area to be included in the zoning study and initiate a zoning study of the reduced area.

Upon inquiry of Councilman Cloninger, Mr. Ownbey stated that the petitioners are aware that this rezoning study will not stop the duplex from being built on the property. He also noted that staff has not come across anything to indicate that the property was incorrectly zoned.

When Mayor Sitnick asked how much staff time it would take to initiate the study, Mr. Ownbey said that the entire process would take approximately 3-4 months, noting that it will require staff review, then Planning & Zoning Commission review and recommendation, and then to City Council for their public hearing and recommendation. Mayor Sitnick voiced concern with re-directing staff to work on a zoning study when staff has just been given direction on several items relative to the Unified Development Ordinance annual review.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

PURCHASE OF EQUIPMENT RELATIVE TO PUBLIC SKATING

Mr. David Pisha, Civic Center Director, said that this is the consideration of a budget amendment, in the amount of $35,000, to establish a public skating program at the Civic Center.

Public skating offers a new recreational opportunity for the citizens of Asheville and Buncombe County. It provides the Civic Center with the potential to develop a significant new event category. The public skating program is expected in future years to be self-funding through internally generated funds. Funds are requested, however, in the initial year to establish the event. Monies will be used to purchase skates, rubber matting, and a skate sharpener. It is expected that revenues will be sufficient in the first year to recoup the $35,000 small capital fund expenditure. Based on sixty (60) skating sessions, the average attendance necessary to recoup the city's investment in the first year, would be a 150 participants per session. Ninety sessions would require only 100 participants per session. Once the initial investment was recouped, skating would produce very high profit margins for this activity.

The Civic Center requests that City Council amend the city's small capital projects fund by appropriating $35,000 for this activity.

Upon inquiry of Councilman Sellers, Mr. Pisha said that public skating may be open in December, 1998.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CITY COUNCIL MEETING SCHEDULE DURING HOLIDAYS & ELECTION DAY

It was the consensus of City Council to (1) cancel the October 20, 1998, worksession, as well as the worksession tentatively set on October 21, 1998, due to the N. C. League of Municipalities Annual Meeting being held in Charlotte, N.C.; (2) reschedule the November 3, 1998, worksession until November 4, 1998, beginning at 3:00 p.m. in the First Floor North Conference Room of the City Hall Building, due to November 3 being election day; (3) change the December 15, 1998, worksession to be a formal meeting beginning at 5:00 p.m., in the Council Chamber of the City Hall Building, due to the upcoming holidays; and (4) cancel the December 22 and 29, 1998, City Council meetings due to the holidays.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

NEXT TOPIC FOR MAYOR'S ROUNDTABLE ON NOVEMBER 19, 1998

After a brief discussion of possible topics, it was the consensus of City Council that the next topic for the Mayor's Roundtable on November 19, 1998, would be "The Block."

REPORTS FROM BOARDS & COMMISSIONS

Vice-Mayor Hay reported on the status of the Future of the Civic Center Task Force and the recommendations received by the consultant.

Vice-Mayor Hay reported on the upcoming board and commission vacancies, noting the October 28, 1998, deadline for receiving applications for this quarter.

It was the consensus of City Council to appoint Sarah Blankenship to the Asheville Film Board since Steven Heller was unable to accept the appointment due to time restraints.

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ADJOURNMENT & CLOSED SESSION

At 5:28 p.m., Vice-Mayor Hay moved to adjourn the meeting and meet in Room 209 of the City Hall Building to go into closed session for the following reasons: (1) To consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuits about which the Council expects to receive advice are: (a) State of North Carolina, City of Asheville, and Elijah Jones d/b/a Jones Convenience Store; (b) Morris Communications, Inc. d/b/a Fairway Outdoor Advertising Co.; Outdoor Communications, Inc.; Maple Cove, Inc.; and City of Asheville - G.S. 143-318.11(a)(3); (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City of Asheville, including agreement on a tentative list of economic development incentives that may be offered by the City in negotiations - G.S. 143-318.11(a)(4); and (3) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease - G.S. 143-318.11(a)(5). This motion was seconded by Councilman Sellers and carried unanimously.

At 7:04 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilman Tomes and carried unanimously.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - October 13, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING OCTOBER, 1998, AS "SUBSTANCE ABUSE AWARENESS MONTH"

Vice-Mayor Hay read the proclamation proclaiming the month of October, 1998, as "Substance Abuse Awareness Month" in the City of Asheville.

B. PROCLAMATION PROCLAIMING THE WEEK OF OCTOBER 18-24, 1998, AS "YWCA WEEK WITHOUT VIOLENCE"

Councilman Tomes read the proclamation proclaiming the week of October 18-24, 1998, as "YWCA Week Without Violence" in the City of Asheville. He presented the proclamation to Ms. Debbie Vingle, Women's Services Director of the YWCA.

C. PROCLAMATION PROCLAIMING MONDAY OCTOBER 26, 1998, AS "MASSAGE THERAPY AWARENESS DAY"

Councilwoman Field read the proclamation proclaiming Monday, October 26, 1998, as "Massage Therapy Awareness Day" in the City of Asheville. She presented the proclamation to Ms. Stephanie Keach, Director of the Asheville School of Massage.

D. PROCLAMATION PROCLAIMING OCTOBER, 1998, AS "ARTS & HUMANITIES MONTH"

Councilman Cloninger read the proclamation proclaiming the month of October, 1998, as "Arts & Humanities Month" in the City of Asheville. He presented the proclamation to Ms. Pam Myers who briefed City Council on some activities taking place during the month.

RIVERLINK DONATION OF PROPERTY ALONG THE FRENCH BROAD RIVER

Councilman Tomes moved to add to the agenda the consideration of a resolution authorizing acceptance of donation of real property for park and recreation purposes and a resolution authorizing the Mayor to execute a Conservation Easement to the State of North Carolina. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION NO. 98-145 - RESOLUTION AUTHORIZING ACCEPTANCE OF DONATION OF REAL PROPERTY FOR PARK AND RECREATION PURPOSES

RESOLUTION NO. 98-146 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONSERVATION EASEMENT WITH THE STATE OF NORTH CAROLINA

Ms. Karen Cragnolin, Executive Director of RiverLink, said that RiverLink has long had a partnership with the City in the development of the urban riverfront greenway. The next phase of the greenway is through the partnership with RiverLink, the City of Asheville and the State which will add another half of mile of trails, boating and fishing facilities, and the very first outdoor classroom on the French Broad River over wetlands. During the last several years RiverLink has developed a very close relationship with Mr. Roger Gregg, owner of the Asheville Motor Speedway, as well as other property owners along Amboy Road. This past year, for personal reasons, Mr. Gregg has decided to sell this property. She mentioned several significant contributions the Gregg family has made in the past to the entire community. This summer, RiverLink entered into an option agreement with Mr. Gregg and the Asheville Speedway to acquire the property for $1.1 million. They devised a confidentiality agreement and both parties agreed that the option agreement would not be recorded. The agreement was that both parties would be confidential regarding all the details of this except when they approached donors. She was pleased to report that, on behalf of the RiverLink Board of Directors, their donors and members, they have raised the money to make this gift possible to the City of Asheville. The donors include the Clean Water Management Trust Fund for $250,000, the Janirve Foundation, the Stanback Family Foundation and two anonymous donors. She said there are two conditions on the gift. The first condition, imposed by the Clean Water Management Trust Fund, was for a 100 foot ritarian buffer on the area closest to the river. The Janirve Foundation's conditions include (1) the property never again be used as a motor speedway facility or any similar use; and (2) that the property be held in perpetuity for the citizens and visitors to our area. In recognition of the fact of what the Gregg family has done for this community and how they have worked with RiverLink to sell and donate a portion of it to RiverLink, they will be calling this the John Gregg Greenway, in honor of Roger Gregg's father and grand-father, both of whom have the same name. RiverLink will continue to work with the City to develop a master plan for the speedway property so that it has it's highest and best use as a greenway and recreation facility for the community. They are selling one foot sections of greenway for $45 per linear foot and all money will be put into a restricted account to be used to develop the greenway.

Mr. Irby Brinson, Director of Parks & Recreation, said that this was an exciting time for the City of Asheville and noted that this donation is a fitting contribution to the objectives of the Parks & Recreation Master Plan and the Greenways Master Plan. He said this is a tremendous opportunity for the City and thanked Mr. Gregg and RiverLink for their commitment to this community in enhancing not only recreation services, but to help in the development of the French Broad Driver.

On behalf of City Council, Mayor Sitnick thanked Ms. Karen Cragnolin, the RiverLink Board of Directors, Mr. Roger Gregg, the Janirve Foundation, the Clean Water Management Trust Fund, Mr. Joe Ferikes, City staff, and all those who made this gift possible.

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilman Field moved to adopt Resolution No. 98-145 to authorize acceptance of real property for park and recreation purposes. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 15

Councilman Cloninger moved to adopt Resolution No. 98-146 to authorize the Mayor to execute a conservation easement with the State of North Carolina. This motion was seconded by Councilman Cobb and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 17

II. CONSENT:

A. RESOLUTION NO. 98-147 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE

Summary: This resolution will (1) cancel the October 20, 1998, City Council worksession; (2) reschedule the November 3 worksession until November 4, 1998, beginning at 3:00 p.m. in the First Floor North Conference Room in the City Hall Buildings; (3) change the December 15, 1998, worksession to be a formal meeting beginning at 5:00 p.m. in the Council Chamber located on the Second Floor in the City Hall Building; and (4) cancel the December 22 and December 29, 1998, City Council meetings.

RESOLUTION BOOK NO. 25 - PAGE 18

B. RESOLUTION NO. 98-148 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY TO CAROLINA POWER & LIGHT COMPANY A BLANKET EASEMENT FOR THE INSTALLATION AND MAINTENANCE OF ELECTRIC FACILITIES NECESSARY TO PROVIDE SERVICE TO THE RANKIN HEIGHTS SUBDIVISION

Summary: The consideration of a resolution authorizing the Mayor to convey to Carolina Power and Light Company (CP&L) a blanket easement for the installation and maintenance of electric facilities necessary to provide service to Rankin Heights Subdivision.

Rankin Heights Subdivision is located at the intersection of Stewart Street and Kentucky Drive and consists of seventeen residential lots being developed for single family home ownership.

In order to install underground electric service to all seventeen homes to be constructed in the subdivision, CP&L has requested a blanket easement. The proposed blanket easement will enable the facilities to be placed in "mutually suitable locations." The actual locations will be determined between the owner and CP&L at the time service facilities are installed.

Approval of the resolution will authorize conveyance of the easement to CP&L for the installation and maintenance of electric service facilities.

Community Development staff recommends adoption of the resolution authorizing the Mayor to convey to CP&L a blanket easement for the installation and maintenance of electric facilities necessary to provide service to Rankin Heights Subdivision.

RESOLUTION BOOK NO. 25 - PAGE 19

C. **RESOLUTION NO. 98-149 - RESOLUTION AUTHORIZING THE CITY MANAGER TO RENEW THE OTEEN VA MEDICAL CENTER'S FIRE PROTECTION AGREEMENT FOR A TERM OF UP TO THREE YEARS**

Summary: The consideration of a resolution renewing Oteen VA Medical Center's fire protection contract with the City of Asheville for a term of up to three years.

For more than fifteen years, the City of Asheville has furnished fire protection services under contract to the Oteen VA Medical Center. The present contract for such services will expire in October. VA Medical Center staff have requested renewal at the same terms presently in place—a payment of $30,000 per year for Asheville Fire Department fire response, fire prevention activities and fire safety education for VA staff.

Oteen VA Medical Center has petitioned City Council in previous years for annexation, so that full City services would be available to the VA Medical Center at no cost to the Center. The present contract—and the proposed contract—provide for termination of the contract if annexation of the Oteen VA Medical Center were to occur.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a new fire protection contract with the Oteen VA Medical Center.

RESOLUTION BOOK NO. 25 - PAGE 20

D. **RESOLUTION NO. 98-150 - RESOLUTION APPOINTING SARAH BLANKENSHIP TO THE ASHEVILLE FILM BOARD**

RESOLUTION BOOK NO. 25 - PAGE 21

E. **MOTION SETTING A PUBLIC HEARING ON OCTOBER 25, 1998, TO CONSIDER A CONDITIONAL USE APPLICATION TO LOCATE A TELECOMMUNICATION TOWER AT 754 MERRIMON AVENUE**

F. **MOTION SETTING A PUBLIC HEARING ON NOVEMBER 10, 1998, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING SHORT TERM RENTAL IN RESIDENTIAL DISTRICTS (VACATION RENTALS)**

G. **MOTION SETTING A PUBLIC HEARING ON NOVEMBER 10, 1998, TO REZONE 910 SWANNANOA RIVER ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT**

H. **MOTION SETTING A PUBLIC HEARING ON NOVEMBER 10, 1998, TO REZONE 980 HENDERSONVILLE ROAD FROM HIGHWAY BUSINESS DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE BUSINESS AND 45 SEMINOLE ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE BUSINESS DISTRICT**

I. **ORDINANCE NO. 2515 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR FUNDS RECEIVED FROM THE N.C. GENERAL ASSEMBLY FOR IMPROVEMENTS AT HARVEST HOUSE AND THE SENIOR OPPORTUNITY CENTER**

Summary: The consideration of a budget amendment, in the amount of $13,514, to establish a budget for funds received from the North Carolina General Assembly for improvements at Harvest House and the Senior Opportunity Center.

The Senior Center Appropriation is designed to provide funds to senior centers throughout North Carolina for a variety of services including capital improvement, supplies, equipment, and staff. The funds will be used at the Harvest House to remodel the reception area and office, and to renovate two outdoor shuffle boards and shelters. Senior Opportunity Center will purchase a new ceramic kiln and commercial kitchen equipment to update the existing kitchen.

The Parks and Recreation Department staff recommends City Council accept the legislative appropriation for improvements at Harvest House and the Senior Opportunity Center.

ORDINANCE BOOK NO. 17 - PAGE 149

J. ORDINANCE NO. 2516 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR FUNDS RECEIVED FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO DEVELOP THE MASTER STREET TREE PLAN, PHASE I

Summary: The consideration of a budget amendment in the amount of $9,873 to establish a budget for funds received from the N.C. Dept. of Environment and Natural Resources for the development of a Master Street Tree Plan, Phase I.

The Parks and Recreation Department is responsible for developing a Master Street Tree Plan (MSTP) for street trees on City rights-of-way located within the City limits of Asheville. The existing inventory is almost fifteen years old and no longer accurately reflects the trees of the City. Phase I of the process will specifically identify the location, size, condition, and site conditions of trees located in the central area of Asheville. The MSTP will help serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community organizations.

If funding is available, future phases of the Master Street Tree Plan will identify the location, size, condition, and site conditions for street trees in the north, west, south, and east areas of Asheville.

The Parks and Recreation Department staff recommends City Council accept the grant funds for the development of the Master Street Tree Plan, Phase I.

ORDINANCE BOOK NO. 17 - PAGE 151

K. ORDINANCE NO. 2517 - BUDGET AMENDMENT TO ESTABLISH A PROJECT BUDGET FOR REPLACEMENT AND/OR IMPROVEMENTS TO THE HEATING, VENTILATION AND AIR CONDITIONING SYSTEM AT THE SHILOH COMMUNITY CENTER

Summary: The consideration of a budget amendment, in the amount of $30,000, to establish a project budget for replacement and/or improvement to the Heating, Ventilation and Air Conditioning (HVAC) system at the Shiloh Community Center.

In a prior budget year, City Council appropriated $30,000 to the City's Capital Reserve Fund for Parks & Recreation to undertake various HVAC replacement and improvement projects. Thirty thousand dollars was then transferred from the Capital Reserve Fund to the City's General Capital Projects Fund to provide funding for HVAC projects. To officially appropriate the cash received from the Capital Reserve Fund, and to properly establish an HVAC project budget, a budget ordinance amendment authorizing a $30,000 increase in budgeted revenues and expenditures in the General Capital Projects Fund needs to be approved by City Council. This is not a request for additional funding since funds were initially authorized and budgeted in the City's Capital Reserve Fund.

The Parks and Recreation Department requests City Council amend the City's General Capital Projects Fund by appropriating revenues and expenditures in the amount of $30,000 for HVAC replacement and improvements at the Shiloh Community Center.

ORDINANCE BOOK NO. 17 - PAGE 153

L. ORDINANCE NO. 2518 - BUDGET AMENDMENT TO ESTABLISH A PUBLIC SKATING PROGRAM

Summary: The consideration of a budget amendment, in the amount of $35,000, to establish a public skating program at the Civic Center.

Public skating offers a new recreational opportunity for the citizens of Asheville and Buncombe County. It provides the Civic Center with the potential to develop a significant new event category. The public skating program is expected in future years to be self-funding through internally generated funds. Funds are requested, however, in the initial year to establish the event. Monies will be used to purchase skates, rubber matting, and a skate sharpener. It is expected that revenues will be sufficient in the first year to recoup the $35,000 small capital fund expenditure. Based on sixty (60) skating sessions, the average attendance necessary to recoup the city's investment in the first year, would be a 150 participants per session. Ninety sessions would require only 100 participants per session. Once the initial investment was recouped, skating would produce very high profit margins for this activity.

The Civic Center requests that City Council amend the city's small capital projects fund by appropriating $35,000 for this activity.

ORDINANCE BOOK NO. 17 - PAGE 155

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Tomes moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO CLOSE WILSON ALLEY LOCATED BETWEEN HENDERSONVILLE ROAD AND SUMMIT STREET

At the request of City staff, Councilman Tomes moved to continue the public hearing until October 27, 1998, without further advertisement. This motion was seconded by Councilwoman Field and carried unanimously.

B. PUBLIC HEARING RELATIVE TO REZONING THREE LOTS ON BURTON STREET AT BUFFALO STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS

ORDINANCE NO. 2519 - ORDINANCE TO REZONE THREE LOTS ON BURTON STREET AT BUFFALO STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS

Mayor Sitnick opened the public hearing at 5:32 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of an ordinance to rezone three lots on Burton Street at Buffalo Street from RM-8 Residential Multi-Family Medium Density District to Neighborhood Business.

The owners/applicants Roy and Pauline Young and Ross and Laurie Peterson have requested three lots (PIN Nos. 9638.10-46-6298, 6393, and 6397) on Burton Street at Buffalo Street be rezoned from RM-8 Residential Multi-Family Medium Density District to Neighborhood Business.

The Neighborhood Business District is established to indicate areas for low density commercial uses that are compatible with and accessible to pedestrians from the surrounding neighborhood. This area of Burton Street, in conjunction with the existing community center, complies with the definition of the Neighborhood Business District. However, due to the small size of the 3 lots (approximately 0.75 acre for the three lots together), the City Attorney's Office has pointed out hat there is a question as to whether or not this request could be determined to be "illegal spot zoning". There is no known published case in North Carolina which directly matches the facts in this request in order to answer the question.

The Planning staff reviewed the rezoning request and recommended approval. At the September 2, 1998, Planning & Zoning Commission meeting, the Commissioners voted unanimously to recommend approval of the rezoning request.

Ms. Gloria Johnson, President of the Burton Street Community, spoke in support of the rezoning. She said that the proposed community store will benefit the community

City Attorney Oast reminded the Council that when they consider the rezoning request, they must consider all the uses available in the Neighborhood Business District.

Mayor Sitnick closed the public hearing at 5:38 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cobb moved for the adoption of Ordinance No. 2519. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 157

C. PUBLIC HEARING RELATIVE TO REZONING 418 and 422 McDOWELL STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO INSTITUTIONAL

ORDINANCE NO. 2520 - ORDINANCE TO REZONE 418 and 422 McDOWELL STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO INSTITUTIONAL

Mayor Sitnick opened the public hearing at 5:40 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Mike Matteson, Urban Planner, said that this is the consideration of an ordinance to rezone 418 and 422 McDowell Street from RS-8 Residential Single-Family High Density District to Institutional.

Joe C. Swicegood is requesting a rezoning of 418 and 422 McDowell Street from RS-8 Residential Single-Family High Density District to Institutional.

The two properties total approximately 0.47 acres and are located across from Asheville High School at the corner of McDowell Street and Grindstaff Place. Surrounding zoning consists of Institutional to the west, RM-16 to the north and RS-8 to the south and east. The two properties have historically been used for commercial purposes and were zoned Office Institutional prior to the adoption of the Unified Development Ordinance.

At their September 2, 1998, meeting, the Planning and Zoning Commission voted 5-1 to recommend approval of the rezoning. The Planning and Development staff also is recommending approval of the rezoning. Mr. Matteson briefed Council on the phone calls he received concerning this rezoning request.

Mayor Sitnick closed the public hearing at 5:42 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2520. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 159

D. PUBLIC HEARING RELATIVE TO ADOPTING THE PARKS & RECREATION MASTER PLAN, THE GREENWAYS MASTER PLAN AND DIRECTING THE ENGAGEMENT OF BOND COUNSEL

RESOLUTION NO. 98-151 - RESOLUTION ADOPTING THE PARKS & RECREATION MASTER PLAN, THE GREENWAY MASTER PLAN AND DIRECTING THE ENGAGEMENT OF BOND COUNSEL

Mayor Sitnick opened the public hearing at 5:44 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Irby Brinson, Director of Parks & Recreation, said that staff was given direction by City Council to examine the draft of the Parks and Recreation Master Plan and to bring back recommendations for prioritization of needs for the next five to seven years.

On May 12, 1998, staff presented to City Council the Comprehensive Master Plan for Parks and Recreation. During that meeting, City Council directed staff to carry out the following objectives and to report back to City Council at a later date their recommendations. These directives included the informal agreement to the concept of the Master Plan, making sure the Parks and Recreation Master Plan is coordinated with the Greenway Master Plan, properly prioritizing needs for the next five to seven years, instructing staff to move toward a bond referendum, and reporting back to City Council their recommendations. In an effort to achieve the above objectives, staff expanded the Parks and Recreation Master Plan Steering Committee to include a greater diversity of representation on the Committee. This Steering Committee is made up of over 75 members of the community and has been working since June to develop the recommendations which are presented in this report. The process has been inclusive and based upon input from a broader range of community interest. He summarized by saying that the Steering Committee is recommending the following elements to be included in an $18 million bond referendum.

New Facility Development	$6.4 million
Renovations and upgrades to existing facilities	$6.6 million
Greenway Development	$3.0 million
Land Acquisition	$2.0 million

The Parks and Recreation Master Plan Steering Committee recommends including the Greenway Master Plan as an addendum to the Parks and Recreation Master Plan.

Representatives from the Trust for Public Land briefed Council on the process implemented to arrive at the Greenways Master Plan noting that the plan is the community's plan.

Ms. Cindy Miller, Finance Operations Manager, said that the City will need to retain bond counsel for the preparation of documentation for the bond referendum and sale. Parker, Poe, Adams & Bernstein, L.L.P., has ably represented the City during past financings and has consented to assist the City with this bond issue. Their fee will be based on actual hours worked, plus expenses incurred on behalf of the City for photocopies, long distance phone, travel, etc. City staff recommends City Council retain Parker, Poe, Adams & Bernstein, L.L.P., as bond counsel.

City Manager Westbrook said that action required today would be to complete the public hearing, adopt the Parks & Recreation Master Plan, adopt the Greenways Master Plan, direct staff to employ bond counsel, and direct City staff to plan for a May bond election. From that point on, City staff will work with the Local Government Commission and the bond attorney to bring back to the Council on an intermittent basis all the legal procedures.

Mr. H. K. Edgerton, President of the Asheville Branch of the NAACP, hoped that the money is utilized for the things it is targeted for, however, he has some concerns about infrastructure, economic development, and business development.

Ms. Geraldine Melendez, President of the West End/Clingman Avenue Neighborhood Organization, voiced concern over the closing of Merritt Street and expansion of the maintenance facility on the corner of Hilliard and Clingman Avenue. She stated they did not want any infringement into their neighborhood of the expanded maintenance facility.

Mr. Brinson said that at this point staff has determined that they will not expand the maintenance facility but will make some improvements to the exterior that will hopefully address a lot of the concerns of the community and try to buffer the community from their particular needs.

Ms. Laura Copeland, representative of the Asheville Area Chamber of Commerce, spoke in support of the Master Plans.

Mr. Brian Peterson, representing the Coalition of Asheville Neighborhoods, Vice-Chair of the Parks & Recreation Master Plan Steering Committee and member of the Greenways Citizen Advisory Committee, spoke in support of the Master Plans and briefly reviewed with Council the process that was undertaken by the Steering Committee. He did, however, have one concern about the timing of when a special election would be held. If it is held in May of 1999, the City would have to be responsible for the estimated $15-20,000 to conduct a special election. However, the City would not have to incur this cost if it was held during the regular City elections in the fall of 1999.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities and resident on Cumberland Avenue, spoke in support of the Parks & Recreation Master Plan and hoped City Council would move ahead with adoption. He then spoke about the importance of the connection between homes and parks and the importance of considering them together in their design and their funding. He said that if there are any vacant or abandoned properties around the proposed parks and greenways, that the planning and funding be done for the parks and neighborhoods together as an overall quality of life package. Again, he asked that these issues be considered together in coming weeks as compatible and supportive of each other.

On behalf of City Council, Mayor Sitnick thanked all the members of the community who worked on the Parks & Recreation Master Plan Steering Committee and the Citizens Advisory Committee on the Greenway Master Plan and the City Council Greenways Subcommittee. Greenways forces.

Mayor Sitnick closed the public hearing at 6:07 p.m.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 98-151 adopting the Parks & Recreation Master Plan, adopting the Greenways Master Plan, authorizing the engagement of Parker, Poe, Adams & Bernstein, L.L.P., as bond counsel, and directing staff to work toward a May bond referendum election, if feasible in their judgment. This motion was seconded by Councilman Sellers.

Councilwoman Field wanted to make sure that the community understands that the bond referendum will go before the public and it will be the public who will vote it up or down on whether or not the City moves forward with this. If they vote for it, there will be a tax increase. She wanted to make it very clear that general obligation bonds are backed up by the City's taxing ability and that the public is going to be who says they are willing to pay a little bit more money on their property taxes in order to pay for this wonderful opportunity for the City of Asheville. It will take the whole community to make this happen.

Mayor Sitnick said that she hoped that as an extension of the adoption of these two Plans and the go-ahead from the public on the bond referendum that when the Unified Development Ordinance is reviewed that the City also consider the designation of a parks district, along with all the other districts. That way, the City won't zone our parks according to the land use around them but that we actually zone them to make sure they are retained as parks. She said that parks, recreation, greenways, and green spaces are all part of economic development.

Councilwoman Field said that one piece that hasn't come up as quickly as the Parks & Recreation Master Plan and the Greenways Master Plan is the Pedestrian Thoroughfare Plan. She said that will need to be rolled into this as the City moves into the future.

The motion made by Councilman Cloninger and seconded by Councilman Sellers was unanimously adopted.

RESOLUTION BOOK NO. 25 - PAGE 22

IV. UNFINISHED BUSINESS:

A. ORDINANCE TO REZONE A PORTION OF PROPERTY ON TOLULA LANE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE BUSINESS

Mayor Sitnick said that the public hearing on this matter was held on September 22, 1998, and continued until this date in order to give City Council time to visit the property in question.

Mr. Mike Matteson, Urban Planner, reviewed the rezoning request by said that this is the consideration of an ordinance rezoning a portion of property located on Tolula Lane from RS-8 Residential Single-Family High Density to Office Business District.

City Attorney Oast said that pursuant to discussions at Council's meeting of September 22, Victoria Investment Company, ("VIC") the doctors group that operates Mountain Neurological Center on McDowell Street), has submitted a proposed amendment to the option it currently holds for the purchase of the City's property, adjacent to Mountain Neurological Center ("MNC"). This amendment enables the following conditions to be added to the City's deed to VIC, if the transaction is consummated:

1. The property may be used for no commercial purpose other than parking, and access via Tolula Lane is prohibited.
2. All trees bigger than 6 inch diameter along the eastern side of the property (adjacent to MNC) will remain. Removal of some trees may be permitted as necessary to provide vehicular access to the parking lot. If a variance is obtained, even this will be unnecessary.
3. The City may reserve part of the property for a greenway, to be located in consultation with VIC's architect.
4. VIC will provide a landscaped buffer along the western line of the property, (adjacent to Tolula Lane) sufficient to screen the parking lot from view.

These proposed amendments are intended to limit the use of the property to parking associated with MNC, and to minimize the impact on the use, visually and functionally, on the adjacent residential properties. Because these proposed amendments do not impair the City's position with respect to the transaction (with the right to reserve a greenway, the City's position is actually improved) and because there is no change in the consideration for the property, no additional approvals by Council are necessary in order for the amendments to be valid, or for the Mayor to execute the amendment.

City Attorney Oast reminded Council that in consideration of any rezoning request, Council must be cognizant that the property may be used for any purpose permitted by the zoning classification. Legal restrictions on the use of property, however, are matters of public record, and may be taken into account to the same extent that the physical, geological or topographical features of a site may be considered.

Mr. George Young, Tolula Lane community member, said that regardless of how beautifully they make the property into a parking lot, it is still a parking lot in a low density residential neighborhood. He implored City Council to take into consideration the sensitive feeling of the neighborhood and not allow this encroachment into their residential neighborhood.

Mr. Phil Carson, attorney for VIC, said that the option agreement was amended as directed by City Council in order to try to meet as many requests and considerations by the neighborhood as possible. He stressed that MNC wants to be a good neighbor. He said that a parking lot is absolutely the lowest use of this property that can be made. He noted that when this property was first offered for sale, that City departments said they had no use for the property. He urged City Council to rezone the property.

Upon inquiry of Councilman Sellers, Mr. Carson said that the VIC now has a reciprocal agreement with St. John's Church to allow the MNC to park at the Church during the day and then the Church uses MCN's parking lot during Sundays and evenings. Since the Church plans to tear the Church down and build a new Church, the parking may be less than what is currently there now.

Upon inquiry of Councilman Cobb about the feasibility of building a parking lot on the property they currently own, Mr. Carson said that in some ways a deck would be more intrusive on the neighborhood than a well-landscaped parking lot.

Upon inquiry of Mayor Sitnick about the meeting between the neighborhood and Mr. Camille and Dr. Durham, he said that according to Dr. Durham the meeting was very cordial and a lot of discussion took place, however, the neighbors agreed that they did not want a parking lot there.

Mr. H. K. Edgerton said that to rezone this property would be the traditional African American neighborhood encroachment. He asked City Council to table this matter until they find out more on what the residents want.

Mayor Sitnick responded that it would be unfair to table this matter again since City Council held a public hearing on this issue on September 22, 1998, and tabled it until this date. She felt that City Council was well informed on the stance the neighborhood was taking.

Mr. Robert Camille, Camille-Alberice Architects, responded to Councilman Cobb's question as it related to building a parking deck on the property currently owned by VIC. He took issue that they are doing this to an African American neighborhood. He said it is happening everywhere in Asheville and is part of a City being healthy and growing. He did hope that Council would rezone this property because he hoped to be able to use this parking lot as an example of how a nice parking lot should be done and we can hold future development up to this standard.

There was some discussion about the number of parking spaces needed versus the number of spaces at the current location and at the Church.

Councilman Tomes agreed with the neighborhood in that the rezoning will infringe on this African American residential neighborhood.

Councilman Sellers moved to rezone a portion of property located on Tolula Lane from RS-8 Residential Single-Family High Density to Office Business District. This motion was seconded by Councilwoman Field.

City Attorney reminded Council that if the property is rezoned, all possible uses in the Office Business District will be allowed. However, Council may take into consideration, as you could any natural or topographic feature of the lot, what is or will be matter of public record, and that is the restrictions that the City will sell this subject to.

Mayor Sitnick said that while she appreciated the needs of the physicians and the fact that they were willing to go an extra mile to accommodate the neighborhood and to allow the City to impose restrictions, however, the lowest impact use of this property is to leave it natural. She said as the McDowell Street bridge nears completion, much of the traffic from Biltmore will be re-routed onto McDowell and there is no buffer like a tree buffer. She felt that 42 parking spaces in the parking lot will not allow for an adequate number of trees and she would recommend that at some point in the near future, in anticipation of the increased traffic and auto noise and omissions that will occur on McDowell Street, that as the City retains ownership of that property, that we actually plant some additional trees.

The motion made by Councilman Sellers and seconded by Councilwoman Field failed on a 3-4 vote, with Vice-Mayor Hay, Councilwoman Field and Councilman Sellers voting "yes," and Mayor Sitnick and Councilmen Cloninger, Cobb and Tomes voting "no."

V. NEW BUSINESS:

A. RESOLUTION NO. 98-152 - RESOLUTION IN SUPPORT OF THE PROPOSED STATE BOND ISSUES FOR WATER, SEWER AND NATURAL GAS

City Manager Westbrook said that in just a few weeks voters will go to the polls for the November 3 election. On the ballot are two very important bond referenda. One authorizes $800 million in loans and grants for clean water bonds, and one provides $200 million in loans and grants to extend natural gas to underserved areas in the state. The clean water bonds will provide much needed funding assistance for communities all across the state, including the citizens of Asheville. A recent study revealed that more than $11 billion in water and sewer capital needs exist across the state over the next 20 years. The Regional Water Authority has millions of dollars in capital needs over the next decade, a portion of which could be eligible for receipt of the clean water bond money. The bond funds can be used by local governments to build new water and sewer treatment facilities, expand capacity to new businesses and homes, and upgrade deteriorating facilities.

He recommended that the Council support the clean water and natural gas bonds, and adopt the resolution titled "Resolution in Support of the Proposed State Bond Issues for Water, Sewer and Natural Gas" which calls on the citizens of Asheville to vote in favor of the bond issues at the polls on November 3, 1998.

City Manager Westbrook responded to questions from Councilman Tomes.

Upon inquiry of Mayor Sitnick, City Manager Westbrook said that this doesn't include any stormwater money.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 98-152. This motion was seconded by Councilwoman Field and carried unanimously.

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At 6:50 p.m., Mayor Sitnick announced a short break.

B. RESOLUTION NO. 98-153 - RESOLUTION TO APPROVE THE HOUSING ACTION PLAN

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of a Housing Action Plan which recommends specific actions to be taken by the City and its partner agencies in 1998/99 to increase the production of affordable housing in Asheville and Buncombe County. She then briefly reviewed the Plan which sets out a response to each of the study's recommendations, concentrating on those actions that can be implemented by June 30, 1999.

Councilwoman Field, Chair of the Housing & Community Development Committee, spoke in support of the Plan and its implementation. She said that she supported using mediation to resolved land use debates. She then explained how a residential land use efficiency analysis would be helpful and asked that it be included in next year's budgeted. She also spoke in support of a Housing Trust Fund.

Councilman Tomes expressed concern over developers who build affordable homes but then sell them for higher prices making them not affordable. He felt it should be declared unethical and even immoral.

Mayor Sitnick spoke in support of the Housing Action Plan and stressed that the Plan cannot be implemented with no funding. She said that the City is going to work with the County and private developers to find a funding mechanism that is fair and that even-handedly spreads out the burden of cost for affordable housing. She said Ms. Caplan has information that provides vast information to private developers of all of the funding potential available to them from the federal, state and local level. In addition, she has asked the City Manager to look at ways the City can find properties before they are condemned that can be given to either urban homesteaders or to members of the housing coalition for repair and redevelopment.

Vice-Mayor Hay said that the objective to institute formal, on-going collaboration with the County, should be direction to staff to work with the County. He would like the County to follow our lead and take on affordable housing as an issue as their own. He understands that the County has no staff, no plan and no funding, however, we are one large community, especially when it comes to issues like housing. He hoped that this challenge will result in something community-wide.

Councilman Cobb felt that the City needs to address not only the need for housing, but the job market which restricts some people from owning their own homes or even renting.

Mayor Sitnick said that she would draft a letter to our state and federal representatives asking for them to re-prioritize our tax dollars and send some money back to the communities to meet their needs.

Mr. H.K. Edgerton, President of the Local Branch of the NAACP, urged City Council to seek evidence as to why there is under-representation of African Americans in the home buyer market. To do so will either substantiate or dispense with allegations of wrong-doings as outlined by Marvin Vierra in the Analysis of Impediments to Fair Housing dated November 12, 1997. He said that many of the impediments appear to be unconstitutional and in violation of several Civil Rights Acts.

Mr. David Lee, President of the Mortgage Lenders Association of Western North Carolina, presented City Council with a resolution adopted by his Association which supports the concept of a Housing Bond, or Quality of Life Bond to increase and improve the housing stock in Asheville and Buncombe County.

There was a brief discussion about the percentage of approved applications by lending institutions for affordable housing.

Mr. Brian Peterson, representing the Coalition of Asheville Neighborhoods, spoke in support of the Housing Action Plan and said the Coalition felt it was a good start. He said that they do have two concerns, however, both focus on preserving and improving the existing housing stock. They would like to see some stronger language about enforcing the Minimum Housing Code on all rental units, and to include some very stiff fines for those who are violating that Code. Their second concern is to protect residential neighborhoods from commercial intrusions. He said that if there is a shortage of commercial space in downtown Asheville or some of the outer lying areas, that maybe we should re-look at the Unified Development Ordinance to allow a greater commercial density or possibly provide some incentive for commercial developers to include residential units.

Ms. Laura Copeland, representing the Chamber of Commerce, thanked City Council for their leadership in this Plan. The Homes for Asheville-Buncombe Task Force would like to accept the offer to begin planning to address the funding issue and bring a plan back to Council. She hoped that City Council would look to the Task Force for support of any letter sent to the federal and state representatives to look at issues that affect priorities, especially unfunded mandates.

Vice-Mayor Hay said that the Homes for Asheville-Buncombe Task Force is a new entity and yet has emerged as a very important component in our whole community based housing initiative and we are relying heavily on them to provide the kind of input that we need.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities and Co-Chair of the Homes for Asheville-Buncombe Task Force, felt that this was the best Plan Asheville has had in many years. It has been mentioned that without significant new funding, whether by a local housing trust fund, bond, private revenues or other revenue sources, we cannot move ahead significantly on this plan. A number of local groups have passed resolutions supporting a housing trust fund, a dedicated revenue source for homes for working families, elderly and disabled residents of our community, or a bond. Two important elements of these requests are that it should include private funds and that it be designed with a pay-back feature. He asked for City Council's commitment in support and their leadership first to approve the plan and then to work with them in the coming weeks to determine the best sources or combination of new resources to bring to bear in this critical effort.

Mr. Larry Thompson, Director of the Blue Ridge Center, felt that this is the first time the needs of the special population have been recognized in a Plan. He said there is a real need for housing for the special population and urged City Council to support the Plan which will focus on these needs.

Ms. Geraldine Melendez, President of the West End/Clingman Avenue Neighborhood Organization and Office Manager at the Affordable Housing Coalition, gave examples of phone calls she receives daily by people who are forced out into the street. She spoke in support of the Housing Action Plan.

Ms. Caplan responded to questions from Mr. Darryl Hart regarding what is considered the range for affordable housing and who is it affordable to.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 98-153. This motion was seconded by Vice-Mayor Hay and carried unanimously.

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AT 7:55 P.M., MAYOR SITNICK MADE THE FOLLOWING ANNOUNCEMENT - THE MEDIA HAS REQUESTED THAT THE MAYOR AND CITY COUNCIL MEMBERS MAKE AVAILABLE TO REPORTERS CITY-RELATED CORRESPONDENCE RECEIVED BY THEM. CORRESPONDENCE IS DEFINED BY STATE LAW AS LETTERS RECEIVED BY LOCAL ELECTED OFFICIALS AND THIS INCLUDES MAIL RECEIVED BY THE MAYOR AND CITY COUNCIL. MAYOR SITNICK SAID THAT SHE AND CITY COUNCIL MEMBERS FEEL THAT THEY HAVE A RESPONSIBILITY TO THE CITIZENS OF ASHEVILLE TO LET THEM KNOW THAT THE MEDIA WILL BE READING THEIR MAIL SENT TO THEM

B. MOTION RELATIVE TO A ZONING STUDY FOR WOODSIDE HILLS SUBDIVISION

Mr. Carl Ownbey, Urban Planner, said that the Planning and Development Department has received a petition for a zoning study which includes six properties in the Woodside Hills Subdivision.

City staff has been directed to conduct a zoning study of six properties in the Woodside Hills Subdivision. The six properties total approximately 21.4 acres. The petition received by City Council included signatures of individuals who own five of the six properties. These five properties total approximately 18.7 acres or 87% of the total acreage of the requested study.

Section 7-7-2 of the Unified Development Ordinance states that "a zoning study of a defined area may be requested upon submittal to the Planning and Development Department of a petition signed by 51% of the property owners in the defined area for which the zoning study is requested who own at least 51% of the property (acreage) in the defined area for which the zoning study is requested". The petition does meet the above referenced criteria.

Council is asked to determine whether a zoning study should be initiated for this defined area (or a portion thereof). The concern of residents in the Woodside Hills Subdivision stemmed from the proposed development of a duplex on the property designated as PIN No. 9617.05-07-4718. Both this parcel, as well as the majority of PIN No. 9617.09-17-5215, are zoned RM-6. This zoning district allows a duplex as a permitted use. The areas adjacent to Woodside Hills

Subdivision are zoned RS-4. This zoning district allows duplexes as a conditional use. At this time, the property owner has applied for a building permit for the duplex, noting that the wastewater allocation, the water allocation, and letters relative to the building of a culvert have been received and approved for this property.

City Council may direct staff to initiate the zoning study, elect not to initiate the zoning study, or reduce the size of the area to be included in the zoning study and initiate a zoning study of the reduced area.

When Councilman Cloninger asked why the request is to rezone six properties when only five of the property owners signed the petition, Mr. Ownbey said that the sixth property owner did not sign the petition because he is the one who is developing the duplex and has not indicated any desire to have his property rezoned to single-family.

Upon inquiry of Vice-Mayor Hay, Mr. Ownbey said that if the property were rezoned from RM-6 to RS-4, duplexes would be allowed as a permitted use versus duplexes being allowed as a conditional use. Mr. Ownbey also said that it would also decrease the density.

Mayor Sitnick confirmed that the duplex can be built under the RM-6 zoning designation.

When Councilman Cobb asked approximately how long a study of this area would take, Mr. Ownbey said that it would take approximately 4-5 months.

Councilman Cobb felt that as a common courtesy, City Council should initiate the study since they are City residents, owners of the property and the surrounding property is zoned RS-4.

Mr. Paul Sweeney, President of the Woodside Hills Recreation Association, reinforced their concern about not wanting any of the forest removed which currently serves as a buffer for the noise from the I-40 traffic which runs along the ridge overlooking the housing development. They also have some concern about the density of population that a larger development might bring to this area since it is completely isolated from the outside world, with the only access through this residential area. When Mr. Heyward bought the approximately 12 acres, he bought them with the express purpose of maintaining that buffer area between the park and I-40. It was with distress to some of the property owners that some of that buffer might be eliminated. He urged City Council to initiate the zoning study.

Mr. Earl Shelton expressed his concern over the increased traffic in the area if any additional in the housing in the area is built.

Mr. Ken Hamlin, property owner in the area, stated also that any development will increase the traffic in the area.

Upon inquiry of Councilwoman Field, Mr. Ownbey explained why the Planning staff zoned the area RM-6 during the recent Unified Development Ordinance adoption.

When Vice-Mayor Hay asked about the procedure involved for the zoning study, Mr. Ownbey said that Planning staff would take the zoning study to the Planning and Zoning Commission, get their recommendation and then it would come back to City Council. But in the meantime the construction plans that are on the table now for a single duplex, could go forward.

City Manager Westbrook pointed out that if Council instructs the Planning staff to initiate this zoning study, they need to remember that the Planning staff already has direction to do a number of other things, including some other small area plans, the Unified Development

Ordinance annual review issues, the church designation, signs, etc. He felt that City Council would need to re-prioritize those issues for staff to let them know what Council's priorities are, in addition to the length of time a zoning study would take.

Councilman Cobb moved to direct the Planning staff to initiate the zoning study as soon as possible, however, not to put it ahead of any of the other issues City Council has instructed the Planning staff to work on. This motion was seconded by Councilman Sellers.

Councilman Cloninger was concerned that the request includes property owned by someone who doesn't want to be rezoned. His broader concern was that if City Council moves forward with this study, noting that City staff has said they are not aware of any reason why it should be rezoned, it may well set a precedent that Council is going to become inundated with relatively small areas requesting rezoning changes. He said Council has just went through the Unified Development Ordinance process in which staff looked at all the areas and he felt it was a little early that we start looking at individual small areas throughout the City.

Councilwoman Field said that the RM-6 designation was really designed to provide a little bit of flexibility in terms of mixing uses to encourage duplex, quadraplexes and triplexes and to encourage affordable housing.

The motion made by Councilman Cobb and seconded by Council Tomes failed on a 3-4 vote, with Councilmen Cobb, Sellers and Tomes voting "yes," and Mayor Sitnick, Vice-Mayor Hay, Councilwoman Field and Councilman Cloninger voting "no".

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 22, 1998; THE COMMUNITY MEETING HELD ON SEPTEMBER 29, 1998; AND THE WORKSESSION HELD ON OCTOBER 6, 1998

Vice-Mayor Hay moved for the adoption of the minutes of the regular meeting held on September 22, 1998; the community meeting held on September 29, 1998; and the worksession held on October 6, 1998. This motion was seconded by Councilman Tomes and carried unanimously.

B. CANCELLATION OF MAYOR'S ROUNDTABLE ON NOVEMBER 19, 1998

Councilman Tomes moved to cancel the Mayor's Roundtable on "The Block" currently scheduled for November 19, 1998, due to the fact that this topic will take more staff time to adequately prepare for the Roundtable discussion and also due to the upcoming holidays. This motion was seconded by Councilman Sellers and carried unanimously.

Mayor Sitnick noted that when the next Roundtable is scheduled, the topic will not necessarily be "The Block" and when the date it scheduled, she will once again ask Council members for suggested topics.

C. CLAIMS

The following claims were received by the City of Asheville during September 11-October 1, 1998: Trecia Tucker (Water), Wendy Rathburn (Water), Holly Grotzinger (Water), Martin Beckman (Sanitation), Tracey Boles (Water), Harold Bradley (Water), Louise K. Dodson (Streets), Clayton Lewis (Water), Givens Estate (Water) and Rebecca Metcalf (Streets).

The following claims were received during the week of October 2-8, 1998: Mae Tucker (Streets), Scott Goodman (Water), Asheville Transit (Sanitation), David Langrall (Sanitation) and Rickey Capps (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

D. LAWSUIT

The City has received a Notice of Appeal on September 3, 1998, which is generally described as follows: Elijah Ulysses Jones v. City; Nature of Proceeding: Appeal to District Court from Towing Appeals Committee decision that certain vehicles should be removed from property located at 52 South Market Street.

This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS RELATIVE TO CITY COUNCIL SALARY

Mr. David Gould felt that the Mayor and City Council members were grossly underpaid for the amount of work and time they devote to their position on City Council and their salaries should be increased.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:35 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - October 27, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Cobb gave the invocation.

ANNOUNCEMENT

Mayor Sitnick announced that at each regular meeting she will ask City Council members and City staff if there is an item they would like to add to the agenda.

Councilwoman Field moved to add the Asheville Motor Speedway topic to the agenda under Other Business. This motion was seconded by Councilman Sellers and carried unanimously.

At the request of City Attorney Oast, Councilwoman Field moved to add an amendment to the franchise for Asheville Trolley Works to the agenda under New Business. This motion was seconded by Councilman Tomes and carried unanimously.

I. PROCLAMATIONS:

II. CONSENT:

A. RESOLUTION NO. 98-154 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A TWO YEAR LEASE WITH DEVERGE SYSTEMS FOR PROPERTY AT 7-1/2 BILTMORE AVENUE

Summary: The consideration of a resolution authorizing a two year lease of property at 7-1/2 Biltmore Avenue to the current tenant, DeVerger Systems.

City Council previously authorized holding the subject property for a period of two years (until August, 2000) before considering its sale. In the interim, the property is being leased. The current tenant, DeVerger Systems, has been paying $205.00 per month. The proposed lease calls for incremental increases beginning October 1, 1998, as follows:

10/1/98 - 2/28/99	**3/1/99 - 8/31/99**	**9/1/99 - 2/29/00**	**3/1/00 - 8/31/00**
$300.00 per mo.	$400.00 per mo.	$500.00 per mo.	$625.00 per mo.

The property comprises 600 sq. ft. in a 10' x 60' space. The heating and air conditioning systems are old and in need of replacement. The rental amounts are believed to be reasonable considering the condition of the space, the lease terms and the cost of tenant turnover.

The Lessee is responsible for paying utilities and maintenance of the interior including cleaning, glass breakage, electrical, heating, plumbing and air conditioning equipment. The Lessor is responsible for the exterior walls and roof along with the parking area.

Community Development staff recommends City Council adopt the resolution authorizing a two-year lease of property at 7-1/2 Biltmore Avenue to DeVerger Systems.

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B. RESOLUTION NO. 98-155 - RESOLUTION APPROVING CERTAIN CONSTRUCTION IMPROVEMENTS AND MODIFICATIONS FOR A STRUCTURE LOCATED WITHIN THE PRIMARY FIRE DISTRICT

Summary: The consideration of a resolution requesting City Council approval of construction improvements and modifications of the Wick and Greene Jewelry Building located at 115 Patton Ave.

North Carolina law (N.C.G. S. 160A-436) requires approval of both local inspection authorities and the local governing body when construction modifications are made to a Type VI (wood frame) building in a municipality's "primary fire district".

Wick and Green Jewelers, 115 Patton Ave., has requested this approval for work it is proposing on the exterior of it's building. Building Safety and Fire Department officials have determined that this work will, in fact, improve the fire safety characteristics of the building, and have approved the proposed work, subject to City Council and North Carolina Commissioner of Insurance approval, as provided in N.C.G.S 160-436.

The Director of Building Safety and the Fire Chief recommend City Council approval of Wick and Greene's proposal to repair their existing building.

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C. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 10, 1998, TO REZONE 1451 SWEETEN CREEK ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and the Consent Agenda and they would not be read.

Councilman Tomes moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO CLOSE WILSON ALLEY LOCATED BETWEEN HENDERSONVILLE ROAD AND SUMMIT STREET

RESOLUTION NO. 98-156 - RESOLUTION TO CLOSE WILSON ALLEY LOCATED BETWEEN HENDERSONVILLE ROAD AND SUMMIT STREET

Mayor Sitnick said that this public hearing was rescheduled from October 13, 1998, She then opened the public hearing at 5:10 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Councilman Cloninger said that his law firm represents Mr. and Mrs. Young on an ongoing basis and asked to be excused from voting. Therefore, Councilman Sellers moved to excuse Councilman Cloninger from voting on this matter due to a conflict of interest. This motion was seconded by Councilman Cobb and carried unanimously.

Ms. Suzanne Molloy, Assistant Director of Public Works, said that this is the consideration of a resolution to permanently close Wilson Alley between Summit Street and Hendersonville Road.

A petition has been received from Janet L. Young and Paul M. Young requesting that an Wilson Alley between Summit Street and Hendersonville Road (U.S. Route 25) be permanently closed to public use.

The petition received includes the affidavit of Janet L. Young and Paul M. Young, owners of parcels 9647-07-77-2987 and 4803. Janet L. and Paul M. Young own all of the property with frontage on the unopened alleyway between Summit Street and Hendersonville Road that has been petitioned to be closed.

Wilson Alley is a paper street and has never been used as a alleyway. There are no plans to utilize this alleyway. All utility companies will be contacted, the resolution of intent to close Wilson Alley will be advertised in a local paper, and the location was posted with the resolution of intent to close.

The Public Works Department staff recommends adoption of the resolution to permanently close Wilson Alley from Hendersonville Road to Summit Street.

Mayor Sitnick closed the public hearing at 5:12 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Tomes moved for the adoption of Resolution No. 98-156. This motion was seconded by Councilwoman Field and carried unanimously.

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B. PUBLIC HEARING RELATIVE TO A COMPREHENSIVE PARKING STUDY FOR DOWNTOWN, BILTMORE VILLAGE AND WEST ASHEVILLE AREAS

Mayor Sitnick opened the public hearing at 5:14 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Cathy Ball, City Engineer, said that on September 15, 1998, representatives from Walker Parking Consultants and Day Wilburn Associates, Inc., presented recommendations from the Comprehensive Parking Study of the Downtown, Biltmore Village, and West Asheville areas. Following that worksession, Council agreed to allow formal input on the recommendations by holding a public hearing.

Since the September 15, 1998, meeting, staff has met with several organizations to discuss the recommendations of the study. Some recommendations included increasing on-street parking meter rates from 25-cents an hour to 50-cents an hour, optimizing signal lights downtown, building a parking garage in the Battery Park area, adding three surface lots at the Biltmore Village area, adding stripping on Haywood Road to delineate parking spaces, adding signs on private parking lots, as well as making improvements to several of the garages. Staff has met with the Asheville Downtown Association, Merchant Action Coalition, Haywood Road Small Area Planning Group, and Downtown Parking Task Force. In addition, staff has received phone calls from the Biltmore Village Merchants Association, Eagle Market Street Development and a few individuals. Most of the input staff has received has been favorable with the major criticism being that the study did not offer enough recommendations.

Following the public hearing staff will prepare specific recommendations for implementation of the Parking Study, along with costs and a schedule to bring before Council for approval on December 15, 1998.

Staff recommends City Council (1) hold their public hearing to allow input from the public on the recommendations of the Parking Study for the Downtown, Biltmore Village, and West Asheville areas; and (2) review and approve these recommendations at the December 15, 1998, meeting.

Mr. Lee Bourque and Mr. Rick Day, consultants, responded to various questions and comments from Council, some being, would there be a need for a parking garage in the Battery Park area if there are improvements at the Civic Center; are pedestrian crosswalks and bike routes included in the study; need for coordination with the Pedestrian Thoroughfare Plan; the need to work signalization synchronization in the three study areas of the City; can a better method be devised to get people into the parking decks quicker at events so traffic is not at a stand-still; the advantages of a color-coded signage system; suggestion for a one color parking logo sign for all parking areas; rates in the parking garages; how the parking on Haywood Road is recommended; if the Grove Arcade is not developed, is it still recommended that we need more parking in that area; and the feasibility of a mixed use parking deck.

Mayor Sitnick said that the following are important items to keep in mind as we move forward to adopt the Plan: (1) the trucks and buses on the downtown streets; (2) the opportunity to provide enough parking for downtown employers and employees; and (3) parking spaces on the perimeter of downtown, with perhaps some shuttle services. Since all-day occupancy was one part of the problem, wanted to look into the future as we build to make sure that we not only provide for the shoppers, but also provide as much space as possible for the people who work downtown.

Mayor Sitnick suggested that the City contact the N.C. Dept. of Transportation to see if the old McDowell Street Bridge can be saved and made into a pedestrian bridge to connect McDowell Street to Biltmore Village. It could be landscaped with built in planters, and possibly kiosks. City Manager Westbrook said that he has already discussed this with the N.C. Dept. of Transportation and would bring the Mayor up-to-date.

Mr. Carl Ownbey, Urban Planner, said that the Haywood Road Corridor Study is in process and some of the recommendations that have come out of the parking study are also some of the ideas that the community has been looking at.

Mr. Joe Eckert, representative of the Merchants Action Coalition, said that they have submitted their responses to the parking study and briefly reviewed the following recommendations: (1) one hour of free parking Monday through Friday and three hours of free parking on Saturdays in all city-owned parking structures; (2) consideration of a shuttle service for downtown business district; (3) comprehensive advertising campaign for the public and the merchants of downtown in developing the parking theory - one issue being the customers and the clients and the employers and employees; (4) two full-time parking enforcement personnel to help manage and control the parking; (5) any changes in metered parking to be considered among the business merchants in downtown; (6) there should be two classes of loading zones - one for commercial and one for a general purpose loading zone for customers; (7) construction of a proposed parking structure in the area of the Grove Arcade; and (8) number of merchants on Haywood Street and Battery Park support higher parking rates while members in other areas are satisfied with the present rates - therefore, parking meter rates in different downtown areas should be flexible. He said that the Coalition believes that their recommendations will not require any additional funding from sources other than the increase in parking meter revenues. He said the downtown merchants are very committed to this process and would support the City in this endeavor.

When Mayor Sitnick asked Mr. Eckert his thoughts on setting time restrictions on large tractor-trailer trucks for deliveries in the downtown area, Mr. Eckert responded that he did not think regulating them is realistic or practical.

When Vice-Mayor Hay questioned if having different rates in different parts of the City for on-street parking would be feasible, Mr. Bourque felt that it can work but depends on the merchants themselves.

Mayor Sitnick said that as we move further into the parking study, possibly there can be more coordination with the N.C. Dept. of Transportation on their signage on the highways into downtown Asheville.

City Manager Westbrook said that the parking garage will be the largest single expenditure coming out of the parking study and one that has already been talked about as a need in the Grove Arcade and Civic Center area. Staff hopes that the revenues from the entire parking system will be enough to generate the debt service to pay the bonds that we need to build such a structure. However, if that is not the case, then we will need to look at another revenue source to do that. City Attorney Oast noted that part of our agreement with the Grove Arcade has them contributing financially to a deck if it gets built in a certain area.

Upon inquiry of Councilman Sellers, City Manager Westbrook said that the preliminary guidance to the staff has been that when they start the design of the deck that the first floor will have street shops. He said that adds to the cost upfront but you can generate some revenue from it, however, there are some restrictions in the bond issue. It is also staff's intent to design the deck to make it appealing to that particular part of town.

Mayor Sitnick was not opposed to considering approaching the County and the State, both of whom have many offices downtown, to help us with some of the parking needs of the downtown area.

Mr. Bourque encouraged City Council to think long-term because if the City does proceed with the garage design, knowing in advance the potential future purpose of that garage can provide the designer an opportunity to make provisions for those revisions.

Mayor Sitnick closed the public hearing at 5:47 p.m.

It was the consensus of City Council to consider adopting the Comprehensive Parking Study for Downtown, Biltmore Village and West Asheville areas on December 15, 1998.

C. PUBLIC HEARING RELATIVE TO A CONDITIONAL USE APPLICATION TO LOCATE A TELECOMMUNICATIONS TOWER AT 754 MERRIMON AVENUE

Due to an error in notice of the public hearing (a "Z" sign was not posted at the site), Councilman Cloninger moved to continue this public hearing until November 10, 1998, without further legal advertisement. This motion was seconded by Councilman Cobb and carried unanimously.

D. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING A WIRELESS TELECOMMUNICATION FACILITIES ORDINANCE

Senior Planner Gerald Green said that this is the consideration of a motion to reschedule the public hearing relative to wireless telecommunications facilities ordinance to November 24, 1998.

The Planning and Zoning Commission received an overview of the draft Telecommunications Facilities ordinance from Paul Rosa at their October 7, 1998, meeting. The Commission members asked questions regarding the draft ordinance and received input from one representative of a telecommunications provider. The Commission requested staff schedule an opportunity for providers of telecommunications services to comment on the ordinance in a setting which would be conducive to discussion. The Commission continued this matter until the telecommunication services providers have had the opportunity to comment on the draft ordinance. A meeting to obtain the input of the providers is scheduled for October 28, 1998, at 3:00 p.m. This item has been placed on the Planning and Zoning Commission agenda for their November 4, 1998 meeting.

Based upon the action of the Planning and Zoning Commission, City staff recommends that City Council continue the scheduled public hearing on this matter until their November 24, 1998, meeting.

Therefore, Councilman Sellers moved to continue the public hearing until November 24, 1998. This motion was seconded by Councilman Tomes and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 2521 - AMENDMENT TO ORDINANCE GRANTING A FRANCHISE TO OPERATE A TROLLEY WITHIN THE CITY OF ASHEVILLE

City Attorney Oast said that in June of 1998, City Council authorized the granting of a trolley franchise to Asheville Trolley Works. It appears now that that operation will be taken over by the Grove Park Inn Resort Inc. Therefore, he reviewed the following amendments to the franchise: (1) To change the name of the group franchised from "Asheville Trolley Works, LLC" to "Grove Park Inn Resort, Inc., a Delaware Corporation, doing business as The Asheville Trolley Works"; (2) Add a stop at the Grove Arcade (staff will not designate the exact location of the stop until the first shops at the Arcade are ready to open); (3) Change the term of the Franchise to start on the date of final approval of these amendments; and (4) Change the address for notification to Asheville Trolley Works from Mr. David Newman, General Delivery, Asheville,

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North Carolina, to Mr. Bill Kelly, Grove Park Inn, 290 Macon Avenue, Asheville, North Carolina, 28804. He said that this franchise amendment will require two votes on two separate dates. He asked that if Council approves the amendment on first reading at this meeting, that the second reading be held next week at Council's worksession scheduled for November 4, 1998.

Upon inquiry of Vice-Mayor Hay on the name which will show on the trolley, noting that "Asheville Trolley Works" was more appealing than possibly the "Grove Park Inn Trolley", Urban Planner Bruce Black noted that there is nothing in the franchise (other than the name can't be confused with the regular Transit Authority buses) that would limit the Grove Park Inn from choosing any name they want. Vice-Mayor Hay was concerned that residents might think they have to be guests at the Grove Park Inn to ride the trolley.

City Attorney Oast said that even though there was nothing in the franchise about the name, City Council can certainly make the name of the trolley a condition of the franchise.

Councilman Cobb moved to adopt Ordinance No. 2521 on its first reading, subject to the Grove Park Inn using the name "Asheville Trolley Works", or another name tied to the City of Asheville, on the vehicles.

Councilman Cloninger opposed the option because he felt the City Council should not be telling businesses what names they should use on the vehicles that they either own or lease. He said that the Grove Park Inn will be incurring a substantial expense in running the operation of the trolleys and Council is saying that they can't even identify on the vehicles that they are the ones providing the service.

Since the ordinance would have to be voted on again at the November 4 meeting, after a brief discussion it was the consensus of City Council to instruct staff to contact the Grove Park Inn and invite a representative to the November 4 worksession in order to negotiate with them the insignia that will appear on the outside of the vehicles.

Councilman Cobb amended his motion to adopt Ordinance No. 2521 on its first reading, subject to further discussion on the insignia that will appear on the outside of the vehicles. This motion was seconded by Councilman Sellers and carried unanimously.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 13, 1998

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on October 13, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

B. CLOSED SESSION

Because Representative Martin Nesbitt has requested he be allowed to speak to City Council on the issue of the future of the Asheville Motor Speedway and his plane will arrive in Asheville shortly after 7:00 p.m., Mayor Sitnick suggested City Council proceed with their closed session business, recess the meeting and then reconvene the meeting once Representative Nesbitt arrives.

Councilman Tomes said that he will be driving to Durham, North Carolina, after the Council meeting and since there will be no official action taken by City Council, he asked to be excused after coming out of closed session.

At 6:10 p.m., Councilwoman Field moved to go into closed session for the following reasons: (1) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or is not considered a public record within the meaning of Chapter 132 of the General Statutes. That law that renders the information to be discussed privileged or confidential is G.S. 143-318.10 (e) - statutory authorization is G.S. 143-318.11 (a) (1); and (2) to consult with an attorney retained or employed by the City Council in order to preserve the attorney-client privilege between the City and its attorney. The parties in the lawsuit about which the Council expects to receive advice are: Fairway Outdoor Advertising Inc., Outdoor Communications Inc., Maple Cove Inc. and the City of Asheville - statutory authorization is G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Tomes and carried unanimously.

At 7:05 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilman Cobb and carried unanimously.

At 7:12 p.m., Councilwoman Field moved to excuse Councilman Tomes from the meeting. This motion was seconded by Councilman Sellers and carried unanimously.

C. FUTURE OF THE ASHEVILLE MOTOR SPEEDWAY

At 7:14 p.m., Mayor Sitnick recessed the meeting to await Representative Nesbitt's arrival.

At 7:25 p.m., Mayor Sitnick called the meeting back to order.

Representative Martin Nesbitt, attorney representing a number of people, appreciated City Council allowing him to time to speak at this meeting. Following a meeting last week of approximately 90 people, an executive committee (called "Speedway 99") was appointed to work on this problem and to try to bring some resolution. The committee members consist of: Sharon Tolley (car owner and business owner of medical emergency ambulance), Kermit Tolley (car owner, business owner of medical emergency ambulance and Asheville property owner), Martin Nesbitt (car owner, driver and bank manager for Wachovia), Michael Fryar (Fryar Performance Inc.), Ron Crane (car owner, business owner and owner of riverfront property), Dean Jones (Owner of Prime Time Design Graphics/Souvenirs), Keith Cochran (5 years marketing - Public Relations Director of AMS and Owner of Check Flag Publications), Almeria Waldrop (former concession stand manager, customer relations manager for First Union), Danny Jones (Owner of Dans Discount Tobacco Stories), and Ken Jarvis (Advertising Manager for Ingles Market). The committee has set up three working groups: history, media and fans; economic impact; and petitions and charities. As time progresses, the committee will be giving City Council petitions from the community asking that racing be restored at the Asheville Speedway. They will provide economic data on what the racetrack means to this area and will be requesting possible historic designation for all or part of the Speedway. There also may be a concept growing to create a Hall of Fame for the Asheville Speedway. The Speedway has produced some of NASCAR's greatest drivers and recently they have designated Jack Ingram (from Asheville) as one of the top 50 drivers of all time. He said the Speedway is no small venture - it has generated substantial income to the owners over the years, it brings in approximately 3-4,000 fans a week during the summer, approximately 100 race cars, five people in each crew for each race car, vendors that sell to that race track (approximately $10,000 each), sponsors, and many marketing people. There is a tremendous infrastructure built around race cars and the building of race cars. After you pass the people who are directly involved, you get to a much larger racing audience. Some people do it and spend money at it, but a lot of people do it and depend on it for their living. He explained how racing is a family and how shocked everyone was when they didn't even get to say good-bye to the racetrack. He stressed that racing is a cultural economic benefit to this community. If you close it for any amount of time, everyone loses - the fans

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leave, the drivers leave, you can't get management and concessionaires back, and NASCAR sanction won't come back. He had high hopes for another racetrack in this community. They propose to work with City Council to figure out a way to operate the speedway until another racetrack can be built. He knows of three groups who are willing to build a speedway here. He asked for City Council to work with the people who worked to help the City acquire the property and see if they can convince them to allow racing for another year. The racing community offered their help to find people that Council would be comfortable with to operate that facility. They also asked Council to make sure that no plans are made concerning that facility until they have had a chance to explore the possibility of a Hall of Fame or a historical designation for that area. He said this whole situation is about something that has happened and now what can be done to repair our community and to keep something that is extremely good about Asheville and its people in place until we can overcome this and go onto the next step. He said they stand ready, willing and able to help City Council in anyway they can and they hope City Council will help them.

Upon inquiry of Councilwoman Field, City Attorney Oast said that deed restrictions come from two instruments. One is the deed from RiverLink which contains a restriction that says the property can only be used for residential purposes and the other is a conservation easement with the State of North Carolina which is an even stricter restriction in a corridor that is 100 feet wide right next to the river.

When Councilwoman Field asked the City Attorney if it was possible to allow racing for one more year, he replied that it would be difficult, but not impossible. He said it would require everyone up the chain of title and the State of North Carolina to agree to this.

Councilwoman Field said that personally she would like to see City Council at least look into the possibilities of whether we can or can't so that we don't leave the racing community out on a limb.

When Councilman Cloninger asked what the next steps would be, Representative Martin suggested that the first step would be for the City to go back through the chain of title and get the responses. He was very optimistic that people will agree under the right circumstances. After the responses have been obtained, then the City can come back to the racing community and tell them what the conditions are so that they know where to start looking in terms of managing the racetrack.

Councilman Cloninger agreed that the City should work on the legal aspects and the racing community should work on a proposal on the management of the racetrack.

Upon inquiry of Councilman Cobb, Representative Nesbitt said that if the City needed any help with anyone in the chain of title, they would be willing to talk to them.

Councilwoman Field said that she felt the City Manager feels that since all the negotiations were made outside of the City, just brought to the City as a complete package, that it may be better that RiverLink or whoever did the negotiations, go back to the people in the chain of title, especially since there was one anonymous donor. Representative Nesbitt said that the City now owns the racetrack and that is the reason this group is before Council, however, he felt that RiverLink is probably already doing something some of that. He felt that getting control of the land for the future was what the deal was all about, not getting rid of the Speedway.

Upon inquiry of Vice-Mayor Hay on how the restrictions would be enforced, City Attorney said that it would require some action on their part to enforce the restrictions. He believed that was not only true of the deeds but also of the easement. He said the possibility might be some type of waiver of the right to enforce that part of the restrictive covenant.

Mayor Sitnick was concerned that the people didn't have a chance to say good-bye to the racetrack. Personally, she hoped that the City can find a way to allow the Speedway to operate for another year so that (1) people can use their engines, mufflers, etc., and (2) so that there is time for another bigger, better and safer speedway to be built. She was not aware of the things going on in the racing community, other than the issue of the noise ordinance, the mufflers, and the money that individuals spent on their cars. If she had this to do all over again, she would have done it differently. In her mind, the City was accepting a gift from a private property owner who wanted to honor his family at a time when this Council had just adopted a Comprehensive Parks & Recreation and Greenways Master Plan, noting that more park land was needed. She felt she should apologize for not being more sensitive to not only the widespread economic impact of the racetrack, but for the fact that she was not aware of the impact on the individuals involved. She was not saying that she wouldn't have accepted the gift, but she would have done it differently. On the other hand, they were asked by the private property owner to keep it confidential, in the short amount of time Council knew about it, and they honored that. At this point, it is her responsibility to do whatever she can to help the racing community find another way to race their cars, to work with this chain of title in the deed, and to see if we can keep the track open for another year so that we don't lose the NASCAR sanction. The only negative aspect she heard about the racetrack was the noise and she felt that everyone involved with the raceway did everything they could to abate that problem. She would like to work with the Executive Committee and with RiverLink to find a way to do what the Committee has asked Council to do.

Representative Nesbitt said that, to some degree, they will need to know what, if any, restrictions are going to be put on the operation of the racetrack before they can put together a proposal to present to City Council in order to get a promoter to operate the racetrack.

City Attorney Oast said the first step which needs to happen is whether the parties are willing to let the racetrack continue to operate under any conditions, and then find out what those conditions are.

Since Councilman Sellers has shown so much leadership on this issue, it was the consensus of City Council to appoint him to serve as liaison between the racing community and the City in coming up with a proposal to make to the City.

Councilman Cobb said that nothing would please him more than to see the racetrack operate another year and make a nice transition to a different location.

It was the consensus of Council to add the future of the speedway on the November 10, 1998, agenda so that City Council can be brought up-to-date on the progress being made.

When Councilwoman Field asked if another racetrack could be built in a year because in one year she didn't want to be in the same position, Representative Nesbitt said that hopefully it was possible because the people that are capable of building one are out there. He said they would do everything they can as a racing community to move this along. He did note, however, that their request was that they want City Council to bridge the gap between now and when a new racetrack can be built. Mr. Scott Jarvis said that he was assured by one of the principals in one of the groups interested in building a racetrack, that if they have the opportunity, they can have the project up in one year.

Vice-Mayor Hay said that one concern is that people were told that there would be another year of racing and they relied on that by investing their money. By allowing racing for one more year, they wouldn't be in that position because they will have a much clearer idea of what is going to happen to the racetrack.

The following individuals made several comments relative to supporting the continued racing at the Asheville Motor Speedway:

Ms. Kathy Young, race fan
Mr. Fred English, Haw Creek resident
Ms. Leslie King, race fan from Candler
Mr. Jack Ingram, race car driver
Mr. Bruce McTaggart
Mr. Todd Heckman, race fan from Candler

It was the consensus of City Council to instruct the City Attorney to start pursuing how the racetrack can continue for another year legally by contacting RiverLink and the individuals in the chain of title. Then, the Committee will work with Councilman Sellers to bring back a proposal to City Council regarding management of the racetrack.

Mayor Sitnick thanked everyone for their comments. She said that City Council wants to open the dialog and wants to work with the racing community. She thanked Representative Nesbitt for his interest, concern and time on behalf of the racing community and the City of Asheville. She knows there are a lot of hard feelings, however, the City had no bad intentions.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:30 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Wednesday - November 4, 1998 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Bid Award re: Bulldozer for Public Works

Summary: The consideration of a resolution to award the bid for the purchase of a bulldozer to Van Lott Inc. in the amount of $127,502.

Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were invited to furnish a bulldozer for the Public Works Department, Street Division. Three (3) bids were received as shown as follows:

Van Lott Inc., Asheville, NC	$127,502
NC Equipment Co., Asheville, NC	$133,815
Carolina Tractor & Equipment, Asheville, NC	$140,919

Bids have been reviewed for technical compliance to specifications by the Public Works Department and the Fleet Management Division, and their concurrence received in the following recommendation.

Funds for this purchase are provided for in the budget.

City staff recommends City Council adopt the resolution which awards the bid to the lowest responsible bidder, Van Lott, Inc., Asheville, N. C., in the amount of $127,502 for the purchase of a 1998 'Deere' model 750C bulldozer.

Financing Information re: Bulldozer for Public Works

Summary: The consideration of resolutions authorizing: (1) the installment financing of a bulldozer and (2) the reimbursement of the City from proceeds of the financing in the event the bulldozer is delivered prior to execution of the installment financing contract.

The Finance Department sought proposals from 30 firms to finance the purchase of a bulldozer for the Public Works Department. The amount to be financed is $127,502, equaling the amount of the lowest bid, over a period of five years. Both fixed-rate and variable-rate proposals were solicited. Proposals were received from 11 firms, "no bid" responses were received from 3 and no response was received from the remaining 16 . The best proposal, 3.74% interest plus $250.00 closing cost, was submitted by Wachovia Leasing Corporation.

The first proposed resolution authorizes the installment purchase contract between the City and Wachovia Leasing Corporation; designates that the obligations will be "qualified tax-exempt obligations" (meaning that the City does not anticipate that we will issue more than $10,000,000 of tax-exempt debt during calendar year 1998 and are therefore "bank qualified") and authorizes the City Manager to execute any and all documents necessary for the financing.

The second proposed resolution allows reimbursement to the City from proceeds of the financing if it becomes necessary for the City to take delivery and pay for the bulldozer prior to execution of the financing contract. (We presently anticipate that the financing will be in place prior to delivery of the bulldozer.)

Staff recommends City Council adopt both resolutions.

Budget Amendment relative to Future Park Development

Summary: The consideration of a budget amendment, in the amount of $20,000, to appropriate funding from the sale of property to the Opportunity Corporation of Madison-Buncombe Counties to construct a new office building for their staff.

City Council approved the sale of approximately 1.3 acres of property behind the Reid Community Center to the Opportunity Corporation of Madison-Buncombe Counties. In exchange for this property, the Opportunity Corporation agreed to pay $20,000 to the City of Asheville for the City Parks and Recreation to use in funding needed parks in this particular area. The action required by City Council in regard to this staff report is to set up an appropriation to accept the money from this sale into the appropriate account.

The Parks and Recreation Department requests City Council approval of the attached budget amendment to appropriate $20,000 into an account for future park development.

Blanket Easement to Carolina Power & Light Company for Twin Springs Subdivision

Summary: The consideration of a resolution authorizing the Mayor to convey to Carolina Power and Light Company (CP&L) a blanket easement for the installation and maintenance of electric facilities necessary to provide service to Twin Springs Subdivision.

Twin Springs Subdivision is located on Broadview Drive in Oakley. The City is scheduled to subdivide this property into 34 residential lots. The city will construct the infrastructure improvements and Habitat for Humanity will construct the housing units.

In order to install underground electric service to all 34 homes to be constructed in the subdivision, CP&L has requested a blanket easement. The proposed blanket easement will enable the facilities to be placed in "mutually suitable locations." The actual locations will be determined between the owner and CP&L at the time service facilities are installed.

Approval of the resolution will authorize conveyance of the easement to CP&L for the installation and maintenance of electric service facilities.

Community Development staff recommends adoption of the resolution.

Budget Amendment to Amend the Water Capital Project Ordinance (29 Fund)

Summary: The consideration of a budget amendment to provide funding for engineering services for the design of the Brevard Road/Sand Hill Bridge Projects and to reprogram funds for a change order to the Camp Dresser & McKee contract for engineering services for the Mills River Water Treatment Facilities.

The Brevard Road/Sand Hill Bridge Projects are high priority Water Distribution Master Plan projects that will greatly improve water service in the West Asheville/West Buncombe service area. Design of the Sand Hill Bridge Project is complete; however, design of the Brevard Road Project is needed and has been estimated not to exceed $50,000. Adequate funding for these engineering services is available in the Distribution Master Plan Improvements due to the Biltmore Avenue Water Line Project coming in under budget. It is also expected that there will be enough contingency remaining from the Mills River Project to fund the construction of these projects. The Mills River Project is expected to be substantially complete in the Spring of 1999; and if there is adequate contingency remaining, staff will request approval to fund construction of the Brevard/Sand Hill Bridge Projects at that time.

There is currently adequate funding in the Mills River Project Contingency to fund a change order to the Camp Dresser & McKee contract for engineering services related the Mills River Project. This increase in fees is due to an extension of the scheduled completion date of the Mills River Water Treatment Plant. The projected final completion date has been extended by the contractors from January 6, 1999, to approximately July 1, 1999, and could result in increased engineering fees of up to $199,800. This includes assistance provided by Camp Dresser & McKee in preparing the funding application for the pesticide mixing stations on the Mills River Watershed.

Staff recommends adoption of the budget amendment to reprogram funds in the amount of $50,000 from the Water Distribution Master Plan Downtown Project (Biltmore Avenue) to the Brevard Road/Sand Hill Road Bridge Project and to reprogram funds in the amount of $199,800 from Mills River Contingency to Mills River Engineering Services.

Budget Amendment to Amend the Water Capital Project Ordinance (35 Fund)

Summary: The consideration of a budget amendment to the Water Major Capital Project Ordinance 82-25 (35 Fund - Water Major Capital Improvements Fund) to reflect the first payment to the N.C. Dept. of Transportation ("NC DOT") for the relocation of water lines on US 70/74 Tunnel Road/Haw Creek, the pesticide mixing stations, and the first project of the Fiscal Year 1998-99 Distribution System Improvements.

Funds in the amount of $597,920 were approved to be transferred from the Operating Budget (30 Fund) to the Water Major Capital Improvements Fund (35 Fund) to fund capital improvements projects.

The following are three projects that the Regional Water Authority has previously committed to fund with Fiscal Year 1998-99 Contribution to Capital:

- Payment #1 of the US 70/74 Tunnel Road/Haw Creek NC DOT project in the amount of $89,962;
- Relocation of the pesticide mixing stations on the Mills River Watershed in the amount of $33,000; and
- The Affordable Housing 50% fee waiver in the amount of $87,000.

A Quality Improvement Task Team called the Critical Needs Assessment Team has been formed to identify and prioritize critical water distribution system needs. The team has identified three projects thus far to be prioritized along with other projects. These projects are as follows:

- Lee Street/Prospect Street Water Main Replacement ($33,000) which is needed in order to provide adequate service to existing and future customers;
- Monroe Street Water Main Replacement ($25,000) which is needed in order to provide adequate service to existing and future customers; and
- Mine Hole Gap and Young's Cove Reservoir Improvements Project ($40,000) which includes resurfacing these water distribution system reservoirs in order to protect water quality.

An update of the Critical Needs Assessment Team and a list of other potential projects will be presented in November.

On October 20, 1998, the Regional Water Authority adopted a resolution to fund water line replacements in Prospect Street and Monroe Street. Other priorities will be recommended after completion of the Task Team's work. Since the Authority has committed to funding the pesticide mixing stations and the first payment to the NC DOT for the relocation of water lines on US 70/74 Tunnel Road/Haw Creek, it is recommended that this budget amendment reflect appropriations for these projects as well.

Staff recommends adoption of the budget amendment which will reflect the addition of a portion of Contribution From Other Funds - Fiscal Year 1998-99 in the amount of $180,962, to fund the following projects in the 35 Fund: Relocation of Pesticide Mixing Stations ($33,000), Lee Street/Prospect Street Water Main Replacement ($33,000), Monroe Street Water Main Replacement ($25,000), and the first payment of the NC DOT US 70/74 Tunnel Road/Haw Creek water line relocation project ($89,962).

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

I-26 ASHEVILLE CONNECTOR ADVISORY COMMITTEE REPORT

At the request of City Council, Mrs. Norma Price, former Chair of the Asheville Connector Advisory Committee ("ACAC"), reviewed with City Council the work of the ACAC as it related to the I-26 Connector Corridor. She reviewed specific items throughout the April 1995 Phase I Environmental Analysis of the Asheville Urban Area Corridor Preservation Pilot Project. She reviewed the list of committee members which represented 30 organizations consisting of a cross section of business, environmental and neighborhood. She also reviewed the process that occurred to reach the September 9, 1993, vote to recommend to the Transportation Advisory Committee that the ACAC voted in favor of Alternative "A" by a vote of 6-3. Alternative "A" consisted of that portion of the new construction from I-240 to US 19-23 (between the Hilton and Westgate Shopping Center), the widening of I-240 to six lanes (from I-40 to Smokey Park Bridge), the widening of Smokey Park Bridge from 8 lanes to 12 lanes, and considerable alterations to Patton Avenue (from Louisiana Avenue to the Bridge). Furthermore, the ACAC requested the opportunity to review any design plans as they became available. A summary of the rationale upon which the recommendation was made is (1) Alternative "A" is the shortest, least disruptive route to residences; (2) Alternative "A" is the least expensive in regard to right-of-way and construction costs; (3) Alternative "A" will have the least adverse impact on environmental concerns; (4) Alternative "A" is the only route that is a true, direct "connector" to I-26 and US 19-23; and (5) Alternative "A" will do more to ease the traffic congestion on the Smokey Park Bridge.

She said the ACAC was unanimous in the following: (1) the selected alternative must address aesthetics and safety (drive confusion, weaving, etc.); (2) access to the river and riverfront businesses should remain an important consideration; and (3) the access to existing businesses should be strongly considered in the design phase of project.

Ms. Price said that the following are additional comments the ACAC expressed concerning the other alternatives: (1) The ACAC was unanimous in not recommending Alternative "K"; and (2) The ACAC was unanimous in not recommending Alternative "B" in its entirety. Both of these alternatives were deemed to be too disruptive to residences, businesses, and the environment. They are likewise not true "connectors" and would contribute to urban sprawl.

She said that although there were serious concerns expressed by almost all of the ACAC members as to the design plans that were provided to them by the N.C. Dept. of Transportation, the general consensus was to recommend it with reservations. The three dissenting members: Pat Skalski (representing Coalition of Asheville Neighborhoods), Harry Weiss (representing the Preservation of Asheville & Buncombe County) and Rusty Sivils (representing the Western N.C. Alliance) were not opposed to the selection of "A" as the corridor of choice, but expressed opposition to segments of the proposed project and thus voted against the motion. In summary, their concerns were as follows: (1) Traffic volume projections contain errors and need to be re-examined; (2) the widening of I-240 will cause unnecessary disruption to the adjacent neighborhoods; (3) the additional lanes to Smokey Park Bridge will add to congestion and confusion; (4) there has not been adequate attention given to alternative transportation modes; and (5) making the area more "friendly" to automobiles does not address the real problem, such as sprawl and land use controls.

She then briefly explained why Alternative "K" and "B" were unanimously not recommended.

Mr. Harry Weiss, Mr. Rusty Sivils and Ms. Pat Skalski each went into greater detail regarding the concerns of their respective organizations.

Mr. John Hill, representing the French Broad River Foundation, explained in detail the tremendous amount of work and public input that went into the recommendation. He felt that even though only six lanes were mentioned to the ACAC at the time of their review, the N.C. Dept. of Transportation ("NC DOT") has professional engineers on staff to determine if six or eight lanes are necessary.

Discussion surrounded various issues, some being, but are not limited to, what type of environmental study was performed and why there has not been an updated analysis performed since 1995.

Councilman Cobb expressed concern of truck traffic, noise, pollution, smog and the large vehicles carrying hazardous materials. He strongly felt that Alternative "K" should be built because Alternative "A" will kill our downtown.

When Mayor Sitnick asked if the ACAC committee was given the opportunity to review any design plans, Ms. Price replied that she was not contacted by the NC DOT, however, there was information in the newspapers that said the design plans were available at the Armory.

Mayor Sitnick also expressed many concerns regarding the project, some being that we should not build our roads and highways for peak hour traffic, air pollution, noise, social affordable housing, urban sprawl, the further alienation of the Hillcrest community, and the fact that eight lanes were never mentioned.

When Councilman Cobb said that he felt City Council should hold a public hearing on the route, Mayor Sitnick said that since Secretary Tolsen of the NC DOT said that they will no longer tell communities what to do but instead listen to what the communities want, the very least Asheville could do is to hold a public hearing, with the express understanding that changes may not be forthcoming or possible. The public hearing would be just to tell NC DOT what the 1998 Asheville community has to say about the project.

Vice-Mayor Hay's biggest concern was possibly raising the expectation that there is something the City Council can do to re-route the corridor, noting that City Council cannot make any decisions to bind the NC DOT.

After a brief discussion, it was the consensus of City Council to instruct the City Manager to contact the NC DOT to see what their plans are concerning public hearings in the Asheville area, prior to any public hearing being scheduled by City Council.

On behalf of City Council, Mayor Sitnick thanked Ms. Price and other committee members present for reviewing their report for City Council.

REPORT FROM THE FUTURE OF THE CIVIC CENTER TASK FORCE

Vice-Mayor Hay, Chair of the Task Force on the Future of the Civic Center, reported that over two years ago City Council commissioned the Task Force on the Future of the Civic enter to study the need to make substantial renovations to the Asheville Civic Center. Among the issues to be reviewed were the necessity of making repairs, the impact of the anticipated opening of the Bi-Lo Center in Greenville and, most importantly, an assessment of the direction of be taken by the Civic Center for the foreseeable future. The Task Force has worked continuously and diligently since that time studying options, reviewing reports from consultants and soliciting public input through several series of public meetings and surveys. Interim reports were made to City Council in November 1996 and May 1998.

At the direction of City Council, the City engaged the services of Hunter Interests Inc. of Annapolis, Maryland, a nationally-recognized consulting firm, to assist in the study. After Phase I of its worked (completed in May 1998), the consulting firm reported that our present multi-purpose Civic Center is well-suited in terms of location, size, and facilities to continue to meet the needs of our community, but that significant improvements are required to extend its useful life and to maximize its potential. The consultant also found that there is a significant market for conventions and conferences in Asheville, but that our Civic Center is unable in its present state to host them.

Phase II (completed this summer) considered the feasibility of expanding the Civic Center to attract those events. In its Phase II report, the consultant recommended that the Civic Center be expanded to attract new conventions and conferences by making the following improvements:

A. Upgrade the existing facilities throughout, including the Thomas Wolfe Auditorium, in order to provide a first-class convention and conference offering, particularly with regard to technological, audio-visual and acoustical amenities.

B. Expand the current Civic Center to provide an additional 31,780 square feet of space, to include breakout rooms, conference rooms, and a new ballroom/exhibit room roughly the same size as the existing exhibit level.

C. Enhance food and beverage facilities to serve the conventions/conferences and meet the perceived need for additional service for local events.

D. Recruit a developer to construct a new hotel to be located adjacent to the Civic Center. The City would enter into a public-private relationship with the developer which would include sharing the cost of construction of the new convention/conference spaces. The consultant urges that no improvements be initiated until the developer is identified.

The Task Force has carefully studied the consultant's report and solicited public input about his recommendations. A representative group from the Task Force visited the Roanoke, Virginia, Conference Center to inspect that facility to learn more about the concept. After thoughtful review, the Task Force recommends to City Council that it adopt the proposal presented by the consultant, along with the following supplemental recommendations:

A. The Thomas Wolfe Auditorium should be upgraded to make it a premier performing arts facility, including improvements in acoustics and backstage properties.

B. In addition to the new facilities recommended by the consultant, further study should be done on expanding the "flat show" space available for trade shows, with an emphasis on continuous space.

C. In making improvements to the Civic Center to accommodate conventions/ conferences, necessary improvements to the arena should be included.

D. Assure that any expansions/improvements adequately address existing and potential parking concerns.

E. An emphasis be made to involve local developers in the private portion of the project.

The Task Force believes that the success of a Civic Center Renovation Plan rests upon a balanced approach to economic development, local public use, and financial feasibility considerations. After careful review, it finds that each need is best met by a synthesis of the proposal by the consultant with the additional recommendations found by the Task Force. Specifically, the Task Force recommends to City Council that it engage Hunter Interests Inc. to move forward with the proposal it made regarding the Civic Center, building into their proposal the recommendations made by the Task Force. The Task Force also recommends that it be commissioned to continue its work in overseeing and reporting to City Council as the project develops.

At the request of Councilwoman Field, Vice-Mayor Hay said that the Task Force would contact the consultant and request that they interview local firms and open up the process for the schematic design work.

Vice-Mayor Hay responded to Mayor Sitnick's question about the facade of the Civic Center once the project is complete.

Mayor Sitnick wanted to make sure that Buncombe County continues to have input into this project with perhaps some funding cooperation as well.

It was the consensus of City Council that the Task Force continue its work in overseeing and reporting to City Council as this project develops.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place the appropriate items, including a budget amendment to proceed with Phase III, on the next formal City Council agenda.

At 5:00 p.m., Mayor Sitnick announced a short break.

PEG CHANNEL UPDATE

Ms. Robin Westbrook, Public and Community Information Coordinator, said that the Cable Franchise Agreement adopted by City Council designates three initial access channels to be used for public, educational and/or government programming.

She said that in August 1998, City Council adopted a Cable Franchise Agreement allowing InterMedia to provide cable service within the city limits of Asheville. As part of this agreement, InterMedia was required to provide three initial channels to be used for public, educational and/or government programming. A fourth access channel will be provided when certain programming thresholds are met on the other channels.

She said that the City may assign or delegate the administration and management of the PEG channels to a third party or to InterMedia. The agreement states also that the City and InterMedia may coordinate the administration and management of the channels. The City has the sole authority to designate the channels and the use of their capacity.

Ms. Westbrook said that regarding the Government Access Channel, the City will be responsible for management and programming of the government channel. This channel will be programmed with city information, City Council meetings and other forms of programming.

Councilman Cobb said that there are many educational entities in the City of Asheville and the educational access channel may be designated for the use of all of these organizations. Some of these entities have video programs and curriculums already established. This gives the educational community a head start in the programming of their channel.

He said that there are several ways that the educational access channel can be organized. Due to the expertise that exists in our educational community, we recommend that we go to them for the answers. By establishing an Educational Access Channel Commission to determine how to manage the channel, we allow these organizations to work together to chart their own course. He said that Ms. Robin Westbrook will explain the composition and expectations of this Commission.

Ms. Westbrook said that regarding the Educational Access Channel, it is proposed that the City form an Educational Access Channel Commission made up of members representing all of the educational entities in the City. This Commission will oversee the development and future programming of the educational access channel. It will work with the educational community in Asheville to achieve this task. She reviewed a draft ordinance which would establish the Commission. Following City Council's review of the ordinance, staff will meet with all representatives of these organizations to solicit input on the document.

Councilwoman Field suggested that the commission be broadened to include representatives from the Charter School, the Home Schooling program and the alternative teaching community.

Mayor Sitnick suggested that that the people who participated in the cable franchise discussions be included in on the development stage of the Commission as well.

Councilman Cloninger also suggested that it might be good to have a couple of members from the general public on the Commission.

It was the consensus of City Council to ask that staff meet with the educational community to review the ordinance establishing an educational access channel commission to solicit their input on the document. After staff receives that input, then they will come back to City Council with a recommended ordinance.

Councilman Tomes said that during the meeting of the City Council to consider the cablevision franchise with InterMedia, a lot of interest was expressed about a public access channel. Now that the franchise has been granted, Council needs to address the administration and management of the public access channel.

He said there are many ways a public access channel can be managed. In considering how we do it in the City of Asheville, we need to look at the language of the franchise granted to InterMedia and to the comments expressed during the meetings of the City Council on the franchise. Under the terms of the franchise, the City may assign or delegate the administration and management of the governmental, educational and/or public access channels to InterMedia or to a third party. He said that Assistant City Attorney Patsy Meldrum will now explain various options we can consider in the administration and management of the public access channel.

Assistant City Attorney Patsy Meldrum first reviewed with Council the franchise requirements regarding the Public Access Channel: (1) InterMedia provides channel capacity for up to three initial channels that may be designated by the City for governmental, educational and/or public access ("PEG channels); (2) The City shall have the sole authority to designate the channels and use of their capacity; (3) The City may assign or delegate the administration and management of the PEG channels to another party or to InterMedia; and (4) The City and InterMedia may coordinate the administration and management of the PEG channels. She said that several of the available options for the administration and management of the public access channel include:

1. The City assigns or delegates the administration and management of the public access channel to a third party.

    - Establish a non-profit corporation and contract with the non-profit corporation to operate and manage the public access channel, incorporating guidelines for channel operation and management in the contract. (If desired, a commission could be appointed to oversee the contract).

      OR

    - Send out a request for proposal ("RFP") for a non-profit corporation to operate and manage the public access channel, incorporating guidelines for channel operation and management in the contract. (If desired, a commission could be appointed to oversee the contract).

      OR

    - Set up a commission and authorize the commission to contract with a non-profit corporation to operate and manage the public access channel, incorporating guidelines in the ordinance setting up the commission on operation and management of the public access channel.

2. The City hires staff and operates and manages the public access channel.

3. The City authorizes InterMedia to operate and manage the public access channel.

A time and method for public comment on the administration and management of the public access channel should be determined. If a RFP is used, public comment on the request may be considered before the request is sent out for response.

Ms. Meldrum responded to several questions from Council, including, but not limited to, what was the advantage of having a non-profit corporation operate and manage the channel and how do other cities handle their public access channel.

After discussion, it was the consensus of City Council to direct staff to develop a RFP for a non-profit corporation to operate and manage the public access channel, incorporating guidelines for channel operation and management in the contract, along with language to appoint a commission to oversee the contract including the commission's authority. After the RFP has been drafted and the community has been given an opportunity to comment on it, staff will bring the RFP back to City Council for their approval at a formal meeting and ask for authority to send it out. After responses are received, the RFP's will be reviewed and staff will make a recommendation to award the contract and also present Council with a draft ordinance on the Public Access Commission. It was Council's consensus that they would select the non-profit corporation and appoint the commission, with Council retaining review authority on subsequent renewals or re-bids in the future.

When Councilwoman Field suggested that Mark Rosenstein review the draft RFP, Ms. Meldrum responded that she would invite his comments, as well as several other individuals in the community.

Vice-Mayor Hay suggested that the Public Access Commission should be a small group.

SECOND READING OF ORDINANCE NO. 2521 - ORDINANCE AMENDING THE FRANCHISE FOR ASHEVILLE TROLLEY WORKS

City Attorney Oast said that the first reading of this ordinance was adopted on October 27, 1998, subject to further discussion on the name on the outside of the vehicles.

Mr. Bill Kelly, representative of the Grove Park Inn, said that the identification on the outside of the trolleys will read "Asheville Trolley Works". He also said that they will have a separate telephone line that will be answered "Asheville Trolley Works."

Upon inquiry of Vice-Mayor Hay, City Attorney Oast suggested that a new subsection (c) be included in Paragraph 6 to read as follows: "Identification/Advertising: Each trolley vehicle may display the name "Asheville Trolley Works" externally, and may have incidental signs providing route and fare information. Any other external signs shall be limited to one display face per side of the vehicle, and shall be subject to the size limitations to off-premise signs."

Councilman Tomes moved to suspend the rules in order to take official action at this meeting. This motion was seconded by Councilman Sellers and carried unanimously.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilwoman Field moved to adopt Ordinance No. 2521 on its second and final reading, with the addition of subsection (c) in paragraph 6 as read by City Attorney Oast. This motion was seconded by Vice-Mayor Hay and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 161

CARTER COVE SANITARY SEWER AND WATER IMPROVEMENTS BID AWARD

Ms. Cathy Ball, City Engineer, said that this is the consideration of adopting a resolution awarding the contract for the Beaverdam Annexation Area Carter Cove Sanitary Sewer and Water Improvements to the lowest responsible bidder, Cooper Construction Company Incorporated, in the amount of $442,278.00.

Approximately $540,000 is available in the budget for this project. The project consist of installing approximately 5,800 linear feet of sanitary sewer line and 550 linear feet of waterline.

Mattern & Craig Consulting Engineers and Surveyors prepared construction plans for the project. The engineer's estimate, also provided by Mattern and Craig, for this project is in the amount of $440,446.00.

On Tuesday, September 23, 1998, at 2:00 p.m., the Engineering Department received the following three bids for the project:

Precision Contracting, Asheville, NC	$435,806.00
Cooper Construction Co., Hendersonville, NC	$442,278.00
Buckeye Construction Co., Canton, NC	$478,031.25

The lower bidder for this project was Precision Contracting with a bid of $435,806; however, after checking references for similar types of jobs, they have been determined not to be responsible for performing this job.

Over ninety-three percent of the work on this project consists of installing sanitary sewer line. Precision Contracting has completed two sanitary sewer projects in the past. The first was for the Town of Spruce Pine and the second was for MSD at the Holiday Inn Sunspree Resort Golf Course. The cost of the project for Spruce Pine was approximately $114,000. Staff talked to Robert Wiseman with the Town of Spruce Pine. He gave a favorable reference for the work they performed; however, he said that he had some problems with the way the crews interacted with the residents.

The second sanitary sewer project was with MSD at the Holiday Inn Sunspree. The total cost of this project was approximately $250,000. MSD staff provided the documentation from the project indicating that they encountered several problems with the Contractor during the course of the project. Some of the problems included; (1) discharged sewer into the creek four times; (2) failed to provide adequately trained and skilled labor to perform the necessary work; (3) repeated instances of improperly installed silt fence and deliberate discharges of mud and soil into the creek; (4) placement of stored materials and trespassing ion areas outside the construction easement; and (5) damaged the irrigation system and cover up the line without repairing it. Additionally, MSD informed Precision's Bonding Company that they needed more sewer pipe laying experience.

The Director of the Golf Course at the time of the construction of this project provided staff with information supporting the information MSD provided.

The factors leading to the determination that Precision Contracting was not a responsible bidder are; (1) they have never completed a sanitary sewer project of this size; (2) of the two sanitary sewer projects they have completed, they encountered major problems with the bigger one and some minor problems with the smaller one; (3) Precision's Insurance Company paid the Holiday Inn Sunspree approximately $20,000 in damages following the sanitary sewer project at the Golf Course; and, (4) they discharged sewer into the creek at the Golf Course four times.

The second low bidder by $6,472 was Cooper Construction. They have performed several projects of this nature for the City of Asheville in the past without any major problems. She also received some positive references for Cooper from outside companies.

The construction time for this project is identified as 150 calendar days in the contract documents. If Contractor shall neglect, fail or refuse to complete the work within the time herein specified, then the Contractor pays the sum of $250 as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the contract.

Staff recommends that City Council accept a resolution awarding the bid for Beaverdam Annexation Area Carter Cove Sanitary Sewer and Water Improvements to Cooper Construction Company, the responsible low bidder, and authorize the City Manager to execute all necessary agreements and contracts.

Ms. Susan Lewis, attorney representing Precision Contracting, explained that her client is the lowest responsible bidder and responded to all the problems Ms. Ball alleged, noting that some of the problems she was not aware of and requested a copy of the information so that she could be prepared to respond at the formal meeting.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ANNUAL RETREAT TOPICS

City Manager Westbrook said that staff is seeking direction for the agenda items for the upcoming retreat.

He said that listed below are topics which have been suggested for the annual retreat to be held January 29, 30 and 31 of 1999. He asked that Council review the list and finalize their decision so that staff can begin preparation. There also may be topics not listed that Council may want to discuss. In previous retreats, Council has been able to deal effectively with anywhere from eight to ten issues including the brainstorming session. Based on prior history, Council may want to pare down the above list of subjects to a more reasonable size depending on the amount of time they may wish to spend on goal setting, as well as brainstorming.

1. Sewer Agreement - After reviewing the details of the sewer agreement at the September retreat, Council wanted to further discuss its options with regard to MSD not funding the extension of sewer lines for residential and commercial areas inside the City of Asheville for those who currently do not have sewer service, economic development projects, and annexation areas.

2. Review of Current Goals and the Setting of New Goals for the Upcoming Fiscal Year - Council normally does this as a part of the retreat process to give staff guidance for the upcoming budget.

3. Water Agreement - Details of the water contracts were discussed at the September retreat, and Council wanted further discussion of the water agreement at the mid-year retreat.

4. Annexation - This might be an appropriate time to discuss where we are on the annexation study and what steps need to be taken to complete it.

5. User Fees - The Mayor and Council asked for a report on user fees in the City of Asheville and across the state.

6. Stormwater Requirements - The retreat may be a good time to discuss Phase II of the federal stormwater requirement regulations and its impact on the City.

7. Civic Center Financing - A key to transforming our Civic Center to a convention center lies in the financing. This may be an appropriate time for Council to discuss where the Task Force on the Future of the Civic Center is in their current study and financial options.

8. Minimum Housing Code - As you know we are approaching a Minimum Housing Code deadline in July of 1999. This may be a good opportunity to receive a report from Terry Summey.

9. Civil Service Law - Council Members have expressed an interest in discussing the Civil Service Law at the retreat.

10. Bele Chere - Council has expressed an interest in discussing Bele Chere from several viewpoints including alcohol, increasing revenues and the financial results of the most recent Bele Chere. Staff could be ready to report these issues to you at that time.

11. Community Facilitation Training - For some time certain City employees have been receiving training and development in the area of facilitation of public meetings. With our emphasis on Community Oriented Government and many public meetings which occur between staff and various organizations and communities throughout the City, we needed to improve our facilitation skills. This was a strategic alignment with our commitment to Community Oriented Government. We have sent some staff to Western Carolina University for training in dealing with public disputes and conflict. They have also had video training and teleconferences to interact with other municipalities on this type of training. We have also invited a professor from N.C. State University to provide a course and spend time in training and certifying our employees in community facilitation. Some time ago upon apprising Council of this initiative, you requested a review and perhaps a short session for the Council on this matter. The professor from N.C. State University would discuss how to keep meetings from turning sour, how to stay on track in high tension meetings, and how to bring about consensus at the end of the meeting. This would take approximately one hour. If you would like to have this briefing and training as a part of the retreat, staff would be glad to coordinate it for you.

12. Review of the City of Asheville Corporate University/Management 21 Employee Development Program - Over a period of time staff has been examining the organization to determine where gaps exist between where the organization is and where it strategically needs to go. Once that determination was made, we needed to make sure the skills, behaviors, and capabilities of staff were aligned with the organizations goals. This is a large undertaking and it is directed at developing employees to their fullest potential. They are creating training modules and a curricula designed around the gaps we have found to take us into the twenty-first century. Staff would like to brief Council on our concept of the City of Asheville Corporate University; it would take approximately thirty minutes.

13. Reports From Departments - Council Members have indicated they like to hear reports from Department Directors on critical items that are in progress and issues that may arise in the coming year. This does not mean a report from each department, but only those that have topics that are both timely and could benefit Council in terms base knowledge or feedback to departments as a part of their planning and implementation process.

14. Council/Staff Brainstorming Issues - In the previous Council/staff retreat, Council indicated they very much liked to brainstorm solutions about specific issues. If there are issues Council would like to discuss, it would be helpful if they could be identified ahead of time so that staff can provide information or research if needed.

After discussion, (1) the Minimum Housing Code was removed from the retreat topics to be handled under Reports from Departments or at a worksession; (2) Civic Center Financing was removed from the retreat topics; (3) the Review of Current Goals should include the second set of ten goals; (4) Community Facilitation Training was removed from the retreat topics to be handled at a worksession; (5) User Fees to be removed from the retreat topics to be handled at a worksession; (6) Stormwater Regulations to be removed from the retreat topics to be handled under Reports from Departments; (7) Annexation to be removed from the retreat topics to be handled under Reports from Departments; and (8) Water Agreement to be removed from the retreat topics to be reviewed by a Council committee made up of Mayor Sitnick, Councilwoman Field and Councilman Cobb which will hold their first meeting after the retreat.

The following topics were agreed upon to be retreat topics: Sewer Agreement, Review of Current Goals (top ten along with second ten), Civil Service Law, Bele Chere, Review of the City of Asheville Corporate University/Management 21 Employee Development Program; Reports from Departments; Council/Staff Brainstorming Issues; and Economic Development/Job Creation.

REFINANCING CURRENTLY OUTSTANDING GENERAL OBLIGATION BONDS

Finance Director Bill Schaefer said that this is the consideration of resolutions authorizing: (1) application to the Local Government Commission for authorization to issue General Obligation Refunding Bonds and (2) making certain statements of fact concerning the proposed bond issue.

Due to the decrease in prevailing interest rates, it would be beneficial at this time for the City of Asheville to refinance portions of its currently outstanding debt. Specifically, the Finance Department proposes to refund the callable portions of four issues: $2,600,000 of General Obligation Street and Sidewalk Bonds Series 1986; $1,950,000 General Obligation Street and Sidewalk Bonds Series 1990; $8,800,000 General Obligation Water Bonds Series 1992; and $2,425,000 General Obligation Water Bonds Series 1994. Refunding of those issues will require the City to issue General Obligation Refunding Bonds in an amount not to exceed $18,500,000. The sale of the Refunding Bonds is tentatively scheduled by the Local Government Commission (LGC) on January 19, 1999 with closing and funds delivery on February 9, 1999. Based on currently prevailing interest rates, estimated approximate savings from the refunding will be: Gross Savings of $857,000; Net Present Value Savings of $773,000; and Annual Savings throughout the life of the issue of $55,000. Actual savings and specific outstanding bond series to be refunded will be dependent on the rates obtained on the date of sale of the bonds.

The City will require the services of a financial advisor and bond counsel to assist with the preparation of documentation for the Refunding Bonds. The Finance Department proposes the City retain Wachovia Capital Markets, Inc. as financial advisor (Fee of $12,500 plus out-of-pocket expenses not to exceed $750) and Parker, Poe, Adams & Bernstein L.L.P. as bond counsel. Retention of the financial advisor and bond counsel is subject to the approval of the LGC.

The first proposed resolution authorizes and directs the Finance Director to submit an application to the LGC to allow the City of Asheville to issue not to exceed $18,500,000 General Obligation Refunding Bonds and allow the retention of Wachovia Capital Markets, Inc. as financial advisor and Parker, Poe, Adams & Bernstein L.L.P. as bond counsel for the issue.

The second proposed resolution provides "statements of fact concerning proposed bond issue" in regards to: (A) the necessity of the proposed financing; (B) the amount of the bonds proposed; (C) past debt management policies; (D) past budgetary and fiscal management policies; and (E) retirement of debt. These "statements of fact" are required in order for the LGC to make determinations necessary to approve the City's request to issue Refunding Bonds.

City staff recommends City Council adopt both attached resolutions.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BOARDS & COMMISSIONS

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Eugene Ellison to the Alcoholic Beverage Control Board.

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Bernadette Thompson and Cassandra Ingram to the Asheville-Buncombe Community Relations Council.

At Councilman Tomes' request, at 6:34 p.m., Councilman Cloninger moved to excuse Councilman Tomes from the meeting. This motion was seconded by Councilwoman Field and carried unanimously.

It was the consensus of Council to instruct the City Clerk to arrange interviews with Sherry Wilson, Connie Barnette and Richard Evans for a vacancy on the Americans with Disabilities Act Compliance Committee.

It was the consensus of Council to instruct the City Clerk to arrange interviews with Chris Goodwin, Michael Hootstein, Patricia Grant, Sondra Slosman and Lauren Malinoff for vacancies on the Board of Adjustment. It was also the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Dennis Hodgson (Regular member) and Joseph Brady (Alternate member) to the Board of Adjustment.

It was the consensus of Council to instruct the City Clerk to arrange interviews with Bill Branyon, Steve Rice, Kim Moore and Leslie Hennessee for vacancies on the Asheville-Buncombe Fair Housing Commission.

It was the consensus of Council to instruct the City Clerk to arrange an interview with Lloyd Williams for a vacancy on the Firemen's Relief Fund.

It was the consensus of Council to instruct the City Clerk to arrange interviews with Thomas House, John Moyer, Jamie Deveney, Barbara Weinkle and Frank Fishburne for vacancies on the Recreation Board;

It was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to appoint Robert Camille to the River District Design Review Committee.

It was the consensus of Council to instruct the City Clerk to arrange interviews with Nick Koon and Robert Potter for a vacancy on the Transit Authority.

REPORTS FROM BOARDS & COMMITTEES

Councilman Cloninger said that the first meeting of the Asheville Film Board went very well.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:00 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - November 10, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Vice-Mayor gave the invocation and publicly thanked everyone for their kind words of sympathy on the loss of his father.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING NOVEMBER 11, 1998, AS "VETERANS DAY" IN THE CITY OF ASHEVILLE

Mayor Sitnick read the proclamation proclaiming November 11, 1998, as "Veterans Day" in the City of Asheville and presented it to Ms. Deborah Crowder, representing the 16th District Veterans of Foreign and it's Ladies Auxiliary.

AMENDMENT TO AGENDA

Due to the large group of citizens wishing to address City Council on the issue of the Asheville Motor Speedway, Councilman Tomes moved to amend the agenda to place the future of the Asheville Motor Speedway update at the end of the agenda, at which time the meeting will adjourn and reconvene at the Civic Center in the Banquet Hall. This motion was seconded by Councilwoman Field and carried unanimously.

II. CONSENT:

At the request of Vice-Mayor Hay, Item G. was removed from the Consent Agenda for further discussion.

A. RESOLUTION NO. 98-157 - RESOLUTION AWARDING BID TO VAN LOTT INC. FOR A BULLDOZER FOR THE PUBLIC WORKS DEPARTMENT

Summary: The consideration of a resolution to award the bid for the purchase of a bulldozer to Van Lott Inc. in the amount of $127,502.

Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were invited to furnish a bulldozer for the Public Works Department, Street Division. Three (3) bids were received as shown as follows:

Van Lott Inc., Asheville, NC	$127,502
NC Equipment Co., Asheville, NC	$133,815
Carolina Tractor & Equipment, Asheville, NC	$140,919

Bids have been reviewed for technical compliance to specifications by the Public Works Department and the Fleet Management Division, and their concurrence received in the following recommendation.

Funds for this purchase are provided for in the budget.

City staff recommends City Council adopt the resolution which awards the bid to the lowest responsible bidder, Van Lott, Inc., Asheville, N. C., in the amount of $127,502 for the purchase of a 1998 'Deere' model 750C bulldozer.

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B. RESOLUTION NO. 98-158 - RESOLUTION AUTHORIZING AN INSTALLMENT PURCHASE CONTRACT NUMBER ONE BETWEEN WACHOVIA LEASING CORPORATION AND THE CITY OF ASHEVILLE TO FINANCE THE ACQUISITION OF A BULLDOZER

Summary: The consideration of resolutions authorizing: (1) the installment financing of a bulldozer and (2) the reimbursement of the City from proceeds of the financing in the event the bulldozer is delivered prior to execution of the installment financing contract.

The Finance Department sought proposals from 30 firms to finance the purchase of a bulldozer for the Public Works Department. The amount to be financed is $127,502, equaling the amount of the lowest bid, over a period of five years. Both fixed-rate and variable-rate proposals were solicited. Proposals were received from 11 firms, "no bid" responses were received from 3 and no response was received from the remaining 16 . The best proposal, 3.74% interest plus $250.00 closing cost, was submitted by Wachovia Leasing Corporation.

The first proposed resolution authorizes the installment purchase contract between the City and Wachovia Leasing Corporation; designates that the obligations will be "qualified tax-exempt obligations" (meaning that the City does not anticipate that we will issue more than $10,000,000 of tax-exempt debt during calendar year 1998 and are therefore "bank qualified") and authorizes the City Manager to execute any and all documents necessary for the financing.

The second proposed resolution allows reimbursement to the City from proceeds of the financing if it becomes necessary for the City to take delivery and pay for the bulldozer prior to execution of the financing contract. (We presently anticipate that the financing will be in place prior to delivery of the bulldozer.)

Staff recommends City Council adopt both resolutions.

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C. RESOLUTION NO. 98-159 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO UNDERTAKE CERTAIN EXPENDITURES WITH RESPECT TO MISCELLANEOUS CAPITAL PROJECTS PRIOR TO THE EXECUTION BY THE CITY OF AN INSTALLMENT PURCHASE CONTRACT FOR SUCH PURPOSES IN AN AMOUNT NOT TO EXCEED $127,502

Summary: See Item B. above.

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D. RESOLUTION NO. 98-160 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY TO CAROLINA POWER & LIGHT COMPANY A BLANKET EASEMENT FOR THE INSTALLATION AND MAINTENANCE OF ELECTRIC FACILITIES NECESSARY TO PROVIDE SERVICE TO THE TWIN SPRINGS SUBDIVISION

Summary: The consideration of a resolution authorizing the Mayor to convey to Carolina Power and Light Company (CP&L) a blanket easement for the installation and maintenance of electric facilities necessary to provide service to Twin Springs Subdivision.

Twin Springs Subdivision is located on Broadview Drive in Oakley. The City is scheduled to subdivide this property into 34 residential lots. The city will construct the infrastructure improvements and Habitat for Humanity will construct the housing units.

In order to install underground electric service to all 34 homes to be constructed in the subdivision, CP&L has requested a blanket easement. The proposed blanket easement will enable the facilities to be placed in "mutually suitable locations." The actual locations will be determined between the owner and CP&L at the time service facilities are installed.

Approval of the resolution will authorize conveyance of the easement to CP&L for the installation and maintenance of electric service facilities.

Community Development staff recommends adoption of the resolution.

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E. RESOLUTION NO. 98-161 - RESOLUTION AUTHORIZING THE FINANCE DIRECTOR TO APPLY TO THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF THE CITY'S PROPOSED BOND FINANCING AND TO SUBMIT SUCH APPLICATION TO THE LOCAL GOVERNMENT COMMISSION

Summary: The consideration of resolutions authorizing: (1) application to the Local Government Commission for authorization to issue General Obligation Refunding Bonds and (2) making certain statements of fact concerning the proposed bond issue.

Due to the decrease in prevailing interest rates, it would be beneficial at this time for the City of Asheville to refinance portions of its currently outstanding debt. Specifically, the Finance Department proposes to refund the callable portions of four issues: $2,600,000 of General Obligation Street and Sidewalk Bonds Series 1986; $1,950,000 General Obligation Street and Sidewalk Bonds Series 1990; $8,800,000 General Obligation Water Bonds Series 1992; and $2,425,000 General Obligation Water Bonds Series 1994. Refunding of those issues will require the City to issue General Obligation Refunding Bonds in an amount not to exceed $18,500,000. The sale of the Refunding Bonds is tentatively scheduled by the Local Government Commission (LGC) on January 19, 1999 with closing and funds delivery on February 9, 1999. Based on currently prevailing interest rates, estimated approximate savings from the refunding will be: Gross Savings of $857,000; Net Present Value Savings of $773,000; and Annual Savings throughout the life of the issue of $55,000. Actual savings and specific outstanding bond series to be refunded will be dependent on the rates obtained on the date of sale of the bonds.

The City will require the services of a financial advisor and bond counsel to assist with the preparation of documentation for the Refunding Bonds. The Finance Department proposes the City retain Wachovia Capital Markets, Inc. as financial advisor (Fee of $12,500 plus out-of-pocket expenses not to exceed $750) and Parker, Poe, Adams & Bernstein L.L.P. as bond counsel. Retention of the financial advisor and bond counsel is subject to the approval of the LGC.

The first proposed resolution authorizes and directs the Finance Director to submit an application to the LGC to allow the City of Asheville to issue not to exceed $18,500,000 General Obligation Refunding Bonds and allow the retention of Wachovia Capital Markets, Inc. as financial advisor and Parker, Poe, Adams & Bernstein L.L.P. as bond counsel for the issue.

The second proposed resolution provides "statements of fact concerning proposed bond issue" in regards to: (A) the necessity of the proposed financing; (B) the amount of the bonds proposed; (C) past debt management policies; (D) past budgetary and fiscal management policies; and (E) retirement of debt. These "statements of fact" are required in order for the LGC to make determinations necessary to approve the City's request to issue Refunding Bonds.

City staff recommends City Council adopt both resolutions.

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F. RESOLUTION NO. 98-162 - RESOLUTION MAKING CERTAIN STATEMENTS OF FACT CONCERNING PROPOSED BOND ISSUE

Summary: See Item E. above.

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G. MOTION ACCEPTING THE FINDINGS OF HUNTER INTERESTS INC. REGARDING IT'S PHASE II, A DETAILED MARKET ANALYSIS, ALONG WITH THE SUPPLEMENTAL RECOMMENDATIONS BY THE FUTURE OF THE CIVIC CENTER TASK FORCE; RESOLUTION NO. 98-163 - RESOLUTION AUTHORIZING THE CITY MANAGER TO NOTIFY HUNTER INTERESTS INC. TO PROCEED WITH PHASE III, THE DEVELOPMENT OF A BUSINESS AND STRATEGIC PLAN; AND ORDINANCE NO. 2522 - BUDGET AMENDMENT, IN THE AMOUNT OF $62,800, TO PROCEED WITH PHASE III OF HUNTER INTERESTS INC.'S PROPOSAL

This item was removed from the Consent Agenda for further discussion.

H. ORDINANCE NO. 2522 - BUDGET AMENDMENT TO APPROPRIATE FUNDING FROM THE SALE OF PROPERTY INTO AN ACCOUNT FOR FUTURE PARK DEVELOPMENT

Summary: The consideration of a budget amendment, in the amount of $20,000, to appropriate funding from the sale of property to the Opportunity Corporation of Madison-Buncombe Counties to construct a new office building for their staff.

City Council approved the sale of approximately 1.3 acres of property behind the Reid Community Center to the Opportunity Corporation of Madison-Buncombe Counties. In exchange for this property, the Opportunity Corporation agreed to pay $20,000 to the City of Asheville for the City Parks and Recreation to use in funding needed parks in this particular area. The action required by City Council in regard to this staff report is to set up an appropriation to accept the money from this sale into the appropriate account.

The Parks and Recreation Department requests City Council approval of the budget amendment to appropriate $20,000 into an account for future park development.

ORDINANCE BOOK NO. 17 - PAGE 167

I. ORDINANCE NO. 2523 - BUDGET AMENDMENT TO AMEND THE WATER CAPITAL PROJECT ORDINANCE (29 FUND)

Summary: The consideration of a budget amendment to provide funding for engineering services for the design of the Brevard Road/Sand Hill Bridge Projects and to reprogram funds for a change order to the Camp Dresser & McKee contract for engineering services for the Mills River Water Treatment Facilities.

The Brevard Road/Sand Hill Bridge Projects are high priority Water Distribution Master Plan projects that will greatly improve water service in the West Asheville/West Buncombe service area. Design of the Sand Hill Bridge Project is complete; however, design of the Brevard Road Project is needed and has been estimated not to exceed $50,000. Adequate funding for these engineering services is available in the Distribution Master Plan Improvements due to the Biltmore Avenue Water Line Project coming in under budget. It is also expected that there will be enough contingency remaining from the Mills River Project to fund the construction of these projects. The Mills River Project is expected to be substantially complete in the Spring of 1999; and if there is adequate contingency remaining, staff will request approval to fund construction of the Brevard/Sand Hill Bridge Projects at that time.

There is currently adequate funding in the Mills River Project Contingency to fund a change order to the Camp Dresser & McKee contract for engineering services related the Mills River Project. This increase in fees is due to an extension of the scheduled completion date of the Mills River Water Treatment Plant. The projected final completion date has been extended by the contractors from January 6, 1999, to approximately July 1, 1999, and could result in increased engineering fees of up to $199,800. This includes assistance provided by Camp Dresser & McKee in preparing the funding application for the pesticide mixing stations on the Mills River Watershed.

Staff recommends adoption of the budget amendment to reprogram funds in the amount of $50,000 from the Water Distribution Master Plan Downtown Project (Biltmore Avenue) to the Brevard Road/Sand Hill Road Bridge Project and to reprogram funds in the amount of $199,800 from Mills River Contingency to Mills River Engineering Services.

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J. ORDINANCE NO. 2524 - BUDGET AMENDMENT TO AMEND THE WATER CAPITAL PROJECT ORDINANCE (35 FUND)

Summary: The consideration of a budget amendment to the Water Major Capital Project Ordinance 82-25 (35 Fund - Water Major Capital Improvements Fund) to reflect the first payment to the N.C. Dept. of Transportation ("NC DOT") for the relocation of water lines on US 70/74 Tunnel Road/Haw Creek, the pesticide mixing stations, and the first project of the Fiscal Year 1998-99 Distribution System Improvements.

Funds in the amount of $597,920 were approved to be transferred from the Operating Budget (30 Fund) to the Water Major Capital Improvements Fund (35 Fund) to fund capital improvements projects.

The following are three projects that the Regional Water Authority has previously committed to fund with Fiscal Year 1998-99 Contribution to Capital:

- Payment #1 of the US 70/74 Tunnel Road/Haw Creek NC DOT project in the amount of $89,962;
- Relocation of the pesticide mixing stations on the Mills River Watershed in the amount of $33,000; and
- The Affordable Housing 50% fee waiver in the amount of $87,000.

A Quality Improvement Task Team called the Critical Needs Assessment Team has been formed to identify and prioritize critical water distribution system needs. The team has identified three projects thus far to be prioritized along with other projects. These projects are as follows:

- Lee Street/Prospect Street Water Main Replacement ($33,000) which is needed in order to provide adequate service to existing and future customers;
- Monroe Street Water Main Replacement ($25,000) which is needed in order to provide adequate service to existing and future customers; and
- Mine Hole Gap and Young's Cove Reservoir Improvements Project ($40,000) which includes resurfacing these water distribution system reservoirs in order to protect water quality.

An update of the Critical Needs Assessment Team and a list of other potential projects will be presented in November.

On October 20, 1998, the Regional Water Authority adopted a resolution to fund water line replacements in Prospect Street and Monroe Street. Other priorities will be recommended after completion of the Task Team's work. Since the Authority has committed to funding the pesticide mixing stations and the first payment to the NC DOT for the relocation of water lines on US 70/74 Tunnel Road/Haw Creek, it is recommended that this budget amendment reflect appropriations for these projects as well.

Staff recommends adoption of the budget amendment which will reflect the addition of a portion of Contribution From Other Funds - Fiscal Year 1998-99 in the amount of $180,962, to fund the following projects in the 35 Fund: Relocation of Pesticide Mixing Stations ($33,000), Lee Street/Prospect Street Water Main Replacement ($33,000), Monroe Street Water Main Replacement ($25,000), and the first payment of the NC DOT US 70/74 Tunnel Road/Haw Creek water line relocation project ($89,962).

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Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

MOTION ACCEPTING THE FINDINGS OF HUNTER INTERESTS INC. REGARDING IT'S PHASE II, A DETAILED MARKET ANALYSIS, ALONG WITH THE SUPPLEMENTAL RECOMMENDATIONS BY THE FUTURE OF THE CIVIC CENTER TASK FORCE; RESOLUTION NO. 98-163 - RESOLUTION AUTHORIZING THE CITY MANAGER TO NOTIFY HUNTER INTERESTS INC. TO PROCEED WITH PHASE III, THE DEVELOPMENT OF A BUSINESS AND STRATEGIC PLAN; AND ORDINANCE NO. 2525 - BUDGET AMENDMENT, IN THE AMOUNT OF $62,800, TO PROCEED WITH PHASE III OF HUNTER INTERESTS INC.'S PROPOSAL

Vice-Mayor Hay, Chair of the Task Force on the Future of the Civic Center, said that the Task Force would like to review the contract directly with Hunter Interests Inc. in that there are some issues that the Task Force would like to discuss with them, in particular the local architect issue raised by Councilwoman Field on November 4, 1998. The Task Force will be meeting next week to review the proposal and he does not expect any substantive changes, but wanted to let Council know they have not reviewed the proposal as a group and that they wanted to do that.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and ordinance and they would not be read.

Vice-Mayor Hay moved to adopt Resolution No. 98-163 and Ordinance No. 2525. This motion was seconded by Councilwoman Field and carried unanimously.

Vice-Mayor Hay said that the Citizen-Times ran an article last week that basically said there was a proposal by the City to fund the Civic Center with an increase in room tax. He said that report was inaccurate. He said that they are at the stage now where they need to start looking at funding options, and that is one funding option that they will be looking at. However, at this time, there has not been any proposals on funding decided.

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ORDINANCE BOOK NO. 17 - PAGE 173

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING 980 HENDERSONVILLE ROAD FROM HIGHWAY BUSINESS DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND 45 SEMINOLE ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE BUSINESS DISTRICT

ORDINANCE NO. 2526 - ORDINANCE TO REZONE 980 HENDERSONVILLE ROAD FROM HIGHWAY BUSINESS DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND 45 SEMINOLE ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE BUSINESS DISTRICT

Mayor Sitnick opened the public hearing at 5:15 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that this is the consideration of an ordinance to rezone 980 Hendersonville Road from Highway Business and RS-4 Residential Single-Family Medium Density District to Office Business District and 45 Seminole Road from RM-8 Residential Multi-Family Density District to Office Business District.

The owner and applicant, Biltmore Baptist Church, has requested the rezoning of two lots on Hendersonville Road and one adjoining lot on Seminole Street (PIN Nos. 9646-08-99-8970, 9656-05-09-0747, and 9657-17-00-0113) totaling 5.72 acres from Highway Business District, RS-4 Residential Single-Family Medium Density District and RM-8 Residential Multi-Family Medium Density District to Office Business District.

The Church wishes to sell the property. The current main building, approximately 43,000 square feet, occupies that portion of the property that is currently zoned Highway Business. The parking for this building occupies that area of the property currently zoned RS-4. There is not sufficient room for parking for the existing building on the section currently zoned Highway Business. The use of RS-4 for parking after a change of use would not be allowed. Thus, the Church would like to zone the entire property as one zoning classification.

The parsonage is currently zoned RM-8. It is 0.51 acre in size and has a house and associated out buildings on it. The property fronts on Seminole Street, and is surrounded by office uses.

The Planning staff reviewed the rezoning request and recommended approval of the rezoning provided, however, that the new Office Business zoning should terminate twenty feet inside of the eastern property line of the area now zoned RS-4. This will preclude entry to the property from Imperial Court, thus preventing traffic from accessing the property through a Residential district. At their October 7, 1998, Planning & Zoning Commission meeting, the Commissioners voted seven to zero to recommend approval of the rezoning of two lots on Hendersonville Road and one adjoining lot on Seminole Street to Office Business District.

Upon inquiry of Councilwoman Field, Mr. Black said that even though Planning staff generally does not like to split zone a piece of property, in this case, they feel it is warranted in order to restrict traffic from entering the property from Imperial Court.

Mr. Richard Moore, member of Biltmore Baptist Church, spoke in support of the proposed rezoning.

Mayor Sitnick closed the public hearing at 5:23 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2526, retaining a 20 foot portion of property on the eastern property line to remain zoned RS-4. This motion was seconded by Councilwoman Field and carried unanimously.

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B. PUBLIC HEARING RELATIVE TO A CONDITIONAL USE APPLICATION TO LOCATE A TELECOMMUNICATIONS TOWER AT 754 MERRIMON AVENUE

Mayor Sitnick said that this public hearing was continued from the October 27, 1998, date due to an error in notice of the public hearing (a "Z" sign was not posted at the site). She said that this is a public hearing for Council to consider whether the requested conditional use application to locate a telecommunications tower at 754 Merrimon Avenue should be issued. There being no preliminary matters to be considered, she opened the public hearing at 5:24 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing. She then administered the oath to anyone who anticipated speaking on this matter.

Mayor Sitnick reviewed the procedures for this hearing by stating that City Council will first hear from staff who will describe the proposal and provide some background information. Then the applicant may make a presentation and then comments from the public will be taken. She said that there will be an opportunity for questions and rebuttal comments, as necessary. Following the hearing, Council will then debate the proposal and will take action on the request. Hearing no questions about the procedure, she asked for staff's presentation.

Mr. Mike Matteson, Urban Planner, said that SBA Incorporated is requesting a conditional use permit to construct a telecommunications tower for Bell South Mobility DCS at 754 Merrimon Avenue.

This staff report includes information with respect to the proposed telecommunications tower's ability to meet both the general and specific conditions as required by Section 7-16-2 of the Unified Development Ordinance.

The property is located at the corner of Merrimon Avenue and Sandon Drive. The proposal is to construct a 175 foot galvanized steel monopole tower outfitted with a triangular work platform at the top of the tower. In addition, a set of three steel equipment cabinets are proposed to be mounted to a concrete pad located adjacent to the base of the monopole.

Bell South Mobility will lease a portion of the property and the existing dentist office will remain on the site.

The property is zoned Community Business II. Telecommunications towers are conditional uses within the Community Business II zoning district. Conditional uses are uses which, because of their unique characteristics or potential impacts on the surrounding neighborhood and/or the city as a whole, require individual consideration of their location, design, configuration, and/or operation at the particular location proposed.

In addition to development standards for the zoning district in which they are located, conditional uses must meet certain general and individualized conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare.

The general conditions, which apply to all conditional uses, can be found in Section 7-16-2 (c) of the Unified Development Ordinance and are as follows:

(1) That the proposed use or development of the land will not materially endanger the public health or safety;

City Council may want to consider such things as the structural integrity of the tower, security, etc. but cannot consider radio frequency emissions (provided that FCC regulations have been met and they do have FCC approval).

(2) That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region;

(3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;

The applicant has provided the City with studies regarding the effect of telecommunications towers on property values, including a recent study in Asheville illustrating the change in values for properties *in the vicinity* of telecommunications towers. One study recently done for the Asheville area focused on two areas: the Richmond Hill area and the Oakley community. It analyzed sales data for properties located within the vicinity of towers in those area. Most of the properties used in the study were not adjoining or abutting the tower property, but merely in the vicinity of the tower. There is one property in the Richmond Hill area that is adjoining and abutting the tower location - 216 Richmond Hill Drive. That location is 200 feet from the existing tower and there is a mature tall row of evergreen trees between the property and the tower which is a pretty effective visual buffer.

(4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;

Telecommunications towers are listed as conditional uses within the Commercial Business II zoning district. The Unified Development Ordinance allows towers with a height of up to 200 feet. The Commercial Business II zoning district limits the height of structures (other than telecommunications towers) to 40 feet. A "windshield survey" indicates that the majority of structures along the street do not exceed 40 feet. There is a residence directly adjacent to the proposed tower site. The residential property, however, is not zoned residential.

(5) That the proposed use or development of the land will generally conform with the comprehensive plan and other official plans adopted by the city;

The City's comprehensive plan, the Asheville City Plan 2010, was adopted in 1987. Telecommunications towers were not a major issue facing communities at that time. Therefore, the plan does not specifically address these facilities.

(6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and

(7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The following individualized conditions, which can be found in Section 7-16-2(d)(3) of the Unified Development Ordinance, apply specifically to telecommunications towers:

a) **Use districts: Office/Business, Community Business II, Resort, Institutional, Highway Business, Regional Business, Commercial Industrial, River, Industrial**

The property is zoned Community Business II.

b) **No telecommunications tower or antenna shall interfere with usual and customary radio and television reception excepting broadcast facilities as provided for in the regulations of the Federal Communications Commission (FCC).**

The applicant has provided the City with a statement indicating that this condition will be met.

c) **All telecommunications towers must comply with FCC and Federal Aviation Administration (FAA) guidelines. The telecommunications tower owner shall provide the City each year with a copy of any FCC and FAA licenses required.**

The applicant has provided the City with a statement indicating that this condition will be met.

d) **Unless otherwise specified herein, telecommunications towers shall be restricted to the minimum standards of lighting required by the FAA. Telecommunications towers that do not require FAA compliant lighting shall be equipped with at least one steady-burning red obstruction lamp meeting FAA specification L-810 in order to alert helicopters that approach and depart at low altitudes to the presence of such towers. All telecommunications towers that require flashing lights by the FAA shall utilize a dual lighting system consisting of a white strobe light for daytime lighting and a red flashing light for nighttime lighting.**

The applicant has provided the City with a statement indicating that this condition will be met.

e) **Minimum setbacks for telecommunications towers shall be in accordance with the setback requirements set forth in the development standards for the zoning district in which the location of the tower is proposed, provided that the buffering requirements set forth in subsection 7-16-2.D.3.f., below, may be met. Additionally, telecommunications towers must set back from any residentially zoned properties a distance equivalent to the height of the tower being erected or 125 feet, whichever is greater.**

The site plan submitted by the applicant shows that this condition has been met. The proposed tower height is 175 feet. Because this is a monopole tower, the setback distance from residentially zoned property is half the height of the tower, or 87.5 feet. The proposed tower location is not within 87.5 feet of any residentially zoned property.

f) **Telecommunications towers shall be buffered from adjacent properties with a buffer meeting the requirements of a "B" buffer as described in Sec. 7-11-2.D.15., regardless of adjacent zoning district classifications or uses.**

The landscape plan does indicate a "B" buffer between the proposed tower and adjacent properties with the exception of along the west property line which has a severe slope that would pretty much preclude a buffer being constructed. In this location, alternative compliance from the buffering standards was approved by the Technical Review Committee due to limitations related to the topography of the site. The landscape plan indicates that part of the buffer will be located outside of the leased area.

g) **No telecommunications towers shall be located on top of buildings.**

The proposed tower will not be located on top of a building.

h) **No telecommunications towers or antennas shall be constructed in local historic districts or on the property on which a local historic landmark is located. Telecommunications towers shall not be constructed within 1000 feet of any local historic district.**

The proposed location for the telecommunications tower is not within a local historic district or on a property on which a local historic landmark is located. The proposed location is not within 1000 feet of any local historic district.

i) **No telecommunications towers shall be located within one-half mile of the Blue Ridge Parkway roadway unless the tower shall not be visible and/or discernible to the Parkway visitor as a telecommunications tower, from the Parkway roadway. The burden of demonstrating that a tower is not visible or discernible from the Parkway roadway shall be on the applicant. "Visible" shall mean capable of being seen by the unaided eye in daylight. "Discernible" shall mean capable of being distinguished with the eye or mind from its surroundings as a telecommunications tower.**

The proposed location for the telecommunications tower is not within one-half mile of the Blue Ridge Parkway roadway.

j) **No telecommunications towers shall be erected in areas determined by the Asheville City Council to be "viewsheds of superior quality" taking into consideration the definitions by the United States Department of Interior, Blue Ridge Parkway Office. A map indicating the location of the "viewsheds of superior quality" which has been reviewed and adopted by the Asheville City Council shall be kept on file in the Planning and Development Department of the City of Asheville.**

The proposed location for the telecommunications tower is not in an area determined by the Asheville City Council to be "viewsheds of superior quality."

k) **Telecommunications towers shall not be constructed unless the company erecting the tower has general liability coverage of at least $1,000,000. The owner of a telecommunications tower shall provide the City with a certificate of insurance showing evidence of its coverage and the certificate shall contain a requirement that the insurance company notify the City thirty (30) days prior to the cancellation, modification or failure to renew the insurance coverage required.**

The applicant has provided the City with a certificate of insurance showing evidence of coverage.

l) **Telecommunications towers shall have a flat gray or galvanized finish.**

The applicant has provided the City with a statement indicating that this condition will be met.

m) **Telecommunications towers over 125 feet in height shall be constructed to provide for at least one additional user. Broadcast AM towers are exempt from this requirement.**

The applicant has provided the City with a statement indicating that this condition will be met.

n) **No two telecommunications towers shall be constructed within 1320 feet of each other unless documentation is provided to the Department of Planning and Development to show that co-location on towers within the 1320 feet is not technically feasible. Broadcast AM towers are exempt from this requirement.**

There does not appear to be another telecommunications tower within 1320 feet of the proposed tower location. The closest tower appears to be the one at the Grace Plaza Shopping Center.

o) **No telecommunications tower shall be constructed without first looking at other possibilities within 1320 feet for location of an antenna on structures other than a tower. Such structures include billboards, church steeples, etc.**

The applicant has indicated that there are no existing structures within 1320 feet of the proposed location of sufficient height to satisfy their coverage objectives. It may be possible, however, for them to utilize "stealth" technology by building a new structure in the vicinity on which to locate an antenna.

p) **Monopole-type telecommunications towers are encouraged and shall receive a reduction in setback distances of up to 50% of the setback requirement stated in item 4. above.**

A monopole-type telecommunications tower is proposed for the site.

q) **The base of the telecommunications tower along with any individual guy wires shall be enclosed by a fence a minimum of 8 feet in height.**

The proposed facility will be enclosed by an eight foot fence.

r) **No telecommunications tower shall be permitted which exceeds 200 feet in height.**

The proposed telecommunications tower would be 175 feet in height.

s) **The City Council may require any other conditions found necessary to ameliorate the impact of the tower on the adjacent properties and uses. Such conditions shall include, but are not limited to: the height of the tower; the construction or type of tower; and co-location of the antennas and facilities of different parties on a single tower.**

The applicant is aware that City Council may require additional conditions. If City Council is inclined to approve the conditional use permit, they may want to consider establishing the following additional conditions:

- That the proposed work platform not be permitted (please note that the draft of the proposed new Wireless Telecommunication Facilities Ordinance prohibits such platforms). Staff understands that these platforms are used very infrequently and the use of a crane could satisfy their maintenance objectives;
- That the tower not be lighted, except for to meet the minimum requirements of the FAA and the City; and

- That the height of the tower be limited to 150 feet. Staff feels that based on the maps supplied by the applicant, there is no significant gain in a 175 foot tower that could not be accomplished with a 150 foot tower.
- That the lessor be required to provide the buffering outside of the leased area.

t) **Telecommunications towers which have remained inactive for a period of 180 days or longer shall be removed by the owner of the tower. In the event that the City determines that a tower has not been removed pursuant to this requirement, the City may provide the owner of the tower with a written notice sent by certified mail, return receipt requested, or by hand delivery or by any other method allowed under the North Carolina Rules of Civil Procedure for service, that the tower should be removed within 90 days of receipt of that notice.**

The applicant is aware of this condition.

u) **The above regulations shall not be deemed to prohibit the installation of an antenna on any existing tower, whether conforming or nonconforming, so long as the addition of said antenna adds no more than ten feet to any nonconforming dimension of the existing tower.**

Mr. Matteson said that he has received 42 calls from people in the area expressing opposition to this request.

Mayor Sitnick questioned the studies the applicant provided indicating that indicating that telecommunications towers have little or no effect on residential property values. Mr. Matteson said that the initial study that they supplied the City with was a study out of the Pacific Northwest and it was a number of years old. Therefore, the City asked them to provide a study of the Asheville area. That study was prepared the Asheville study was prepared by Jay Marlow, Marlow Real Estate Appraisal Services located here in Asheville. Their study does suggest that the existing towers at Richmond Hill and in Oakley did not significantly affect property values for the residential properties that they had sales data for. One ordinance condition is that the proposed use will not injure the value of abutting or adjoining properties. With one exception, the properties for which they had sales data for were not abutting or adjoining the tower, but rather were merely in the vicinity of the tower.

Upon inquiry of Councilman Cobb, Mr. Matteson said the tower in Oakley is 225 feet, the tower in the Richmond Hill area is 150 feet and the tower at Grace Plaza Shopping Center is 100 feet.

Ms. Katherine Wilkerson, attorney representing SBA Inc. and BellSouth Mobility DCS, introduced Mr. Stephen Lewotsky, Zoning Coordinator for SBA Inc.

Mr. Lewotsky briefly reviewed his credentials and talked about the telecommunications in general, noting that approximately 24,000 people in Asheville use wireless telecommunications. He then went over the specific site details that BellSouth used to find this site which began over two years ago and involved looking at 15 different sites. He said that this Merrimon Avenue site meets their criteria and also satisfied Asheville's Code. He submitted 15 letters (Applicant Exhibit A) into the record which letters note that there is a gap of service in this area. He said that there are no tall structures in the area that would provide them an opportunity to put a concealed site on the ground. According to Asheville's Code, they provided a monopole, asked for the tower to be 175 feet (not 200 feet allowed), and added additional landscaping. He said that their site design meets the health, safety and welfare of the community. He explained that it provides an essential service to the community and the region, it does not adversely affect property values, it is compatible with the character of the area, and it facilitates the use of the surrounding zones. The site will not interfere with the operation of the basic electronics, i.e., television, radio, microwaves, etc. The site satisfies all the set-back requirements. He said they spent a great deal of effort working with the community and the City to develop this site. They arranged a meeting with three neighborhood organizations at the request of the Planning & Development Department. Actually they postponed the meeting 30 days to allow everyone in those organizations to be notified. At the meeting, they listened to the community's comments and actually incorporated some of their ideas into their design. He submitted 2 photo simulations (Applicant Exhibit B) of the telecommunications tower at 754 Merrimon Avenue. Their real estate study indicates that cellular telecommunications towers do not affect property values in the Asheville area. They feel they have done everything the City has asked to minimize the visual impact of this tower, by placing it in a commercial zone, meeting with the neighbors, using the smallest antenna possible, and studying the effects of wireless on property values. In every instance they have met the requirements of the City in their efforts to provide for the needs of the community. They feel that this is the best site they can find in this area. The site satisfies the regulatory requirements of the Unified Development Ordinance, it presents substantial opportunities for co-location which will reduce the overall number of sites that will be needed by providers coming into the area in the future, and it will affect the smallest number of property owners possible. He then submitted for the record a copy of their original application (Applicant Exhibit C) , responses to conditions of approval of the Technical Review Committee (Applicant Exhibit D), letter from the Planning & Development Department stating that the information they provided sufficiently addressed the Technical Review Committee's conditions (Applicant Exhibit E), letter to adjacent property owner offering to provide additional landscaping (Applicant Exhibit F), and a copy of their real estate report (Applicant Exhibit G). By use of a map, he said that given the way the zones are laid out in Asheville and given the zones the towers are allowed in, in order to get a site in this area, they had no choice but to go next to residential zones. He urged City Council to approve their conditional use application to construct a 175 foot telecommunications tower for Bell South Mobility DCS at 754 Merrimon Avenue.

Upon inquiry of Vice-Mayor Hay, Mr. Lewotsky explained the advantages of digital vs. cellular.

Mr. Lewotsky responded to a question from Councilman Cobb regarding the coverage area and how the topography of the area, trees and buildings made it difficult to find an suitable location. He said that putting a wireless site downtown is not going to bring the signal far enough onto Merrimon Avenue, because not only are they trying to serve the Merrimon Avenue area, they are trying to hand off to sites north of Merrimon Avenue. He said that for this site, their primary provider is BellSouth, however, the tower is being built to allow other providers to go on it as well.

At the request of Ms. Wilkerson, Mr. Lewotsky swore that all the information in the application which he submitted into evidence and the other documents that he has actual knowledge of, with the exception of the letter from the Planning & Development Department, is true.

Mr. Howard Petree, BellSouth Mobility DCS Radio Frequency Engineer, reviewed his credentials with City Council. By use of a map, he explained the objective of the site was to provide coverage to a coverage hole on Merrimon Avenue, north of Asheville and south of the Beaver Lake area. He said they already have a site located on the BB&T Building in downtown and it does not provide the coverage that they need to connect to the north on Merrimon Avenue. He then explained that they are requesting a 175 foot tower instead of a 150 foot tower in order to minimize the coverage hole on Merrimon Avenue. He then addressed the antenna configuration they chose which would allow them to use one antenna per sector and minimize the aesthetic effect on the community.

When Mayor Sitnick asked if they looked at co-locating on the tower at the Grace Plaza Shopping Center, Mr. Petree said that the maximum height they could go on that tower was approximately 65 feet and that doesn't even reach over the hill.

Councilwoman Field asked if two antennas located lower on possibly a church steeple work better because there is still a pretty big coverage hole? Mr. Petree said that it is financially not feasible to do that. He said that they try to minimize the number of sites they put in an area.

Mr. Jay Marlow, Marlow Real Estate Appraisal Services, reviewed his credentials and briefed City Council on the Property Value Impact Study he prepared on the impact of communication towers on residential home prices. He said he analyzed two neighborhoods where there were existing communication towers: (1) Richmond Hills which has an existing tower that has been there for approximately two years; and (2) Oakley which has a tower which was more recently built. He analyzed sales within each neighborhood which were located in close proximity to the communication towers as compared to homes located in the same neighborhoods which were located further away. His analysis revealed that there was no difference in sales price, marketing time, price per square foot or rate of depreciation between homes which were located in close proximity to the tower and homes in the same development which were located further away. He also analyzed sales from within each of these neighborhoods that have communication towers compared to the larger Asheville market. Once again, he found that in both neighborhoods that have already existing communication towers, there was no difference in sales price, marketing time, price per square foot of residence or depreciation rates in these neighborhoods compared to the greater Asheville real estate market. He said that if Council recognizes the importance of digital communications in the area, then they must accept the need for communication towers in areas which would benefit from these serves. It then becomes a matter of not if, but where, to locate the towers. The proposed site is already in a commercial district located behind an operating commercial business. Behind the site is a high embankment which shields all but two residences from having a direct view of the tower's base. The two residences are also zoned Commercial Business II. This site, due it it's already existing commercial zoning and the commercial nature of the surrounding properties will have no effect on residential property values in the greater neighborhood.

When Vice-Mayor Hay asked if Mr. Marlow looked at the impact of property values regarding the tower at Grace Plaza Shopping Center, Mr. Marlow explained that he did try to analyze that site, however, because the tower is too new, there is not adequate sales data within which to make a comparison.

Mr. Marlow explained how close the houses were that he looked at to the tower and why he chose those particular ones.

Ms. Wilkerson requested City Council's approval of the conditional use application to construct a telecommunications tower for Bell South Mobility DCS at 754 Merrimon Avenue. She said they would be happy to consider the conditions suggested by the Planning staff, however, they would request approval at 175 feet.

The following individuals spoke against City Council approving the conditional use application for several reasons, some being, but not limited to, approval of the application would perpetuate a travesty on the Gracelyn Road and surrounding neighborhoods; the best possible site is no site at all; the tower will ruin viewscape and landscape; mistrust between neighborhood groups and developers; the neighborhood is trying to keep out commercial encroachments that are inappropriate for the area; every time there has been an attempt to encroach into the neighborhoods, the perpetuators have tried to cast residents who suffer from and oppose proposals as anti-business, anti-development, anti-progress, anti-religious, or simply out of touch with the needs of the community; turning a quick profit seems to be the sole objective who want to infringe upon residential neighborhoods; the people who are going to use this service should pay the true economic cost instead of asking the surrounding neighborhoods to provide an indirect subsidy for the convenience of a few; the proposed tower is 75% taller than the tower at Grace Plaza Shopping Center; the neighborhood will see more than just the base of the tower; at the meeting with Mr. Lewotsky, none of the possible locations were adequately addressed and some residents felt that they were not taken seriously; suggestion to use the tower on top of Reynolds Mountain; digital will not be adequate in the future because we will probably go to satellite communications; when the satellite technology is here, who will pay to take down the cellular towers; City Council should pass a strong telecommunications tower ordinance which will protect the community from further encroachments of this nature; the tower will spoil the terrain, vision and property values; denial of the application should be based on Items 2, 3, 4 and (f) and (j); the tower is not necessary, it will infringe upon the surrounding neighborhood and the people who travel on Merrimon Avenue; tower should be built somewhere less visible; new global telecommunications system will allow subscribers to receive wireless digital telephone service virtually anywhere on the planet; there are unresolved questions about the safety of exposure to microwave radiation emitted by these towers; towers add to the generic urban sprawl spreading over the City; alternate sites should be considered; consider sites on public properties and permitting co-location on those properties; a possible location might be in the vicinity of the North Asheville Community Center; Merrimon Avenue is desperately in need of a comprehensive vision of development that will serve the businesses, residents and traveling public; a pocket park was just purchased by the neighborhoods and presented to the City which gives the indication that neighborhoods do not want commercial encroachment; why is stealth technology not being used; and, some homes in the area will have the light shining into rooms:

Mike Lewis, 48 Gracelyn Road
Dennis Hodgson, 107 Evelyn Place
Sidney Feldman, 1 Sandon Circle
A resident from 19 Melrose Avenue
Doug Saylor, 9 Mt. Vernon Circle
Robert Prentice, 403 Secluded Forest Drive (submitted Audience Exhibit A)
Ben Jones, 400 North Griffing Boulevard
David Thundershell Queen
Keith Thompson, 1 Bridle Path Road
Alan Wagner, 15 Larchmont
David Whitley, 210 Edgewood Road
Kay Coxe Andrews, 8 Sandon Circle

Upon inquiry of Councilman Cloninger regarding submission of documents into the record, City Attorney Oast said that since we are in a quasi-judicial context, unless the authors of the letters submitted are here to swear to their truth, that they would have to be considered potentially hearsay, although they can be admitted into the record for whatever they're worth. He said that the applicant has submitted a number of documents into the record and the staff report is part of the record as well (City Exhibit A).

When Councilman Cloninger asked if it would be too late to supplement the record with the letters in opposition to this, since he did not have them with him at this meeting, City Attorney Oast that felt that the record could be held open to allow for submission of that information, however, the applicant should be given an opportunity to respond to it.

Given the opinion of the City Attorney, Councilman Cloninger submitted a letter from Paul M. Rosa (City Exhibit B) into the record.

When Mayor Sitnick asked if telephone calls are able to be submitted into the record, City Attorney Oast said that Council needs to base its decision on matters that are in the record and although the letters are in the record, he stressed that Council should be aware that they are considered hearsay and Council needs to be aware that that potential problem exists. Regarding the telephone calls, there isn't even a document to support it.

At the request of Mayor Sitnick, City Attorney Oast said that he recommended City Council to vote yes or no regarding the issuance of a conditional use permit, and then direct staff to prepare findings and conclusions and bring them back to City Council for a second vote. He said staff will prepare the findings and conclusions based on the comments of City Council and bring them back to Council at their next formal meeting on November 24, 1998.

Mayor Sitnick closed the public hearing at 7:24 p.m.

Councilman Cloninger moved to deny the conditional use application to locate a telecommunications tower at 754 Merrimon Avenue and to instruct staff to prepare findings of fact and conclusions consistent with that decision and bring them back to Council at their next formal meeting on November 24, 1998. This motion was seconded by Councilman Sellers.

Vice-Mayor Hay said that Item 4 is sufficient for him to vote against the application and it should appear in the findings. He was not convinced that providing digital service to north Asheville rises to the level of Item 2. He felt that if you talked to the people in north Asheville who are really going to be the ones affected by this on both sides, they will say that they want digital service, but when you tell them there is going to be a 175 foot tower to give them that digital service, they would say they don't want that service that bad.

Councilwoman Field said that she does understand the need for people to be able to have the opportunity to use cell phones. She understands that our cable franchisee will be providing digital service at a low cost as well. She said that she is Chair of the Governor's Regional Civic Connectivity Commission and there is an ordinance being supported by the N.C. League of Municipalities to provide for the public location of cell towers in the community. The bottom line for her was when the engineer showed Council his maps that indicated the proposed location did not solve the problem of filling the hole in the service on Merrimon Avenue. Therefore, Item 2 does not completely provide an essential service to the community or to the region. She still believes that the hole can be filled in a way that does not affect the neighborhood in this kind of way. She stressed that City Council needs to be fair to treat one segment of the community the same as other segments of the community. She would vote against the application because she didn't believe that the proposed tower solves the problem of the hole and does not meet Item 2. She did not believe that any cell tower can be in harmony with the scale, bulk, coverage, density and character of any neighborhood in Asheville and that is something that Council needs to look at very carefully.

Councilman Cobb felt that the application should be denied based on Items 2, 3 and 4. He felt that the service is needed out there but they should find a way to provide it, without the construction of a 175 foot tower. He felt that two smaller towers might accomplish that need and they would not be as obtrusive to the neighborhoods.

Councilman Tomes felt that even though the applicant has met the requirements of the Unified Development Ordinance, the 175 foot tower will not adequately bridge the large service gap, so he would have to vote to deny the application.

Councilman Cloninger said that among the concerns he has is that the 175 foot tower will create visual blight, when you look at the height of the proposed tower relative to the surrounding buildings that are no higher than 40 feet. He was concerned about the blight that would be created as a result of the height of the proposed tower relative to the surrounding landscape. He was not convinced that Bell South has adequately looked at other less conspicuous locations in that area, nor have they looked at potential stealth technologies. He also was not convinced that the value of the adjoining or abutting property would not be adversely impacted by the tower.

Councilman Sellers felt that the application should be denied based on Item 4, along with Items 2 and 3. He agreed with most of the statements already stated by Council.

Mayor Sitnick said that Items 2, 3 and 4 have not been satisfied. She believed that Item 3 has been misleading because she considers the studies that have been done to be non-studies, in that a couple of instances cited can in no way be construed as study. She said the most hopeful comment was that satellites will eventually make cell towers obsolete. She questioned the difference between the terms "adjoin" and "abut." She also felt that the comment made about the adjoining or abutting property having a rental house on it was an elitist comment. She said that this Council looks at the total community and doesn't make their decisions based on neighborhoods.

City Attorney Oast reminded Council to base their vote on the testimony and evidence that has been presented at this hearing. He said that one man provided some information about potential danger from radio emissions. City Attorney Oast suggested to Council that without more evidence on that, that issue should not be the basis for their decision because the evidence that Council does has suggests that they do meet the FCC standards and the law specifically prohibits denial based on that reason.

The motion made by Councilman Cloninger and seconded by Councilman Sellers to deny the conditional use permit carried unanimously.

At 7:40 p.m., Mayor Sitnick announced a short break.

C. PUBLIC HEARING RELATIVE TO REZONING 910 SWANNANOA RIVER ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

Mayor Sitnick opened the public hearing at 8:03 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of an ordinance to rezone 910 Swannanoa River Road from RM-16 Residential Multi-Family High Density District to Neighborhood Business District.

The owners, Wade and Sandra Hall, have requested the rezoning of 910 Swannanoa River Road (PIN No. 9668.09-15-0297) from RM-16 Residential Multi-Family High Density District to Neighborhood Business District.

The Neighborhood Business District was established to indicate areas for low density commercial uses that are compatible with and accessible to pedestrians from the surrounding neighborhood. This area of Swannanoa River Road is adjacent to a relatively large residential complex that is isolated from the area. This development potential will allow pedestrian access from the residential community and comply with the definition of the NB zoning district. However, due to the small size of the lot (.80 acre), the City Attorney's office has pointed out that this request could be determined to be "illegal spot zoning" which can only be determined in court.

The Planning staff reviewed the rezoning request and recommended approval. At their October 7, 1998, Planning & Zoning Commission meeting, the Commissioners voted unanimously to recommend approval of the rezoning of 910 Swannanoa River Road from RM-16 Residential Multi-Family High Density District to Neighborhood Business District. Mr. Ownbey noted that the neighborhood did attend the Planning & Zoning Commission meeting, however, an item prior to this matter lasted over 2-1/2 hours and the neighborhood left prior to the hearing.

Mr. Ownbey said that on November 5, 1998, a valid protest petition was filed.

Upon inquiry of Councilman Cobb about proper notification to surrounding property owners, Mr. Ownbey said that everyone within 400 feet that was on their database was notified. He said that the residents at View Pointe were not notified because they were new residents and they were not on the database which information is furnished by Buncombe County. However, the overall developer of View Point was notified.

In response to Councilwoman Field, Mr. Ownbey said that the closest commercial area, excluding Recreation Park, would be the intersection at Tunnel Road and Swannanoa River Road or the intersection of Fairview Road and Swannanoa River Road. Mr. Ownbey said that neither commercial area is able to be walked at safely because of no sidewalks and because of the traffic on Sweeten Creek Road.

Mr. Steve Barden, attorney representing the developer of View Pointe, noted that his client did not get notice of the Planning & Zoning Commission meeting because of some apparent misaddress. He explained that the property is surrounded by residential property and to rezone it would, in his opinion, constitute an illegal spot zoning. He said there is no benefit to rezone this property to commercial. Since Swannanoa River Road is not a pedestrian access and to rezone will only bring additional traffic brought in from other areas. He urged Council to deny the rezoning due to the illegal spot zoning.

The following individuals spoke against rezone 910 Swannanoa River Road for several reasons, some being, but not limited to, no prior notification of meetings, already existing safety and traffic problems on Swannanoa River Road, especially at intersection of Azalea Road and Swannanoa River Road; the area was recently zoned residential under the Unified Development Ordinance and should not be changed; the rezoning would constitute illegal spot zoning; there are adequate shopping facilities nearby and more businesses are not needed in the community; no sidewalks to walk on Swannanoa River Road; Swannanoa River Road is narrow and is dangerous for cars; best interest for entire community for area to remain residential; Swannanoa River Road has a 45 miles per hour speed limit at that location and it would be hard for residents of the Beverly Hills community to cross the street to shop at any proposed stores at that location; greenway path would desirable instead of zoning to commercial; since View Pointe is on the top of the hill from the proposed site, the exhaust and pollution from the commercial strip will affect the quality of lives in the development and pollute the homes; this rezoning will start commercial development into residential areas; view will be destroyed; the residents of View Pointe already have to deal with flea markets, parked large trucks, washing machines and mattresses on the property and the owner has not taken any pride in the property to date; and noise:

Tom O'Keefe, resident of View Pointe (presented petition with 27 signatures and photograph of area)
Mr. Herb Gallinger, resident of View Pointe
Mr. Brian McKenna, President of the Beverly Hills Homeowners Association
Ms. Marilyn Born, resident of View Pointe
Mr. Peter Fisher, resident on Little Cedar Court in View Pointe
Mr. Robert Born, resident of View Pointe

Ms. Anita Wolfe, 25 Little Cedar Court in View Pointe
Ms. Esther Fisher, resident of View Pointe
Ms. Trish Lancaster, 3 Waverly Court (presented petition with 53 signatures which opposes the rezoning to Neighborhood Business)

Mr. Wade Hall, owner of 910 Swannanoa River Road for over 20 years, spoke in support of the rezoning. He said this area was zoned commercial prior to adoption of the Unified Development Ordinance and he assured the neighborhood that he would not put anything on that property that they would be ashamed of. He planned to build small businesses that would be appropriate for the neighborhood, e.g., drug store, medicine shop, pizza place, etc. He said the site is not appropriate for residential and should be zoned back to commercial. He urged City Council to rezone this property.

Mayor Sitnick reminded Council that they must consider all uses allowable under the Neighborhood Business District and not the use the petitioner proposes.

Mayor Sitnick closed the public hearing at 8:46 p.m.

Upon inquiry of Councilwoman Field if the petitioner and the property owners might reach a compromise, audience members did not feel that any consensus could be reached.

Upon inquiry of Councilman Cobb about a possible illegal spot zoning, City Attorney Oast emphasized that the rezoning could be determined to be an illegal spot zoning. He said that there are a number of factors that a court would look at and only a court can determine whether something is spot zoning or not.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Hay moved to deny the rezoning of 910 Swannanoa River Road from RM-16 Residential Multi-Family High Density District to Neighborhood Business District. This motion was seconded by Councilwoman Field.

Vice-Mayor Hay said that he was sympathetic with the situation of Mr. Hall, however, he did not think the appropriate zoning for the lot is Neighborhood Business in that it is not designed for pedestrian access.

Councilwoman Field felt that the City needs to retain their multi-family residential land.

Mayor Sitnick felt that there are a lot of uses under the current zoning designation of RM-16 and the traffic situation at that area greatly concerns her.

The motion made by Vice-Mayor Hay to deny the rezoning and seconded by Councilwoman Field carried unanimously.

D. PUBLIC HEARING RELATIVE TO REZONING 1451 SWEETEN CREEK ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Sitnick opened the public hearing at 9:00 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that this is the consideration of an ordinance to rezone 1451 Sweeten Creek Road from RM-16 Residential Multi-Family High Density District to Commercial Industrial District.

The owners and applicants, Narrell and Billie Owenby, have requested the rezoning of 1.57 acres at 1451 Sweeten Creek Road (PIN No. 9656-10-37-1408) from RM-16 Residential Multi-Family High Density District to Commercial Industrial District.

By use of a map, Mr. Black reviewed the location of the property, noting that it runs from Edgewood Road over to Sweeten Creek Road. The area in question is close to the entrance to a stable single family neighborhood. The potential commercial industrial uses that would be allowed in this area are of greater functional impact (primarily noise and traffic) to these areas than the current zoning, which fits in with the existing development. He said there is commercial industrial development (electrical shop) just above the property. The 2010 Plan calls for low density residential in this area.

The Planning staff reviewed the rezoning request and recommended denial. At the October 7, 1998, Planning & Zoning Commission meeting, the Commissioners voted seven to zero to recommend denial of the rezoning of 1.57 acres at 1451 Sweeten Creek Road from RM-16 Residential Multi-Family High Density District to Commercial Industrial District.

On October 21, 1998, the petitioners appealed the Planning & Zoning Commission's denial to City Council.

Mr. Narrell Owenby, petitioner, explained that the original rezoning request was for two lots to be rezoned, however, the owner of the other lot withdrew his request. Unfortunately he was out of the country when the Planning & Zoning Commission held their hearing and did not know that the other petitioner had withdrawn his request. He said that since they are widening Sweeten Creek Road and taking a portion of his property for right-of-way, the property will not be desirable for a residence. He urged City Council to rezone his property to commercial industrial.

Ms. Lois Hodgson, President of Cimarron Homeowners Association, urged City Council not to rezone the property to commercial. She hoped Council would not allow commercial development to encroach into the residential properties in the area. She felt the proposed rezoning is close enough to affect their property values. She felt that Edgewood Road is in a constant state of disrepair because of so much traffic now and urged Council to deny the rezoning request.

Mr. Roger Smith, President of the Stockwood Road Association, urge City Council to deny the rezoning request. To rezone this property would be an incompatible extension into the residential neighborhood.

Mayor Sitnick closed the public hearing at 9:19 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved to deny rezoning 1451 Sweeten Creek Road from RM-16 Residential Multi-Family High Density District to Commercial Industrial District. This motion was seconded by Councilman Cobb and carried unanimously.

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E. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING SHORT TERM RENTAL IN RESIDENTIAL DISTRICTS (VACATION RENTALS)

ORDINANCE NO. 2527 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW VACATION RENTALS AS A PERMITTED USE, SUBJECT TO SPECIAL REQUIREMENTS, IN ALL RESIDENTIAL DISTRICTS

Mayor Sitnick opened the public hearing at 9:21 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

At the request of Councilman Cloninger, Councilman Sellers moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

Senior Planner Gerald Green said that this is the consideration of two wording amendments to the Unified Development Ordinance which would permit vacation rentals as a conditional use in single family residential districts and as a permitted use, subject to special requirements, in multi-family residential districts.

The Asheville Planning & Zoning Commission, at their October 7, 1998, meeting, reviewed and recommended approval of two amendments to the Unified Development Ordinance which identify vacation rentals as conditional uses in the single-family residential districts and as permitted uses, subject to special requirements, in the multi-family residential districts. As proposed, the approval of vacation rentals in single-family residential districts would require a public hearing before City Council. Approval of vacation rentals in multi-family residential districts would be granted by staff upon a finding that all requirements were met. The Planning & Zoning Commission felt that the introduction of this type of use into single family residential districts would be a change substantial enough to warrant a public hearing. The proposed amendments identify standards which must be met by vacation rentals in residential districts; these standards are the same for single-family and multi-family residential districts. The standards address issues such as minimum acreage for the use, maximum number of rental units, open space requirements, buffering requirements, services provided to guests, and other measures designed to minimize the impact of this use in residential areas. The Commission felt that vacation rentals would provide an alternative lodging choice for visitors to the Asheville area while preserving open areas.

The Asheville Planning & Zoning Commission voted 6 -1 to recommend approval of the wording amendments. The Planning & Development staff recommend approval of the amendments.

He said letters of support have been received from the Chamber of Commerce and the Friends of the Blue Ridge Parkway, and the National Park Service/Blue Ridge Parkway which he would give to the City Clerk for submission into the record.

Mr. Mike McLeod urged City Council to adopt the ordinances in that it clarifies the existing ordinance and imposes several stringent new requirements. It will encourage the preservation of large tracts of unspoiled acreage, because vacation rentals would only be permitted in tracts of 30 acres or more, and at least 1/2 of the acreage would have to be devoted to open space. The ordinance amendment would permit him to build six additional homes off

Sweeten Creek Road at Willow Winds and without approval of this amendment, he would be forced to sell the land for more intensive development. He felt that the ordinance serves a strong public interest in that his tract of land is the only tract that is zoned multi-family that is adjacent to the Blue Ridge Parkway. Therefore, he believes the public is served by making vacation rentals in multi-family district a use by right subject to special conditions. Urban encroachment has been widely recognized as one of the greatest threats to the beauty of our great national resource, the Blue Ridge Parkway. This amendment will enable him to maintain his acreage in a relatively natural state and not detract in any way from the Parkway, with whom they share a common boundary of over 1700 feet. In addition, it serves the economic purpose of providing badly needed accommodations for families who wish to come to Asheville and rent a vacation home.

Mr. Mel Thomason, 304 Cisco Road, asked City Council to consider an amendment to permit vacation rentals as a permitted use, subject to special requirements, in all residential districts.

Mr. Roger Smith, President of the Stockwood Road Association, said their only concern would be the additional traffic coming in and out of Stockwood Road neighborhood. He said the amendment will probably be good for preservation of his neighborhood, however, they do want their neighborhood protected.

Mayor Sitnick closed the public hearing at 9:47 p.m.

Upon inquiry of Vice-Mayor Hay, Mr. Green explained that the staff's recommendation was to treat vacation rentals as a permitted use, subject to special requirements, in all neighborhoods, regardless of whether they were single-family or multi-family. He then explained why he thought the Planning & Zoning Commission made their recommendation different from staff's recommendation.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman moved for the adoption of Ordinance No. 2527, to permit vacation rentals as a permitted use, subject to special requirements, in all residential districts. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 17- PAGE 177

IV. NEW BUSINESS:

A. RESOLUTION NO. 98-164 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AWARD THE BID TO COOPER CONSTRUCTION COMPANY FOR THE BEAVERDAM ANNEXATION AREA CARTER COVE SANITARY SEWER AND WATER IMPROVEMENTS

Ms. Cathy Ball, City Engineer, said that staff is recommending City Council award the contract for the Beaverdam Annexation Area Carter Cove Sanitary Sewer and Water Improvements to the lowest responsible bidder, Cooper Construction Company Incorporated, in the amount of $442,278.00.

On Tuesday, September 23, 1998, at 2:00 p.m., the Engineering Department received the following three bids for the project:

Precision Contracting, Asheville, NC	$435,806.00
Cooper Construction Co., Hendersonville, NC	$442,278.00
Buckeye Construction Co., Canton, NC	$478,031.25

The lowest apparent bidder for this project was Precision Contracting, which is a minority owned business, with a bid of $435,806; however, after checking references for similar types of jobs, they have been determined not to be responsible for performing this job. Staff has met with the Minority Business Commission and notified them of staff's recommendation.

The biggest reason for designating them as not responsible for this project is that they have found on two sewer projects that they had completed, one of which was for $114,000 for the Town of Spruce Pine and the other was for approximately $250,000 for Metropolitan Sewerage District ("MSD").

She clarified some of the concerns raised about how that bid was awarded and some complications with what was considered to be a sub-contractor. It is her understanding that when the bid was awarded to Precision for the Holiday Inn Sunspree sanitary improvements, MSD had not planned to sod the fairways of the golf course, they had only planned to sod the tee-boxes and they had bid that out to Precision to do. When the golf course found out about this, they were very upset because they wanted to have the fairway sodded as well. That's when the negotiations went between MSD and the Holiday Inn Sunspree. They had told her that does not figure in at all to the recommendation they gave them regarding Precision Contracting. That was not looked at in a negative way. The problem arose because the sod that was installed did not live, according to what she was told, because the sprinkler system had been damaged and not repaired by Precision Contracting. That was the result of the damages and from that the insurance company paying to take care of the sod. She said that the City would like to work with Precision Contracting in the future, in the event that they are low bidder for a project of a lesser amount. They would like to work with them to establish a good reputation.

Upon inquiry of Councilman Sellers, Ms. Ball said that there approximately 15-16 homes that will be affected by this project.

Ms. Susan Lewis, attorney representing Precision Contracting, passed out to City Council a booklet and stated that the bid must be awarded to the lowest responsible bidder and obviously Precision Contracting is the lowest bidder, therefore, she would argue the definition of what is "responsible." Precision Contracting has the bidding limit of $500,000, is licensed by the state to bid $500,000, and is bonded up to $500,000. The project in question consists of three separate lines. The job is basically running the sewer lines, with completing one line 100% and then proceeding with the next line. This is basically not a complicated project but a high dollar project based on so many lines to be run. Relative to the letter Jim Orr signed, she said Mr. Orr was not the Superintendent of the Golf Course, but was Director of the Golf Course at Holiday Inn Sunspree. He made several allegations and one basically was that he didn't have any communications with the contractor. Precision Contracting had dealings with MSD who contracted the job out to them. They had no authority to deal with Sunspree. At any point in time that they had any conversations with Sunspree, they would have them in the presence of MSD and the Superintendent, who again is not Jim Orr. Also, Mr. Orr has no contracting license and does not have any way to supervise Precision Contracting, nor was he in any position to supervise Precision Contracting. Therefore, the letter from Mr. Orr is irrelevant.

Ms. Lewis then proceeded to review the information in the booklet which addressed the items Ms. Ball voiced concerns about at the November 4, 1998, worksession. She summarized by stating that Precision Contracting is the responsible bidder and should be awarded the contract.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Sellers moved for the adoption of Resolution No. 98-164 which awarded the contract to Cooper Construction Company. This motion was seconded by Councilman Cloninger and carried unanimously.

Councilman Cloninger said that Ms. Lewis had made some very persuasive arguments, however, he felt that we needed to have confidence in our City Engineer and should rely on her judgment. He agreed with Ms. Ball in that the City should look for other opportunities to work with Precision Contracting in the future.

RESOLUTION BOOK NO. 25 - PAGE 39

V. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 27, 1998, AND THE WORKSESSION HELD ON NOVEMBER 4, 1998

Vice-Mayor Hay moved for the adoption of the minutes of the regular meeting held on October 27, 1998, and the worksession held on November 4, 1998. This motion was seconded by Councilman Tomes and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville from October 9-29, 1998: Allison Frank (Streets), Herbert Rector (Water) and Mary Pettijohn (Inspections).

The following claims were received by the City of Asheville from October 30 - November 5, 1998: Annie R. Fowler (Police), Suzanne R. Wilder (Sanitation) and William Flanagan (Finance).

These claims have been referred to Asheville Claims Corporation for investigation.

VI. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY DAVID THUNDERSHELL QUEEN RELATIVE TO ASHEVILLE POLICE DEPARTMENT

Mr. David Thundershell Queen, resident of 37 Wall Street and freelance journalist and reporter. He addressed City Council about the police misconduct and even brutality of some officers at Bele Chere 1998. He felt that to not discipline a violent police over-reaction, he urged City Council to seriously look into the voices of many who witnessed the incident. A citizens/police review board with real power to discipline or dismiss is in order, not just the present Citizens/Police Advisory Committee. Criminal charges should be charged against officers who violently abuse the rights of a fellow citizen while hiding behind a badge. He presented City Council with Volume 5, No. 13, of the Mountain Xpress and Council to read the details.

B. MICKIE MaHAFFEY

Mr. Mickie MaHaffey briefed City Council on an impromptu survey he conducted concerning the accessibility of City officials.

At 10:15 p.m., Mayor Sitnick adjourned this meeting to proceed to the Asheville Civic Center.

VII. UNFINISHED BUSINESS:

At 10:30 p.m., Mayor Sitnick reconvened the meeting.

A. FUTURE OF THE ASHEVILLE SPEEDWAY

Representative Martin Nesbitt, attorney representing the racing community, introduced the program and speakers before City Council.

Mr. Keith Cochran briefed Council on the 38 year history of racing at the Asheville Motor Speedway, starting with when the Speedway was first built in 1960 on the site of a former airstrip, known as Carrier Field, on the banks of the French Broad River.

Mr. Dean Jones reviewed with Council the economic impact study consisting of facts gathered from the 1998 season. He reviewed each area involving track employees, track concession vendors, race community vendors, advertising dollars, race purse, race admission and other event and revenues, totaling a revenue loss of approximately $2,386,490.

Mr. Kermit Trolley reported to Council on the driver/team owner point of view with closing the Asheville Motor Speedway, stressing that the citizens of Western North Carolina will lose an exciting education opportunity. Most areas of racing, from track owner to advertising to track crew, require a college degree with today's era of racing. If the Speedway is taken away from the community, many youth will not be exposed to a career opportunity with salaries large enough to make any local doctor, lawyer or accountant envious. Many charities will lose a tremendous amount of donations directly from the racing families, some charities being, but not limited to, Memorial Mission Hospital Ducky Derbie, Eblen Foundation Boosters, Victims of Fire Burn-Out, Cancer Foundation (Amy Hamerick), Family of Gary Neice, Billy Joe Pressley Memorial, Children's Miracle Network, and Make-A-Wish Foundation. He then explained the sponsorship aspect of the racing community.

Ms. Sharon Tolley presented City Council with a petition containing 20,390 signatures that support racing in the Asheville area and that are in favor of the continuation of racing at the Asheville Motor Speedway for one more season. She also presented City Council with a letter from Kathy Cook who wrote in support of the racing community in Asheville.

Representative Nesbitt said that the NASCAR license expires on December 31, 1998, and they hoped to work toward closure of this issue near the first of December. He again urged City Council to work to allow racing at the Asheville Motor Speedway until another track could be built.

City Attorney Oast briefed City Council on the progress to date noting that staff has been given direction from City Council that they desire to see the racetrack utilized for a period of time in order to give Speedway '99 a chance to pursue establishment of another racetrack in the area. He said that he is working to develop plans for its operation and a method for soliciting who will operate with it with appropriate members of the community and as well as City staff. RiverLink is working to gather concurrence from all of the parties who contributed to the purchase of the racetrack to allow its continued use as a racetrack for a period of time. Although he is encouraged by the meetings to date, he stressed that a lot of pieces need to fall into place. He said that he is preparing documents, proceeding on the assumption that the racetrack can be used another season.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 11:30 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

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Tuesday - November 17, 1998 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Earl Cobb

CONSENT:

Authority to Advertise for Upset Bids for 110 Morris Street

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for 110 Morris Street.

A bid from Carol Lynne Jones, in the amount of $79,600.00, has been received for the purchase of 110 Morris Street. The bid is not less than the established minimum price of $79,500.00.

110 Morris is a residential lot and house near the corner of West Asheville Park comprising 13,503 square feet of land. The property was acquired along with the park property and is under the Parks & Recreation Department's control. The house contains 1,336 square feet of floor space, three (3) bedrooms, one and one half (1 1/2) baths and a full basement with drive-in garage. The bidder, Carol Lynne Jones, intends to occupy the residence as her home. She is a graduate of the Affordable Housing Coalition's Homebuyer Education Class.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff and the Parks & Recreation staff recommends adoption of the resolution.

Grant Application to Assist in the Construction of Haw Creek Park

Summary: The consideration of a resolution to apply for grant funds to assist with the construction of Haw Creek Park through the N.C. Dept. of Environment and Natural Resources.

The development of Haw Creek Park represents the City of Asheville and the Haw Creek Neighborhood Association's long term goal to build a park in the Haw Creek community. The park is a collaborative effort between the City of Asheville and the Haw Creek Neighborhood Association, who has committed to raise $40,000 to assist with construction of the park. Haw Creek Park will be a passive park located on approximately 6.2 acres on Haw Creek Road, and will serve as a major destination along the proposed Haw Creek Greenway. Park features include a trail, picnic shelter, and paved parking. The grant funds will be used to add a toddler playground, a second picnic shelter, rest rooms, interpretive signage, and landscaping.

The Parks and Recreation Department is requesting $100,000 in grant funds which requires a 50% cash match. Funds for the match are currently available in the Capital Improvement Budget designated for Haw Creek Park.

The Parks and Recreation Department recommends the City Manager and/or the Mayor be authorized to apply for the grant and enter into the agreement to assist with the development of Haw Creek Park.

Budget Amendment to Appropriate Funds from NC Governor's Highway Safety Program

Summary: The consideration of a budget amendment, in the amount of $50,000, to appropriate funds to the Police Department in support of a grant funded project from the NC Governor's Highway Safety Program.

The Police Department has been awarded a $37,500 grant from the NC Governor's Highway Safety Program (GHSP). The grant is for the purchase of equipment to support the department's traffic safety program; specifically five in-car computers and five speed detection devices.

GHSP guidelines require a local match of $12,500 for a total project budget of $50,000.

The City Council, at their meeting on July 28, 1998, authorized the application for this grant.

City staff recommends City Council adopt the budget amendment appropriating $50,000 to the Police Department budget.

Budget Amendment for Fair Housing Assistance Program

Summary: The consideration of a budget amendment to continue federal funding for the twelfth year of the Fair Housing Assistance Program.

On April 28, 1987, the City of Asheville was recognized by Department of Housing and Urban Development (HUD) as having a fair housing enforcement program which is substantially equivalent to that of the Federal Fair Housing Act. The City has been carrying out its fair housing program under contract with the Asheville-Buncombe Community Relations Council and Fair Housing Commission since January 1988.

The City has received approval from HUD of $18,400 for the Fair Housing Assistance Program for the period October 1, 1998 - September 30, 1999. This will be the twelfth year of funding through this program. The program is administered under contract by the Asheville-Buncombe Community Relations Council which provides staff support to the Asheville-Buncombe Fair Housing Commission. The City Community Development Division serves as Lead Entity and monitors the program.

Community Development staff recommends adoption of the budget amendment.

Amendment to Agreement with J.L. deBall-Girmes

Summary: The consideration of a resolution authorizing the Mayor to enter into an amendment to the agreement with J.L. deBall-Girmes of America Inc.

Girmes applied for an Industrial Development Grant based on expansion plans that included investment in facility and equipment at their Old Charlotte Highway site of $2,000,000 by July 1, 1998, and $7,000,000 within two years. An increase in new jobs from between 12 to 16 were to be provided by July 1, 1998, and up to 50 by January 1, 2000. On August 12, 1997, City Council awarded an Industrial Development Grant, in the amount of $51,300, to J.L. deBall-Girmes of America Inc.

Due to unforeseen circumstances, certain equipment could not be delivered by the July 1, 1998, deadline. The equipment is now in place and Girmes has met all other requirements of the grant. They are requesting that the Grant Agreement be amended to change the completion deadline from July 1, 1998, to October 1, 1998. No other changes are requested.

Staff recommends that City Council adopt a resolution authorizing the Mayor to amend the agreement with J.L. deBall-Girmes of America Inc. in order to extend the deadline in the agreement from July 1, 1998, to October 1, 1998.

Set Public Hearing on General Obligation Refunding Bonds and Introduction of Bond Order

Summary: Introduction of the Bond Order by the Finance Director and the consideration of a resolution which calls for a public hearing on the Bond Order, directs publication of said public hearing and directs the filing of a debt statement.

At City Council's direction of November 10, 1998, the Finance Director has filed with the Local Government Commission an application for its approval of $18,500,000 General Obligation Refunding Bonds of the City of Asheville, North Carolina.

The Bond Order briefly describes the bonds to be issued in regard to: purpose; maximum amount; taxes to be levied; provides for a sworn statement of debt; and states the effective date of the Bond Order. The Bond Order will be published and a public hearing convened for its consideration prior to its proposed adoption by Council on December 8, 1998.

The Resolution calls for a public hearing on the Bond Order to be held on December 8, 1998 at 5:00 p.m. in the Council Chambers of the City Building; directs the City Clerk to publish notice of the public hearing no fewer than 6 days prior to the public hearing and directs the Finance Director to file with the City Clerk (prior to publication of the Bond Order and along with the notice of public hearing) a statement of the debt incurred or to be incurred, the appraised value of property subject to taxation by the City and the net debt of the City.

City staff recommends City Council adopt the resolution.

Amendment to Minority Business Plan

Summary: The consideration of a resolution to amend the Minority Business Plan in order to permit minority firms participation as mentors in the Mentor-Protégé Program.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan requires that "The Minority Business Commission shall establish a Mentor-Protégé Program." The Plan defines the Mentor-Protégé as "A program of the Minority Business Commission whereby ***non-minority*** firms provide assistance and mentorship to minority firms." (emphasis added) The Commission is currently working to implement the Mentor-Protégé program; however, they find the present program definition unnecessarily restrictive and exclusionary. There are many minority firms which have the experience, wisdom and commitment to serve as effective mentors; however, the current definition of the program unintentionally excludes their participation in the mentor role.

At their meeting on October 15, 1998, the Minority Business Commission recommended that the Plan's definition of the Mentor-Protégé program be amended to permit the inclusion of minority firms as mentors. Specifically revise the definition on page two of the plan as follows: "**Mentor-Protégé Program** – A program of the Minority Business Commission whereby minority and non-minority firms provide assistance and mentorship to minority firms."

The resolution amends the Plan as recommended by the Minority Business Commission. The recommended revision to the Plan was adopted by the Buncombe County Commission earlier this month.

City staff recommends City Council adopt the resolution.

Pack Place Lease

Summary: The consideration of a resolution directing the City Clerk to advertise an offer from Pack Place Education Arts and Science Center, Inc. to lease the property owned by the City of Asheville and known as the Pack Place Education Arts and Science Center.

The City of Asheville owns the property on which the Pack Place Education Arts & Science Center is located. That property was leased to Pack Place Education Arts & Science Center, Inc. on December 13, 1988, for a ten (10) year term for the construction, operation and maintenance of the education, arts & science center.

The current lease with Pack Place Education Arts & Science Center, Inc. expires on December 12, 1998. Pack Place Education Arts & Science Center, Inc. has offered to lease the property again from the City for the continuing operation and maintenance of the education, arts and science center. Pack Place Education Arts & Science Center, Inc. desires to lease the property for more than ten (10) years.

N. C. Gen. Stat. sec. 160A-272 authorizes North Carolina cities to lease property for longer than ten (10) years if the lease is treated as a sale of property and is executed by following any of the procedures authorized for sale of real property in Article 12 of Chapter 160A of the North Carolina General Statutes. Of those procedures, N. C. Gen. Stat. sec. 160A-269 appears to be the most appropriate method for execution of a lease for more than ten (10) years for this property and requires that when an offer is made and the City Council proposes to accept it, a deposit shall be made with the City Clerk and the City Clerk shall publish a notice of the offer.

A deposit has been received and the general terms of the proposed lease are described in the notice.

City staff recommends the resolution directing the City Clerk to advertise the offer of the lease be adopted.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

ROSS CREEK URBAN WATERSHED PROJECT

Ms. Becky Rideout, representative of the Land-of-Sky Regional Council, briefed Council on the Ross Creek Urban Watershed Project, which is to restore Ross Creek and Kenilworth Lake. She reviewed the Project, the progress they are making and requested the City of Asheville's support through participation in the future. She felt one way for the City to show their support is for representatives from the Engineering, Public Works and/or Planning Departments to serve on their clean stream action team.

Councilwoman Field suggested Ms. Rideout coordinate her efforts with the recommendations in the consultant's report that the City had prepared approximately 4-5 years ago relative to stormwater.

UPDATE ON FAIR HOUSING

Mr. Bob Smith, Executive Director of the Asheville-Buncombe Community Relations Council, updated City Council on fair housing activities as well as what they are doing regarding outreach in education.

Mayor Sitnick said that she would be happy to write a letter of support for Mr. Smith in his efforts to consider asking state and federal agencies make a broader definition of discrimination on any basis.

HONDA HOOT

Mr. Charles D. Keller, Manager of the Honda Rider's Club of America, presented City Council with an overview of the history of the Honda Hoot in Asheville and its impact to the community. He said that when the Honda Hoot first came to Asheville in 1994 it had 1,254 registered attendees with a financial impact of $952,488. In 1998, they had 7,062 registered attendees with a financial impact of $5,364,012. He said the total financial impact over the five years they have been to Asheville is $16,448,720. He said the advertising/media dollars spent by Honda to advertise the Honda Hoot over five years is $243,400, however, the advertising/media impressions for five years is $16.2 million. He said Honda's philosophy is to invest in the community in which they are in, noting that in 1998 they spent $362,261 in this market place. He also stated that $73,000 was raised in 1998 in a motorcycle charity run for the Pediatric Brain Tumor Foundation.

He felt that the City of Asheville has a lot to offer in the field of travel, tourism and convention potential. He said that it is their intent to build a stronger bond with the community as they work toward the future. As they work toward that end, he said (1) they looked for is a way for their participants actually help off-set some of the expenses, i.e., Civic Center. For example, this year they have negotiated a rate with the individual hotels tacking on an additional $2 to the room lodging for Honda Hoot participants only that at the end of the event that money would be turned over to the Civic Center to off-set rent; (2) they are always looking for ways to advertise more in order to bring more attention to an event. When they advertise, it should be remembered that this advertisement has a great deal of carry-over because people will remember Asheville and want to visit at different times during the year. This year the Tourism Development Authority helped them with $15,000 to help off-set advertising; (3) another item is a pass-through costs. They asked that those items, i.e., donuts for their receptions, be passed through at cost and not marked up at the suggested retail price; (4) shared expenses. They hold a lot of free parties and request that when locals are being entertained that the City should share in the expenses of security, trash and even EMT's; (5) event parking. This year they are currently working with the City on a proposal which will allow them to buy parking permits from the City which can then be put on the motorcycles which will allow them to park in metered parking spots, in addition to buying out the Civic Center Parking Garage; (6) they need a clear, concise and consistent permitting process; and most importantly (7) a can-do team attitude with the City. In closing, he said that in the last five years, they have paid retail for police security, trash service, sanitation, port-a-potties, roving EMT's, Civic Center parking, Civic Center rent, and ground transportation. They would like to get the City's assistance in making that switch from paying retail to wholesale based on what the Honda Hoot brings to the marketplace.

Upon inquiry of Mayor Sitnick, Mr. Keller said they charge non-members $50 and members $45 for the event.

Councilwoman Field noted that City Council needs to also respect the concerns and needs of the people who live in Asheville every day.

Civic Center Director David Pisha responded to the concern about pass-through costs, in particular the charge for donuts and coffee. He said that the cost includes labor going to get the items, setting them up in the Civic Center, along with tables, etc.

Mayor Sitnick said that the City has a policy with regard to festivals and such which policy treats all festivals fair and even-handed. She stressed that each organization feels that their festival is bringing something into the community.

With regard to the permitting process, City Manager Westbrook said that he would investigate the incident Mr. Keller mentioned, but also suggested that the planning for the Honda Hoot should take place far in advance of the actual event. Since the City has designated representatives to whom problems and issues can be brought during the event, he suggested their event coordinator know which City staff member handles specific problems and issues.

Mr. Keller felt that this may be an opportune time for Asheville to make whatever changes or improvements it may need to attract and keep large events like the Honda Hoot coming back to Asheville.

Mayor Sitnick agreed that Council may need to look at a possible policy amendment in the future regarding some instances where exceptions may be warranted. She did note, however, that the City does in fact subsidize approximately $8,700 for the free outdoor parties Mr. Keller mentioned. In addition, all downtown police officers work the Honda Hoot almost exclusively during their event which is an additional estimate of $10,000 the City subsidizes.

When Mr. Keller said that it appeared to be a distinct difference in the enforcement of the parking laws from last year to this year, City Manager Westbrook said that during the five days the Honda Hoot was in Asheville, the City issued a total of 585 parking citations to all vehicles, including motorcycles. Only 138 of those citations were issued to motorcycles, however, they were unable to distinguish between those motorcycles participating in the Honda Hoot and any others. Types and numbers of motorcycle citations were as follows: overtime parking - 74; parking in designated handicapped spaces - 18; and, parking in authorized areas (in intersections, loading zones and crosswalks; on sidewalks, etc.) - 46. He said that almost all parking tickets issued by the Police Department were complaint generated and it didn't appear to him that 138 out of 585 was unusual. On this issue, Mayor Sitnick said that just because people go to a different town and bring good things to that town doesn't mean they can break the rules or expect something different than is done for others.

With regard to the parking proposal for Honda Hoot, City Manager Westbrook said that after that plan is agreed upon, he will bring it to City Council for approval.

The following individuals spoke in support of the City helping the Honda Hoot where they can to keep this wonderful business opportunity in Asheville:

Mr. Phil Flack, Asheville resident and vendor at rally
Mr. Randy Fluharty, Chair of the Buncombe County Tourism Development Authority
Mr. John Weinkenwerder, hotel owner, former Chair of the Asheville Area Chamber of Commerce and former Chair of the Buncombe County Tourism Development Authority
Mr. Jay Garner, President and CEO of the Asheville Area Chamber of Commerce
Mr. Michael Smith, Vice-President and General Manager of Daniels Communications
Mr. Mike Kryvanek, General Manager of the Holiday Inn Sunspree Resort and former Director of Sales and Marketing at the Radisson
Mr. Mike Traynor, President of the Pediatric Brain Tumor Foundation
Ms. Rosalie Johnston, representing hotel properties that have less than 100 rooms

In order to clear up a misconception, Mr. Keller said that American Honda Motor Co. and Honda Motor Company Limited, is a for-profit corporation. However, as far as their intent on this event, it is to grow the market place and they are not looking for immediate remuneration on it. Eventually, if they are good people, make the best product and embrace their consumers, it will be profitable to them. But it is not their goal to hold the Honda Hoot to make money as other rallies do.

Mr. Garner suggested City Council develop an incentive policy similar what City Council is already doing for traditional economic development on the industry side. At the request of Councilman Cloninger, Shelly Green, head of the Convention Visitor Bureau, said that she would research other cities to see what type policies they have along these lines, in particular to see how it's funded, whether by local money or room tax. It would also be interesting to know what, if any, their overall subsidy is of their convention center.

Councilman Cloninger said that it sounds like rather than considering, at this point, what we would be willing to do for Honda, if anything, we need to develop an overall policy that is fair, consistent, also has enough flexibility to take into consideration what the economic impact of a particular convention might bring. He would like to explore the idea of what some of the other communities are doing and also what City staff may be able to think of that might help the City develop a policy that looks at some of the larger conventions that come to the area.

It was the consensus of City Council to assign this task to the Future of the Civic Center Task Force and if Vice-Mayor Hay, Chair of the Task Force, feels additional staff support is necessary, he will so advise the City Manager.

Mr. Keller said that he will send City Council, the City Manager and the Civic Center Director a bullet-point sheet of their concerns and suggestions.

Mayor Sitnick said that there is no doubt that City Council would like to keep the Honda Hoot coming to Asheville and the City will work with them on a solution.

GENERAL OBLIGATION PARKS, RECREATION AND GREENWAY BONDS

Finance Director Bill Schaefer said that this is the consideration of the following three resolutions: (1) directing publication of notice of intention to apply to the Local Government Commission (LGC) for approval of bonds; (2) directing the Finance Director to submit an application to issue bonds for consideration by the LGC; and (3) making certain statements of fact concerning the proposed bond issue.

Based upon recommendations by the Parks and Recreation Master Plan Steering Committee and the Greenway Steering Committee, Council directed staff to proceed with a referendum for the issue of $18,000,000 Parks, Recreation and Greenway bonds. The resolutions are the first in a series of actions required by Council to effect issue of the bonds.

The general obligation bonds shall be for the following purposes and in the following maximum amounts: $18,000,000.00 of bonds for the purpose of providing recreation opportunities through the preservation and acquisition of land for open spaces, natural areas, environmental enhancements and greenways, including rights-of-way and easements; providing new recreation facilities, playfields and playgrounds, including acquisition of land, rights-of-way and easements therefor; and renovating existing parks and recreation facilities.

The first proposed resolution directs the City Clerk to publish "Notice of Intention to Apply to the Local Government Commission for Approval of Bonds". The notice states the purpose of the bonds, their maximum amount and provides instructions to citizens or taxpayers of the City of Asheville who object to the issue of bonds to file a written notice of their objection with the LGC and City Clerk within 7 days of the publication of the notice.

The second proposed resolution authorizes and directs the Finance Director to submit an application to the LGC to allow the City of Asheville to issue not to exceed $18,000,000 General Obligation Parks, Recreation and Greenway Bonds and allow the retention of Parker, Poe, Adams & Bernstein L.L.P. as bond counsel for the issue.

The third proposed resolution provides "statements of fact concerning proposed bond issue" in regards to: (A) the necessity of the proposed financing; (B) the amount of the bonds proposed; (C) past debt management policies; (D) past budgetary and fiscal management policies; and (E) increase in taxes and retirement of debt. These "statements of fact" are required in order for the LGC to make determinations necessary to approve the City's request to issue Refunding Bonds.

City staff recommends City Council adopt all three resolutions.

Councilwoman Field explained that the Housing and Community Development Committee ("Committee") met to discuss the possibility of including, in addition to the parks, recreation and greenway bond, a bond to build a Housing Trust Fund. This is not money that will be grant money, but money that will be loaned and therefore, it will be a revolving fund. The Homes for Buncombe Asheville is requesting $2 Million a year for five years to be added to the parks, recreation and greenway bond ballot, but to be voted on separately. They have a grant for $6,000 and they have raised $6,000 to do a survey or polling of the community to find out if this is the best way to do it. They have heard in other communities, a quality of life bond got more support than a parks, recreation and greenway bond. She asked if it would have a major affect on what we're doing to hold up for about a month so that the Homes for Buncombe Asheville can get their survey done. If it will, is there some way we can add it down the road? The Committee said that they would unanimously support their request for either a delay or some way of giving them some other opportunity, if it is appropriate, for them to come onto the bond issue in May. She did stress, however, that the Committee, under no circumstances, wants to hold up the parks, recreation and greenway bond.

Mr. Schaefer said that the process on the parks, recreation and greenway bonds has already started and they are aiming for a May 11 referendum. The two situations would be presented separately on the ballot. The documentation for those can be combined at certain points. The questions should stand separately on the ballot and he recommended we continue on with these three resolutions and at a later date, staff can bring in the documentation to address the housing trust fund. He said they probably have about a month within which to get the information.

Councilwoman Field said that after the Homes for Buncombe Asheville obtain their survey results, they will determine whether it is in the best interest to try to put together a quality of life bond issue or to do something separately.

Councilman Cloninger very strongly urged that the City proceed with the parks, recreation and greenway bond. In a letter received from Will Abberger, Director of Conservation Services with The Trust for Public Land, he read "Regarding the issue of the willingness of Asheville voters to support a tax increase for a parks and greenways bond, the survey tested a number of different appropriation levels, ranging from $38 million to $3 million. In our view, the survey indicated a sufficient level of support from Asheville voters, 62 percent, to support an $18 million parks and greenways bond. We also polled the $28 million appropriation level (between $18 and $28 million) with a question phrased to test the average tax increase to the individual property owner necessary to support this amount of bonds: when asked if they would be willing to support $55 per year in additional taxes, only 50 percent of those surveyed responded yes. Based on the survey results, we believe any amount higher than $18 million would be difficult to pass. ... Based on our experience with similar measures in other communities, the 62 percent level of support for parks and greenways indicated in the Asheville survey is likely to decrease prior to the actual vote." He was in favor of the idea of exploring a possible housing referendum and they should have an opportunity to conduct their survey and come back and see what might be done. However, he felt it was doubtful that a bond referendum with both issues is feasible. He also said that The Trust for Public Land's experience has been that traditionally parks and greenways bond measures stand the greatest chance of success if it is placed on the ballot alone, as a single. They are not optimistic about adding another bond issue on the ballot. He also said that months and months of work has gone into the Parks and Recreation Master Plan to arrive at this point and we don't have that plan at this point with the housing trust fund.

Upon inquiry of Councilwoman Field, Mr. Schaefer said that it would not be appropriate to consider revenue bonds for the housing trust fund.

Mayor Sitnick hoped that if we cannot do the bonds together, that we work together to explore every avenue to find the kinds of funds that we need, e.g. some cities work with private developers to create incentives, some places dedicate a penny of the tax revenue for housing, etc. She hoped to be able to come up with a combination of sources that work.

Councilman Cloninger said that The Trust for Public Land is having their national meeting in early December and at that time they will make a decision on where they will devote their resources for the coming year. We need to send them a strong message that we are committed to the parks, recreation and greenway bond referendum. Mayor Sitnick also noted that they indicated that they would be more than willing to help the Affordable Housing Coalition with their efforts, should it come to that.

Ms. Beth Maczka, Director of the Affordable Housing Coalition, spoke in support of the quality of life bond. She explained that they do not want to propose housing to the detriment of parks. She appreciated City Council leaving the door open for them to include their bond question on the May 11 ballot, if, after their survey, the results indicate that is the best way to proceed. She did note that they are will continue to work with Buncombe County and the State Housing Trust Fund as well.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place the resolutions relative to the parks, recreation and greenway bond on the next formal City Council Agenda. In addition, if it is determined that the Homes for Asheville Buncombe's survey determines that it is in their best interest to proceed with a quality of life bond, staff should be prepared to proceed with the documentation to place that item on the May 11 ballot as a separate issue.

REGIONAL AIR QUALITY

Mr. Kim Carlyle, representative of the WNC Alliance, read a letter dated November 3, 1998, which reads in part "we are very concerned about the deterioration of air quality in the mountain region of Western North Carolina. Although air pollution problems have been gradually worsening for many years in the mountains, the reduced visibility and public health warnings of this summer should serve as a wake up call for our community. Air pollution is reaching levels which seriously jeopardize public health and quality of life in the mountains. To begin addressing this problem, we ask the Asheville City Council pass a resolution in support of North Carolina join Tennessee in signing a Memorandum of Understanding (MoU) with federal agencies regarding regional air quality. ... The MOU does not address existing air pollution sources. It only addresses new sources of pollution which may impact the most pristine areas in the mountains. ... The MoU simply clarifies the implementation procedures for the Clean Air Act for all the state and federal parties involved." The resolution they requested City Council to adopt is as follows: "The Asheville City Council supports North Carolina join Tennessee in signing, unamended, the Memorandum of Understanding ("MoU") with federal agencies regarding regional air quality. At a recent public forum, citizens from across western North Carolina spoke overwhelmingly in favor of signing the agreement. This MoU will protect air quality in western North Carolina's most pristine areas, such as the Great Smoky Mountains National Park and Shining Rock Wilderness Area. The MoU is only concerned with facilitating the compliance of new industries with existing regulations. The Asheville City Council recognizes that clean air is vital to maintaining the public health, economic viability, and quality of life in the region. We urge the Governor to sign the MoU without revision." The letter was signed by representatives of the American Grassroots Unlimited, Blue Ridge Environmental Defense League, Coalition for Scenic Beauty, Friends of the Blue Ridge Parkway, National Parks and Conservation Association, League of Women Voters-Asheville-Buncombe Chapter, Appalachian Voices, Coalition of Asheville Neighborhoods, Dogwood Alliance, Friends for Parks and Public Lands, League of Women Voters-NC State Office, Physicians for Social Responsibility, Sierra Club-Wenoca Group, UNC-A Environmental Quality Institute, Western Carolina Women's Coalition, Southern Appalachian Biodiversity Project, U.S. Public Interest Research Group-NC Field Office and WNC Alliance.

Councilman Cloninger clarified that this also applies to not only new industries but major expansions to new industries as well. He supported City Council's passage of the resolution, however, he would ask that City Council delete the word "unamended." He felt that it would be presumptuous of City Council, without knowing all of any potential amendments that might be on the table, which ones may be helpful and which ones may not be helpful.

Mr. Carlyle said that an important note in the summary of the permitting procedures Memorandum of Understanding on Air Quality, reads "The passage of any amendment to the MoU by a North Carolina signatory will render the agreement between NC and other signatory states invalid." Councilman Cloninger still recommended that the word "unamended" be deleted.

Councilwoman Field noted that all the organizations that encouraged City Council to adopt the resolution were environmental groups. She suggested that they encourage large business groups, like the Chamber of Commerce, to support the resolution in order to show the balance with other members in the community.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

FINANCING PURCHASE OF TWO FIRE TRUCKS AND A LOADER PACKER

Finance Director Bill Schaefer said that this is the consideration of a resolution authorizing the installment financing of two fire trucks and a loader packer.

The City of Asheville Fiscal Year 1998-1999 Capital Improvement Plan includes authorization in FY 98/99 for the purchase of two fire trucks (a severe service vehicle estimated to cost approximately $120,000 and a pumper/telesquirt costing approximately $255,000) and a loader packer for sanitation (approximately $120,000); all of which are to be financed.

The Finance Department sought proposals from 30 firms to finance the purchase of a bulldozer for the Public Works Department. Twelve proposals were received, the best of which was submitted by Wachovia Leasing Corporation - - 3.74% interest plus $250.00 closing cost. Wachovia Leasing Corporation has offered to extend those very favorable rates to finance other essential equipment authorized by our current budget.

Federal Tax laws make it advantageous for banks to lend to "bank qualified" governmental borrowers. As a result, banks can provide lower rates for loans to their "bank qualified" borrowers. For a local government to be "bank qualified" it must not contemplate issuing more than $10,000,000 in tax-exempt debt in the calendar year in which the loan is made. The City of Asheville is "bank qualified" in 1998; however, we do not expect to be in calendar year 1999.

We do not anticipate delivery of the fire trucks and loader packer until normal competitive procurement can be completed for each of them; which will not occur until well into calendar year 1999.

However, in order to take advantage of Wachovia's offer, the loan transaction must be closed not later than December 31, 1998. We propose to close the loan this year. We would then place the proceeds of the loan in escrow until each of the trucks is delivered, at which time funds would be drawn from escrow to pay the purchase price.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and Wachovia Leasing Corporation for the purchase of two fire trucks and a loader packer and authorizes the City Manager to execute and deliver any and all necessary documents.

City staff recommends City Council adopt the resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

OTHER BUSINESS

I-26 Connector

Mayor Sitnick said that a letter has been received from Tom Kendig, Project Manager from the N.C. Dept. of Transportation ("NC DOT"), relative to the I-26 construction and related improvements calendar of events. He said project is divided into two components: I-26 Interstate Highway Construction and the I-26 Connector. The I-26 Interstate Highway Construction project has gone through the entire process and is currently under construction. Workshops and public hearings were held at the appropriate times. With regard to the I-26 Connector, this portion of the interstate will connect with existing I-26 and the interstate under construction as described in the first component. There are two additional public workshops to be held on the I-26 connector. The first will be held during the first quarter of 1999 and the second will be held during the summer. In addition during the March to April timeframe, it is anticipated that the environmental assessment will be complete. After having received the information from the public workshops and the environmental assessment, the NC DOT will hold a public hearing more than likely in the summer of 1999. Asheville would be the location of the public hearing. The NC DOT is legally required to follow this process.

Upon inquiry of Mayor Sitnick, City Manager Westbrook said that he was not sure if the City could hold a joint hearing with the NC DOT, and he thought that what NC DOT suggested was that City Council go to their public hearing. If City Council chooses to hold their public hearing earlier than NC DOT's hearing, chances are that if NC DOT members are present, they will not have their environmental assessment complete and they won't have any answers regarding many questions, like noise.

It was the consensus of Council that it should be made clear to the Asheville residents that the Asheville City Council does not have a decision in this and that the public forum will only be to hear from the community to express their concerns and opinions about the I-26 Connector. The NC DOT will be invited as well to listen to the comments. The purpose of the forum will be for City Council to relay the community's concerns to the NC DOT.

It was the consensus of City Council to wait until Councilman Cobb is present before any decision is made.

Joint Meetings

Mayor Sitnick received a letter from Buncombe County Manager Wanda Greene which asks if the City Council would be interested in a brainstorming session with all the elected officials in Buncombe County. A suggestion was that it be an overnight retreat with an agenda and a professional facilitator. She asked that if City Council is interested, that some potential dates be suggested for the event.

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It was the consensus of Council that they would be interested in this event and that it be held after their annual retreat, which is scheduled for the end of January 1999. The City Manager said that he would contact Ms. Greene regarding the agenda, to make sure that it is a commonly created agenda.

Closed Sessions

Mayor Sitnick said that she has asked the City Attorney to draft a paragraph to City Council about seeing if Council would be agreeable to having as few closed sessions as possible in the future. She said closed sessions would only be on personnel matters, legal issues and land acquisitions. As soon as that information is ready she will bring it to City Council for their consideration.

CLOSED SESSION

At 6:04 p.m., Councilman Cloninger moved to go into closed session to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange or lease - statutory authority is G.S. 143-18.11 (a) (5). This motion was seconded by Councilman Sellers and carried unanimously.

At 7:37 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:37 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - November 24, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman M. Charles Cloninger

INVOCATION

Councilman Sellers gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION OF CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING AWARD

City Manager Westbrook presented Finance Director Bill Schaefer with the Certificate of Achievement for Excellence in Financial Reporting Award. The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management. The City of Asheville is proud to have received this award for the 18th year.

He also presented R. Patricia Leckey, City Accountant, with the Award of Financial Reporting Achievement. Ms. Leckey was designated the individual primarily responsible for preparing the award-winning comprehensive annual financial report.

Mr. Joe Elkins, Ms. Valerie Brown and Ms. Barbara Smith were also recognized for their work in achieving the awards.

B. PROCLAMATION PROCLAIMING DECEMBER 1, 1998, AS "WORLD AIDS DAY" IN THE CITY OF ASHEVILLE

Councilman Tomes read the proclamation proclaiming December 1, 1998, as "World Aids Day" in the City of Asheville and presented it to Ms Pam Kelly, Center Director for the Harvest House.

C. PROCLAMATION PROCLAIMING DECEMBER 10, 1998, AS "HUMAN RIGHTS DAY" IN THE CITY OF ASHEVILLE

Councilwoman Field read the proclamation proclaiming December 10, 1998, as "Human Rights Day" in the City of Asheville and presented it to Mr. George Yates and Ms. Betsy Ewing, who briefed City Council on some activities taking place during that day.

II. CONSENT:

A. RESOLUTION NO. 98-165 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER FOR THE LEASE BY PACK PLACE EDUCATION ARTS & SCIENCE CENTER INC. OF THE PROPERTY OWNED BY THE CITY OF ASHEVILLE AND KNOWN AS PACK PLACE EDUCATION ARTS & SCIENCE CENTER

Summary: The consideration of a resolution directing the City Clerk to advertise an offer from Pack Place Education Arts and Science Center, Inc. to lease the property owned by the City of Asheville and known as the Pack Place Education Arts and Science Center.

The City of Asheville owns the property on which the Pack Place Education Arts & Science Center is located. That property was leased to Pack Place Education Arts & Science Center, Inc. on December 13, 1988, for a ten (10) year term for the construction, operation and maintenance of the education, arts & science center.

The current lease with Pack Place Education Arts & Science Center, Inc. expires on December 12, 1998. Pack Place Education Arts & Science Center, Inc. has offered to lease the property again from the City for the continuing operation and maintenance of the education, arts and science center. Pack Place Education Arts & Science Center, Inc. desires to lease the property for more than ten (10) years.

N. C. Gen. Stat. sec. 160A-272 authorizes North Carolina cities to lease property for longer than ten (10) years if the lease is treated as a sale of property and is executed by following any of the procedures authorized for sale of real property in Article 12 of Chapter 160A of the North Carolina General Statutes. Of those procedures, N. C. Gen. Stat. sec. 160A-269 appears to be the most appropriate method for execution of a lease for more than ten (10) years for this property and requires that when an offer is made and the City Council proposes to accept it, a deposit shall be made with the City Clerk and the City Clerk shall publish a notice of the offer.

A deposit has been received and the general terms of the proposed lease are described in the notice.

City staff recommends the resolution directing the City Clerk to advertise the offer of the lease be adopted.

RESOLUTION BOOK NO. 25 - PAGE 42

B. RESOLUTION NO. 98-166 - RESOLUTION AMENDING THE MINORITY BUSINESS PLAN TO INCLUDE THE ASSISTANCE OF MINORITY FIRMS IN THE DEFINITION OF MENTOR-PROTÉGÉ PROGRAM

Summary: The consideration of a resolution to amend the Minority Business Plan in order to permit minority firms participation as mentors in the Mentor-Protégé Program.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan requires that "The Minority Business Commission shall establish a Mentor-Protégé Program." The Plan defines the Mentor-Protégé as "A program of the Minority Business Commission whereby ***non-minority*** firms provide assistance and mentorship to minority firms." (emphasis added) The Commission is currently working to implement the Mentor-Protégé program; however, they find the present program definition unnecessarily restrictive and exclusionary. There are many minority firms which have the experience, wisdom and commitment to serve as effective mentors; however, the current definition of the program unintentionally excludes their participation in the mentor role.

At their meeting on October 15, 1998, the Minority Business Commission recommended that the Plan's definition of the Mentor-Protégé program be amended to permit the inclusion of minority firms as mentors. Specifically revise the definition on page two of the plan as follows:

"**Mentor-Protégé Program** – A program of the Minority Business Commission whereby minority and non-minority firms provide assistance and mentorship to minority firms."

The resolution amends the Plan as recommended by the Minority Business Commission. The recommended revision to the Plan was adopted by the Buncombe County Commission earlier this month.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 25 - PAGE 44

C. RESOLUTION NO. 98-167 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING 110 MORRIS STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for 110 Morris Street.

A bid from Carol Lynne Jones, in the amount of $79,600.00, has been received for the purchase of 110 Morris Street. The bid is not less than the established minimum price of $79,500.00.

110 Morris is a residential lot and house near the corner of West Asheville Park comprising 13,503 square feet of land. The property was acquired along with the park property and is under the Parks & Recreation Department's control. The house contains 1,336 square feet of floor space, three (3) bedrooms, one and one half (1 1/2) baths and a full basement with drive-in garage. The bidder, Carol Lynne Jones, intends to occupy the residence as her home. She is a graduate of the Affordable Housing Coalition's Homebuyer Education Class.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff and the Parks & Recreation staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 45

D. RESOLUTION NO. 98-168 - RESOLUTION AUTHORIZING THE CITY MANAGER AND/OR MAYOR TO APPLY AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR A GRANT TO ASSIST WITH THE DEVELOPMENT OF HAW CREEK PARK

Summary: The consideration of a resolution to apply for grant funds to assist with the construction of Haw Creek Park through the N.C. Dept. of Environment and Natural Resources.

The development of Haw Creek Park represents the City of Asheville and the Haw Creek Neighborhood Association's long term goal to build a park in the Haw Creek community. The park is a collaborative effort between the City of Asheville and the Haw Creek Neighborhood Association, who has committed to raise $40,000 to assist with construction of the park. Haw Creek Park will be a passive park located on approximately 6.2 acres on Haw Creek Road, and will serve as a major destination along the proposed Haw Creek Greenway. Park features include a trail, picnic shelter, and paved parking. The grant funds will be used to add a toddler playground, a second picnic shelter, rest rooms, interpretive signage, and landscaping.

The Parks and Recreation Department is requesting $100,000 in grant funds which requires a 50% cash match. Funds for the match are currently available in the Capital Improvement Budget designated for Haw Creek Park.

The Parks and Recreation Department recommends the City Manager and/or the Mayor be authorized to apply for the grant and enter into the agreement to assist with the development of Haw Creek Park.

RESOLUTION BOOK NO. 25 - PAGE 46

E. ORDINANCE NO. 2528 - BUDGET AMENDMENT TO APPROPRIATE FUNDS TO THE POLICE DEPARTMENT IN SUPPORT OF A GRANT FUNDED PROJECT FROM THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM

Summary: The consideration of a budget amendment, in the amount of $50,000, to appropriate funds to the Police Department in support of a grant funded project from the NC Governor's Highway Safety Program.

The Police Department has been awarded a $37,500 grant from the NC Governor's Highway Safety Program (GHSP). The grant is for the purchase of equipment to support the department's traffic safety program; specifically five in-car computers and five speed detection devices.

GHSP guidelines require a local match of $12,500 for a total project budget of $50,000.

The City Council, at their meeting on July 28, 1998, authorized the application for this grant.

City staff recommends City Council adopt the budget amendment appropriating $50,000 to the Police Department budget.

ORDINANCE BOOK NO. 17 - PAGE 183

F. ORDINANCE NO. 2529 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FOR THE 12TH YEAR OF THE FAIR HOUSING ASSISTANCE PROGRAM

Summary: The consideration of a budget amendment to continue federal funding for the twelfth year of the Fair Housing Assistance Program.

On April 28, 1987, the City of Asheville was recognized by Department of Housing and Urban Development (HUD) as having a fair housing enforcement program which is substantially equivalent to that of the Federal Fair Housing Act. The City has been carrying out its fair housing program under contract with the Asheville-Buncombe Community Relations Council and Fair Housing Commission since January 1988.

The City has received approval from HUD of $18,400 for the Fair Housing Assistance Program for the period October 1, 1998 - September 30, 1999. This will be the twelfth year of funding through this program. The program is administered under contract by the Asheville-

Buncombe Community Relations Council which provides staff support to the Asheville-Buncombe Fair Housing Commission. The City Community Development Division serves as Lead Entity and monitors the program.

Community Development staff recommends adoption of the budget amendment.

ORDINANCE BOOK NO. 17 - PAGE 185

G. RESOLUTION NO. 98-169 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AMENDMENT TO THE AGREEMENT WITH J.L. DEBALL-GIRMES TO EXTEND THE COMPLETION DATE FROM JULY 1, 1998, TO OCTOBER 1, 1998

Summary: The consideration of a resolution authorizing the Mayor to enter into an amendment to the agreement with J.L. deBall-Girmes of America Inc.

Girmes applied for an Industrial Development Grant based on expansion plans that included investment in facility and equipment at their Old Charlotte Highway site of $2,000,000 by July 1, 1998, and $7,000,000 within two years. An increase in new jobs from between 12 to 16 were to be provided by July 1, 1998, and up to 50 by January 1, 2000. On August 12, 1997, City Council awarded an Industrial Development Grant, in the amount of $51,300, to J.L. deBall-Girmes of America Inc.

Due to unforeseen circumstances, certain equipment could not be delivered by the July 1, 1998, deadline. The equipment is now in place and Girmes has met all other requirements of the grant. They are requesting that the Grant Agreement be amended to change the completion deadline from July 1, 1998, to October 1, 1998. No other changes are requested.

Staff recommends that City Council (1) adopt a resolution authorizing the Mayor to amend the agreement with J.L. deBall-Girmes of America Inc. in order to extend the deadline in the agreement from July 1, 1998, to October 1, 1998, and (2) appropriate $51,300 in accordance with the agreement.

RESOLUTION BOOK NO. 25 - PAGE 47

H. ORDINANCE NO 2530- BUDGET AMENDMENT TO APPROPRIATE FUNDS IN ACCORDANCE WITH THE J.L. deBALL-GIRMES OF AMERICA INC. AGREEMENT

Summary: See Item G above.

ORDINANCE BOOK NO. 17 - PAGE 187

I. RESOLUTION NO. 98-170 - RESOLUTION CALLING FOR A PUBLIC HEARING ON DECEMBER 8, 1998, ON THE BOND ORDER AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $18,500,000 GENERAL OBLIGATION REFUNDING BONDS AND DIRECTING PUBLICATION OF SAID PUBLIC HEARING AND FILING A DEBT STATEMENT

Summary: Introduction of the Bond Order by the Finance Director and the consideration of a resolution which calls for a public hearing on the Bond Order, directs publication of said public hearing and directs the filing of a debt statement.

At City Council's direction of November 10, 1998, the Finance Director has filed with the Local Government Commission an application for its approval of $18,500,000 General Obligation Refunding Bonds of the City of Asheville, North Carolina.

The Bond Order briefly describes the bonds to be issued in regard to: purpose; maximum amount; taxes to be levied; provides for a sworn statement of debt; and states the effective date of the Bond Order. The Bond Order will be published and a public hearing convened for its consideration prior to its proposed adoption by Council on December 8, 1998.

The Resolution calls for a public hearing on the Bond Order to be held on December 8, 1998 at 5:00 p.m. in the Council Chambers of the City Building; directs the City Clerk to publish notice of the public hearing no fewer than 6 days prior to the public hearing and directs the Finance Director to file with the City Clerk (prior to publication of the Bond Order and along with the notice of public hearing) a statement of the debt incurred or to be incurred, the appraised value of property subject to taxation by the City and the net debt of the City.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 25 - PAGE 48

J. INTRODUCTION OF BOND ORDER AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $18,500,000 GENERAL OBLIGATION REFUNDING BONDS OF THE CITY OF ASHEVILLE, N.C.

Summary: See Item H above.

K. RESOLUTION NO. 98-171 - RESOLUTION DIRECTING PUBLICATION OF NOTICE OF INTENT TO APPLY TO THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF GENERAL OBLIGATION PARKS, RECREATION AND GREENWAY BOND FINANCING

Summary: The consideration of the following three resolutions: (1) directing publication of notice of intention to apply to the Local Government Commission (LGC) for approval of bonds; (2) directing the Finance Director to submit an application to issue bonds for consideration by the LGC; and (3) making certain statements of fact concerning the proposed bond issue.

Based upon recommendations by the Parks and Recreation Master Plan Steering Committee and the Greenway Steering Committee, Council directed staff to proceed with a referendum for the issue of $18,000,000 Parks, Recreation and Greenway bonds. The resolutions are the first in a series of actions required by Council to effect issue of the bonds.

The general obligation bonds shall be for the following purposes and in the following maximum amounts: $18,000,000.00 of bonds for the purpose of providing recreation opportunities through the preservation and acquisition of land for open spaces, natural areas, environmental enhancements and greenways, including rights-of-way and easements; providing new recreation facilities, playfields and playgrounds, including acquisition of land, rights-of-way and easements therefor; and renovating existing parks and recreation facilities.

The first proposed resolution directs the City Clerk to publish "Notice of Intention to Apply to the Local Government Commission for Approval of Bonds". The notice states the purpose of the bonds, their maximum amount and provides instructions to citizens or taxpayers of the City of Asheville who object to the issue of bonds to file a written notice of their objection with the LGC and City Clerk within 7 days of the publication of the notice.

The second proposed resolution authorizes and directs the Finance Director to submit an application to the LGC to allow the City of Asheville to issue not to exceed $18,000,000 General Obligation Parks, Recreation and Greenway Bonds and allow the retention of Parker, Poe, Adams & Bernstein L.L.P. as bond counsel for the issue.

The third proposed resolution provides "statements of fact concerning proposed bond issue" in regards to: (A) the necessity of the proposed financing; (B) the amount of the bonds proposed; (C) past debt management policies; (D) past budgetary and fiscal management policies; and (E) increase in taxes and retirement of debt. These "statements of fact" are required in order for the LGC to make determinations necessary to approve the City's request to issue Refunding Bonds.

City staff recommends City Council adopt all three resolutions.

RESOLUTION BOOK NO. 25 - PAGE 51

L. RESOLUTION NO. 98-172 - RESOLUTION AUTHORIZING THE FINANCE DIRECTOR TO APPLY TO THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF THE CITY'S PROPOSED GENERAL OBLIGATION PARKS, RECREATION AND GREENWAY BOND FINANCING AND TO SUBMIT SUCH APPLICATION TO THE LOCAL GOVERNMENT COMMISSION

Summary: See Item J above.

RESOLUTION BOOK NO. 25 - PAGE 52

M. RESOLUTION NO. 98-173 - RESOLUTION MAKING CERTAIN STATEMENTS OF FACT CONCERNING THE GENERAL OBLIGATION PARKS, RECREATION AND GREENWAY BOND

Summary: See Item J above.

RESOLUTION BOOK NO. 25 - PAGE 53

N. MOTION SETTING A JOINT PUBLIC HEARING ON DECEMBER 15, 1998, WITH THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION TO CONSIDER A LOCAL HISTORIC LANDMARK FOR BILTMORE INDUSTRY PROPERTIES AT 111 GROVEWOOD

O. RESOLUTION NO. 98-174 - RESOLUTION AUTHORIZING AN INSTALLMENT PURCHASE CONTRACT BETWEEN WACHOVIA LEASING CORPORATION AND THE CITY OF ASHEVILLE TO FINANCE THE ACQUISITION OF TWO FIRE TRUCKS AND A LOADER PACKER

Summary: The consideration of a resolution authorizing the installment financing of two fire trucks and a loader packer.

The City of Asheville Fiscal Year 1998-1999 Capital Improvement Plan includes authorization in FY 98/99 for the purchase of two fire trucks (a severe service vehicle estimated to cost approximately $120,000 and a pumper/telesquirt costing approximately $255,000) and a loader packer for sanitation (approximately $120,000); all of which are to be financed.

The Finance Department sought proposals from 30 firms to finance the purchase of a bulldozer for the Public Works Department. Twelve proposals were received, the best of which was submitted by Wachovia Leasing Corporation - - 3.74% interest plus $250.00 closing cost. Wachovia Leasing Corporation has offered to extend those very favorable rates to finance other essential equipment authorized by our current budget.

Federal Tax laws make it advantageous for banks to lend to "bank qualified" governmental borrowers. As a result, banks can provide lower rates for loans to their "bank qualified" borrowers. For a local government to be "bank qualified" it must not contemplate issuing more than $10,000,000 in tax-exempt debt in the calendar year in which the loan is made. The City of Asheville is "bank qualified" in 1998; however, we do not expect to be in calendar year 1999.

We do not anticipate delivery of the fire trucks and loader packer until normal competitive procurement can be completed for each of them; which will not occur until well into calendar year 1999. However, in order to take advantage of Wachovia's offer, the loan transaction must be closed not later than December 31, 1998. We propose to close the loan this year. We would then place the proceeds of the loan in escrow until each of the trucks is delivered, at which time funds would be drawn from escrow to pay the purchase price.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and Wachovia Leasing Corporation for the purchase of two fire trucks and a loader packer and authorizes the City Manager to execute and deliver any and all necessary documents.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 25 - PAGE 55

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING 720 HENDERSONVILLE ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 2531 - ORDINANCE TO REZONE 720 HENDERSONVILLE ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT

Mayor Sitnick opened the public hearing at 5:14 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Urban Planner Carl Ownbey said that this is the consideration of an ordinance to rezone 720 Hendersonville Road from RS-8 Residential Single-Family High Density District to Highway Business District.

The owner and applicant, Mr. Alfred Berlin of Chammies Car Wash, has requested the rezoning of 720 Hendersonville Road (PIN No. 9647-20-82-9429) from RS-8 Residential Single-Family High Density District to Highway Business District. The property is adjacent to an existing property which is presently used as a car wash. The applicant owns both pieces of land. The lot in question is 39.98 feet wide, and is a non-conforming lot in the RS-8 district in which it is currently located. The Unified Development Ordinance requires a minimum lot width of 50 feet at the setback line in the RS-8 District.

The Planning staff reviewed the rezoning request and recommended approval. At their November 4, 1998, meeting, the Planning & Zoning Commission voted seven to zero to recommend approval of the rezoning.

Mayor Sitnick closed the public hearing at 5:20 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2531. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 189

B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING A WIRELESS TELECOMMUNICATION FACILITIES ORDINANCE

Summary: The revised definition of antenna, as recommended by the Planning and Zoning Commission, is closely linked to the telecommunications facilities ordinance. In fact, the new definition of antenna is incorporated into the draft telecommunications facilities ordinance. For this reason, and to avoid unnecessary duplication of efforts, staff would like the City Council to consider these items at the same time. The Planning and Zoning Commission, at their November 2, 1998, meeting, continued consideration of the draft telecommunications facilities ordinance until their December 2, 1998, meeting. As a recommendation from the Planning and Zoning Commission is required prior to consideration of an ordinance amendment by City Council, the City Council will not be able to consider this at their November 24, 1998, meeting. In order to provide the opportunity for Council to deal with both these ordinance amendments at the same time, staff is requesting that Council continue the consideration of the ordinance amendment until your January 12, 1999, meeting.

Councilman Sellers moved to continue the public hearing until January 12, 1999. This motion was seconded by Councilwoman Field and carried unanimously.

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 98-175 - RESOLUTION ADOPTING FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATIVE TO THE DENIAL OF THE CONDITIONAL USE APPLICATION TO LOCATE A TELECOMMUNICATIONS TOWER AT 754 MERRIMON AVENUE

City Attorney Oast said that the order contains findings of facts and conclusions of law taken from City Council's discussion after their public hearing on November 10, 1998.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast said that, as he interprets the ordinance, the burden is on the applicant to establish that certain conditions been me. Based on Council's comments after the public hearing, Council did not think that some of the conditions had been met.

Since Councilman Cloninger was not at this meeting, Councilman Sellers asked if he had been given an opportunity to review the order. City Attorney Oast said that he did talk with Councilman Cloninger and Councilman Cloninger said that he had confidence in the Council to make sure the order was proper.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Hay moved for the adoption of Resolution No. 98-175. This motion was seconded by Councilman Sellers and carried unanimously.

Councilwoman Field did not believe that any cell tower could be in harmony with the scale, bulk and character of any area or neighborhood in Asheville. As long as that stays in as a condition in part of the conditional uses, she didn't see how City Council could site a cell tower anywhere in the community, except maybe in an industrial district. She asked the City Attorney to provide to Council clarification on that part of the conditional use process, with regard to cell towers.

RESOLUTION BOOK NO. 25- PAGE 57

V. NEW BUSINESS:

A. RESOLUTION NO. 98-176 - RESOLUTION IN SUPPORT OF NORTH CAROLINA ADOPTING PERMITTING PROCEDURES FOR AIR QUALITY IN THE SOUTHEAST

City Attorney Oast said that at City Council request, he has prepared a resolution and summary of the Memorandum of Understanding ("MOU"). He said that the Buncombe County Commissioners adopted a similar resolution last week. At Councilman Cloninger's request, there is no reference to the unamended MOU. He felt that Councilman Cloninger's request was that since the State of North Carolina is primarily responsible for administering the law and would be responsible for administering the MOU, they should be the ones who decide how much time they need or how much time is advisable. He said that basically the MOU formalizes the process for involving land managers for several federal agencies in the air quality permitted decisions that are made in the State of North Carolina, primarily the Dept. of Interior and the Dept. of Agriculture, and ensures that they get involved in the process and they have input into the state agency decisions if they wish to.

Dr. Richard Mass, UNC-A Environmental Quality Institute, urged City Council to sign a resolution asking Governor Hunt and the State of North Carolina to agree to sign onto the MOU to cooperate with the State of Tennessee on air quality permits in both states to protect the Class 1 air sheds of the Smoky Mountain National Park and other federal lands. He briefly reviewed the six addenda which the State of North has tacked on the agreement that the State of Tennessee has already signed. He said that four are amendments to the preamble and they don't affect the agreement. One is unclear and the other amendment (addendum 5)) is one that basically everyone disagrees with and hopefully they will go back and change it. Addendum 5 is the only amendment that both the federal land managers with the National Park Service, the U.S. Forest Service and the Fish and Wildlife Service along with the State of Tennessee has disagreed with. It says there can only be a 30 day period from the time the application is made before federal land managers have to sign whether they will go along with it or not. All concerned believe that this is too short a time, noting that in the original MOU it allowed 60 days and he doesn't know why the State of North Carolina wanted to propose the shorter time frame. It basically precludes the possibility of having public input. He again asked City Council to endorse the MOU without the amendments with some type of notation that they disagree with Addendum 5 that shortens the comment period to 30 days.

Councilwoman Field suspected that the reason for the 30 days period was to speed up the process so that if indeed industry is impacted that there is some kind of deadline for when the agency has to respond.

City Attorney Oast pointed out that because we have a lot of national park land around Asheville that the federal land managers may view industries locating in this area as tending to affect the air quality of those areas more than industries in another part of the state for instance. He emphasized that this does not impose any stricter pollution discharge requirements on anyone, but it does mandate a process.

Mayor Sitnick said that essentially this is asking new industry to comply with existing regulations. There is nothing new imposed here. Given the fact that the Smoky Mountain National Park is one of the most polluted in the country, we need to be doing everything we can to ask new industry to comply. She felt that even 60 days is not that long of period of time when you consider 90 and 120 days in other pieces of federal legislation.

City Attorney Oast said that one of the reasons that the State of Tennessee desires a longer time period is that it provides more of an opportunity to work out differences and perhaps adopt some mitigating standards that maybe a 30 day time period may not allow for.

The following individuals spoke in support of City Council signing the unamended MOU for various reasons:

Ms. Hazel Fobes
Ms. Susan Kask, Economics Professor at Western Carolina University
Mr. Kim Carlyle
Mr. Mike Morgan
Mr. Keith Thompson, 1 Bridle Path
Dr. Harvard Ayers, Professor of Sustainable Development and Anthropology at Appalachian State (presented City Council with a book entitled "An Appalachian Tragedy")
Mr. Allen Frank
Mr. Ted Prosser, business owner and real estate developer
Mr. Hal Hogstrom, retired academic

Mr. Carlyle said that at Council's worksession on November 17, a suggestion was made that other groups, other than environmental groups, should be contacted to see if they would be willing to endorse City Council's signing the unamended MOU. He said that they now have signatures from the American Lung Association, BB&T Insurance Services, Hawk & Ivy Bed and Breakfast, Landmark Management Inc., Mike Byer Auto & Truck Repair, NC League of Women Voters, Physicians for Social Responsibility, and Western Carolina Women's Coalition, in addition to other businesses.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Councilman Tomes moved for the adoption of Resolution No. 98-176 which does not address any amendments. This motion was seconded by Councilman Cobb.

Councilman Cobb said that we have serious pollution problems and we will have to find a way to address them. He felt that it will take a concerted effort by the businesses and local citizens to work on this problem. He also felt that there should be some way to obtain money from the tourist business to help off-set some of the problems we have as a result of tourism.

Mayor Sitnick stated that the environment is no longer a political issue. This is not just about tourists breathing clean air and not just about luring new business and jobs, which is part of our responsibility and something we are committed and dedicated in doing. This is also about the people who live here being healthy. She was pleased to take this small step to encouraging our legislators on a state and federal level to create a very balanced and even-handed approach to compliance with the laws that we finally have in place. She appreciated the support from the environmental community, which she expected, and really appreciated the support from the business community.

After a brief discussion, Councilman Tomes agreed to amend this motion to adopt Resolution No. 98-176, with an additional note that the Asheville City Council is concerned about the issues raised in Addendum 5 which may have the affect of limiting public input in the process. Councilman Cobb agreed to amend his second. This motion carried unanimously.

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Mayor Sitnick instructed the City Clerk to arrange for Dr. Maas and Dr. Ayers to make a presentation to City Council, in a future worksession, similar to their presentation they made for Leadership Asheville which was very informative.

B. RESOLUTION NO. 98-177 - RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE A LEASE FOR THE ASHEVILLE MOTOR SPEEDWAY FOR 1999

City Attorney Oast said that this resolution is the consideration of a resolution authorizing the City Manager to negotiate a lease for the Asheville Motor Speedway ("AMS") for 1999.

After meetings and discussions with NASCAR officials, RiverLink representatives, potential Speedway operators, representatives of the racing community, and City staff, the following facts, observations and recommendations have emerged:

1. The NASCAR sanction should be applied for by mid-December; NASCAR would prefer that an operator be identified prior to issuing the sanction.

2. RiverLink and its donors have indicated that their agreement to suspend the use restrictions for 1999 will depend on who the operator will be.

3. The recommended arrangement for operation of AMS in 1999 is for the City to lease it to an operator, with sufficient insurance, indemnity and other provisions to insure that the City, RiverLink and others are insulated from liability. Other provisions would deal with noise, environmental matters, and operational issues. The following is a general summary of proposed lease terms:

Statutory Authority: G.S. 160A-272.

- Authorizes City to enter into leases for its property.
- If lease is for less than one year, no requirement for public notice, and City Manager may be delegated authority to lease (and presumably to negotiate).

Lease Period:

- Beginning December 1998 or January 1999, and ending October 1999.
- Establish racing calendar (historically every Friday night, April through mid-October).
- Establish practice days (historically open practice has been Wednesday, with some individual practice at other pre-arranged times).

Rental:

- Should be a straight rental, payable in monthly installments.
- No percentages – operator keeps profit, absorbs loss.

Liability Issues:

- Operator assumes all risks of operation.
- Blanket indemnity for City.
- Adequate insurance to be provided (determined by Risk Manager).
- Environmental issues: Lessee to operate safely; pay for Phase I assessment at end of lease.

Operational Issues:

- Noise: Must operate within applicable noise restrictions.
- Traffic: Must make adequate provision for traffic/parking.
- Maintenance: Structures, grounds to be maintained by lessee; City not responsible for repairs.
- Utilities: Lessee to provide.
- Concessions, Advertising, Medical, Access, etc.: All to be handled by lessee for period of the lease.

NASCAR Issues:

- Operator must obtain/maintain NASCAR sanction
- Operator must abide by all NASCAR rules and regulations

Other Matters:

- Lease subject to approval by RiverLink, other donors/predecessors in title.
- Final form to be approved by City Council prior to authorization to execute.

4. Because the lease would be for one year or less, the City Manager may be given authority to enter into it on the City's behalf. Also, the usual notice provisions are not applicable, which gives some flexibility in scheduling.

5. RiverLink or its donors have indicated that a minimum rental of $200,000 is a condition of their agreement for allowing operation in 1999. Council may adopt this as baseline rental or may establish other guidelines. Our information indicates that "move in" costs will be between $30,000 and $50,000. Council may also direct the Manager to negotiate the best agreement possible, keeping in mind the City's concerns and the conditions suggested by others whose approval is required.

6. This is not a matter for which competitive bidding is required. Our discussions with NASCAR indicate that word of the AMS situation has spread though the racing community, and that the individuals who are interested in operating AMS in 1999 have already contacted us. Moreover, there has been plenty of publicity through various channels. Council may direct staff to issue a Request for Proposals, but it appears unlikely that doing so would generate any more interest or additional proposals, and it would add time to a tight schedule.

Council should establish those guidelines that it thinks appropriate and authorize the Manager to negotiate within those guidelines. The resolution may authorize the Manager to enter into the lease, or for the lease to be presented to Council for final approval. The proposed resolution directs the Manager to return to Council for final approval.

City Attorney Oast emphasized that discussions have gone well and there are still a lot of things that need to fall in place. He asked that two additional lease provisions be included: (2) That the lease be so constructed to allow for use by other events during the 1999 season (that is consistent with the way it has been used in the past); and (2) There be a no sub-let provision.

Upon inquiry of Mayor Sitnick about whether the NASCAR sanctions have already expired, City Attorney Oast said that it is his understanding that the sanctions expire on December 31. NASCAR indicated that they have a strong interest in remaining in western North Carolina and that they would work with us to allow racing to continue in the area in perpetuity and next year at the Asheville Motor Speedway.

Councilman Sellers agreed with the City Attorney that all the meetings have been very productive and he would support adopting the resolution to keep moving forward.

Mayor Sitnick, on behalf of City Council, thanked the City Attorney for the excellent work he has done as a participant in the meetings and as a negotiator.

Councilwoman Field said that the City is very thankful to RiverLink for providing the City the opportunity to have park land on the river to provide for a greenway which we have been working on for a very long time. She personally has tremendous respect for what RiverLink has done to provide the City with this. However, she expressed concern that one of the anonymous donors requested that if the City did lease the property that all of the proceeds of the lease be held by RiverLink. She personally felt that since this is the City's property, the City should certainly be as responsible a party as RiverLink for holding this money in escrow or however the City decides to use it. City Attorney Oast said that this issue is being negotiated, noting that the point the City is making is that whatever revenue that comes in from the operation of this would be earmarked for parks and recreation purposes and perhaps a large portion of it specifically for the area encompassed by this property.

City Manager Westbrook said that if Council gives him the authority to negotiate the agreement, it will have to be fair for the City, work for the racing community and RiverLink will want for it to be fair to them and their donors. He said that there will be compromise, but he will not come back to Council to recommend anything that will not work for the City. He said there are still a number of issues being worked out.

Mayor Sitnick felt there should be some type of recognition of the historical and cultural aspect of the speedway. Also, she recommended that when the negotiations come to fruition that we do have public notice and opportunity for public comment.

Councilman Tomes was elated to see the spirit of the community working together and commended all the parties involved.

Vice-Mayor Hay spoke in appreciation of Councilman Sellers' work on this issue.

Mayor Sitnick said that while the City is looking out for the City, the racing community and RiverLink, it would be her hope that when this is negotiated and when this race track goes on line again that we are committed to enforcing the noise ordinance out of consideration for the citizens of Asheville, as much as we are committed to having a win-win solution for the racing community.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast explained that if the City conveyed the property to someone else, the property would be subject to the same restrictions and it would be up to the donors whether or not to lift them for any amount of money.

City Attorney Oast thanked Representative Martin Nesbitt, Ron Crane, Karen Cragnolin, Doug Wilson and Councilman Sellers for their cooperation in working on this issue.

Representative Nesbitt appreciated Council's work on this issue.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Sellers moved for the adoption of Resolution No. 98-177. This motion was seconded by Councilman Cobb and carried unanimously.

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At 6:40 p.m., Mayor Sitnick announced a short break.

C. RESOLUTION NO. 98-178 - RESOLUTION APPOINTING A MEMBER TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Vice-Mayor Hay said that the term of Gene Ellison expired on November 13, 1998. This resolution will reappoint Mr. Ellison to serve an additional three year term, term to expire November 13, 2001, or until his successor has been appointed.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Vice-May Hay moved for the adoption of Resolution No. 98-178. This motion was seconded by Councilman Tomes and carried unanimously.

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D. RESOLUTION NO. 98-179 - RESOLUTION APPOINTING A MEMBER TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Vice-Mayor Hay said that Margie Liverman has resigned her position on the ADA Compliance Committee, leaving an unexpired term until August 22, 2001. On November 10, 1998, City Council interviewed Richard Evans, Connie Barnette and Sherry Fitzpatrick.

Councilwoman Field felt that after interviewing Ms. Barnette, she felt she would be a fine candidate for the Fair Housing Commission.

Councilwoman Field nominated Sherry Fitzpatrick.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Sherry Fitzpatrick was unanimously appointed to serve the expired term of Ms. Liverman, term to expire August 22, 2001, or until her successor has been appointed.

RESOLUTION BOOK NO. 25 - PAGE 67

E. RESOLUTION NO. 98-180 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

Vice-Mayor Hay said that the terms of Bud Taylor (Regular), Dennis Hodgson (Regular) and Joseph Brady (Alternate) on the Board of Adjustment expire on January 21, 1999. Also, Allen Roderick has resigned as an Alternate, thus leaving an unexpired term until January 21, 2001.

On November 4, 1998, it was Council's intent to (1) reappoint Mr. Brady as an alternate member to serve an additional three year term, term to expire on January 21, 2002; and (2) reappoint Dennis Hodgson as a regular member to fill an additional three year term, term to expire January 21, 2002.

On November 10, 1998, City Council interviewed Lauren Malinoff, Chris Goodwin, Patricia Grant and Sondra Slosman.

Mayor Sitnick nominated Lauren Malinoff as a Regular member.

Councilman Sellers nominated Patricia Grant as a Regular member.

Councilman Cobb nominated Chris Goodwin as a Regular member.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, each Council member voted: Lauren Malinoff received four votes, Patricia Grant received one vote and Chris Goodwin received one vote. A resolution would be prepared to appoint Lauren Malinoff as a Regular member to serve a three year term, term to begin on January 22, 1999, and expire on January 21, 2002, or until her successor has been appointed.

Vice-Mayor Hay moved to reappoint Dennis Hodgson as a Regular member to serve an additional three year term, term to expire on January 21, 2002, or until his successor has been appointed. This motion was seconded by Councilman Cobb and carried unanimously.

Councilman Sellers nominated Patricia Grant as an Alternate member.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Patricia Grant was unanimously appointed to serve as an Alternate

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member to serve the unexpired term of Mr. Roderick, term to expire January 21, 2001, or until her successor has been appointed.

Vice-Mayor Hay moved to reappoint Joseph Brady as an Alternate member to serve an additional three year term, term to expire on January 21, 2002, or until his successor has been appointed. This motion was seconded by Councilwoman Sellers and carried unanimously.

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F. RESOLUTION NO. 98-181 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Vice-Mayor Hay said that the terms of Bernadette Thompson and Cassandra Ingram expire on December 31, 1998. On November 4, 1998, City Council desired to waive it's rules relative to individuals serving only two full successive terms, and reappoint Ms. Thompson. This resolution will reappoint Ms. Thompson and Ms. Ingram to each serve an additional three year term, terms to expire December 31, 2001, or until their successors have been appointed.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Vice-Mayor Hay moved to reappoint Ms. Cassandra Ingram to serve an additional three year term, term to expire December 31, 2001, or until her successor has been appointed. This motion was seconded by Councilman Sellers and carried unanimously.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Vice-Mayor Hay moved to waive the rules relative to individuals serving only two full terms and reappoint Ms. Bernadette Thompson to serve an additional three year term, term to expire December 31, 2001, or until her successor has been appointed. This motion was seconded by Councilman Cobb and carried unanimously.

Councilwoman Field asked that the City Clerk notify the Chairs of individuals boards at the beginning of the quarterly appointment process that there are upcoming vacancies on their respective boards so that they have enough time to meet and submit their recommendations.

RESOLUTION BOOK NO. 25 - PAGE 69

G. RESOLUTION NO. 98-182 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION

Vice-Mayor Hay said that the terms of Jim Drummond, Joyce Harrison and Jim Barrett expire on December 31, 1998. On November 10, 1998, City Council interviewed Leslie Hennessee, Bill Branyon and Kim Moore. Steve Rice was interested in the vacancy, however, he was not able to attend on the interview date.

Councilwoman Field nominated Connie Barnette.

Vice-Mayor Hay nominated Steve Rice.

Mayor Sitnick nominated Kim Moore.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Connie Barnette (subject to her agreeing to serve on this Commission), Steve Rice and Kim Moore were appointed to serve as members on the Fair

Housing Commission to each serve a three year term respectively, all terms to begin on January 1, 1999, and expire on December 31, 2001, or until their successors have been appointed.

RESOLUTION BOOK NO. 25 - PAGE 70

H. RESOLUTION NO. 98-183 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Vice-Mayor Hay said that the term of Jerry VeHaun expires on January 1, 1999. On November 10, 1998, City Council interviewed Lloyd Williams Sr.

Councilman Cobb nominated Lloyd Williams.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Lloyd Williams. Sr. was unanimously appointed to serve a two year term, term to begin on January 2, 1999, and expire on January 1, 2001, or until his successor has been appointed.

RESOLUTION BOOK NO. 25 - PAGE 71

I. RESOLUTION NO. 98-184 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD

Vice-Mayor Hay said that Jim Orr and Bill Stewart have resigned their positions on the Recreation Board, thus leaving two unexpired terms until June 30, 2000. On November 10, 1998, City Council interviewed Jamie Deveney, Frank Fishburne and Barbara Weinkle. Thomas House and John Moyer were both interested in the vacancy, however, they were unable to attend on the interview date.

Councilwoman Field nominated Frank Fishburne and Barbara Weinkle.

Vice-Mayor Hay nominated Thomas House.

Councilman Cobb nominated John Moyer.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, each Council member voted for two candidates: Frank Fishburne received four vote, Thomas House received four votes and Barbara Weinkle received three votes. Therefore, the resolution would appoint Frank Fishburne and Thomas House to serve as members on the Recreation Board to serve the unexpired terms of Mr. Orr and Mr. Stewart. Each term will begin immediately and expire on June 30, 2002, or until their successors have been appointed.

RESOLUTION BOOK NO. 25 - PAGE 72

J. RESOLUTION NO. 98-185 - RESOLUTION APPOINTING A MEMBER TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Vice-Mayor Hay said that there currently exists a vacancy on the River District Design Review Committee for a design professional, including, but not limited to, architects, engineers or qualified artists. On November 4, 1998, it was City Council's intent to appoint Robert Camille Jr. to serve a three year term, term to begin immediately and expire on September 1, 2001, or until his successor has been appointed.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Vice-Mayor Hay moved for the adoption of Resolution No. 98-185. This motion was seconded by Councilman Sellers and carried unanimously.

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K. RESOLUTION NO. 98-186 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE TRANSIT AUTHORITY

Vice-Mayor Hay said that the term of Nick Koon expires on December 31, 1998. On November 10, 1998, City Council interviewed Nick Koon and Robert Potter.

Councilman Cobb nominated Robert Potter.

Councilwoman Field nominated Nick Koon.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, Robert Potter was unanimously appointed to serve a four year term, term to begin on January 1, 1999, and expire on December 31, 2002, or until his successor has been appointed.

RESOLUTION BOOK NO. 25 - PAGE 74

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 10, 1998, AND THE WORKSESSION HELD ON NOVEMBER 17, 1998

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on November 10, 1998, and the worksession held on November 17, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

B. FEES AND CHARGES COMMITTEE

Councilman Cobb moved to request that the Fees & Charges Committee meet to revisit the fee that is currently being charged to use community centers. This motion was seconded by Councilman Sellers and carried unanimously.

C. REAFFIRMATION OF CITY COUNCIL'S SUPPORT FOR CITY ATTORNEY OAST

Because there have been a lot of comments about City Council's poor choice in having Robert Oast as the City's legal counsel, Councilwoman Field moved to reaffirm City Council's support of City Attorney Oast as City Council's legal counsel. This motion was seconded by Councilman Sellers. After each Council member voiced their praise, confidence and support of City Attorney Oast, the motion carried unanimously.

D. ASHEVILLE AREA CIVIC CENTER COMMISSION

Vice-Mayor Hay, liaison to the Civic Center Commission, read two resolutions adopted by the Civic Center Commission. One resolution supports the Future of the Asheville Civic Center Task Force's proposal to the City Council on enhancement of the Civic Center and appreciated the Task Force's efforts to sustain the future of the Civic Center as a strong force in entertainment, economic impact and unity within our community. The other resolution supports City Council's decision to disallow fee reductions for the use of the Civic Center by the Honda Hoot motorcycle rally, recognizing that the Honda Hoot is an exciting and beneficial event for our City and one that the Civic Center seeks to actively support.

B. CLAIMS

The following claims were received by the City of Asheville during the week of November 6-12, 1998: Bell South (Water), Brian Hasmuck (Police) and Crystal Coomer (Streets).

The following claims were received by the City during the week of November 13-19, 1998: Bell South (Streets), Bonnie Grainger (Water), Kim Carnes (Water) and Roger McPeters (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. BOARD APPOINTMENTS

Mr. Mike Morgan asked City Council to consider adopting a policy to the effect that all members on boards should be U.S. citizens.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:25 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - December 1, 1998- 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; and Councilman Thomas G. Sellers; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman O.T. Tomes

CONSENT:

Intent to Close an Unnamed Alley between Michigan Avenue & Richmond Avenue

Summary: The consideration of a resolution of intent to set a public hearing on January 12, 1999, to close an unnamed alley between Michigan Avenue and Richmond Avenue.

A petition has been received from James H. and Mona G. Justice, Richard A. and Shirley J. Page and Jose and Guiller Nina T. Valazquez, owners of parcels 9638-15-54-5274, 5196, and 6293 requesting that a portion of an unnamed and unopened alleyway between Richmond Avenue and Michigan Avenue be permanently closed to public use. These individuals own all of the property with frontage on the portion of the unopened alleyway between Richmond Avenue and Michigan Avenue that has been petitioned to be closed.

The Public Works Department staff recommends City Council adopt the resolution of intent to set a public hearing on January 12, 1999, to permanently close the unnamed and unopened alleyway between Richmond Avenue and Michigan Avenue.

Acceptance of Remainder of Bear Knoll Drive

Summary: The consideration of a resolution authorizing the City Manager to accept the remaining portion of Bear Knoll Drive for street maintenance.

Trappers Run is an existing subdivision in the City. The developer completed the streets in the subdivision several years ago and turned the streets over to the City to maintain. Since that time, Bear Knoll Drive has been extended and a cul-de-sac constructed. The developer has now completed this portion of the street and is requesting that the City accept the street for maintenance. Engineering Department staff along with Public Works staff have inspected the road and found it to be in compliance with our Standard Specifications.

Staff requests Council authorize the City Manager accept the remaining portion of Bear Knoll Drive for City maintenance.

Section 108 Loan Guarantee

Summary: The consideration of a resolution to authorize the mayor to execute a Contract for Loan Guarantee Assistance, Fiscal Agency Agreement, Notes, and other documents in connection with a Section 108 Loan Guarantee from the U. S. Department of Housing and Urban Development (HUD) to generate $1.5 million for rental rehabilitation loans.

On April 1, 1998, the Mayor executed a Funding Approval/Agreement with the Dept. of HUD for a 1.5 million dollars Section 108 loan guarantee pursuant to the application for same approved by City Council Resolution No. 97-211 and submitted by the City of Asheville on December 16, 1997. The Section 108 loan guarantee program enables Community Development Block Grant (CDBG) entitlement grantees to borrow money from the federal government at low interest rates for CDBG eligible activities. The proceeds of the proposed loan will be loaned to investor owners through the City of Asheville Rental Rehabilitation for Owners and Tenants (CARROT) loan program. The Section 108 loan funds will be used to provide decent housing opportunities for low and moderate income households at affordable rents.

The Section 108 loan will be secured by a series of ten (10) Notes of $150,000 each with different maturity dates ranging from one to ten years to be repaid using program income from the CARROT loans, program income from the existing rehabilitation loan portfolio and as necessary a portion of the CDBG entitlement funds. The CARROT loans will be secured by deeds of trust which will be assigned to the Dept. of HUD. The goal of the Section 108 project is to rehabilitate 150 rental units over a three year period of time.

Community Development staff recommends approval of the resolution.

Storefront Door Replacement at Civic Center

Summary: The consideration of a resolution to authorize the City Manager to enter into a construction contract to replace the storefront doors at the Civic Center.

An ADA accessibility study was completed for the Civic Center and City staff has determined that the storefront doors at the entrance to the Civic Center do not meet Federal Guidelines for accessibility. City staff solicited sealed bids from ten General Contractors, three of which were minority contractors, for the replacement of storefront doors at the Civic Center. The following bids were received:

KEKO, Inc.	$ 179,672
Carolina Construction and Investment Co.	$ 180,909
R P F Construction, Inc.	$ 142,880

Approved funding is available in the Civic Center account to pay for this renovation to replace the storefront doors at the Civic Center.

The Parks and Recreation Department staff requests City Council to direct the City Manager to enter into a contract for $142,880 with R P F Construction, Inc., to replace the storefront doors at the Civic Center.

Project Budget Authorization

Summary: The consideration of a budget amendment to officially establish project budgets in the amount of $220,000 for Phase II of W.T. Weaver Boulevard Greenway, $200,000 for Pritchard Park, $50,000 for Haw Creek Park, and $20,000 for park improvements.

Funds for Phase II of the W.T. Weaver Boulevard Greenway, Pritchard Park development, Haw Creek Park, and park repairs and renovations were authorized through the City of Asheville's Capital Improvement Program. Funds had been held in a capital reserve account until it was necessary to begin work on these projects. This ordinance will officially establish project budgets for W.T. Weaver Boulevard, Pritchard Park, Haw Creek Park, and park improvements using funds formerly held in capital reserve.

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Staff recommends City Council officially establish budgets for the aforementioned projects.

Acceptance of Elderly and Disabled Transportation Assistance Program Grant

Summary: The consideration of entering into an agreement with Buncombe County through its Mountain Mobility System program in order to take advantage of a $5,000 grant to transport the elderly to recreation programs.

The City of Asheville has obtained a $5,000 grant of state money routed through Buncombe County for use in the Mountain Mobility System, and which may only be used to transport the elderly to recreation programs. The Parks and Recreation Department will use this money for special events and additional transportation to events for seniors. These events include such things as the Asheville Symphony, Home Shows, The WNC Fair, concerts at Civic Center, the N.C. Arboretum, etc. These are new trips which the Department has not provided prior to this grant.

This grant involves no commitment of City funds to match or otherwise contribute to this grant. The grant will take the form of a credit, and will be applied to Mountain Mobility System use by the Parks and Recreation Department.

City staff recommends City Council authorize the City Manager to enter into an agreement with Buncombe County through its Mountain Mobility System program to transport the elderly to recreation programs.

Setting a Public Hearing to Reallocate CDBG Funds from Hill Street/Cherry Street to City-Wide Rehabilitation

Summary: The consideration of a motion setting a public hearing on January 12, 1999, to reallocate $160,000.00 of Community Development Block Grant (CDBG) funds from the Hill Street/Cherry Street Project to the City Wide Rehabilitation Program in order to utilize current funds according to immediate needs.

The Hill Street/Cherry Street Project is the CDBG budget title for the Head of Montford Redevelopment Project activities. The need for Redevelopment Project activities has diminished with the increase in private investment in the Montford area. Indeed the increase in property values in Montford has outdone the average for Asheville by two times. To a large extent all of the goals of the redevelopment plan have been realized. Although some work remains to be done, funding for such activities should be routed through the CDBG funding process as specific projects are developed. The project budget has a current balance of $172,600.00 which has been carried over from prior years and represents funds that were not needed to carry out the activities for which they were originally scheduled. The projected need to fund currently planned activities amounts to approximately $12,600.00 leaving a balance of $160,000.00. The City Wide Rehabilitation Program has an immediate need for funds for homeowner rehabilitation loans. In assessing the need for funds in Montford compared to the shortfall of funds for homeowner rehabs CD staff have determined that a greater need exists in the City Wide Rehab Program.

The reallocation of $160,000.00 for which no activities are currently planned from the Hill Street/Cherry Street Project to the City Wide Rehabilitation Program will enable the rehabilitation of an additional five to seven homes.

The Community Development staff recommends City Council set a public hearing on 1/12/99 to consider the reallocation of $160,000.00 of Community Development Block Grant funds from the Hill Street/Cherry Street Project to the City Wide Rehabilitation Program.

Office Space for VISION

Summary: The consideration of a request from the VISION for Asheville-Buncombe for an extension of time for use of city office space.

City staff has received a request from the VISION to extend the commitment for donated office space from the City of Asheville from December 31, 1998 to June 30, 1999. Currently, the VISION utilizes office space in the City Development Office located at 29 Haywood Street. The VISION Board of Directors has indicated that they will call an Executive Committee meeting in the near future to discuss options for VISION office space. They have indicated that they will review available options over the next several months. As of this time, City staff is not aware of any other available space from the City of Asheville that could meet the needs of VISION.

Due to the addition of the Cable Coordinator position and associated equipment, all of which will be housed at the City Development office, it is anticipated that this office space will be needed by the City. This position will likely be filled by February 1, 1999.

Staff recommends that City Council approve the extension of time from December 31, 1998, through June 30, 1999, for the VISION office space to allow them an opportunity to make alternate arrangements for office space.

Mayor Sitnick was interested in using the space left vacant by VISION for possibly a central location for the City to sell souvenirs.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

RECOGNITION OF OFFICER GROVER MATHEWS

On behalf of City Council, Mayor Sitnick praised Officer Grover Mathews from the Asheville Police Department who saved a life by performing the Heimlich maneuver.

UPDATE ON THE TREE/GREENWAY COMMISSION'S ACTIVITIES

Mr. Kasty Lavtin, Chairman of the Tree/Greenway Commission, said that the mission statement for the Commission is to support the vitality of the City's trees through professional arboricultural practices and conscientious stewardship. The Commission also assists in decisions about tree planting and preservation, engages in dedicated advocacy, and promotes public awareness concerning the importance of trees and greenways. This is accomplished though education and code enforcement. He said that the Commission has worked hard in the past year to establish itself as a community resource advocating trees and flora amenities.

He reviewed the Commission's accomplishments in 1998: (1) "Trees Today - Tomorrow" Seminar in March of 1998; (2) Commission retreat in August of 1998 in which they drafted the mission statement and goals and objectives for next year; (3) Tree Response Committee for proactive field work and pragmatic solutions; (4) participation in Pritchard Park Planning; (5) Greenway liaison for master planning; (6) participation in the Unified Development Ordinance's Technical Review Committee; and (7) development of administrative procedures regarding permits, letters and code enforcement..

Mr. Lavtin outlined their goals and objectives, which are (1) Education Program consisting of verbal - slide program, brochures and booklets, and seminar; (2) Continuing "Tree Response" activities; (3) Pro-active code enforcement; and (4) Commission funding mechanism.

Mayor Sitnick spoke very highly of the Tree/Greenway Commission members and it's important role in the City of Asheville.

DOWNTOWN PLAN COMMITTEE

Ms. Karen Tessier reviewed with City Council the background of the Downtown Master Plan process to date. She said the downtown Asheville has experienced tremendous growth and change during the last ten years. There is now a variety of diverse needs, agendas and opportunities that have evolved since the revitalization process began. Things to consider now include a compatibility of new market segments and socio-economic groups as well as lifestyle and business patterns. New goals need to be set to develop central public/private goals, policies, ordinances, incentives and an economic strategy to retain and continue to recruit desired growth. Many new downtown "niche" organizations have developed and Asheville needs to review its organizational structure to ensure consistent, effective communication. A strong leadership system must be in place in a now very dynamic Central Business District to meet the demands of differing businesses, consumer, tourist and residential living components. The downtown community needs a new plan to coordinate, focus and give guidance to downtown's next stage of development.

The Downtown Commission members have been carefully researching planning options and processes that have worked effectively in comparable cities. A Master Plan Committee was established. The Committee decided it needed an assessment of the downtown and recommendations on what to focus on when developing a downtown plan for Asheville's next stage of growth. The Committee became interested in inviting the National Main Street Center to bring a technical assistance team to Asheville. After the committee consulted with Savannah Renewal and Development Authority they felt professionals from a non-profit organization specializing in downtown revitalization (such as National Main Street Center) complemented with an expert from another community similar to Asheville (such as Savannah) would be an effective and affordable step to get advice and to focus on input from our community. The National Main Street Center's team visited on September 21-23, 1998, and the following summarizes their visit and report:

The Downtown Plan Committee set three main goals: (1) facilitate meaningful public participation by meeting with community organizations and individuals; (2) review/assess current downtown status and recommend what elements an Asheville as to the best process/structure to design and implement the plan given that it is possible Asheville will be using current staff and volunteers rather than hiring an outside consultant; (3) use other cities and organizational models to propose the best and most efficient structure for an entity to implement the plan and manage the downtown (look at funding and personnel issues).

The National Main Street Center worked with the Downtown Plan Committee and the City to advise and facilitate the first steps in developing a Downtown Plan that will guide and manage future growth in downtown Asheville. The team of downtown revitalization efforts leading the technical assistance visit included Mr. Mac Nichols of the National Main Street

Center, Washington, D.C., Ms. Cuffy Sullivan of the Savannah Renewal and Development Authority, Savannah, Georgia, and Mr. Rodney Swink of the N.C. Division of Community Assistance, Raleigh N.C. This team of experts (1) met with members of our community to assess downtown to solicit input for a downtown plan; (2) took a tour and gave an assessment of downtown; (3) gave recommendations on what to focus on to guide downtown's future success; and (4) addressed recommendations on organizational structure that would need to be in place to implement a downtown plan. A final presentation was made at the end of the tree days with a summary of recommendations following the visit.

To accomplish the goals, the staff of the City Development Office worked with the Downtown Plan Committee to develop an agenda, coordinate logistics, provide key information and facilitate the three day strategy input sessions.

The guidelines for development of a Downtown Master Plan are (1) concentrate on supporting local small businesses; (2) support residential; (3) transportation issues; (4) institutions need to be kept downtown; (5) infrastructure; (6) be involved in catalytic development; (7) policy/resource development (use local talent); (8) provide incentives and protections so that public and private investments are protected; (9) know the roles and responsibilities of groups involved in downtown; and (10) decide how to staff and how to pay for staff.

Mr. Jim Samsel explained to City Council the next step in the process which will be to hold a planning retreat to (1) review ordinance governing the Downtown Commission; (2) recommend ordinance revisions; (3) internal assessment (structure); and (4) infrastructure issues. He said that they would like to come back to City Council in 60 to 90 days for an update.

On behalf of City Council, Mayor Sitnick thanked the Downtown Commission and Master Plan Committee for their tremendous amount of work they have accomplished to date.

1998 BELE CHERE REPORT

Mr. Irby Brinson, Director of Parks and Recreation, presented, on behalf of the Parks and Recreation Department and the 1998 Bele Chere Board, the final report for the 1998 Bele Chere Festival which includes a financial statement and an update of the Strategic Plan.

In January of 1997, City Council approved the Bele Chere Strategic Plan for the next five years. Part of that plan included an annual report to City Council each year after the festival. He updated City Council on the Strategic Plan and financial statement for the 1998 Festival. As can be seen from the financial statement, Bele Chere made a total of $59,140.84. This represents the third year in a row that the Festival has made a profit. This is due largely to an overall increase in sponsorships, souvenir sales and shuttle services. The profit made from Bele Chere will go into the Festival Fund and will be used to enhance Bele Chere as well as other festivals, therefore reducing the City's taxpayers' support of these events. Tremendous headway was made this year in relationships with the downtown merchants which include reducing vendor fees and allowing restaurants rent-free space for the "Taste of Asheville" area. This dialogue has resulted in better communication and trust between both groups.

Mr. Brinson then highlighted various objectives relating to the following goals: (1) To develop financial stability for the festival by becoming self-sustaining, without effecting the quality of the event; (2) To enhance the festival's image with the media and throughout the community; (3) To enhance the quality of the vendors, entertainment, events, and overall festival logistics; (4) To restructure the festival by re-evaluating the roles and responsibilities associated with producing the festival; (5) To improve relationships with the downtown merchants; (6) To resolve the issues surrounding the selling and consumption of alcohol at the festival; (7) To use the excess revenue generated to foster improvements in festival operations, downtown and at the river; and (8) To make the festival as safe as possible for those attending.

Mr. Brinson reviewed the results of the survey conducted by ProGen during the 1998 Festival noting that the estimated direct economic impact of the 1998 Bele Chere was almost $23 Million. Recognition should be given to all City departments for their involvement with the Festival. Without their support and commitment to improving the quality of Bele Chere, the Festival could not continue to be successful.

The Parks and Recreation Department and the Bele Chere Board recommend City Council's endorsement of the Annual Report for Bele Chere.

Upon inquiry of Councilwoman Field, Mr. Brinson said that the Alcohol Task Force is still meeting and they will be prepared to present City Council with an extensive report on that issue in January.

Upon inquiry of Councilman Cobb, Mr. Brinson said that the total of City in-kind services for the 1998 Bele Chere festival is $206,860. The break-down for that figure is police $22,033; fire $10,000; finance $5,781; public works $39,440; building safety $750; and parks and recreation $128,858. He said that in the Parks & Recreation Department more than half of that is overtime.

Mayor Sitnick asked that there be more aggressive recycling opportunities at the festival, with the possibility of a litter free zone or some pre-festival awareness of recycling. Also, she requested that the Bele Chere Board will work with the dance community to address some issues they raised. Mr. Brinson said that they are currently addressing both of those issues.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

LEASE WITH HABITAT FOR HUMANITY FOR 9 BILTMORE AVENUE

Mr. Ed Vess, Field Services Coordinator, said that this is the consideration of a lease of 9 Biltmore Avenue to the current tenant Asheville Area Habitat for Humanity, Inc.

City Council previously authorized holding the subject property for a period of two years (until August, 2000) before considering its sale. In the interim the property is being leased. The current tenant, Asheville Area Habitat for Humanity, Inc., has been paying $150.00 per month. The proposed lease calls for incremental increases beginning December 1, 1998, as follows:

12/1/98 - 11/30/99	**12/1/99 - 5/31/00**	**6/1/00 - 8/31/00**
$300.00 per mo.	$400.00 per mo.	$1,100.00 per mo.

The property comprises 2,070.5 sq. ft. in a 20.5' X 101' space. The space has heat but not air conditioning. The Lessee is responsible for paying utilities and maintenance of the interior including cleaning, glass breakage, electrical, heating, and plumbing. The Lessor is responsible for the exterior walls and roof along with the parking area.

Asheville Area Habitat for Humanity operates a used furniture and home accessories store on the premises. The store proceeds are used for Habitat's non-profit housing production.

Community Development staff recommends adoption of the resolution as does the Housing & Community Development Committee.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RESOLUTION NO. 98-187 - RESOLUTION SETTING A PUBLIC HEARING TO CONSIDER APPLYING TO THE SECRETARY OF COMMERCE FOR DESIGNATION OF A STATE DEVELOPMENT ZONE

Ms. Charlotte Caplan, Community Development Director, requested City Council set a public hearing to consider a resolution to apply to the Secretary of Commerce for designation of a State Development Zone (SDZ) for the City of Asheville, under the Economic Opportunity Act of 1998.

The NC Economic Opportunity Act of 1998 builds on the existing William Lee Act by recognizing that areas of economic disadvantage exist within otherwise prosperous counties. It creates State Development Zones which are urban areas of high poverty within which certain types of businesses creating new jobs or investing in new equipment can claim significant state tax credits. Similar tax incentives have been available for some time under the Lee Act but at very much lower levels because Buncombe County qualifies only for the minimum ("Tier 5") incentives.

Eligible Areas
- Contiguous census tracts or block groups with total population more than 1000, in a municipality with population more than 5000
- More than 20% poverty within SDZ
- Part of each census tract and/or block group must lie within the municipality

Eligible business types
- Manufacturing
- Warehousing and wholesale trade
- Data processing
- Air Courier Services
- Central Administrative Offices (must create at least 40 jobs to qualify)

Tax credits available in SDZs
- Eligible businesses with 5 or more employees receive $4000 tax credit for each new job created, in addition to credit under Lee Act ($500 in Buncombe County)
- 7% tax credit for investment in machinery and equipment - no threshold
- 7% tax credit for costs of establishing a CAO creating at least 40 jobs
- Up to $1000 tax credit for new employee training

Restrictions
- New jobs must not be offset by job loss at another NC location
- New jobs must pay average weekly wage no lower than 110% of County average (currently $493 a week, or $12.32 an hour)

SDZ Designation Procedure
- Local government or individual taxpayers can request designation
- Local government request requires public hearing and Council action
- Simple request form to be submitted to Dept. of Commerce after November 2, 1998

- Secretary of Commerce will designate SDZ after 10 day eligibility review period
- Lasts for four years - SDZ can be enlarged in that time, but not made smaller.

The legislation becomes effective January 1, 1999. We need to get the application to the State by mid-December. Any jobs created after January 1 but before the designation is approved would not receive a tax credit.

Description of Proposed SDZ

SDZ options were studied by a task force comprised of City Planning and Development staff and representatives of Asheville Chamber of Commerce, Asheville Merchants Association, Asheville Business Development Office, Buncombe County, Land of Sky Regional Council, Pisgah Legal Services, and the NC Department of Commerce (as advisor). The yellow area on the map is the SDZ recommended by the task force. The table provides demographic information.

The proposed SDZ is based on eight complete census tracts with more than 20% poverty plus block groups from other census tracts selected either because they join up these tracts (the SDZ cannot contain non-contiguous areas), or because they contain significant areas with suitable zoning (e.g. along the rivers, near the airport).

The orange on the map represents areas included in the proposed SDZ that are zoned for the eligible business types. The brown represents the area with the same zoning, that will remain outside the proposed SDZ. The proposed SDZ includes a significant part of Buncombe County outside the City, mainly in Census tract 23, Block Group 9, which enlarges the SDZ and makes it possible to include the airport. A minority opinion within the task force wanted to limit the SDZ to the city core in order to concentrate job creation incentives in the area of highest poverty. The majority felt that low income persons would be best served by including as much developable land as possible, even though transportation difficulties might prevent some people from accessing new jobs. Location and land availability are key to business development. If suitable land is not available, businesses may simply choose another city.

City staff and the Task Force recommend that City Council authorize the Mayor to apply to the Department of Commerce for designation of the proposed area as a State Development Zone.

Mayor Sitnick requested that as much public notice as possible be given to this real positive effort regarding economic development, making sure that the public is fully aware of the designation impact.

Councilwoman Field moved to waive the rules and take action at this meeting. This motion was seconded by Councilman Sellers and carried unanimously.

Councilwoman Field moved for the adoption of Resolution No. 98-165. This motion was seconded by Councilman Cobb and carried unanimously.

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DISCUSSION ON DATE OF TOUR OF THE URBAN AREAS AROUND THE CITY

Assistant City Manager Doug Spell said that this is the consideration of establishing a date for the tour of urban areas by City Council.

The City retained the consulting firm of BenchMark, Inc. to perform an annexation study. On March 31, 1998, staff and the consultant presented information to City Council regarding "annexation issues". At that meeting, the consultant outlined the need to try and organize a tour of urban areas with City Council as a part of the annexation study. From a timing standpoint, it was preferable to try and accomplish this during the winter when leaves were no longer on trees and one could better see development which has occurred around the City of Asheville.

In order to coordinate the tour of urban areas, staff has organized to have a 24 passenger mini-bus to accommodate City Council, staff members and media on the proposed tour. It is anticipated that the tour will take approximately three hours. Staff recommends that the tour begin around 12:30 p.m. on a Tuesday afternoon of a City Council formal meeting. At that time, staff will have a briefing of the tour agenda and lunch for City Council members. The tour itself would begin around 1:00 p.m. such that we would return to City Hall approximately three hours later.

The timing for the tour of urban areas is important in that this topic is proposed to be further discussed as a part of the City Council Retreat on January 29, 1999, and this background will be beneficial to City Council.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda to schedule the tour for January 12, 1999, with January 26, 1999, being the alternate date.

ESTABLISHMENT OF A DEVELOPMENT ISSUES FORUM

City Manager Jim Westbrook said that staff requests authority to establish a Development Issues Forum to provide a forum to discuss with the entire development community the City's development review process and regulations.

City staff would like to formalize their relationship with developers and the building/ construction community by establishing a Development Issues Forum. The purpose of the forum would be to discuss the City's processes beginning with land use through the issuance of Certificates of Compliance. Through the ongoing issues forum, staff could receive invaluable input on needed changes with development ordinances, create a better understanding of existing ordinances, seek input on recommended changes to the Unified Development Ordinance (UDO) and the Engineering Standard Specifications and Details Manual, and establish better lines of communication between the development community and City staff.

We feel having operated under the Unified Development Ordinance and Engineering Standard Specifications Manual for more than a year, it is an opportune time to establish a mechanism for discussion on these and other issues to take place. Other cities having completed major revisions to their UDO, Standard Specifications, and other development ordinances have found this a useful tool in helping the development community understand the ordinances and having the development community assist staff in understanding the impact, whether positive or negative, on them.

City staff would like to organize and insure participation by a broad spectrum of individuals and organizations in the development community. Knowledgeable persons from the Planning and Development Department, the Water Resources Department, the Building Safety Department, the Engineering Department and the Fire Department would be present to discuss issues. Staff sees this as an ongoing process and a means of receiving continuous feedback from the development community.

The staff recommends that Council authorize staff to initiate and organize a Development Issues Forum for the purpose and reasons outlined above.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

APPROVAL OF CITY MANAGER'S PARTICIPATION IN ASHEVILLE AREA CHAMBER OF COMMERCE'S POLITICAL INSTITUTE

City Manager Westbrook said that beginning in January, the Asheville Area Chamber of Commerce will host a Political Institute, which is a nine week program to encourage and educate business people who are interested in running for public office or becoming more involved in political campaigns. He said a couple of weeks ago Ms. Angie Chandler, with the Chamber of Commerce, asked if he would be agreeable to speak at the Institute on non-political issues. He agreed to it because he wanted to help the Chamber on any issue he could, however, because it was a political institute, he wanted to get City Council's approval first. He said that he would be speaking on the nuts and bolts of local government, council/manager form of government, etc. They have not asked that he speak on any other issue, however, he wanted to make sure there was no misunderstanding on the Council on what his role would be.

Ms. Angie Chandler explained that this program is a service to their members and aimed at educating business people on the political and the governmental process and how government works. Other government leaders participating in the program will be state representatives, County Manager Wanda Greene, representatives from local boards of education, and leadership from boards and commissions. She said that there will also be a session on people who are interested in running for public office or becoming more involved in political campaigns.

Councilman Cobb was uncomfortable in supporting the City Manager's participation in that he felt that this could be aimed at the three Council members who are coming up for election in the fall.

City Manager Westbrook said that since he did not have the entire support of City Council on his participation, he may decide not to participate. However, Mayor Sitnick felt that maybe having an opportunity for input might be beneficial and Council could rely on City Manager Westbrook's experience to make his presentation.

Mayor Sitnick said that because of the particular timing of this request, along with the Council being under the threat of recall, there might be a feeling amongst some of Council that there is some hidden purpose for the Institute.

Ms. Chandler stressed that this is not directed at the City in that the Chamber has been looking at this for quite some time. The Institute was in their plan of action that was determined back in July and this is just part of their overall strategic plan.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

OTHER ISSUES

Election Process

At the request of Vice-Mayor Hay, City Attorney Oast was instructed to provide City Council with a brief report on the election process regarding general election to run-off rather

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than primary to general election. City Attorney Oast said that he will research that issue and advise City Council on whether they can make the change or if it requires legislative action. If it does require legislative action, Council can discuss that at their annual retreat in January.

Mayor's Roundtable on The Block

Mayor Sitnick asked that the City Manager to begin the process of re-scheduling the Mayor's roundtable on The Block.

Public Comment

Mayor Sitnick said that she would like to place an item on the next agenda regarding the reconsideration of Council's policy regarding public comment. She said that she voted against the current policy and would like for it to be reconsidered.

CLOSED SESSION

At 4:52 p.m., Councilman Cloninger moved to go into closed session in order to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee - statutory authorization is N.C. Gen. Stat. 143-318.11 (a) (6). This motion was seconded by Councilman Sellers and carried unanimously.

At 4:57 p.m., Councilman Cloninger moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 4:57 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - December 8, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Tomes gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

Councilman Cobb requested that Consent Agenda Item O. be pulled for discussion.

A. RESOLUTION NO. 98-188 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AND MEMORANDUM OF LEASE FOR PROPERTY KNOWN AS THE PACK PLACE EDUCATION ARTS & SCIENCE CENTER

Summary: This resolution authorizes the Mayor to execute a lease and a memorandum of lease for the property known as the Pack Place Education Arts & Science Center.

The City of Asheville owns the property on which the Pack Place Education Arts & Science Center is located. That property was leased to Pack Place Education Arts & Science Center, Inc. on December 13, 1988, for a ten (10) year term for the construction, operation and maintenance of the education, arts & science center.

The current lease with Pack Place Education Arts & Science Center, Inc. expires on December 12, 1998. Pack Place Education Arts & Science Center, Inc. has offered to lease the property again from the City for the continuing operation and maintenance of the education, arts and science center. Pack Place Education Arts & Science Center, Inc. desires to lease the property for more than ten (10) years.

N. C. Gen. Stat. sec. 160A-272 authorizes North Carolina cities to lease property for longer than ten (10) years if the lease is treated as a sale of property and is executed by following any of the procedures authorized for sale of real property in Article 12 of Chapter 160A of the North Carolina General Statutes. Of those procedures, N. C. Gen. Stat. sec. 160A-269 appears to be the most appropriate method for execution of a lease for more than ten (10) years for this property and requires that when an offer is made and the City Council proposes to accept it, a deposit shall be made with the City Clerk and the City Clerk shall publish a notice of the offer.

A deposit was received and the notice required was advertised in the Asheville Citizen-Times on Friday, November 27, 1998. The time period for upset bids as set forth in N. C. Gen. Stat. sec. 160A-269 has run and no upset bids have been received.

The resolution authorizing the execution of the lease and memorandum of lease be adopted.

RESOLUTION BOOK NO. 25 - PAGE 76

B. RESOLUTION NO. 98-189 - RESOLUTION OF INTENT TO SET A PUBLIC HEARING ON JANUARY 12, 1999, TO CLOSE AN ALLEY BETWEEN RICHMOND AND MICHIGAN AVENUES

RESOLUTION BOOK NO. 25 - PAGE 78

C. INTRODUCTION OF BOND ORDER AUTHORIZING THE ISSUANCE OF $18,000,000 GENERAL OBLIGATION PARKS, RECREATION AND GREENWAY BONDS FOR THE CITY OF ASHEVILLE, N.C.

Summary: Introduction of a Bond Order Authorizing the Issuance of $18,000,000 General Obligation Parks, Recreation and Greenway Bonds for the City of Asheville and consideration of a resolution setting a public hearing thereon.

Having previously instructed staff to apply to the Local Government Commission for approval to issue $18,000,000 General Obligation Parks, Recreation and Greenway Bonds; the next step in the process is the introduction of the Bond Order and setting a public hearing thereon.

The Bond Order provides the purpose and amount of the bonds; states that the projects to be funded by the proceeds of the bonds are necessary; states that taxes shall be levied annually to pay the principal and interest on the bonds; indicates that a sworn statement of debt has been filed with the City Clerk and is open to public inspection; and states that the bond order shall take effect when approved by the voters of the City at a referendum scheduled for May 11, 1999.

The proposed resolution sets a public hearing regarding the bond order to be held at 5:00 p.m. January 12, 1999 in the Council Chambers of the City Building and directs the City Clerk to cause notice of said public hearing to be published. It also directs the Finance Director to file with the City Clerk a statement of debt of the City.

City staff recommends City Council adopt the resolution.

D. RESOLUTION NO. 98-190 - RESOLUTION CALLING FOR A PUBLIC HEARING ON JANUARY 12, 1999, ON THE BOND ORDER AUTHORIZING THE ISSUANCE OF $18,000,000 GENERAL OBLIGATION PARKS, RECREATION AND GREENWAY BONDS AND DIRECTING PUBLICATION OF SAID PUBLIC HEARING AND FILING OF A DEBT STATEMENT

Summary: See Item C above.

RESOLUTION BOOK NO. 25 - PAGE 79

E. RESOLUTION NO. 98-191 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE REMAINING PORTION OF BEAR KNOLL DRIVE FOR STREET MAINTENANCE

Summary: The consideration of a resolution authorizing the City Manager to accept the remaining portion of Bear Knoll Drive for street maintenance.

Trappers Run is an existing subdivision in the City. The developer completed the streets in the subdivision several years ago and turned the streets over to the City to maintain. Since that time, Bear Knoll Drive has been extended and a cul-de-sac constructed. The developer has now completed this portion of the street and is requesting that the City accept the street for maintenance. Engineering Department staff along with Public Works staff have inspected the road and found it to be in compliance with our Standard Specifications.

Staff requests Council authorize the City Manager accept the remaining portion of Bear Knoll Drive for City maintenance.

RESOLUTION BOOK NO. 25 - PAGE 81

F. RESOLUTION NO. 98-192 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A TWO YEAR LEASE WITH ASHEVILLE AREA HABITAT FOR HUMANITY INC. FOR PROPERTY AT 9 BILTMORE AVENUE

Summary: The consideration of a lease of 9 Biltmore Avenue to the current tenant Asheville Area Habitat for Humanity, Inc.

City Council previously authorized holding the subject property for a period of two years (until August, 2000) before considering its sale. In the interim the property is being leased. The current tenant, Asheville Area Habitat for Humanity, Inc., has been paying $150.00 per month. The proposed lease calls for incremental increases beginning December 1, 1998, as follows:

12/1/98 - 11/30/99	12/1/99 - 5/31/00	6/1/00 - 8/31/00
$300.00 per mo.	$400.00 per mo.	$1,100.00 per mo.

The property comprises 2,070.5 sq. ft. in a 20.5' X 101' space. The space has heat but not air conditioning. The Lessee is responsible for paying utilities and maintenance of the interior including cleaning, glass breakage, electrical, heating, and plumbing. The Lessor is responsible for the exterior walls and roof along with the parking area.

Asheville Area Habitat for Humanity operates a used furniture and home accessories store on the premises. The store proceeds are used for Habitat's non-profit housing production.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 82

G. RESOLUTION NO. 98-193 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE SECTION 108 LOAN GUARANTEE CONTRACT WITH THE U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT

Summary: The consideration of a resolution to authorize the mayor to execute a Contract for Loan Guarantee Assistance, Fiscal Agency Agreement, Notes, and other documents in connection with a Section 108 Loan Guarantee from the U. S. Department of Housing and Urban Development (HUD) to generate $1.5 million for rental rehabilitation loans.

On April 1, 1998, the Mayor executed a Funding Approval/Agreement with the Dept. of HUD for a 1.5 million dollars Section 108 loan guarantee pursuant to the application for same approved by City Council Resolution No. 97-211 and submitted by the City of Asheville on December 16, 1997. The Section 108 loan guarantee program enables Community Development Block Grant (CDBG) entitlement grantees to borrow money from the federal government at low interest rates for CDBG eligible activities. The proceeds of the proposed loan will be loaned to investor owners through the City of Asheville Rental Rehabilitation for Owners and Tenants (CARROT) loan program. The Section 108 loan funds will be used to provide decent housing opportunities for low and moderate income households at affordable rents.

The Section 108 loan will be secured by a series of ten (10) Notes of $150,000 each with different maturity dates ranging from one to ten years to be repaid using program income from the CARROT loans, program income from the existing rehabilitation loan portfolio and as necessary a portion of the CDBG entitlement funds. The CARROT loans will be secured by deeds of trust which will be assigned to the Dept. of HUD. The goal of the Section 108 project is to rehabilitate 150 rental units over a three year period of time.

Community Development staff recommends approval of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 83

H. RESOLUTION NO. 98-194 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH R.P.F. CONSTRUCTION INC. TO REPLACE STOREFRONT DOORS AT THE CIVIC CENTER

Summary: The consideration of a resolution to authorize the City Manager to enter into a construction contract to replace the storefront doors at the Civic Center.

An ADA accessibility study was completed for the Civic Center and City staff has determined that the storefront doors at the entrance to the Civic Center do not meet Federal Guidelines for accessibility. City staff solicited sealed bids from ten (10) General Contractors, three (3) of which were minority contractors, for the replacement of storefront doors at the Civic Center. The following bids were received:

KEKO, Inc.	$ 179,672
Carolina Construction and Investment Co.	$ 180,909
R P F Construction, Inc.	$ 142,880

Approved funding is available in the Civic Center account to pay for this renovation to replace the storefront doors at the Civic Center.

The Parks and Recreation Department staff requests City Council to direct the City Manager to enter into a contract for $142,880 with R P F Construction, Inc. to replace the storefront doors at the Civic Center.

RESOLUTION BOOK NO. 25 - PAGE 84

I. ORDINANCE NO. 2532 - BUDGET AMENDMENT TO OFFICIALLY ESTABLISH BUDGETS FOR W.T. WEAVER BOULEVARD GREENWAY, PRITCHARD PARK, HAW CREEK PARK AND OTHER PARK IMPROVEMENTS

Summary: The consideration of a budget amendment to officially establish project budgets in the amount of $220,000 for Phase II of W.T. Weaver Boulevard Greenway, $200,000 for Pritchard Park, $50,000 for Haw Creek Park, and $20,000 for park improvements.

Funds for Phase II of the W.T. Weaver Boulevard Greenway, Pritchard Park development, Haw Creek Park, and park repairs and renovations were authorized through the City of Asheville's Capital Improvement Program. Funds had been held in a capital reserve account until it was necessary to begin work on these projects. This ordinance will officially establish project budgets for W.T. Weaver Boulevard, Pritchard Park, Haw Creek Park, and park improvements using funds formerly held in capital reserve.

Staff recommends City Council officially establish budgets for the aforementioned projects.

ORDINANCE BOOK NO. 17 - PAGE 191

J. RESOLUTION NO. 98-195 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY THROUGH ITS MOUNTAIN MOBILITY SYSTEM PROGRAM IN ORDER TO TAKE ADVANTAGE OF A GRANT TO TRANSPORT ELDERLY TO RECREATION PROGRAMS

Summary: The consideration of entering into an agreement with Buncombe County through its Mountain Mobility System program in order to take advantage of a $5,000 grant to transport the elderly to recreation programs.

The City of Asheville has obtained a $5,000 grant of state money routed through Buncombe County for use in the Mountain Mobility System, and which may only be used to transport the elderly to recreation programs. The Parks and Recreation Department will use this money for special events and additional transportation to events for seniors. These events include such things as the Asheville Symphony, Home Shows, The WNC Fair, concerts at Civic Center, the N.C. Arboretum, etc. These are new trips which the Department has not provided prior to this grant.

This grant involves no commitment of City funds to match or otherwise contribute to this grant. The grant will take the form of a credit, and will be applied to Mountain Mobility System use by the Parks and Recreation Department.

City staff recommends City Council authorize the City Manager to enter into an agreement with Buncombe County through its Mountain Mobility System program to transport the elderly to recreation programs.

RESOLUTION BOOK NO. 25 - PAGE 86

K. MOTION AUTHORIZING STAFF TO INITIATE AND ORGANIZE A DEVELOPMENT ISSUES FORUM

Summary: Staff requests authority to establish a Development Issues Forum to provide a forum to discuss with the entire development community the City's development review process and regulations.

City staff would like to formalize our relationship with developers and the building/ construction community by establishing a Development Issues Forum. The purpose of the forum would be to discuss the City's processes beginning with land use through the issuance of Certificates of Compliance. Through the ongoing issues forum, staff could receive invaluable input on needed changes with development ordinances, create a better understanding of existing ordinances, seek input on recommended changes to the UDO and the Engineering Standard Specifications and Details Manual, and establish better lines of communication between the development community and City staff.

We feel having operated under the Unified Development Ordinance and Engineering Standard Specifications Manual for more than a year, it is an opportune time to establish a mechanism for discussion on these and other issues to take place. Other cities having completed major revisions to their UDO, Standard Specifications, and other development ordinances have found this a useful tool in helping the development community understand the ordinances and having the development community assist staff in understanding the impact, whether positive or negative, on them.

City staff would like to organize and insure participation by a broad spectrum of individuals and organizations in the development community. Knowledgeable persons from the Planning and Development Department, the Water Resources Department, the Building Safety Department, the Engineering Department and the Fire Department would be present to discuss issues. Staff sees this as an ongoing process and a means of receiving continuous feedback from the development community.

The staff recommends that Council authorize staff to initiate and organize a Development Issues Forum for the purpose and reasons outlined in this report.

L. MOTION SETTING A PUBLIC HEARING ON JANUARY 12, 1999, TO REALLOCATE COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FROM HILL STREET/CHERRY STREET TO CITY-WIDE REHABILITATION

M. MOTION ENDORSING THE ANNUAL REPORT FOR BELE CHERE

Summary: In January of 1997, City Council approved the Bele Chere Strategic Plan for the next five years. Part of that plan included an annual report to City Council each year after the festival. He updated City Council on the Strategic Plan and financial statement for the 1998 Festival. As can be seen from the financial statement, Bele Chere made a total of $59,140.84. This represents the third year in a row that the Festival has made a profit. This is due largely to an overall increase in sponsorships, souvenir sales and shuttle services. The profit made from Bele Chere will go into the Festival Fund and will be used to enhance Bele Chere as well as other festivals, therefore reducing the City's taxpayers' support of these events. Tremendous headway was made this year in relationships with the downtown merchants which include reducing vendor fees and allowing restaurants rent-free space for the "Taste of Asheville" area. This dialogue has resulted in better communication and trust between both groups. Also he reviewed the results of the survey conducted by Progen during the 1998 Festival. Highlights from this report will be shared during the presentation to City Council. Recognition should be given to all City departments for their involvement with the Festival. Without their support and commitment to improving the quality of Bele Chere, the Festival could not continue to be successful.

The Parks and Recreation Department and the Bele Chere Board recommend City Council's endorsement of the Annual Report for Bele Chere.

N. MOTION APPROVING THE EXTENSION OF TIME FROM DECEMBER 31, 1998, THROUGH JUNE 30, 1999, FOR VISION FOR ASHEVILLE-BUNCOMBE TO CONTINUE TO USE CITY OFFICE SPACE AT 29 HAYWOOD STREET

Summary: The consideration of a request from the VISION for Asheville-Buncombe for an extension of time for use of city office space.

City staff has received a request from the VISION to extend the commitment for donated office space from the City of Asheville from December 31, 1998 to June 30, 1999. Currently, the VISION utilizes office space in the City Development Office located at 29 Haywood Street. The VISION Board of Directors has indicated that they will call an Executive Committee meeting in the near future to discuss options for VISION office space. Thev have indicated that they will review available options over the next several months. As of this time, City staff is not aware of any other available space from the City of Asheville that could meet the needs of VISION.

Due to the addition of the Cable Coordinator position and associated equipment, all of which will be housed at the City Development office, it is anticipated that this office space will be needed by the City. This position will likely be filled by February 1, 1999.

Staff recommends that City Council approve the extension of time from December 31, 1998 through June 30, 1999 for the VISION office space to allow them an opportunity to make alternate arrangements for office space.

O. APPROVAL OF CITY MANAGER'S PARTICIPATION IN THE ASHEVILLE AREA CHAMBER OF COMMERCE'S POLITICAL INSTITUTE

This item was pulled from the Consent Agenda for further discussion.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

ITEM PULLED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

APPROVAL OF CITY MANAGER'S PARTICIPATION IN THE ASHEVILLE AREA CHAMBER OF COMMERCE'S POLITICAL INSTITUTE

Summary: Beginning in January, the Asheville Area Chamber of Commerce will host a Political Institute, which is a nine week program to encourage and educate business people who are interested in running for public office or becoming more involved in political campaigns. From demographic profiles of voters, to press releases, to campaign ethics, this program will look at every aspect of the political campaign process.

City Manager Westbrook asked for City Council's support in being a speaker in one of the sessions which deals with knowledge is power - facts about local government operations.

Councilman Cobb said that he was assured that this is a non-political political institute and would support the City Manager's participation regarding his role as a speaker. He supported the purpose of the program which is to encourage and educate business people who are interested in running for public office or becoming more involved in political campaigns. He stressed that we need more citizen involvement. However, he felt the cost of the program ($295 for Chamber members and $395 for non-Chamber members), would make it cost prohibitive for many people who may want to participate. Also, he felt that to limit the class to 25 participants was too exclusive. He challenged the Chamber of Commerce to (1) eliminate the cost of the program including the elimination of the food costs; (2) open the program up to all interested citizens; and (3) encourage the media to report in detail all the sessions for those who are unable to attend. He felt that if they encourage all interested citizens, he felt that the businesses, neighborhoods, and private citizens could, and would, underwrite the cost. In any event, he applauded any effort to educate and inform our citizens about the political process.

Councilman Tomes applauded the efforts of the Chamber but noticed that the program focused on business and felt the program should try to include the grassroots people.

Vice-Mayor Hay suggested that since the City's government access channel will be running soon, the program can be taped and shown on that channel.

City Manager Westbrook said that his part in the program will be to talk about the Council/Manager form of government and about local government operations. His part will be strictly non-political.

Mr. Clay Dover, representative of the Chamber of Commerce and Chairman of the Local Issues Task Force, assured City Council that their intent is nothing at all targeted toward any individual or any group. They have been organizing this program for over two years. He said that one reason for the limitation of 25 people is that the location is somewhat restrictive due to the number of seats available. Regarding the cost of the program, the Chamber is a private institution and it does try to break-even on programs like this. In fact, they felt that $300 was a very reasonable cost. Included in that $300 is materials, a meal, and costs incurred in bring outside people to speak. He said that he would invite the taping of the program. The program is aimed at getting more people involved in the political process of not only our City, but our County and State as well.

Regarding Councilman Tomes suggestion about embracing the grassroots community, Mr. Dover said that he would be happy to re-consider possible scholarships.

Councilman Sellers moved to approve the City Manager's participation in the Asheville Area Chamber of Commerce's Political Institute. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE ADOPTION OF BOND ORDER AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $18,500,000 GENERAL OBLIGATION REFUNDING BONDS, SERIES 1999, OF THE CITY OF ASHEVILLE, N.C.

RESOLUTION NO. 98-196 - RESOLUTION OF THE CITY OF ASHEVILLE, N.C., PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED $18,500,000 GENERAL OBLIGATION REFUNDING BONDS, SERIES 1999, OF THE CITY OF ASHEVILLE, N.C.

Mayor Sitnick opened the public hearing at 5:22 p.m.

City Clerk Burleson reported that the bond order entitled "Bond Order Authorizing the Issuance of Not to Exceed $18,500,000 General Obligation Refunding Bonds, Series 1999, of the City of Asheville, N.C.," which was introduced at the regular meeting of the City Council on November 24, 1998, was published on November 27, 1998. She then presented the notice to the public setting the time and date of the public hearing. She also reported that she had filed in her office a statement of debt complying with provisions of the Local Government Bond Act, and such statement as filed showed the net indebtedness of the City to be 1.675% of the appraised valuation of property in said City subject to taxation.

Finance Director Bill Schaefer said that this is the consideration of a resolution providing for the issuance of not to exceed $18,500,000 General Obligation Refunding Bonds, Series 1999.

Having previously given notice of the City's intent to issue bonds and having held a public hearing regarding the bond issue; the next step in the process is for Council to provide for the issuance of the bonds.

The proposed resolution describes in detail the bonds which are to be refunded (series; principal amounts and maturities); the bonds to be issued (principal not to exceed $18,500,000; annual maturities; interest payment dates; provisions for registration of the bonds; etc.) The resolution also authorizes the selection of paying and transfer agents and a bond registrar; requests that the Local Government Commission sell the bonds through competitive bid; authorizes and directs the Mayor, City Manager and Finance Director to prepare the bonds for delivery after sale; authorizes and approves the form and content of the Official Statement which will be dated on or about January 8, 1999 and the Supplement to the Official Statement which will be dated on or about January 19, 1999; authorizes and approves the form and content of the Escrow Agreement; authorizes and directs the Mayor, City Manager, Finance Director and City Clerk to execute and deliver for and on behalf of the City any and all additional certificates, documents, opinions or other papers necessary to implement and carry out the purpose of the resolution; and provides for continuing disclosure of financial information of interest to bond holders.

In response to Councilman Cobb about the projected savings, Mr. Schaefer said that an annual savings throughout the life of the bonds is approximately $60,000 per year.

City staff recommends City Council adopt the bond order and resolution.

Mayor Sitnick closed the public hearing at 5:25 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the bond order and resolution and they would not be read.

Councilwoman Field moved to adopt the bond order without change and direct the City Clerk to publish a notice of adoption, as prescribed by The Local Government Bond Act, of the bond order entitled "Bond Order Authorizing the Issuance of Not to Exceed $18,500,000 General Obligation Refunding Bonds, Series 1999, of the City of Asheville, N.C.," which was introduced at the regular meeting of the City Council held on November 24, 1998. This motion was seconded by Councilman Cobb and carried unanimously.

Councilwoman Field moved for the adoption of Resolution No. 98-196, Resolution of the City of Asheville, N.C., providing for the issuance of not to exceed $18,500,000 General Obligation Refunding Bonds, Series 1999, of the City of Asheville, N.C. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 87

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 98-197 - RESOLUTION TO WAIVER THE ASHEVILLE STANDARD SPECIFICATIONS AND DETAILS MANUAL SIDEWALK REQUIREMENT FOR SARDIS ROAD STOR MOR

Mr. John Echeverra, Assistant City Engineer, said that this is the consideration of a resolution waiving the Unified Development Ordinance (UDO) and the Asheville Standard Specifications and Details Manual (Standards Manual) requirement for a sidewalk along Oak Terrace Drive for the Sardis Road Stor Mor Facility.

Section 7-8-16 (f) (10) of the Unified Development Ordinance requires that new construction on property zoned Regional Business District place sidewalks as specified in the Asheville Standard Specifications and Details Manual (Standards Manual) along street rights-of-way. The Sardis Road Stor Mor proposes to build a self-storage facility on Oak Terrace Drive. Oak Terrace Drive has a dedicated right-of-way but is not a City maintained street. Oak Terrace Drive is a dirt road.

The Standards Manual requires a five foot sidewalk along the rights-of-way for all newly developed projects. The Standards Manual stipulates that for any requirements for sidewalks to be waived the City Council must take action to grant the waiver.

Staff recommends that City Council waive the requirement that a sidewalk be placed on Oak Terrace Drive for the Sardis Road Stor Mor due to the fact that Oak Terrace Drive is not a City maintained street or paved road. Additionally, this corridor is not identified on any future corridor or pedestrian thoroughfare plan.

Vice-Mayor Hay said that this does seem like the appropriate instance to make an exception. However, one of Council's goals in the UDO is to create sidewalks where ever sidewalks are appropriate and he does not want to send the message that Council is opening the door to consider a lot of sidewalk waivers.

Councilwoman Field said that one of the things the pedestrian thoroughfare plan includes is an option if someone wants to ask for a sidewalk waiver that City Council request that they take the lump sum of money it would have cost to build it and put it into a fund to build sidewalks in other more appropriate locations. She supported City Council's adoption of the pedestrian thoroughfare plan..

City Attorney Oast responded to Councilman Cobb's inquiry about Oak Terrace Drive not being a City maintained street.

Upon inquiry of Mayor Sitnick, City Attorney Oast said that he did not think that City could require a developer to install sidewalks if, in the future, the street is paved or brought up to City standards.

Councilman Tomes said that since there were commitments made in the past for sidewalks in various areas of the City and they have not been installed yet, he felt Council needed to be very intentional about the message they send about sidewalk construction.

Mr. John Broadbooks, landscape architect and planner for the Sardis Road Stor Mor Project, explained why City Council should support waiving the sidewalk requirement.

City Manager Westbrook said that this is the first time a request to waive a sidewalk requirement has come before City Council since adoption of the UDO, showing that staff, in addition to City Council, feels that sidewalks are equally important.

Upon request of Councilman Cloninger, and as recommended by City Attorney Oast, Vice-Mayor Hay moved to excuse Councilman Cloninger from voting on this matter due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Councilman Sellers moved for the adoption of Resolution No. 98-197. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 97

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT AND RESTATEMENT OF AGREEMENT REGARDING CONSTRUCTION OF A HIGH-TECH/FLEX BUILDING TO BE LOCATED IN BILTMORE PARK TECHNOLOGY CENTER (FORMERLY TECHNOLOGY PARK AT BROADLANDS)

At the request of City staff, Councilman Cobb moved to continue this item to the December 15, 1998, City Council meeting. This motion was seconded by Councilman Tomes and carried unanimously.

C. UPDATE ON GOVERNMENT ACCESS CHANNEL

Ms. Robin Westbrook, Public and Community Information Coordinator, said that in August 1998, City Council adopted a Cable Franchise Agreement allowing InterMedia to provide cable service within the city limits of Asheville. As part of this agreement, InterMedia was required to provide three initial channels to be used for public, educational and/or government programming. A fourth access channel will be provided when certain programming thresholds are met on the other channels.

The Government Access Channel, Channel 20, is scheduled to premier on Wednesday, December 9, 1998. Programming on this channel will include a Community Bulletin Board, taped Asheville City Council meetings, Open Net, and other varied governmental programming. Open Net, a live feed received from Raleigh, is a live two hour call-in show that focuses on statewide issues of importance. This program will be aired on Tuesday and Thursday evenings from 8:00 p.m. - 10:00 p.m.

Channel 20 will include limited programming initially; however, it is anticipated that the variety and scope of programming will increase as the channel becomes established.

Upon inquiry of Vice-Mayor Hay about the possibility of running the Chamber's political institute on this channel, Ms. Westbrook said that we have no equipment or personnel, however, we can contract to do that with an outside firm.

When Vice-Mayor Hay asked about who will make and how decisions will be made on what will be shown on the governmental channel, Ms. Westbrook said that if the information does not come from a specific City department, she would seek City Manager approval to get clearance on whatever is put on that channel. City Manager Westbrook also said that this is a factual channel about City government putting forth information that the public might need, opposed to the public channel, which is much broader. He said the focus for the government channel is much narrower. He said we will try to keep it focused strictly on local government and providing factual information to the citizens.

Mayor Sitnick said that she was sure Ms. Westbrook would be open for information from City Council as well.

Upon inquiry of Councilman Cobb about Asheville High School students taping the Chamber's Political Institute, Ms. Westbrook said that she was sure that as long as they were able to get students to do that and we were able to pay their fee, they would be happy to film it.

When Councilman Cobb asked if the City Council meetings could be shown live on the government channel, City Manager Westbrook said that that capability will be a part of the renovations to the Council Chamber.

Councilman Tomes was very supportive of involving youth in the political process.

Upon inquiry of Councilwoman Field about how much money and who decides what equipment will be purchased, City Manager Westbrook said that for the public channel, whoever the Council chooses to run the public channel would be making that decision. For the governmental channel, City staff will make recommendations to the Council based on the level of service Council wants to provide. Ms. Westbrook also said that she felt it would be Council's decision as to what percentage of that money would go to public vs. governmental.

Councilwoman Field said that she was approached with an idea of a regional public access group where everyone can pool their equipment, money, talent, and space to do the work and have the member governments that have cable contracts help support that. Ms. Westbrook said that there are several communities that do that and she does have some contacts if there is interest in pursuing that idea.

Mayor Sitnick suggested that the City pull resources together inside the City so that we can be cost effective.

D. RECONSIDERATION OF PUBLIC ADDRESS TO CITY COUNCIL RULE 7

Mayor Sitnick felt that Council changed their policy relative to public address to City Council based on one incident and one issue. She asked for City Council to reconsider not limiting the number of public speakers under the "Informal Discussion and Public Comment" portion of the agenda. The current policy allows three people to speak for three minutes on an issue or a designated spokesperson can speak for 10 minutes on an issue. She supported the three minute time limit for individuals, however, she felt that Council should not limit the number of speakers. Regarding the 10 minute time limit for people representing groups, she felt that should possibly be lowered.

Councilwoman Field reviewed the guidelines from the City of Cincinnati regarding their public comment policy. She said that there are so many ways a person can communicate with the Council or with the government. She felt the current policy is certainly a valid and fair amount of time for Council to be aware of an issue, noting that the policy allows City Council the flexibility of waiving it.

Mayor Sitnick felt that since the policy has not been abused in the past and because the policy was changed based on one incident, she felt that not limiting the speakers further enhances the ability of people to participate in their government. She stressed that public participation is crucial to the way we should conduct our meetings.

Vice-Mayor Hay agreed that the prior policy was not abused, however, by having the current policy in place, it gives Council some control over unexpected situations. He felt that the policy makes people aware that they need to organize their thinking in advance and present their issue effectively.

Councilman Cobb suggested that representative speakers be limited to five minutes and all other individuals three minutes, including a provision that the Mayor or the Council have the authority to not take any more comments on that issue.

Councilman Cloninger voiced support for the current policy.

Councilman Tomes supported the idea of limiting comments on one issue to three speakers in favor and three speakers opposed.

Mr. Mickie McHaffee encouraged Council to broaden their time limits so that people have a chance to speak.

Mr. David Whitley felt that if you encourage more people to participate in the process, you can achieve more solutions. He also felt that it would be difficult to choose three speakers from the many who wish to speak. He said that Councilman Cobb's suggestion might be a good compromise.

Mr. Morrison felt that Council should limit comments, however, they should take opposing views.

Mayor Sitnick said that the Council Chamber is being retrofitted with a speaker timing device that will be fair to everyone who speaks.

Councilman Tomes moved to go back to the original policy of allowing individuals three minutes to address City Council, except for a spokesman of a group who will be allowed 10 minutes.

Councilman Cobb suggested that at a worksession the ten minute time limit be discussed.

Upon inquiry of Councilman Cobb, City Attorney Oast said that since the mayor is the presiding officer, she would have the authority to control the debate and stop taking comments. He also said that City Council Rule 9 (b) would apply in that the mayor has the right "to determine whether a speaker has gone beyond reasonable standards of courtesy in his remarks and to entertain the rule on objections from other members on this ground."

The motion made by Councilman Tomes failed due to a lack of a second.

E. CONSIDERATION OF WAIVING PARK USE FEES

Mayor Sitnick said that group called "Food Not Bombs" wanted to feed a group of homeless people at Pritchard Park and they did not have a permit, nor could they afford the permit fee of $25 per day for park use. That group, along with "New Foundation" and a number of churches, have been feeding the homeless and the hungry on our streets for two or three years with no problem. She said that after talking with City staff, it was recommended that Council consider the possibility of adding a provision to the existing ordinance that allows preachers to obtain a street preaching permit, without fee, to preach in our City parks. She requested City Council, since there is a precedent in the street preaching permit, to (1) instruct staff to draft an amendment to the ordinance governing street preaching permits to include a street feeding permit; and (2) create an interim policy to waive the $25 park use fee until staff reports back to Council on an ordinance amendment to add a street feeding permit provision.

Discussion surrounded the health issues.

Councilwoman Field said that Council has been approached by a group who wants to waive the fees in one of the community centers because they feel they are serving the community through their activities. She questioned if Council is setting a precedent of waiving fees once they have been established.

Councilman Sellers said that the Fees & Charges Committee will be meeting soon and reviewing the issue about waving the fee at the community center and felt that this issue can be reviewed by the Committee as well.

Mayor Sitnick said that she would be amenable to sending this to the Fees & Charges Committee for their review.

Mr. Mickie McHaffee, Mr. Dave Taber, Mr. Jarod Tabor and Mr. Nathan Smith spoke in support of waiving the park use fee for groups feeding the homeless and hungry for many reasons.

Ms. Regina Trantham, representative of the Merchant Action Coalition and President of the Battery Hill Association, felt that City Council should look at this issue seriously before any decisions are made. Because this is the Christmas season, many merchants could not attend the meeting to give Council their input about their concerns and asked that any decision be postponed until the first of the year. Her organizations are not just business, in that they do care about their community through productive participation in programs that help women, children and the homeless.

Councilwoman Field suggested that some kind of partnership with the churches or another institution downtown might be a way to provide restroom facilities.

Councilman Cobb moved to temporarily waive the $25 park permit fee only (not the permit) for the groups feeding the homeless and hungry at City/County Plaza until the Fees & Charges Committee reports back to City Council with a recommendation. This motion was seconded by Councilman Tomes and carried unanimously.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 24, 1998, AND THE WORKSESSION HELD ON DECEMBER 1, 1998

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on November 24, 1998, and the worksession held on December 1, 1998. This motion was seconded by Councilman Cobb and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the week of November 20-December 3, 1998: Jackie Little (Water), Linda Costantine (Water), Rhonda McFadden (Water), Warren Fluharty (Water), Laura Silvernail (Water) and Monty Monteath (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Public Skating at the Asheville Civic Center

Vice-Mayor Hay said that he was pleased that public skating will start at the Asheville Civic Center this month..

CLOSED SESSION

At 7:08 p.m., Councilman Cloninger moved to go into closed session in order to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee - statutory authorization is N.C. Gen. Stat. 143-318.11 (a) (6). This motion was seconded by Councilman Sellers and carried unanimously.

At 7:19 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Vice-Mayor Hay and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:19 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - December 15, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Sitnick gave the invocation.

AGENDA CHANGE

Vice-Mayor Hay requested that the issue of appointing an additional person to the Future of the Civic Center Task Force be added to the Agenda.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING DECEMBER 15, 1998, TO JANUARY 1, 1999, AS THE PERIOD OF CELEBRATION FOR ALBEMARLE PARK'S CENTENNIAL

Mayor Sitnick read the proclamation proclaiming December 15, 1998, to January 1, 1999, as the period of celebration for Albemarle Park's Centennial. She presented the proclamation to Ms. Juanita Landolfi, President of the Albemarle Park Manor Grounds Association, who briefed City Council on some activities taking place during that period of time. She also invited City Council to The Manor Inn's New Year's Eve Celebration.

B. RECOGNITION OF RECIPIENTS OF HOUSING NORTH CAROLINA AWARDS

Mayor Sitnick said that each year the North Carolina Housing Finance Agency gives "Housing North Carolina Awards" for outstanding examples of affordable housing development or supportive services. This year, eight awards were made, of which two came to Asheville - the only community to win more than one award. The winners were: Mountain Housing Opportunities and the Asheville Regional Housing Consortium for the River Glen Apartments, and the Housing Authority of the City of Asheville for its Community Health Services program for the elderly.

She recognized Lee McElrath, Board President, Althea Goode, Board Vice-President, Scott Dedman, Executive Director, and Cindy Weeks, Program Development Manager, for Mountain Housing Opportunities.

Mr. Dedman explained the River Glen Apartment project and presented Councilwoman Field, Chair of the Asheville Regional Housing Consortium, with the plaque for the Project.

Mayor Sitnick then recognized Annette Coleman, Board Chair, David Jones, Executive Director, Spike Gram, Gerontologist, Kay Clark, Nurse Practitioner, Georgia Crump, MSJ Community Health and Lead Trainer, and Carolyn Colvard, Program Coordinator, for the Housing Authority.

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Ms. Gram outlined the Community Health Services Program and thanked individual agencies for working together on this program.

On behalf of City Council, Mayor Sitnick congratulated the representatives of the two agencies for their outstanding programs.

II. CONSENT AGENDA:

A. **RESOLUTION NO. 98-198 - RESOLUTION AUTHORIZING THE SALE OF 110 MORRIS STREET TO CAROL LYNNE JONES IN THE AMOUNT OF $79,600**

Summary: The consideration of a resolution conveying 110 Morris Street to Carol Lynne Jones in the amount of $79,600.

On November 24, 1998, the City Council directed the City Clerk to advertise for upset bids on 110 Morris Street. The advertisement ran in the Asheville Citizen-Times on December 4, 1998, as provided in N. C. Gen. Stat. sec. 160A-269. Subject to no upset bid being received on or before December 14, 1998, the sale to Carol Lynne Jones in the amount of $79,600 should be approved.

Community Development staff recommends adoption of the resolution.

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B. **RESOLUTION NO. 98-199 - RESOLUTION MODIFYING THE SCHEDULE OF CITY COUNCIL MEETINGS**

Summary: City Council will (1) tour the urban areas around the City on Tuesday, January 12, 1999, beginning at 12:30 p.m. in Room 209 of the City Hall Building; and (2) hold it's annual retreat beginning 1:00 p.m. on Friday, January 29, 1999, through 12:00 Noon on Sunday, January 31, 1999, at Highland Lake Inn in Flat Rock, N.C.

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C. **MOTION SETTING A PUBLIC HEARING ON JANUARY 12, 1999, TO CONSIDER ADOPTION OF A SMALL AREA PLAN KNOWN AS THE CHARLOTTE STREET CORRIDOR PLAN AS AN ADDENDUM TO THE COMPREHENSIVE PLAN FOR THE CITY OF ASHEVILLE (ASHEVILLE CITY 2010 PLAN)**

D. **MOTION SETTING A PUBLIC HEARING ON MARCH 9, 1999, TO CONSIDER THE REZONING OF 25 WHITE PINE DRIVE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT**

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions on the Consent Agenda and they would not be read.

Councilman Tomes moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

A. JOINT PUBLIC HEARING WITH THE HISTORIC RESOURCES COMMISSION OF ASHEVILLE-BUNCOMBE COUNTY TO CONSIDER THE DESIGNATION OF BILTMORE INDUSTRIES PROPERTY LOCATED AT 111 GROVEWOOD ROAD AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. 2533 - ORDINANCE TO DESIGNATE THE BILTMORE INDUSTRIES PROPERTY LOCATED AT 111 GROVEWOOD ROAD AS A LOCAL HISTORIC LANDMARK

Mayor Sitnick opened the public hearing at 5:20 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Vice-Chair Chris Knorr announced that a quorum of the Historic Resources Commission was present.

Ms. Maggie O'Connor, Historic Resources Commission Director, said that at their November 11, 1998, regularly scheduled meeting, the Historic Resources Commission ("HRC") voted to hold a joint public hearing with the Asheville City Council to consider if Biltmore Industries should be designated a local historic property.

When a property is designated historic, restrictions are placed on the property and to any exterior improvements or interior improvement where interiors are designated as significant. Any modification to the structures or land must receive a Certificate of Appropriateness from the HRC and all improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings.

Designation of this building as a local historic landmark makes the property owner eligible for a 50% reduction of property taxes. Currently the assessed value of the property is $1,561,300 and the total taxes paid for this year were $21,077.55. If the Biltmore Industries property building is designated historic, the taxes would be reduced by half to $10, 338.78.

Before the Asheville City Council can adopt an ordinance designating the Biltmore Industries property located at 111 Grovewood Road as a local historic landmark, the HRC must find that the Biltmore Industries property has integrity of design, setting, workmanship, materials, feeling, and has architectural and cultural significance. At this joint public hearing with the Asheville City Council, the HRC will determine if the property is significant and possess integrity and will recommend to the Council to adopt or reject an ordinance designating the property as a local historic landmark.

Ms. O'Connor described the project in detail while using a slide program. She said the property to be included in the designation is (1) the building exteriors of (a) Eleanor Vance Building; (b) Charlotte Yale Building; (c) Carding and Spinning Buildings; (d) Weavers' Building - Antique Car Museum; (e) Boiler House; (f) Gatehouse, and (g) Guardhouse; (2) the 11-1/2 acres of land with the existing landscape features including rock walls, steps and stone patios; (3) the interior features of historical significance including, but not limited to, the quotes painted on walls and doors in all buildings, the beams, two chandeliers, and the Roycroft lantern in the Weavers' Building, the dye vats and washing machines in the Carding and Spinning Building; and (4) the smokestack connected to the Boiler House. She said that she has received a favorable comment from the State of North Carolina on this designation.

Ms. Betty Lawrence, member on the HRC, moved that the HRC Commission adopt the following Findings:

1. That notice of a public hearing on this designation was published in the Asheville Citizen on 2nd day of December, 1998
2. That at this hearing the applicant and the public were all given the opportunity to offer oral and documentary evidence to the Historic Resources Commission members.
3. The North Carolina Department of Cultural Resources has been provided with the opportunity to review and comment on the proposed designation.
4. That the historic landmark designation criteria, as set forth in Part 3C of Article 19 of Chapter 160A of the North Carolina General Statutes and in Chapter 8 of the Code of Ordinances of the City of Asheville, is as follows:

   a. Deemed and found to be by this Commission to be of special significance in terms of its historical, prehistorical, architectural or cultural importance and to possess integrity of design, setting workmanship, materials, feeling and/or association.
   b. Deemed and found to be by this Commission to be of historical and cultural significance, suitable for preservation or restoration, and of educational value, when taking into consideration the cost of acquisition, restoration, maintenance, operation or repair; possibilities for adaptive or alternative use of the property; appraised value; and administrative and financial responsibility of any person or organization willing to underwrite all or a portion of such costs.

5. This application meets the criteria for significance and aspects of integrity for the following reasons:

   a. The use of the property by Biltmore Industries survives as a direct and important link to the arts and crafts movement of England and America of the nineteenth and early twentieth-century and is thereby of historical and cultural importance.
   b. The property is associated with the lives, work, and ideals of Mr. & Mrs. George Vanderbilt and Fred L. Seely, leading figures of the twentieth-century in the Asheville/Buncombe County area.
   c. The Vanderbilt's established Biltmore Industries in order to make it possible for girls and boys to become productive and useful citizens of their own community and to use Biltmore Estate's natural resources of wool and timber in a practical and honorable way.
   d. In 1917 Mrs. Vanderbilt sold Biltmore Industries to Mr. Fred Seely, builder of the Grove Park Inn. Seely directed the construction of shop structures adjacent to the Grove Park Inn to house all facets of Biltmore Industries and to allow for expansion. The shops were built to complement the "organic" architecture of the Grove Park Inn and they form a compact grouping of cottage-like buildings with stuccoed wall surfaces, casement windows, and broad sloping roofs with rounded eaves that mimic those of the Grove Park Inn, thereby possessing integrity of design, setting, workmanship, materials, feelings and/or association. The grounds are landscaped with dense plantings of evergreens and flowering shrubs.

6. Based upon the foregoing reasons, the Historic Resources Commission of Asheville and Buncombe County **deems and finds** that the Biltmore Industries property is significant in terms of its historical, architectural or cultural importance; that the structure possess integrity of design, setting, workmanship, materials , feeling, and/or association and that the property is suitable for preservation and is of educational value, taking into

consideration the cost of maintenance, use of the property, appraised value of the property and responsibility of the owner for maintenance of the property. Based upon the foregoing, the Historic Resources Commission recommends to the Asheville City Council adoption of an ordinance designating Biltmore Industries, located at 111 Grovewood Road, as a local historic landmark.

This motion was seconded by HRC member Fred Eggerton and carried unanimously.

Mayor Sitnick closed the public hearing at 5:31 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2533. This motion was seconded by Councilman Tomes and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER THE DESIGNATION OF A STATE DEVELOPMENT ZONE

RESOLUTION NO. 98-200 - RESOLUTION TO APPLY TO THE SECRETARY OF COMMERCE FOR DESIGNATION OF A STATE DEVELOPMENT ZONE FOR THE CITY OF ASHEVILLE

Mayor Sitnick opened the public hearing at 5:32 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Charlotte Caplan, Community Development Director, said that the NC Economic Opportunity Act of 1998 builds on the existing William Lee Act by recognizing that areas of economic disadvantage exist within otherwise prosperous counties. It creates State Development Zones ("SDZ") which are urban areas of high poverty within which certain types of businesses creating new jobs or investing in new equipment can claim significant state tax credits. Similar tax incentives have been available for some time under the Lee Act but at very much lower levels because Buncombe County qualifies only for the minimum ("Tier 5") incentives.

Eligible Areas

- Contiguous census tracts or block groups with total population more than 1000, in a municipality with population more than 5000
- More than 20% poverty within SDZ
- Part of each census tract and/or block group must lie within the municipality

Eligible business types

- Manufacturing
- Warehousing and wholesale trade
- Data processing
- Air Courier Services
- Central Administrative Offices (must create at least 40 jobs to qualify)

Tax credits available in SDZs
- Eligible businesses with 5 or more employees receive $4000 tax credit for each new job created, in addition to credit under Lee Act ($500 in Buncombe County)
- 7% tax credit for investment in machinery and equipment - no threshold
- 7% tax credit for costs of establishing a CAO creating at least 40 jobs
- Up to $1000 tax credit for new employee training

Restrictions
- New jobs must not be offset by job loss at another NC location
- New jobs must pay average weekly wage no lower than 110% of County average (currently $493 a week, or $12.32 an hour)

SDZ Designation Procedure
- Local government or individual taxpayers can request designation
- Local government request requires public hearing and Council action
- Simple request form to be submitted to Dept. of Commerce after November 2, 1998
- Secretary of Commerce will designate SDZ after 10 day eligibility review period
- Lasts for four years - SDZ can be enlarged in that time, but not made smaller.

The legislation becomes effective January 1, 1999. We need to get the application to the State by mid-December. Any jobs created after January 1 but before the designation is approved would not receive a tax credit.

Description of Proposed SDZ

SDZ options were studied by a task force comprised of City Planning and Development staff and representatives of Asheville Chamber of Commerce, Asheville Merchants Association, Asheville Business Development Office, Buncombe County, Land of Sky Regional Council, Pisgah Legal Services, and the NC Department of Commerce (as advisor). She reviewed a map which designated specific SDZ's recommended by the task force.

The proposed SDZ is based on eight complete census tracts with more than 20% poverty plus block groups from other census tracts selected either because they join up these tracts (the SDZ cannot contain non-contiguous areas), or because they contain significant areas with suitable zoning (e.g. along the rivers, near the airport).

The orange on the map represents areas included in the proposed SDZ that are zoned for the eligible business types. The brown represents the area with the same zoning, that will remain outside the proposed SDZ. The proposed SDZ includes a significant part of Buncombe County outside the City, mainly in Census tract 23, Block Group 9, which enlarges the SDZ and makes it possible to include the airport. A minority opinion within the task force wanted to limit the SDZ to the city core in order to concentrate job creation incentives in the area of highest poverty. The majority felt that low income persons would be best served by including as much developable land as possible, even though transportation difficulties might prevent some people from accessing new jobs. Location and land availability are key to business development. If suitable land is not available, businesses may simply choose another city.

City staff and the Task Force recommend that City Council authorize the Mayor to apply to the Department of Commerce for designation of the proposed area as a State Development Zone.

Upon inquiry of Richard Timothy Williams, Ms. Caplan said that she did not believe that there were any provisions in this legislation specific to handicapped persons.

Mayor Sitnick closed the public hearing at 5:46 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 98-200. This motion was seconded by Councilman Cobb and carried unanimously.

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Vice-Mayor Hay said that this is consistent with and supportive of the City's economic development policy.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 98-201 - RESOLUTION ADOPTING THE COMPREHENSIVE PARKING STUDY FOR THE DOWNTOWN, BILTMORE VILLAGE AND WEST ASHEVILLE AREAS

Ms. Cathy Ball, City Engineer, said that this is the consideration of adopting the Comprehensive Parking Study Recommendations for Downtown, Biltmore Village and West Asheville and directing City staff to begin implementing these recommendations.

On September 15, 1998, representatives from Walker Parking Consultants and Day Wilburn Associates, Inc., presented recommendations from the Comprehensive Parking Study of the Downtown, Biltmore Village, and West Asheville areas. Staff then met with several organizations to discuss the recommendations of the study. Staff met with the Asheville Downtown Commission, Asheville Downtown Association, Merchant Action Coalition, Haywood Road Small Area Planning Group, and Downtown Parking Task Force. In addition, staff has received phone calls from the Biltmore Village Merchants Association, Eagle Market Street Development and other individuals. Representatives from some of these groups provided input at the public hearing.

Following the public hearing on October 27, 1998, staff prepared specific recommendations along with approximate costs estimates and a schedule for Council adoption. She said that she plans to bring back to Council at least twice a year an update on what has been accomplished. All comments from interested parties have been either included in the recommendations or addressed.

Ms. Ball then briefly highlighted some of the major recommendations as follows:

Downtown Area: A. Parking Garages: (1) Explore the possibility of increasing the number of monthly parkers in the Wall Street and Rankin Street garages; (2) Look for opportunities to increase parking in the City-County Plaza area; (3) Investigate the possibility of allowed one hour free parking on weekdays and three hours free parking on Saturdays in the parking garages; (4) Actively pursue additional parking in the Biltmore Avenue/Patton Avenue area; (5) Investigate the option of a "park and rice" system; (6) Add a 550 space parking deck in the Battery Park area; and (7) Improve signage to and on the garages. B. On-Street Parking: (1) Request Council pass an ordinance prohibiting feeding on-street parking meters; (2) Work with businesses, residences in individual blocks to revise, add, or eliminate loading zones and handicap parking, including changing some loading zones to commercial vehicles only; (3) Work to provide bus parking for Pack Square; (4) Increase on-street parking meter rates from 25-cents per hour to 50-cents per hour; and (5) Replace manual meters with electronic meters. C. Pedestrian and Bicyclist: (1) Improve pedestrian crossing on College Street close to City/County Plaza. D. Transportation: (1) Optimize traffic signals. Ms. Ball said that in the downtown area they received a lot of comment from different organizations. After receiving those recommendations, they incorporated them into these recommendations. However, many of the recommendations need to be studied further before they are implemented and what was included in these recommendation is that they need to be studied or they need to be explored. Many are at no cost to the City - just means working with some downtown organizations to see how possible it would be to implement them. The only item they had any comment back on was adding parking in the Biltmore Avenue/Patton Avenue area.

Biltmore Village: A. Off-Street Parking: (1) Explore the possibility of adding additional surface parking lots that will add approximately 150 off-street parking spaces; and (2) Explore the possibility of building a 400 car parking garage to meet the off-street demand through the year 2018. B. Pedestrian and Bicyclist: (1) Add crosswalks at the intersection of Lodge Street and All Souls Crescent. C. Transportation: (1) Work with railroad to develop a plan to minimize the impact of the railroad tracks on Biltmore Avenue.

West Asheville: A. Off-Street Parking: (1) Work with private parking lot owners to develop standardized signs for customer parking lots. B. On-Street Parking: (1) Strip on-street parking spaces - work with property owners and business owners on the location of loading zones and handicap ramps). C. Transportation: (1) Request NC DOT study the intersection of Haywood Road and Burton Street to see if it warrants a traffic signal; and (2) Restripe Haywood Road to have two lanes of traffic, except at various intersections.

Staff recommends that City Council adopt the Comprehensive Parking Study Recommendations for Downtown, Biltmore Village and West Asheville and direct City staff to begin implementing these recommendations.

Ms. Ball responded to various questions from Council regarding the recommendations.

Councilman Tomes said that he might come back to Council with a suggestion along the lines of what Kansas City, Missouri, is doing. They have a large surplus fund as a result of an increase in their violation charges, which money is designated to the youth.

Vice-Mayor Hay said that he was not satisfied with the wording relative to the parking in the Biltmore Avenue area. He said there is an immediate problem in the Biltmore Avenue area now that is not being addressed. He suggested amending recommendation 7 Under Downtown Parking Garages to read "Develop a plan for additional parking in the Biltmore Avenue area." He felt the plan could include developers. The approximate end date on that recommendation should be "December 31, 1999."

Mayor Sitnick said that we have some areas behind the City Hall Building that has great potential to go beyond surface lots. The two areas would not only make a great multi-tied deck for the City and County buildings, but also for the Biltmore Avenue and Pack Place area. It could also act as a place for employers and employees to park with a shuttle to downtown.

Upon inquiry of Mayor Sitnick about any recommendation to temporarily park buses that load and unload at Pack Place, Ms. Ball said that it was not officially recommended in the parking study, however, a recommendation does state that when a structure is built in that area that it accommodate bus parking.

Councilwoman Field said that in order for Council to issue revenue bonds in order to build any parking structure that the City had to have a parking study. That is one of the reasons why we went through this exercise. She felt that all of Council has identified the need for parking around the Pack Place area. She suggested amending recommendation 7. Under Downtown Area On-Street Parking to read "Provide bus parking for Pack Place." She also felt a stronger statement needed to be made about coming up with a partnership with a developer to do a parking structure in the Biltmore Avenue area.

Regarding financing of the recommendations, Councilwoman Field suggested the City Manager come back to City Council in the Capital Improvement Program on how the recommendations will be financed.

City Manager Westbrook said that with regard to parking decks, the study recommends the one at the Grove Arcade/Civic Center area be the first one constructed. We will have to pledge the revenues of the parking system, however, even after that, we will have a short-fall in revenue to build that first deck. After the first one is built, we will need to find out how we can come up with the money to build the second one. He asked for general direction from Council based on the recommendations and staff will work on them based on the dates that the City Engineer has presented, starting with the parking deck in the Grove Arcade/Civic Center area first and then work toward the other in future years. Staff will also come back to City Council at various times to modify the plan.

After discussion of possible rewording, it was decided to amend recommendation 7 Under Downtown Parking Garages to read "Develop a plan to meet the parking needs in the Biltmore Avenue area." The approximate end date on that recommendation should be "December 31, 1999." Ms. Ball felt that might be a better recommendation because it may be that the plan would actually call for a surface parking lot.

Mr. Robert Griffin, representing the Biltmore Village Merchants Association and the Biltmore Village Historic Museum, encouraged City Council to strongly consider surface parking locations in the immediate vicinity of the existing Biltmore Train Station so as to accommodate parking for the Amtrak Station and potential locations on those surface locations to build future garages.

Ms. Diana Bilbrey, representing the Health Adventure at Pack Place, urged City Council's support in improving the parking situation on Biltmore Avenue. She noted that they are eager to cooperate with the City in any way they can.

Mr. Mickey Mahafee hoped that City Council would make sure that the concerns of pedestrians are incorporated into the recommendations.

Ms. Christy Pinkston, downtown merchant and also representative of the Merchant Action Coalition, stressed that the meter feeding is a huge problem in the downtown area. She suggested a program to educate people on other parking alternatives outside the City.

Ms. Pam Myers, Director of the Asheville Art Museum in Pack Place, urged City Council's assistance in solving the parking problem in the Pack Place area.

Ms. Linda Nelms, Chair of the Board of Directors for Pack Place, also spoke in support of solving the parking problem in the Pack Place area.

Ms. Regina Trantham, representing the Battery Park merchants, noted that some of the recommendations actually generate revenue immediately. She did feel that there needs to be more enforcement regarding parking.

Ms. Judy Swan, downtown resident and member on the Downtown Association Parking Task Force, urged City Council to look closely at the recommendations of both the Downtown Association and Merchants Action Coalition that the 15-minute rate be raised to $1 per hour.

Mr. John Fleming, President of the Asheville Downtown Association, encouraged City Council to not raise rates in one section of the community without looking to see the effect of that in combination of other rates in various facilities. The garages and parking rates from all the sectors of the City need to be looked at together.

Mr. Scott Jarvis, Chairman of the Downtown Commission, stressed that parking has been an issue of the Downtown Commission for a long time. He thanked different organizations and individuals on their time and efforts into the study.

Mr. Morrison was pleased that the loading zone areas on Biltmore Avenue is being looked at. He suggested that parking be placed on The Block area.

Mr. Neal Evans, Business Administrator of Pack Place, stressed the need for parking in the Pack Place area.

Ms. Jill Arrington, representing the Eagle-Market Streets Development Corporation, noted the desperate need for parking in the City/County area. She said that in developing that plan, active steps be taken to contact all interested parties to be included in the process, particularly given the historical significance of The Block and the Eagle-Market Streets area and any economic development that has happened there in the past.

City Manager Westbrook confirmed that if Council approves the study with the amended recommendations, staff will start bringing back these recommendations and studies to Council on the individual actions as they occur. Also, the City Engineer will be updating City Council twice a year and that would include starting to work on possible financing of a deck in the Grove Arcade/Civic Center area as defined in the study.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 98-201 to adopt the Comprehensive Parking Study Recommendations for Downtown, Biltmore Village and West Asheville areas with the following changes: (1) Recommendation 7 Under Downtown Parking Garages be amended to read "Develop a plan to meet the parking needs in the Biltmore Avenue area." With the approximate end date to be "December 31, 1999" and (2) Recommendation 7. Under Downtown Area On-Street Parking be amended to read "Provide a plan for bus parking for Pack Place." This motion was seconded by Councilwoman Field.

Vice-Mayor Hay said that this is a good comprehensive plan and represents a consensus from the community.

Councilwoman Field said that this is the kind of citizen input and public participation in a process that she considered to be meaningful.

Councilman Cobb hoped that any future decks that are built in the City contain one level of business in it and not just be all parking.

Mayor Sitnick thanked all the citizens of the community who have worked on this diligently. She said it would be our greatest hope that as we move along in trying to implement this plan, which we consider a great significant part of economic vitality in this community, that we form the kinds of partnerships in implementing the plan both fiscal and physical that were formed in creating the plan.

The motion made by Councilman Cloninger and seconded by Councilwoman Field carried unanimously.

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B. RESOLUTION NO. 98-202 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT AND RESTATEMENT OF AGREEMENT REGARDING CONSTRUCTION OF A HIGH-TECH/FLEX BUILDING TO BE LOCATED IN BILTMORE PARK TECHNOLOGY CENTER (FORMERLY TECHNOLOGY PARK AT BROADLANDS)

Assistant City Attorney Patsy Meldrum said that this resolution is to authorize the Mayor to execute an Amendment and Restatement of Agreement by and among the City of Asheville, Western North Carolina Regional Economic Development Non-Profit Corporation and Biltmore Farms, Inc. regarding the construction of a high-tech/flex building to be located in Biltmore Park Technology Center (formerly Technology Park at Broadlands)

On November 28, 1997, the City of Asheville, Western North Carolina Regional Economic Development Non-Profit Corporation and Biltmore Farms, Inc. entered into an agreement regarding the construction of a "high-tech/flex building" in a technological business park to be named Technology Park at Broadlands (now Biltmore Park Technology Center) (hereinafter the "1997 Agreement"). Biltmore Farms, Inc. owns the land on which the technological business park is located and on which the "high-tech/flex building" is to be located.

The 1997 Agreement described the construction of the "high-tech/flex building" which would be constructed by Biltmore Farms, Inc. on property it owns with financing in an amount of up to $2,500,000 from certificates of participation which the City of Asheville would cause to be issued. The 1997 Agreement further provided that the City of Asheville would reimburse Biltmore Farms, Inc. for water and sewer lines and an access road for the Building and the technological business park, with total costs not to exceed $310,000.

Biltmore Farms, Inc. agreed to provide security for the funding from the certificates of participation for the construction of the building, Western North Carolina Regional Economic Development Non-Profit Corporation agreed to market the building for a suitable high-tech user and to provide funding for the interest portion of the debt service on the certificates of participation during the first 24 months after completion of the building.

Construction of the access road and water and sewer lines and issuance of the certificates of participation have now been completed. Biltmore Farms, Inc. desires to relocate the space where the building will be constructed. As a result of these and other changes, it is necessary to revise the 1997 Agreement. An "Amendment and Restatement of Agreement" has been prepared in order to include those revisions.

At the request of Vice-Mayor Hay, City Manager Westbrook gave City Council a status report on the project noting that it is coming along as expected.

Ms. Meldrum said that since they are still working on finalizing the language of the agreement that some language be inserted in the resolution that the final agreement is subject to the approval of the City Attorney's Office. If there are any material changes from what City Council has seen, she will bring those back to City Council.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Councilwoman Field moved for the adoption of Resolution No. 98-202. This motion was seconded by Vice-Mayor Hay and carried unanimously.

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C. RESOLUTION NO. 98-203 - RESOLUTION APPROVING ASSIGNMENT OF GROVE ARCADE LEASE

Because Councilman Cloninger's firm represents the Grove Arcade Public Market Foundation, he asked to be excused from voting. Due to a conflict of interest, Councilman Sellers moved to excuse Councilman Cloninger from voting. This motion was seconded by Councilman Cobb and carried unanimously.

City Attorney Oast said that this is the consideration of a resolution approving assignment of the Grove Arcade Lease.

In August of 1997, the City approved the lease of the Grove Arcade Building, acquired from the US Government pursuant to the National Monuments Act, to the Grove Arcade Public Market Foundation.

GAPMF and the City have received a $1 million grant from the Economic Development Administration to finance part of the renovation, scheduled to begin in January, 1999. GAPMF proposes to finance part of the remainder of the renovations through the use of a mechanism known as tax credit syndication.

Tax credits are available for the cost of work done on historic structures, provided the work preserves or restores the structure and meets certain other requirements. Syndication is a way of selling the tax credits in exchange for financial participation, not unlike certificates of participation. One requirement for the use of tax credit syndication is that the entity doing the work and using the credits must be a tax paying or "for-profit" entity. GAPMF is a non-profit entity.

In order for GAPMF to use tax credit syndication, it has organized a wholly owned for-profit subsidiary corporation. Grove Arcade Preservation, Inc. ("GAPI"), and proposes to assign the lease to this subsidiary in order to market the tax credits. GAPI will then enter into a partnership with the purchaser of the tax credits, and this entity will perform the work on the building.

GAPMF has been working with the National Park Service and the General Services Administration, the federal agencies responsible for the building, and will obtain written assurances that this transaction will not violate any of the deed restrictions; GAPMF's attorneys have been consulting with a Philadelphia law firm that specializes in such transactions, and has handled several of them around the country. A local example of tax credit syndication involving the use of public funds is a recent project by Mountain Housing Opportunities.

One of the requirements of the N.C. law governing the City's lease of the Grove Arcade to GAPMF is that the lessee or purchaser be a non-profit corporation, and that the disposition be subject to a preservation agreement that guarantees the preservation of the structure. The Operating Agreement between the City and GAPMF is such an agreement, and it would continue to bind GAPI. As long as the preservation agreement remains in effect, assignment or other disposition is not prohibited by the statute. Finally, our bond counsel has indicated that the transaction will not affect the validity of the 1997 COP's issuance, because only the taxable part of the issuance is being used in connection with the Grove Arcade renovations.

City Attorney Oast said that Council will need to take two actions: (1) approve the resolution allowing the assignment; and (2) a motion approving our execution of the appropriate covenants to Economic Development Administration to allow us to fulfill the conditions of grant.

Mr. Lou Bissette spoke in support of the assignment of the Grove Arcade lease.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Tomes moved for the adoption of Resolution No. 98-203. This motion was seconded by Councilman Sellers and carried unanimously.

Councilman Sellers moved to approve the execution of the appropriate covenants to the Economic Development Administration. This motion was seconded by Councilman Tomes and carried unanimously.

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D. UPDATE ON ZEALANDIA BRIDGE

Ms. Suzanne Molloy, Assistant Public Works Director, said that his report outlines the findings and recommendation based upon staff's evaluation of the measures necessary to rehabilitate the Zealandia Bridge located at Beaumont Gap.

On July 21, 1998, City Council directed staff to: 1) Determine temporary measures needed to make the Zealandia Bridge safe; and 2) Provide cost estimates to permanently repair the structure. After additional engineering analysis and subsequent bidding of the project, staff determined the structure can be stabilized to prevent safety hazards (until Spring, 1999) for $20,000. For $50,000, the structure can be stabilized to prevent safety hazards for an estimated 3 years, and potentially up to 5 years. Permanent rehabilitation efforts would need to be initiated at the end of either of these time periods with an additional cost of $350,000. An additional $4,000 will be needed for surveying and easement acquisition. The bids received by the City must be acted upon in a timely manner or the bid proposal can be withdrawn by the Contractor.

Staff also evaluated other issues which must be addressed in order to rehabilitate the bridge. These issues include: 1) Ownership of bridge property outside of the right-of-way; 2) Buy-in from adjoining property owners who will need to dedicate property or easements to the City for rehabilitation access and linkages to a potential greenway system; and 3) Identification of organization or responsible individuals who will spearhead planning, easement acquisition, and fundraising efforts.

Ownership of the Bridge
The City of Asheville does not currently own all of the property upon which the Zealandia Bridge is located. A 30 foot right-of-way exists on Beaumont Street; however, portions of the structure are located on the property owned by Robert D. Armstrong and Juanita Brown.

Dedication of Property or Easements
The Historic Resources Commission has just recently mailed correspondence to the two key property owners who would need to dedicate permanent easements for access to the bridge for

rehabilitation, reconstruction, or long-term greenway development. The correspondence provides an overview of the bridge preservation concept, costs, and necessary easements. A response has not been received from these two property owners.

Organizational Sponsorship and Fundraising
On December 7, 1998, Joshua Warren agreed to organize and temporarily chair a "Save the Bridge" Committee to work with the Historic Resources Commission on fundraising over the next three years. The Preservation Society , though interested in the structure, has decided not to take on this project. Public Works is not aware of any funds that have already been raised for stabilization or long-term options. A preliminary fundraising plan would be initiated by the Committee to raise necessary funds.

Greenway System
The *Master Greenway Plan* identifies a neighborhood greenway along Beaucatcher which could link up to the Zealandia Bridge; however, neighborhood greenways have not been prioritized in the plan. The Parks and Recreation Department will focus on the 14 corridor greenways as outlined in the implementation plan. Land acquisition for greenway development will be necessary and no budget (current or planned) has been identified for this specific type of project in the future. Should a greenway system eventually be linked across the Beaumont Gap, a pedestrian bridge could be constructed for approximately $60,000.

Petition from Residents of Windswept
Residents of Windswept Drive submitted a petition to the City of Asheville requesting that the Zealandia Bridge not be rehabilitated for reasons outlined in their petition. The residents have requested that this petition be presented to City Council as a part of the consideration of the bridge discussion.

The Zealandia Bridge is not designated as "historic" by virtue of not being in the National Register of Historic Structures. The primary issue is that of public safety due to the condition of the structure. Considering potential liability, the structure should either be demolished or rehabilitated to a condition to allow for private fundraising to restore the bridge. If temporarily stabilized, fencing should be installed to prevent access to the bridge and avoid tampering with stabilization system.

Based upon the public safety concerns outlined herein, staff recommends that City Council take action according to one of the following two (2) options:

Option #1 Authorize staff to remove the Zealandia Bridge and salvage any potential materials that an be feasibly incorporated into other City projects;

Option #2 Appropriate funds in the amount of $54,000 and authorize the City Manager to enter into a contract in the amount of $50,000 with the lowest bidder Precision Contracting Inc. for stabilization of the structure and easement acquisition, contingent upon the following:

a. Permanent easements for access to the Bridge can be acquired within 30 days; and

b. An agreement be prepared between the "Save the Bridge" Committee and the City outlining the Committee's commitment to raise $330,000 no later than January 2, 2002, and to repay the City the $50,000 for stabilization if the fundraising efforts are not successful.

Upon inquiry of Councilman Cobb, Ms. Molloy said that it would cost approximately $5-7,000 of in-house labor to tear the bridge down.

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Councilman Cloninger tried to determine whether there was enthusiasm in the community to save the bridge, or whether the City is trying to talk people into becoming interested. He felt if the City was trying to prod people along, that would not be a good indication that we should spend the $50,000.

Upon inquiry of Councilman Tomes about where the $54,000 would come from to stabilize the bridge, City Manager Westbrook said it would have to come out of either contingency or fund balance.

Mr. Robert Griffin said that with his previous offer to volunteer to raise $5,000 and the City's $7,000 for demolition, those two figures could be combined for a total of $13,000 toward the $50,000 to stabilize the bridge. He urged Council to give more time in order to save this historical artifact.

Mr. Jody Kuhne, representative of the Historic Resources Commission, felt this was a difficult time to raise money in the year. He said that people are interested in the project but they are not quite sure what will happen to the bridge. Since the City has a greenway master plan, he felt that we should put this together as a package that the public is willing to support. Personally he felt the property should become a greenway and if it would be organized through Parks and Recreation, he would be willing to spearhead the original public foray into developing this into a greenway since it is not currently a priority under the greenway plan. He took this issue to the N.C. Dept. of Transportation Maintenance Department and they said that if we had someone willing to do this type of work for $50,000, we should do it. He sees this as a $50,000 investment into property the City already owns. He said the people at Peppertree have expressed their willingness to see the park developed and the easements granted up to the bridge on their side. They have been unable to contact the other property owner on the other side. He felt that in stabilizing the bridge for three-five years will give the community an opportunity to raise the $300,000 through grants and ICTEA funds. He encouraged City Council to take steps to save the bridge.

Mr. Harry Weiss, Executive Director of the Preservation Society, said that despite the lack of official designation of this bridge, it is a bona fide historic resource that ties in with the Zealandia and ties into a whole 19th Century landscape. He felt that the concept of a park at this location is a viable one that may serve to leverage a financial solution for restoring the bridge, as well as making it a useful and functional element that the public can enjoy. You could treat it as a public monument in the sense that Vance Monument is a public monument owned by the City. He said that the Preservation Society is not in a position to take the lead to spearhead the work on saving the bridge, however, they will assist and support any efforts to save it.

Councilman Cloninger said that option no. 2 authorizes the expenditure of $50,000 to stabilize the bridge for the next three-five years and then if the Save the Bridge Committee is not successful in their fundraising efforts, they would have to reimburse the City that amount. His concern is that if this Committee doesn't get off the ground at all and not even able to raise $50,000, then the City won't get that money back and will have had to spent $50,000 for basically nothing. He did not know enough about the Committee, any members, what their potential is for fundraising, or what their plan is. He only way he would be comfortable at this point to allocate $50,000 is if the Committee was given a fairly short time-frame to come up with $50,000 and put it in escrow so that it is sitting in an account waiting to be reimbursed back to the City in the event they are not successful.

Mr. Weiss felt that if the strategy of a park on the 12 acres is explored, they would be able to find public support for it if there was support from the adjacent property owners and some indication of interest on the part of City government as a whole. In talking with representatives of Peppertree and Zealandia, they have both indicated a comfort level and general support for the idea of a park at that location. They have also indicated a willingness to grant the necessary easements for repair and restoration of the bridge, as well as future pedestrian access across portions of Zealandia to make a better linkage between the bridge and any potential park there. He said their fundraising plan shows a three year schedule to raise the entire $330,000, with $50,000 being raised in 1999. He could not imagine $50,000 could be raised in 30 days.

When Mayor Sitnick asked if there has been any effort in the past months, since this first came to Council to raise any funds, Mr. Weiss said that there have been private contracts made but until they knew a firm figure to go to people to raise funds, it was a difficult proposition. When they approach major funding sources, those sources will want more clarity on what the total cost of the whole project will be.

When Councilwoman Field asked what would happen if Council delayed action for 30 days to get clarity from the Committee, Ms. Molloy said that staff's concern is that Council really needs to decided soon because winter is coming and there is a contractor involved. She said that easements and temporary construction easements need to be obtained, and the property needs to be surveyed.

Mayor Sitnick noted that should a greenway system be eventually linked across the Beaumont Gap, a pedestrian bridge could be constructed for approximately $60,000. Recognizing the sensitivity of the historic aspect of Zealandia Bridge, how offensive would it be to construct the pedestrian bridge across the Gap for $60,000 using the materials that were salvaged from the Zealandia Bridge and creating a plaque recognizing that this is a pedestrian bridge that was in part constructed out of materials from the Zealandia Bridge. Ms. Molloy responded that the $60,000 cost is for a new pre-fabricated type of bridge that will probably be similar to what will go eventually be in the W.T. Weaver Boulevard Phase II Greenway. She said the City could look into that, however, the cost would go up substantially. However, there may be ways that you can incorporate some of that back into the design. But to actually totally re-create the structure in the same manner will be very difficult because it is stone and mortar and a lot of the cap stones are already missing on the bridge.

City Manager Westbrook said that the bridge is a danger to the public and that staff needs to block the street, take the bridge down or stabilize it. He said the first staff recommendation was to take the bridge down because there is nobody that uses it now, it is across public right-of-way, it is dangerous, and it would cost a lot of money to stabilize it. Because there are a lot of variations and if Council wants more time, he recommended blocking the street at this time because they feel the bridge is imminent danger. If the bridge were dismantled and at another time a pedestrian bridge was built, we could save the materials and perhaps build an entranceway or some pillars with a plaque that might be a trailhead for that particular interest. But to completely rebuild it, it will get back up to the $350,000 figure. Staff is concerned about the safety and if there is any other delay, the road should be blocked.

Ms. Betty Lawrence said that the City has never spent any money on maintaining this bridge and has owned it for a number of years so the City should take some portion of responsibility for its condition. She encouraged Council to support the concept of a park.

After discussion, Councilwoman Field moved to continue this matter until January 12, 1999, in order for (1) the Public Works Department to report on whether they have or have not obtained the appropriate easements, (2) the Public Works Department to meet with the Director of Parks and Recreation to find out if the partnering of the bridge and parks will work with the Greenway Master Plan, and (3) the Historic Resources Commission, through HRC Director Maggie O'Connor, to report back with some clear, strong direction from the Save the Bridge

Committee on a realistic timeline and their ability to raise the $50,000. If after that time, Council will make a definite decision. This motion was seconded by Councilman Sellers.

Councilman Cloninger said that would like to see some evidence from commitments as to money.

The motion made by Councilwoman Field and seconded by Councilman Sellers carried unanimously.

Given the imminent danger concern, City Manager Westbrook said that staff will decide whether to keep the road open or close it.

Councilman Tomes moved to amend the agenda to discuss the Asheville Motor Speedway prior to the proposed Phase III water restrictions. This motion was seconded by Councilwoman Field and carried unanimously.

E. RESOLUTION NO. 98-204 - RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE A LEASE FOR THE ASHEVILLE MOTOR SPEEDWAY

RESOLUTION NO. 98-205 - RESOLUTION DIRECTING THAT THE REVENUE FROM THE LEASE OF THE ASHEVILLE MOTOR SPEEDWAY FOR 1999 BE USED FOR PLANNING AND DEVELOPMENT OF THE PROPERTY

City Attorney Oast said that on October 13, 1998, City Council acquired approximately 31 acres of property known as the Asheville Motor Speedway from RiverLink to be used for park and greenway purposes. Over the past few weeks staff, RiverLink and the racing community have been working to resolve issues that would allow the property to be used for racing for another season.

He said that pursuant to the direction from City Council at their November 24, 1998, meeting, a Lease Agreement was drafted incorporating the basic terms that Council reviewed and approved at that meeting. The City received three inquiries about leasing AMS for 1999, and furnished a copy of the draft lease to each person who requested one. Some changes were made to the draft, and those changes were also supplied to the interested parties. Meetings were arranged with each of the three parties, but one party pulled out prior to the meeting, and only two meetings were held. One group that was interviewed included John Huffman, the South Carolina businessman who owns the Hickory Motor Speedway; the other group (Carolina Motorsports) included Danny Jones, who is seeking to develop a speedway in Henderson County.

Both parties agreed to the essential operational aspects of the lease: length of season, insurance and indemnity, noise restrictions; and both submitted strong proposals.

The main difference between the two proposals was in the amount of rent offered for the season. The Jones group offered $200,000, a substantial part of which will be paid before the season begins. The Huffman proposal offered significantly less money. The figure is significant not only because it is higher than the other figure that was offered, but because one of RiverLink's donors have suggested the $200,000 minimum lease amount that the City should request. He felt that $200,000 is a fair rent and that we had some information that the track's recent income history would support an income of $200,000 for a season. He also was advised that it will take between $30-80,000 to make the racetrack operational for next year.

Accordingly, the City's staff recommends that the City accept the proposal made by Danny Jones and Carolina Motorsports for leasing the speedway for 1999, and that it authorize the City Manager to negotiate and sign the lease in substantial conformity with the draft lease, and for a rent of $200,000. The lease, and Council's approval of it, are subject to the contingency to that appropriate waivers and approvals be obtained with respect to the Conservation Easement and deed restrictions. The discussions on these points are already underway. The details are subject to further negotiation, and the City will insist on reviewing a financial statement prior to executing the Lease.

City Attorney Oast said that the City cannot guarantee racing but the best thing the City can do is everything to make it possible for racing to occur. If we can come up to an agreement, and again this is not a "done-deal", it will be up to the racing community to make that racing happen. If Council agrees with staff's recommendation to accept the proposal made by Danny Jones and Carolina Motorsports for leasing the speedway for 1999, there are still some details that need to be addressed, for example, they want to establish a timetable for getting certain things done and a schedule of payments to be received needs to be established depending on the kinds of financial assurances that the City receives.

City Attorney Oast said that the Parks and Recreation Department is requesting that funds from the lease of the Speedway for the 1999 season be dedicated for the future development and design of the Speedway property, consistent with the terms of its acquisition.

City Attorney Oast thanked Councilman Sellers, Representative Martin Nesbitt Sr., Martin Nesbitt Jr., Ron Crane, Doug Wilson, Karen Cragnolin, Jim Westbrook, Irby Brinson, John Huffman, the Young family, Danny Jones and everyone who expressed interest in operating the speedway. He said everyone had good ideas about what should be incorporated into the agreement. He said that the revenue for the operation of the Speedway during the final season may go a long way towards providing the City's plan for developing the property. Also, the Asheville Motor Speedway, which is 40 years old, will soon be replaced with a bigger, better and faster facility that will better serve the needs of the racing community and may provide for some economic development.

Mayor Sitnick wanted to make sure that some kind of recognition of the Speedway's four decades long cultural historical contribution to this community be acknowledged. City Attorney Oast said that the best way to address that issue is when the 1999 racing season is over, that the raceway will be the City's property and what is appropriate to do with it should be left up to the City. City Manager Westbrook said that in talking with the Director of Parks and Recreation, it is in his plan to incorporate whatever happens to that property there a proper recognition for what has occurred there in the past in terms of the racetrack.

Mr. Ron Crane, member of the Speedway 99 Committee, said that personally, he was resentful that a Black Flag Committee that is trying to recall City Council tied the issues of the racetrack to the recall petition. He does not support any of their issues and they have found this Council to be open-minded to their needs and wants concerning the racetrack. He said Bob Oast was very precise in his information he has given them and he has worked very hard with the Speedway 99 Committee. He said that Councilman Sellers, who is liaison to the Speedway 99 Committee, has certainly done a worthy job. Parks & Recreation Director Irby Brinson and City Manager Westbrook have shown their concern for all the citizens' needs in the community and addressed all issues in a most professional manner. He said City Council has done a stand-up job and he personally thanked them. He thanked RiverLink and its donors for allowing racing to continue for another year.

Mr. Don Yelton said that he was with MSD Associates who has been retained by the Black Flag Committee to circulate the recall petition. He thanked the Mayor for her comments relative to the historic nature of the racetrack. He suggested that City Council use some of the $200,000 to take a canoe ride down by the old racetrack and look at all the old cars sticking out of the bank causing an environmental hazard.

Mr. Peter Dawes, partner in MSD Associates, suggested City Council use some of the $200,000 to clean up RiverLink's old Mill property down by the River that burnt down. He said the tape that is around the building is not sufficient to keep people out of there.

Representative Martin Nesbitt thanked Councilman Sellers, City Attorney Oast, all City Council members, RiverLink and the racing community for their work with this. He said that it is almost unbelievable to think that we are here only two months after it looked like there was no answer to this question. He said it was important for everyone to remember that when the racing community approached City Council there were no solutions. It took communication, good will and people working together to find a solution to this problem. He couldn't think of anything else where this many people in our community have come together in such a quick period of time to do what he felt was the appropriate thing to do for the community. He said that when people question the historic significance of the racetrack, they may be just thinking that some people have a soft spot in their hearts, but in the NASCAR magazine this week, on the front page inside from the editor there is a piece on the historical significance of Asheville to NASCAR. He again thanked all the individuals involved.

Councilman Cloninger said that a tremendous part of being able to work out an agreement was due to the cool level headed leadership that Representative Nesbitt approached this matter. On behalf of City Council, he expressed Council's appreciation.

Mayor Sitnick said that in reference to the Wadley-Donovan report which consistently bad-mouthed this community, said we don't get along, said we don't know how to work together, and said we don't know how to come to resolution, she would like to compliment the racing the community. There was a shock, there was a stunning blow, there was anger, there was emotional upheaval and everybody worked together and found a win-win solution. The Wadley-Donovan report said that doesn't happen in this community. She rests her case on the quick resolution of the speedway issue.

An audience member said that the 20,000 people who signed the petition requesting that racing be allowed at the racetrack for another season thanked City Council.

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilman Sellers moved for the adoption of Resolution No. 98-204. This motion was seconded by Councilman Cobb and carried unanimously.

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Councilman Tomes moved for the adoption of Resolution No. 98-205. This motion was seconded by Councilwoman Field and carried unanimously.

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F. PHASE III DROUGHT RESTRICTIONS AND RATE SURCHARGES

Mr. Tom Frederick, Water Resources Director, said that at the Water Authority meeting on December 15, 1998, the Authority adopted a resolution declaring Phase III Water Use Restrictions and Surcharges which continue to enforce Phase II restrictions adopted October 20, 1998, and add rate surcharges of $1.40 per one hundred cubic feet for all consumption during this restriction greater than 80% of the customers average consumption in the past year. One action the Water Authority did not enact delaying putting in taps for new customers that come in and begin an application during this Phase III condition. It was decided by the Authority to keep that process as it currently exists.

Continued above normal temperatures and below normal rainfall in the Asheville area has resulted in further depletion of the City's water supply reservoirs. As of December 9, 1998, the combined reservoir levels have reached a record 67.35 feet below normal and recent staff calculations have projected that if current temperature and lack of rainfall persist, the current stored water in the reservoirs may not last beyond 90 more days.

On Thursday, December 3, 1998, the Water Authority held a public forum at the City of Asheville Public Works facility where a draft of Phase III restrictions were introduced for public comment. A resolution has been amended to incorporate some effective comment from this forum. In addition, the staff received many suggestions from the public on areas to target better public information.

Along with the proposed resolution, the Water Resources Department is increasing public information on conservation through various news media, billing inserts, and five business round tables in the next two weeks with landscapers, lodging facilities, multi-family residential facilities, industry, and restaurants. In addition, the staff are focusing on responsive leak repairs in the Water System, implementing purchase of water from Hendersonville and evaluation of other alternatives, and continuing to evaluate the latest conditions at the two water treatment plants to anticipate as early as reasonable changing conditions requiring operating adjustments or other contingencies.

Upon inquiry of Councilman Sellers, Mr. Frederick said that if necessary to go to Phase IV, that would be mandatory rationing of water to customers and curtailing of non-essential uses.

Mr. Frederick responded to various questions from Council, some being, but not limited to, what is the feasibility of brining in water from the French Broad River to our treatment plant, can industries use the French Broad River water, when will the Mills River Plan be operable, is there any kind of surcharge for commercial industry, is there a penalty clause in the Mills River Plan construction documents, and can the City look to FEMA for help.

Mayor Sitnick said that this crisis makes a case for on-going conservation. This community has attempted to do some public relations and education efforts in the past regarding on-going conservation. Since we can't control the weather and there will be future droughts, while we are trying to keep up with a 200 year old infrastructure that is very expensive, that we consider creating an ongoing, much more accentuated water conservation program throughout the City to not only keep people on their toes, but so that if we get to this point of drought again that we are not in such a desperate situation. Conservation should be part of our daily lives. When we are fiscally conservative everyone thinks that's great, but the minute you talk about conservation of nature

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 8, 1998

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on December 8, 1998. This motion was seconded by Councilman Cobb and carried unanimously.

B. FUTURE OF THE CIVIC CENTER TASK FORCE

Vice-Mayor Hay, who is also Chair of the Future of the Civic Center Task Force, moved to appoint John Winkenwerder to the Future of the Civic Center Task Force. This motion was seconded by Councilwoman Field and carried unanimously.

C. JOINT MEETINGS WITH BUNCOMBE COUNTY ELECTED OFFICIALS

City Manager Westbrook said that he received a letter from Buncombe County Manager Wanda Greene which suggested the dates of Friday, February 19-20, 1999, or Friday, February 26-27, 1999, as possible dates for the brainstorming session with all the elected officials in Buncombe County. He said the retreat would be at Owen Conference Center at UNC-Asheville. It would be held on Friday from 4-8:00 p.m. and then again on Saturday from 8-4:00 p.m.

Mayor Sitnick asked that City Council contact the City Manager directly the next day to let him know of which dates City Council would prefer to meet.

D. CLAIMS

The following claims were received by the City of Asheville during the week of December 3-10, 1998: Kristy Penland (Water), Pat Blair (Finance), Clifton Dozier (Inspections), Michaela Denny (Sanitation), Clements Flower Shop (Sanitation), Freida Mitchell (Traffic Engineering), Gary Strickland (Sanitation), Walter Koester (Water) and Mike Zenowitz (Inspections).

These claims have been referred to Asheville Claims Corporation for investigation.

E. LAWSUIT

The following Petition in the Nature of Certiorari was received on December 10, 1998: SBA Inc. and BellSouth Carolina, PCS, L.P., d/b/a BellSouth Mobility DCS and Paul Tescione v. City of Asheville. The proceeding is an appeal to Superior Court from City Council's adoption of Order Denying Conditional Use Permit for wireless telecommunications tower proposed to be located at 754 Merrimon Avenue.

This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMPLAINT BY RICK WILLIAMS RELATIVE TO SONNY'S TOWING

Mr. Rick Williams was very upset at the towing practices of Sonny's Towing Service in private lots. He said that he has researched this issue and has found out that City Council does have the authority and can regulate towing in the Asheville area.

Mayor Sitnick said that the City Attorney will look into this matter and that she would contact Mr. Williams with what he finds.

B. MASSACRE IN MEXICAN STATE OF CHIAPAS

Mr. Bill Gorz, representing Sister City Solidaridad, said that the Mexican City of San Cristobal de Las Casas is one of Asheville's Sister Cities. On December 22, 1997, approximately 65 members of a right-wing paramilitary group drove into a community of Mayan

Indians on the outskirts of San Cristobal de Las Casas and went on a killing spree. Twenty-one women, 14 children, one infant and nine men for a total of 45 people were killed. At least 25 more were injured and the whole town was terrorized. While this was happening, the Chiapas state police watched from a few hundred yards away and did nothing. Investigations by both the Mexican Federal Attorney Generals Office and the Zapatista Command Council revealed that the perpetrators had links to the Mexican Institutional Revolutionary Party, which is the Mexican federal government, the Chiapas State Governor's Office and local governor's offices, and furthermore that these contacts had supplied the perpetrators with the weapons, ammunition, vehicles and radios used in the assault.

After an investigation, approximately 40 people were identified and formally charged with participation in the massacre. One was the Mayor of Chenalhol which is nearby-town. Also, the material that was used in the assault was paid for by the U.S. Government so our tax dollars were used for this outrage.

Almost a year has gone by and the people responsible for this tragedy have not been brought to justice. The PRI government of President Zedillo has not pursued the indictments handed down by the Attorney General's Office and without any outside pressure being brought upon the Mexican government, it is likely that the whole thing will be swept under the rug.

The fact that there is no pressure, recently Amnesty International and the United Nations Commission against torture have released reports that have been raised international awareness of the problem in Mexican and the European Union has made an extensive investigation, has condemned the massacre and the Mexican government's complicity. In the United States, Senator Leahy and Representative Pelosi introduced a bill requiring the Mexican government to spend the money that we send them for defense and anti-drug efforts actually for defense and anti-drug efforts rather than oppressing their own population.

We hereby call upon the City of Asheville to support it's Sister City and join this growing international movement in forcing the Mexican government to bring this gang of killers to justice. In support of this we request the following points: (1) That the City Council formally condemn the massacre; (2) That the City Council send a letter to the office of President Zedillo deploring the government's lack of action in this matter, and urging him to support immediate hearings so that justice may be served; and (3) That the City Council send copies both of the condemnation and the letter to President Zedillo to the people of our Sister City San Cristobal de Las Casas n case of the office of their mayor, so they will know of our support.

Councilwoman Field said that the Sister Cities group is very much aware of what is going on and is monitoring it. She said that because Sister City relationships are government to government, we are working with the system and with the Red Cross as much as we can. She suggested our City Attorney look into the situation to see what City Council can do.

Mayor Sitnick suggested Mr. Gorz contact Councilwoman Field to exchange information.

C. COMPLAINT BY DEBBIE LEDFORD RELATIVE TO SONNY'S TOWING

Ms. Debbie Ledford, speaking on behalf of her mother, urged City Council to stop the towing practices of Sonny's Towing. She said that he if he is operating within the law, it is barely. She urged City Council to support their efforts.

Mayor Sitnick said that City Council has been discussing this issue.

B. COMMENTS BY MR. MORRIS RELATIVE TO CANNABIS

Mr. Morrison said that he would be contacting City Council members and try to inform them about his issue of cannabis use and not abuse.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:17 p.m.

Magdalene Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - January 5, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

New Street Name Approval - Rosefield Drive

Summary: The consideration of a resolution accepting the new proposed street name Rosefield Drive.

New Street Name - Distant View Drive

Summary: The consideration of a resolution accepting the new proposed street name Distant View Drive.

Contract with NC State University to Provide a Pavement Management Inventory for City-Maintained Streets

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with NC State University to provide a Pavement Management Inventory in the amount of $41,104.

The City maintains approximately 365 miles of streets. The best method for prioritizing the maintenance of these streets is to develop an inventory of all the streets along with the condition of the street. Many municipalities use this method for developing both short and long term pavement and maintenance schedules.

The Institute for Transportation Research and Education (ITRE), which is affiliated with North Carolina State University, provides these services to many cities in North Carolina. (All contracts must be with NC State University.) Prior to selecting ITRE for this contract, staff invited three other firms to demonstrate their ability to provide these services to the City. Review staff consisted of three staff persons from the Engineering Department, one staff person from the Public Works Department and one staff person from the Information Services Division of the Finance Department. Following the demonstrations, the staff committee selected ITRE to perform the work for the following reasons:

- *ITRE was the least expensive.* In order to maintain this inventory, it should be redone every three to five years due to the fact that some streets deteriorate at varying rates. Staff felt that it would not be feasible to spend $100,000 every five years to have the inventory redone.
- *ITRE is a non-profit organization established specifically to assist with Transportation Research and Education.*
- *ITRE has provided this service to several cities in North Carolina.*

The services provided by ITRE consist of an inventory and evaluation of all City streets, as well as establishing a database which prioritizes the street maintenance needs. The Public

Works Department has $40,000 budgeted for this project and the Engineering Department has the remaining funds budgeted. Due to the fact that ITRE is a non-profit organization affiliated with NC State University, they do not have the funds to begin the project. Therefore, they have requested half of the money initially and the remaining half at the end of the project.

City staff requests City Council authorize the City Manager to sign a contract with NC State University in the amount of $41,104 to provide a Pavement Management Inventory for the City.

Bid Award for 16 Assorted Vehicles

Summary: The consideration of a resolution to award Bid Request No. 486-99 for the purchase of 16 assorted fleet vehicles.

Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were received to furnish the Police, Building Safety and Engineering Departments with vehicles as described in the bid summary as bid items 1 through 4. Four bids were received as follows:

Full Size Police Vehicles	
Earl Tindol Ford, Gastonia, N.C.	$193,130.00
Matthews Ford, Asheville, N.C.	$195,160.00
Frank Polk Ford, Black Mountain, N.C.	$206.640.00

Mid Size 4 WD Pickup Truck	
Earl Tindol Ford, Gastonia, N.C.	$15,769.00
Matthews Ford, Asheville, N.C.	$15,666.00
Frank Polk Ford, Black Mountain, N.C.	$15,690.00
Fletcher Motor Company, Fletcher, N.C.	$16,145.27

Mid Size 2 WD Pickup Trucks	
Earl Tindol Ford, Gastonia, N.C.	$40,065.00
Matthews Ford, Asheville, N.C.	$39,705.00
Frank Polk Ford, Black Mountain, N.C.	$39,774.00
Fletcher Motor Company, Fletcher, N.C.	$40,156.95

One-Half Ton 2 WD Heavy Duty Pickup	
Earl Tindol Ford, Gastonia, N.C.	$28,866.00
Matthews Ford, Asheville, N.C.	$28,744.00
Frank Polk Ford, Black Mountain, N.C.	$28,816.00
Fletcher Motor Company, Fletcher, N.C.	$32,217.14

Bids have been reviewed for technical compliance to specifications by the Fleet Management Division and their concurrence received in the following recommendations.

Funds for the purchase of these vehicles are to be from the requisitioning departments capital equipment appropriations for FY 98/99. All vehicles are budgeted as replacement vehicles.

Subject to Council's approval, it is recommended that awards be made to the low bidder of each item as follows:

Bid item 1 award to Earl Tindol Ford, Gastonia, N. C. in the amount of $193,130.00 for the purchase of the vehicles described in the bid summary for this item.

Bid items 2, 3, and 4 award to Matthews Ford, Asheville, N. C. in the amount of $84,115.00 for the purchase of vehicles described in the bid summary for these items.

Grand total of all awards as recommended $277,245.00.

Adoption of Fiscal Year 1999-2000 Budget Schedule

Summary: The budget office has proposed a Fiscal Year 1999/2000 budget schedule.

The proposed Fiscal Year 1999/2000 budget schedule identifies key dates for completion of all phases of budget adoption. Key phases of the process include distribution of budget materials and instructions, submission of departmental budget requests, City Manager's review of departmental requests, presentation of the proposed budget to City Council, a public hearing and formal adoption. Adoption of the Fiscal Year 1999/2000 budget is scheduled for June 22, 1999.

City staff recommends City Council adopt the Fiscal year 1999/2000 budget schedule.

Accepting the Regional Water Authority's Recommendation to award the Bid for the Fairview Reservoir Project to T & K Utilities

Summary: The consideration of awarding a construction contract to T&K Utilities for the "Fairview Reservoir Project".

Sealed bids were received by the Regional Water Authority on October 28, 1998 for the Fairview Reservoir Project. This project is a Master Plan Phase II project that includes the construction of a 1 million gallon reservoir and the installation of approximately 3,700 linear feet of 12-inch waterline. This is the last project in a series of projects that will greatly enhance the Authority's ability to provide reliable water service to existing customers in the South Buncombe/ Fairview area and will provide for the future growth and development of this area. As a result of this reservoir construction, (4) existing pumping stations will be abandoned in favor of the regional South Buncombe / Fairview Pumping Station and Reservoir. Construction on this project is scheduled to begin in mid February, 1999 with 180 calendar days allocated for construction. There is a liquidated damages clause in the contract of $ 500.00 per day if the project is not completed on time.

Five (5) bids were received with T&K Utilities of Asheville, North Carolina submitting the low of $675,700. These bids were received in accordance with NC General Statute 143-129 and in accordance with the City of Asheville's Minority Business Plan. The engineer's estimate for the project is in the amount of $738,000. All the bids received are listed below in the order of their bid:

T&K Utilities, Asheville, N.C.	$ 675,700.00
Cooper Construction Company, Hendersonville, N.C.	$ 676,926.00
Buckeye Construction Company, Canton, N.C.	$ 689,588.63
Terry Brothers Construction Company, Leicester, N.C.	$ 801,925.00
Hickory Construction Company, Hickory, N.C.	$ 906,925.00

The Regional Water Authority approved award of this contract to T&K Utilities in the low bid amount of $ 675,700.00 on November 17, 1998, and staff recommends City Council's concurrence with the Authority's action.

Accepting the Regional Water Authority's Recommendation to award the Bid for the Spivey Mountain Reservoir Project to Taylor & Murphy Construction Company

Summary: The consideration of awarding a construction contract to Taylor and Murphy Construction Company for the "Spivey Mountain Reservoir Project".

The Regional Water Authority received bids for the Spivey Mountain Reservoir Project on November 13, 1998. This reservoir and its related pumping station and water transmission lines, already under construction, will alleviate periodic low water pressures in the western sections of our water distribution system and will provide for the continued growth and development of that area. This project was previously bid but not awarded due to failure of the low bidder to comply with the Minority Business provisions of the contract. Construction on this project is scheduled to begin in mid February, 1999 with 150 calendar days allocated for construction. There is a liquidated damages clause in the contract of $ 500.00 per day if the project is not completed on time.

A total of two bids were received with Taylor and Murphy submitting the low bid of $ 663,069. These bids were received in accordance with NC General Statute 143-129 and in accordance with the City of Asheville's Minority Business Plan. All the bids received are listed below in the order of their bid:

Taylor and Murphy Construction Company, Asheville, N.C.	$ 663,069
Hobson Construction Company, Arden, N.C.	$ 697,400

The previous low bid for this project, submitted by Taylor and Murphy, was $ 532,340. This bid was rejected for failure to comply with the Minority Business provisions of the contract. Subsequently, a low bid of $ 561,000 was negotiated with Cooper Construction Company but this was rejected by the Authority at the recommendation of staff. The engineer's estimate for this project is in the amount of $600,000.

Since the bid opening, negotiations with Taylor and Murphy has brought their low bid price down to $560,000. Approximately $ 60,000 of this reduction is attributable to raising the base of the reservoir approximately 10 feet and the associated reduction in excavation. The remainder of the reduction was not related to any change in scope but rather to price negotiations. Staff is confident that the quality of the finished project will not be sacrificed by any of these price reductions.

The Regional Water Authority approved award of this negotiated contract to Taylor and Murphy Construction Company in the amount of $560,000 on December 15, 1998, and staff recommends City Council's concurrence with the Authority's action.

Agreement with the N.C. Dept. of Transportation for the NC 191/Brevard Road to I-240 Interchange Project

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the N.C. Dept. of Transportation ("NC DOT") for utility relocation costs as part of improvements along NC 191/Brevard Road to the I-240 Interchange.

The NC DOT is proposing to construct roadway improvements along NC 191 (Brevard Road) from I-40 to I-240. NC DOT proposes to widen and relocate NC 191/Brevard Road as a four-lane road with curb and gutter from just north of the Interstate 40/NC 191 interchange to just north of the Interstate 240/Park Road interchange on the western side of Asheville. The intersection of Fairfax Avenue with the westbound Interstate 240 exit ramp will be eliminated, and Fairfax Avenue will be extended to intersect with NC 191. The westbound Interstate 240 exit ramp will be shifted south to tie into NC 191 across from the Interstate 240 westbound entrance ramp. A new bridge will be constructed to carry proposed NC 191 over Hominy Creek and Hominy Creek Road. Shelburne Road will be extended to tie into NC 191 at the proposed Fairfax Avenue/NC 191 intersection north of Interstate 240. These improvements are anticipated to start in 1999. An agreement was executed in July, 1996, solely for the transfer of ownership of Bridge #216 to the City of Asheville so as to leave it in place to accommodate pedestrian traffic.

The Municipal Agreement provides for the relocation of the waterline. The items in conflict with NC DOT will be designed and relocated during construction of the project. The existing waterline is an 8-inch diameter and the Water Master Plan calls for this waterline to be upgraded to a 24-inch diameter. This will occur as part of the waterline relocation. All 6-inch and 12-inch existing waterlines are being relocated for construction of the highway. The estimate for the relocation of the waterline is $256,756. The Municipal Agreement contains provisions for reimbursement of these costs after completion of the work and within sixty (60) days after date of invoice. Interest shall be paid at the rate of 8% on any unpaid balance due.

This agreement will effect the necessary adjustment of any utilities under franchise without cost to the NC DOT, and to provide for the adjustment of any municipally-owned utilities, without cost to the NC DOT.

On December 15, 1998, the Regional Water Authority unanimously approved a resolution amending Capital Project Ordinance 82-25 (35 Fund - Water Major Capital Improvements Fund) to provide future funding for the NC 191 NC DOT Project in the amount of $256,756. This project will be funded with future funds from either the Operating Budget or from bonds or loans.

Staff recommends that City Council (1) authorize the City Manager to sign the Municipal Agreement for improvements on NC 191/Brevard Road to I-240 Interchange; and (2) authorize the budget amendment to reprogram line items relating to the NC 191 24-inch waterline.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PRESENTATION OF ANNUAL AUDIT REPORT

Finance Director Bill Schaefer said that City Council retained an independent audit firm, Crisp Hughes Evans LLP of Asheville, NC, to perform an audit of the City of Asheville for the fiscal year ended June 30, 1998, as required by North Carolina General Statute sec. 159-34. The auditors gave the City a "clean" audit opinion.

Mr. Brian Broom, Senior Manager, briefed City Council on their findings, noting that their reports on compliance and internal control disclosed no instances of noncompliance and no material weaknesses in controls. He then reviewed the Fund Balance in the General Fund.

PRITCHARD PARK DESIGN UPDATE

Mr. Alan Glines, Assistant Landscape Architect, said that the Parks and Recreation Department has been working with the consultant design team, Genesis Group Inc., to develop redesign plans for Pritchard Park.

Over the past several months City staff, in conjunction with the Pritchard Park Task Force, have been working with Genesis Group to develop redesign plans for Pritchard Park in downtown Asheville. On October 8th and November 5th, 1998, community meetings were held to gather information and review conceptual plans for Pritchard Park. The plan has received broad support from many in the community including downtown merchants, residents, property owners, and municipal advisory groups. Since then, City staff have been reviewing the plans and making suggestions for design improvements. In addition staff has begun the process of evaluating the traffic impacts of the proposed plans.

The next steps as a part of this project consist of a comprehensive project impact evaluation. Such components as traffic impact due to revised travel patterns, utility conflicts, and construction sequence need to be evaluated.

Mr. Robert Finnegan, Genesis Group Inc., reviewed with City Council the main issues the consultant design team reviewed. Some of those issues were how to get traffic through the site, the addition of parking, and how to increase the size of the park. He said some traffic calming elements include changing the vehicular use on College Street and Patton Avenue from a one way to a two way system, the addition of a roundabout at the Coxe Avenue and Patton Avenue intersection and the College Street and Haywood Road intersection, and reducing speed on Patton Avenue. They also looked at a more pedestrian friendly environment, for instance widening the sidewalk on College Street to place some outdoor tables and chairs, public art, etc.; the possibility of businesses along College Street adding some balconies; the encouragement of some signage improvements; the addition of some type of marquee structure to mark the Wall Street/Market Street entrance; the addition of a bus shelter kiosk; etc. He said that the park is divided into two aspects. The western part is more of a passive park with preservation of the existing large tree, the addition of other trees, and the creation of a walkway system through the park. The eastern part will be developed as an amphitheater element with some variability to it where people can come and do a variety of things. Artistic inclusion in the eastern part could include a bronze statute, of perhaps Mr. William Johnson who was the original property owner of the site, or some other historical figure.

Mr. Michael Wallwork, Alternative Street Design, P.A., reviewed with Council their task of improving pedestrian mobility in the area and connecting the park to something other than it just being an island. He explained how they tried to minimize the amount of asphalt and use as much space as possible for parking and greenery. He then detailed for Council the use of round-abouts and the excellent reports they have received from other cities who use roundabouts.

Mr. Wallwork responded to various questions from Council regarding roundabouts.

Councilwoman Field suggested that if the roundabouts are successful at these two locations, they might be work well at Pack Square and also at the Civic Center. She spoke in support of roundabouts.

Mayor Sitnick encouraged the concept of street trees on College Street toward Pack Square.

Mr. Finnegan said that based on the components of the plan, they have developed a preliminary project budget of $1,436,610, which includes (1) demolition of the existing infrastructure in the park, i.e. drainage, irrigation, landscaping, paving, structures/utilities; (2) reconstruction of drainage, irrigation, landscaping, paving/grading, site specialties, round-abouts, retaining walls/signs, structures/utilities, water/sewer/stormwater, artistic inclusion; and (3) permits and fees. He said that they will be happy to work with the City to look for ways to reduce the costs, i.e., reduce the number of trees, use less expensive paving material, etc. He also said that it is his understanding that the City has $200,000 for this project at this time. He suggested using that money for demolition of those elements in the park and perhaps construct the amphitheater and some ancillary elements.

Upon inquiry of Mayor Sitnick, Mr. Finnegan said that the park could be completed in phases. He explained that there are a variety of options available for public/private partnerships and would be happy to furnish to the City some possible funding sources.

Councilwoman Field felt that the City may be able to obtain some corporate contributions from the three banks in the immediate area of Pritchard Park. She also had a brief conversation with the Merchants Association who said they may be able to help a little with funding. She felt this needed to be a public/private community project and would work along with the Mayor on meeting with different groups. She favored doing the project all at once and not by phases.

It was the consensus of City Council to instruct staff the City Manager to report back to Council on a plan of how the money can be raised, along with the possibly of appointing some lead Council members to focus on that plan.

LEASE PORTION OF MILLS RIVER PROPERTY TO R.V. WARREN FARMS

Mr. Tom Frederick, Water Resources Director, said that this is the consideration of a resolution to lease presently vacant land on the opposite side of the Mills River from the new water treatment plant owned by the City of Asheville be leased to R. V .Warren Farms in 1999 for corn production with appropriate restrictions for environmental protection.

The City of Asheville purchased property in Henderson County in 1994 along the west bank of the French Broad River, on both sides of the Mills River, for the construction of a Water Treatment Plant. The Plant is currently being built exclusively on the south side of the Mills River. A residual 51 acres north of the Mills River is presently vacant land but was agricultural before the City's purchase. R. V. Warren Farms has offered to lease this land during 1999 for corn production at a fair market price of $75 per acre ($3,825 total).

Staff has evaluated this proposal and finds there is no near-term use of the property north of the Mills River for the water treatment complex. Further review of this 51 acres confirms the property is relatively flat and most of the property drains slightly toward the east where the French Broad River is located. Negotiations for this lease with R. V. Warren include requirements for a 75-foot buffer at the rivers, prohibition of pesticide applications, and limitations on herbicide and fertilizer use. The restrictions will promote an example of agricultural use in harmony with environmental protection.

Staff further recommends the revenue from the lease go to the Water Fund toward the local matching funds for watershed protection in the Mills River valley provided the currently pending application to the Clean Water Management Trust Fund is approved.

The Regional Water Authority of Asheville, Buncombe, and Henderson adopted a resolution on December 15, 1998, recommending that the Asheville City Council grant this lease.

Staff recommends the City Council adopt the resolution, thereby granting the lease to R.V. Warren Farms for 1999 for a total of $3,825.

Mr. Frederick responded to questions from Council as they related to Mr. Warren's experience with not using pesticides, who will monitor the compliance and the City's efforts to promote the best way to promote the proper use of the property.

When Mayor Sitnick suggested that the lease contain some type of enforcement and violation language, especially since this is adjacent to our water treatment plant and 30-60 days is too long for a violation to occur, City Attorney Oast that standard language will be incorporated into the lease which will address Mayor Sitnick's concerns.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REPORTS ON BOARDS/COMMISSIONS

Vice-Mayor Hay, Chair of the Boards & Commissions Committee, said that there is a vacancy for a central representative on the Citizens-Police Advisory Committee. He said the deadline for receiving applications is January 27, 1999.

Vice-Mayor Hay also said that there is a vacancy on the Opportunity Corporation for Madison-Buncombe Counties, however, the Mayor is charged with the responsibility of making that appointment.

Vice-Mayor Hay said that regarding the two School Board vacancies expiring on April 1, 1999, the Boards and Commissions Committee recommend not proceeding with soliciting applications and reappoint both Mr. Brian Weinkle and Mr. Roy Harris to each serve an additional four year term. Both individuals are interested in reappointment and both have excellent attendance records. He said that the School Board is proceeding in the right direction with a team approach with Chair Susan Fisher and Superintendent Campbell. It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Mr. Weinkle and Mr. Harris to each serve an additional four year term.

OTHER BUSINESS

Councilwoman Field, Chair of the Housing & Community Development Committee, requested that a public hearing be scheduled to reallocate Community Development Block Grant funds, in the amount of $27,000, to New Home Community Health Center.

Vice-Mayor Hay spoke about the success of public skating during December, 1998, and stated that the Civic Center Director is working on a new schedule to allow public skating to run through March, 1999.

Vice-Mayor Hay, liaison for the Airport Authority, reported to City Council that the Airport Authority has decided to postpone building a parking deck and to make other arrangements for parking in the immediate future.

CLOSED SESSION

At 4:42 p.m., Councilman Cloninger moved to go into closed session (1) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange or lease - statutory authority is G.S. 143-318.11 (a) (5); and (2) to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial appointment of an individual public officer or employee or prospective public officer or employee - statutory authority is G.S. 143-318.11 (a) (6). This motion was seconded by Councilman Sellers and carried unanimously.

At 7:15 p.m., Vice-Mayor Hay moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

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ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:15 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - January 12, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Cobb gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JANUARY 11-18, 1999, AS "DR. MARTIN LUTHER KING JR. WEEK" IN THE CITY OF ASHEVILLE

Mayor Sitnick read the proclamation proclaiming January 11-18, 1999, as "Dr. Martin Luther King Jr. Week" in the City of Asheville. She presented the proclamation to Ms. Oralene Simmons, who briefed City Council on some activities taking place during the week.

B. RECOGNITION OF BUNCOMBE COUNTY'S PROJECT ACCESS

Mayor Sitnick read the recognition of Buncombe County's Project Access and presented the recognition to Dr. Suzanne Landis, on behalf of the Medical Society, and Dr. George Bond, on behalf of Buncombe County, and Mr. Alan McKenzie, who briefed Council on the project.

II. CONSENT AGENDA:

At the request of Mr. H.K. Edgerton, Item E. was removed from the Consent Agenda to be discussed individually.

A. RESOLUTION NO. 99-1 - RESOLUTION ACCEPTING THE NEW PROPOSED STREET NAME ROSEFIELD DRIVE

Summary: Free-Beaux Associates, owner of lots in the Kenilworth Hills Subdivision, has petitioned the City of Asheville to accept the street name Rosefield Drive. The new street will be a cul-de-sac beginning at Kenilworth Road.

RESOLUTION BOOK NO. 25 - PAGE 107

B. RESOLUTION NO. 99-2 - RESOLUTION ACCEPTING THE NEW PROPOSED STREET NAME DISTANT VIEW DRIVE

Summary: Highland Builders of Asheville, owner of lots in The Views of Asheville, a resubdivision of The Pinnacle at Park Avenue, has petitioned the City of Asheville to accept the street name Distant View Drive. The new street will be a cul-de-sac beginning at Park Avenue.

RESOLUTION BOOK NO. 25 - PAGE 108

C. RESOLUTION NO. 99-3 - RESOLUTION WITH THE NORTH CAROLINA STATE UNIVERSITY TO PROVIDE A PAVEMENT MANAGEMENT INVENTORY FOR CITY MAINTAINED STREETS

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with NC State University to provide a Pavement Management Inventory in the amount of $41,104.

The City maintains approximately 365 miles of streets. The best method for prioritizing the maintenance of these streets is to develop an inventory of all the streets along with the condition of the street. Many municipalities use this method for developing both short and long term pavement and maintenance schedules.

The Institute for Transportation Research and Education (ITRE), which is affiliated with North Carolina State University, provides these services to many cities in North Carolina. (All contracts must be with NC State University.) Prior to selecting ITRE for this contract, staff invited three other firms to demonstrate their ability to provide these services to the City. Review staff consisted of three staff persons from the Engineering Department, one staff person from the Public Works Department and one staff person from the Information Services Division of the Finance Department. Following the demonstrations, the staff committee selected ITRE to perform the work for the following reasons:

- *ITRE was the least expensive.* In order to maintain this inventory, it should be redone every three to five years due to the fact that some streets deteriorate at varying rates. Staff felt that it would not be feasible to spend $100,000 every five years to have the inventory redone.
- *ITRE is a non-profit organization established specifically to assist with Transportation Research and Education.*
- *ITRE has provided this service to several cities in North Carolina.*

The services provided by ITRE consist of an inventory and evaluation of all City streets, as well as establishing a database which prioritizes the street maintenance needs. The Public Works Department has $40,000 budgeted for this project and the Engineering Department has the remaining funds budgeted. Due to the fact that ITRE is a non-profit organization affiliated with NC State University, they do not have the funds to begin the project. Therefore, they have requested half of the money initially and the remaining half at the end of the project.

City staff requests City Council authorize the City Manager to sign a contract with NC State University in the amount of $41,104 to provide a Pavement Management Inventory for the City.

RESOLUTION BOOK NO. 25 - PAGE 109

D. MOTION APPROVING THE 1999-2000 ANNUAL OPERATING BUDGET SCHEDULE

E. RESOLUTION TO AWARD BIDS FOR FLEET VEHICLES

This item was removed from the Consent Agenda for further discussion.

F. RESOLUTION NO. 99-4 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A LEASE FOR A PORTION OF THE MILLS RIVER PROPERTY WITH R.V. WARREN FARMS FOR CORN PRODUCTION

Summary: The consideration of a resolution to lease presently vacant land on the opposite side of the Mills River from the new water treatment plant owned by the City of Asheville be leased to R. V .Warren Farms in 1999 for corn production with appropriate restrictions for environmental protection.

The City of Asheville purchased property in Henderson County in 1994 along the west bank of the French Broad River, on both sides of the Mills River, for the construction of a Water Treatment Plant. The Plant is currently being built exclusively on the south side of the Mills River. A residual 51 acres north of the Mills River is presently vacant land but was agricultural before the City's purchase. R. V. Warren Farms has offered to lease this land during 1999 for corn production at a fair market price of $75 per acre ($3,825 total).

Staff has evaluated this proposal and finds there is no near-term use of the property north of the Mills River for the water treatment complex. Further review of this 51 acres confirms the property is relatively flat and most of the property drains slightly toward the east where the French Broad River is located. Negotiations for this lease with R. V. Warren include requirements for a 75-foot buffer at the rivers, prohibition of pesticide applications, and limitations on herbicide and fertilizer use. The restrictions will promote an example of agricultural use in harmony with environmental protection.

Staff further recommends the revenue from the lease go to the Water Fund toward the local matching funds for watershed protection in the Mills River valley provided the currently pending application to the Clean Water Management Trust Fund is approved.

The Regional Water Authority of Asheville, Buncombe, and Henderson adopted a resolution on December 15, 1998, recommending that the Asheville City Council grant this lease.

Staff recommends the City Council adopt the resolution, thereby granting the lease to R.V. Warren Farms for 1999 for a total of $3,825.

RESOLUTION BOOK NO. 25 - PAGE 110

G. RESOLUTION NO. 99-5 - RESOLUTION ACCEPTING THE REGIONAL WATER AUTHORITY'S RECOMMENDATION TO AWARD THE BID FOR THE FAIRVIEW RESERVOIR PROJECT TO T & K UTILITIES

Summary: The consideration of awarding a construction contract to T&K Utilities for the "Fairview Reservoir Project".

Sealed bids were received by the Regional Water Authority on October 28, 1998 for the Fairview Reservoir Project. This project is a Master Plan Phase II project that includes the construction of a 1 million gallon reservoir and the installation of approximately 3,700 linear feet of 12-inch waterline. This is the last project in a series of projects that will greatly enhance the Authority's ability to provide reliable water service to existing customers in the South Buncombe/ Fairview area and will provide for the future growth and development of this area. As a result of this reservoir construction, four existing pumping stations will be abandoned in favor of the regional South Buncombe / Fairview Pumping Station and Reservoir. Construction on this project is scheduled to begin in mid February, 1999 with 180 calendar days allocated for construction. There is a liquidated damages clause in the contract of $ 500.00 per day if the project is not completed on time.

Five bids were received with T&K Utilities of Asheville, North Carolina submitting the low of $675,700. These bids were received in accordance with NC General Statute 143-129 and in accordance with the City of Asheville's Minority Business Plan. The engineer's estimate for the project is in the amount of $738,000. All the bids received are listed below in the order of their bid:

COMPANY	BID AMOUNT
T&K Utilities, Asheville, N.C.	$ 675,700.00
Cooper Construction Company, Hendersonville, N.C.	$ 676,926.00
Buckeye Construction Company, Canton, N.C.	$ 689,588.63
Terry Brothers Construction Company, Leicester, N.C.	$ 801,925.00
Hickory Construction Company, Hickory, N.C.	$ 906,925.00

The Regional Water Authority approved award of this contract to T&K Utilities in the low bid amount of $ 675,700.00 on November 17, 1998, and staff recommends City Council's concurrence with the Authority's action.

RESOLUTION BOOK NO. 25 - PAGE 111

H. RESOLUTION NO. 99-6 - RESOLUTION ACCEPTING THE REGIONAL WATER AUTHORITY'S RECOMMENDATION TO AWARD THE BID FOR THE SPIVEY MOUNTAIN RESERVOIR PROJECT TO TAYLOR & MURPHY CONSTRUCTION COMPANY

Summary: The consideration of awarding a construction contract to Taylor and Murphy Construction Company for the "Spivey Mountain Reservoir Project".

The Regional Water Authority received bids for the Spivey Mountain Reservoir Project on November 13, 1998. This reservoir and its related pumping station and water transmission lines, already under construction, will alleviate periodic low water pressures in the western sections of our water distribution system and will provide for the continued growth and development of that area. This project was previously bid but not awarded due to failure of the low bidder to comply with the Minority Business provisions of the contract. Construction on this project is scheduled to begin in mid February, 1999 with 150 calendar days allocated for construction. There is a liquidated damages clause in the contract of $ 500.00 per day if the project is not completed on time.

A total of two bids were received with Taylor and Murphy submitting the low bid of $ 663,069. These bids were received in accordance with NC General Statute 143-129 and in accordance with the City of Asheville's Minority Business Plan. All the bids received are listed below in the order of their bid:

Taylor and Murphy Construction Company, Asheville, N.C.	$ 663,069
Hobson Construction Company, Arden, N.C.	$ 697,400

The previous low bid for this project, submitted by Taylor and Murphy, was $532,340. This bid was rejected for failure to comply with the Minority Business provisions of the contract. Subsequently, a low bid of $561,000 was negotiated with Cooper Construction Company but this was rejected by the Authority at the recommendation of staff. The engineer's estimate for this project is in the amount of $600,000.

Since the bid opening, negotiations with Taylor and Murphy has brought their low bid price down to $560,000. Approximately $ 60,000 of this reduction is attributable to raising the base of the reservoir approximately 10 feet and the associated reduction in excavation. The

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remainder of the reduction was not related to any change in scope but rather to price negotiations. Staff is confident that the quality of the finished project will not be sacrificed by any of these price reductions.

The Regional Water Authority approved award of this negotiated contract to Taylor and Murphy Construction Company in the amount of $560,000 on December 15, 1998, and staff recommends City Council's concurrence with the Authority's action.

RESOLUTION BOOK NO. 25 - PAGE 112

I. RESOLUTION NO. 99-7 - RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE IMPROVEMENTS ON NC 191/BREVARD ROAD TO I-240 INTERCHANGE

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the N.C. Dept. of Transportation ("NC DOT") for utility relocation costs as part of improvements along NC 191/Brevard Road to the I-240 Interchange.

The NC DOT is proposing to construct roadway improvements along NC 191 (Brevard Road) from I-40 to I-240. NC DOT proposes to widen and relocate NC 191/Brevard Road as a four-lane road with curb and gutter from just north of the Interstate 40/NC 191 interchange to just north of the Interstate 240/Park Road interchange on the western side of Asheville. The intersection of Fairfax Avenue with the westbound Interstate 240 exit ramp will be eliminated, and Fairfax Avenue will be extended to intersect with NC 191. The westbound Interstate 240 exit ramp will be shifted south to tie into NC 191 across from the Interstate 240 westbound entrance ramp. A new bridge will be constructed to carry proposed NC 191 over Hominy Creek and Hominy Creek Road. Shelburne Road will be extended to tie into NC 191 at the proposed Fairfax Avenue/NC 191 intersection north of Interstate 240. These improvements are anticipated to start in 1999. An agreement was executed in July, 1996, solely for the transfer of ownership of Bridge #216 to the City of Asheville so as to leave it in place to accommodate pedestrian traffic.

The Municipal Agreement provides for the relocation of the waterline. The items in conflict with NC DOT will be designed and relocated during construction of the project. The existing waterline is an 8-inch diameter and the Water Master Plan calls for this waterline to be upgraded to a 24-inch diameter. This will occur as part of the waterline relocation. All 6-inch and 12-inch existing waterlines are being relocated for construction of the highway. The estimate for the relocation of the waterline is $256,756. The Municipal Agreement contains provisions for reimbursement of these costs after completion of the work and within sixty (60) days after date of invoice. Interest shall be paid at the rate of 8% on any unpaid balance due.

This agreement will effect the necessary adjustment of any utilities under franchise without cost to the NC DOT, and to provide for the adjustment of any municipally-owned utilities, without cost to the NC DOT.

On December 15, 1998, the Regional Water Authority unanimously approved a resolution amending Capital Project Ordinance 82-25 (35 Fund - Water Major Capital Improvements Fund) to provide future funding for the NC 191 NC DOT Project in the amount of $256,756. This project will be funded with future funds from either the Operating Budget or from bonds or loans.

Staff recommends that City Council (1) authorize the City Manager to sign the Municipal Agreement for improvements on NC 191/Brevard Road to I-240 Interchange; and (2) authorize the budget amendment to reprogram line items relating to the NC 191 24-inch waterline.

RESOLUTION BOOK NO. 25 - PAGE 113

J. ORDINANCE NO. 2534 - BUDGET AMENDMENT FOR THE PROJECT NC 191 24" WATERLINE ON BREVARD ROAD FROM I-240 TO I-40

Summary: See item "I" above.

ORDINANCE BOOK NO. 17 - PAGE 201

K. MOTION SETTING A PUBLIC HEARING FOR JANUARY 26, 1999, TO REALLOCATE COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS TO NEW HOPE COMMUNITY HEALTH CENTER

L. MOTION SETTING A PUBLIC HEARING FOR JANUARY 26, 1999, TO ZONE SECTION 11 OF BILTMORE PARK TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

M. MOTION SETTING A PUBLIC HEARING FOR JANUARY 26, 1999, TO ZONE SECTION 12 OF BILTMORE PARK TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

N. MOTION SETTING A PUBLIC HEARING FOR JANUARY 26, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE AN OFFICE II ZONING DISTRICT

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

NEW TIMING DEVICE FOR SPEAKERS

Mayor Sitnick said that in an effort to be fair to all speakers, we have installed a timing device. For individuals speaking, the time limit is three minutes each. For a group spokesman, the time limit is 10 minutes. We request that if you are speaking for a group, you make that known prior to your comments to allow the appropriate time to be set.

Also, in an effort to allow the speaker to get the full time allotted to address Council, City Council will hold all their questions or comments until the speaker is finished.

She explained that on the podium there are three lights. The green light indicates that you are within your allotted time. The amber light will signal that the speaker has 15 seconds to wrap up. When the red light comes on, your time is up and we ask that you take your seat to allow others to speak.

She felt that this system will allow our meetings to run smoothly and be fair to all speakers.

ITEM PULLED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

RESOLUTION NO. 99-8 - RESOLUTION TO AWARD BIDS FOR FLEET VEHICLES

Summary: The consideration of a resolution to award Bid Request No. 486-99 for the purchase of sixteen (16) assorted fleet vehicles.

Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were received to furnish the Police, Building Safety and Engineering Departments with vehicles as described in the bid summary as bid items 1 through 4. Four bids were received as follows:

Full Size Police Vehicles	
Earl Tindol Ford, Gastonia, N.C.	$193,130.00
Matthews Ford, Asheville, N.C.	$195,160.00
Frank Polk Ford, Black Mountain, N.C.	$206.640.00
Mid Size 4 WD Pickup Truck	
Earl Tindol Ford, Gastonia, N.C.	$15,769.00
Matthews Ford, Asheville, N.C.	$15,666.00
Frank Polk Ford, Black Mountain, N.C.	$15,690.00
Fletcher Motor Company, Fletcher, N.C.	$16,145.27
Mid Size 2 WD Pickup Trucks	
Earl Tindol Ford, Gastonia, N.C.	$40,065.00
Matthews Ford, Asheville, N.C.	$39,705.00
Frank Polk Ford, Black Mountain, N.C.	$39,774.00
Fletcher Motor Company, Fletcher, N.C.	$40,156.95
One-Half Ton 2 WD Heavy Duty Pickup	
Earl Tindol Ford, Gastonia, N.C.	$28,866.00
Matthews Ford, Asheville, N.C.	$28,744.00
Frank Polk Ford, Black Mountain, N.C.	$28,816.00
Fletcher Motor Company, Fletcher, N.C.	$32,217.14

Bids have been reviewed for technical compliance to specifications by the Fleet Management Division and their concurrence received in the following recommendations.

Funds for the purchase of these vehicles are to be from the requisitioning departments capital equipment appropriations for FY 98/99. All vehicles are budgeted as replacement vehicles.

Subject to Council's approval, it is recommended that awards be made to the low bidder of each item as follows:

Bid item 1 award to Earl Tindol Ford, Gastonia, N. C. in the amount of $193,130.00 for the purchase of the vehicles described in the bid summary for this item.

Bid items 2, 3, and 4 award to Matthews Ford, Asheville, N. C. in the amount of $84,115.00 for the purchase of vehicles described in the bid summary for these items.

Grand total of all awards as recommended $277,245.00.

Mr. H.K. Edgerton asked if the Request for Proposals went to any minority-owned businesses. Finance Director Bill Schaefer responded that the City extended an invitation to 24 entities, however, none were minority-owned firms. He said that the City presently has no minority businesses certified in the City or County that supply vehicles. He said that Councilman Tomes will make him aware of a firm that may be an opportunity in the future. He said that any time we can find a minority in a commodity of a product or serve that is not listed, we would welcome the opportunity to extend to them an opportunity to be listed as one of our vendors and to extend an opportunity for participation in any procurement action by the City.

Councilman Tomes suggested that the Director of Minority Affairs subscribe to Black Enterprise which lists major companies throughout the United States.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Tomes moved for the adoption of Resolution No. 99-8. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 114

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO CLOSING AN ALLEY BETWEEN RICHMOND AND MICHIGAN AVENUES

RESOLUTION NO. 99-9 - RESOLUTION TO PERMANENTLY CLOSE AN ALLEY BETWEEN RICHMOND AND MICHIGAN AVENUES

Mayor Sitnick opened the public hearing at 5:20 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Suzanne Molloy, Assistant Public Works Director, said that a petition has been received from James H. and Mona G. Justice, Richard A. and Shirley J. Page and Jose and Guiller Nina T. Valazquez, owners of parcels 9638-15-54-5274, 5196, and 6293 requesting that a portion of an unnamed and unopened alleyway between Richmond Avenue and Michigan Avenue be permanently closed to public use. These individuals own all of the property with frontage on the portion of the unopened alleyway between Richmond Avenue and Michigan Avenue that has been petitioned to be closed.

The Public Works Department staff recommends City Council adopt the resolution to permanently close the unnamed and unopened alleyway between Richmond Avenue and Michigan Avenue.

Mayor Sitnick closed the public hearing at 5:24 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Tomes moved for the adoption of Resolution No. 99-9. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 116

B. PUBLIC HEARING RELATIVE ADOPTION OF BOND ORDER AUTHORIZING THE ISSUANCE OF $18,000,000 GENERAL OBLIGATION PARKS, RECREATION AND GREENWAY BONDS OF THE CITY OF ASHEVILLE, N.C.

RESOLUTION NO. 99-10 - RESOLUTION SETTING A SPECIAL BOND REFERENDUM AND DIRECTING THE PUBLICATION OF NOTICE OF A SPECIAL BOND REFERENDUM AND NOTIFICATION OF THE BUNCOMBE COUNTY BOARD OF ELECTIONS

Mayor Sitnick opened the public hearing at 5:26 p.m.

City Clerk Burleson reported that the bond order entitled "Bond Order Authorizing the Issuance of $18,000,000 General Obligation Parks, Recreation and Greenway Bonds of the City of Asheville, N.C.," which was introduced at the regular meeting of the City Council on December 8, 1998, was published on January 1, 1999. She then presented the notice to the public setting the time and date of the public hearing. She also reported that she had filed in her office a statement of debt complying with provisions of the Local Government Bond Act, and such statement as filed showed the net indebtedness of the City to be 1.675% of the assessed valuation of property in the City subject to taxation.

Finance Director Bill Schaefer said that this is the consideration of (1) adoption of the Bond Order Authorizing the Issuance of $18,000,000 General Obligation Parks, Recreation and Greenway Bonds; and (2) resolution setting a Special Bond Referendum on May 11, 1999.

Having previously given required public notice and a Sworn Statement of Debt (which shows the net indebtedness of the City to be 1.675% of the assessed valuation of property in the City subject to taxation) having been filed with the City Clerk, as required by the Local Government Bond Act, a public hearing regarding the validity of the Bond Order and the advisability of issuing the General Obligation Parks, Recreation and Greenway Bonds should now be conducted.

The Bond Order provides the purpose and amount of the bonds; states that the projects to be funded by the proceeds of the bonds are necessary; states that taxes shall be levied annually to pay the principal and interest on the bonds; indicates that a sworn statement of debt has been filed with the City Clerk and is open to public inspection; and states that the bond order shall take effect when approved by the voters of the City at a referendum scheduled for May 11, 1999.

The proposed resolution sets a Special Bond Referendum to be held on May 11, 1999, to approve or disapprove the indebtedness to be incurred by the issuance of the General Obligation Parks, Recreation and Greenway Bonds and the levy of a tax for the payment thereof.

Following the closing of the public hearing, City staff recommends City Council (1) adopt the Bond Order; and (2) adopt the proposed resolution setting a Special Bond Referendum on May 11, 1999.

Mr. H.K. Edgerton said that no one can argue against the City needing parks. However, he said the $18 Million referendum translates into a 3 cent tax increase and approximately a 6% overall increase in the tax rate. He also said there is rumored there is a $5.4 million budget deficit. He said the City already has infrastructure problems and we are losing 25% of our water in leaks. He asked what the money would be used for, what will happen for our reserves, and is it our goal to have Asheville as the highest City to live in. He wondered why so much land will be used for parks, etc., when there is a scarcity in land for housing for the poor.

Parks & Recreation Director Irby Brinson responded to Mr. Edgerton by saying that the $18 Million is broken down into four different areas - $6 Million for new facility construction; $6 Million for renovating existing facilities; $3 Million for greenway development; and $2 Million for land acquisition. He then gave examples of several projects in each category.

Mayor Sitnick responded that it is well recognized across the nation that parks, recreation and greenways are all parts of quality of life that drive the economic development engine of communities. She felt it was important to recognize that it's not just about parks and greenways, but about providing things for people in this community to enhance and improve lives. She said there is no question that housing is an important factor for this Council. She said they are looking at housing and all kinds of issues, i.e., the Housing Action Plan and looking at the potential of revenues to support that Plan as well.

City Manager Westbrook responded that the City's budget is balanced as required by State law. With regard to the 25% loss of water due to leaks, he said that the average water loss for a relatively new infrastructure is 15-20%, however, the City is trying to reduce that water loss.

Mayor Sitnick closed the public hearing at 5:37 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the bond order and resolution and they would not be read.

Councilman Cloninger moved that the City Council adopt without change or amendment and direct the City Clerk to publish a notice of adoption, as prescribed by The Local Government Bond Act, of the General Obligation Parks, Recreation and Greenway Bond Order entitled "Bond Order Authorizing the Issuance of $18,000,000 General Obligation Parks, Recreation and Greenway Bonds of the City of Asheville, N.C.," which was introduced at the regular meeting of the City Council held on December 8, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

Councilwoman Field moved for the adoption of Resolution No. 99-10, Resolution setting a special bond referendum and directing the publication of notice of a special bond referendum and notification of the Buncombe County Board of Elections. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 117

C. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING A WIRELESS TELECOMMUNICATION FACILITIES ORDINANCE

ORDINANCE NO. 2535 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING A WIRELESS TELECOMMUNICATION FACILITIES ORDINANCE

Mayor Sitnick opened the public hearing at 5:39 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Senior Planner Gerald Green said that the Planning and Zoning Commission has reviewed and is recommending approval of a revised telecommunications facilities ordinance, which establishes new standards for telecommunication towers and related facilities.

Provided for Council's consideration is a draft Telecommunication Facilities Ordinance. Revised standards for the location and erection of telecommunication towers and related telecommunication facilities are set forth in the proposed ordinance. The ordinance amendment was prepared at the request of City Council by a consultant hired following a request for proposals and review of submitted proposals. Council identified specific goals which were to be accomplished by the proposed ordinance amendment. These goals included:

- Provision of wireless service to all areas of the community;
- Minimize the aesthetic impacts of wireless infrastructure;
- Promote co-location of existing structures;
- Encourage concealment, camouflage, and stealth technologies;
- Protect mountain ridges from tower proliferation; and
- Anticipate technological advances and obsolescence.

As part of their review of the proposed ordinance amendment, the Planning and Zoning Commission directed that two opportunities, other than regular meetings of the Commission, be provided for input by representatives of the telecommunications industry. As a result, representatives of the telecommunications industry met with staff on one occasion and with members of the Commission (with Council members invited) on another occasion to discuss their concerns regarding the proposed ordinance.

At the Planning & Zoning Commission meeting on December 2, 1998, the Commission voted 4-3 to recommend approval of the amendment with the following revisions:

- Provide a range of dates for balloon and crane tests and allow the applicant to provide photographs of the tests, as recommended by the industry representatives; and

- Provide tower owners with notice that the required annual renewal of their license is due.

Following the review of the revised telecommunications ordinance by the Planning & Zoning Commission, and their recommendation for adoption of the revised ordinance, staff met with the consultant and Councilmember Cloninger to discuss possible revisions to the draft ordinance amendment which would address the concerns expressed by the telecommunications providers. The proposed revisions are:

- On Page 18, No. 47 (c) read "Wireless telecommunication facilities may be co-located on any structure which hosts one or more existing permitted and approved wireless telecommunication facilities ...."

- On Page 19 (d) read "Where co-location is proposed by use of a combiner ... an equipment enclosure which houses only the combiner and amplifiers may exceed the maximum permitted dimensions for other types of equipment closures up to a maximum of 70 cubic feet."

- On Page 20 No. 6 read "The Planning and Development Department Director may require as a condition of approval ...."

- On Page 23, delete No. 5.

- On Page 29, delete No. 3.
- On Page 40 (s), read "In addition, concealed structures must be set back from any residentially zoned or used properties a distance ...."
- On Page 28 (o), read "In addition, telecommunication towers must (be) set back from any residentially zoned or used properties a distance ...."
- On Page 40, delete No. 2.

The revisions address many, but not all of the concerns expressed by the telecommunications providers. The major concern of the providers is the height limitation of 100 feet for support structures (towers). Providers have argued that restricting the height of support structures to 100 feet will result in the need for more support structures (possibly 12-15 more). The consultant has pointed out that a height limit of 100 feet will not result in significantly more support structures and that a goal of the draft ordinance is to protect the aesthetic quality of the City of Asheville by restricting the height of support structures. Other concerns of the providers include (1) the providers would like input into the final selection of consultants to be involved in the review of the applications for towers; (2) they would like the electric transmission towers to be considered for the location of antenna to be limited to those towers located within the search area rather than any tower located within one-quarter mile; and (3) the would like for the ordinance to provide Council with greater flexibility in the establishment of setbacks rather than having a certain defined setback for all telecommunication facilities.

The Planning & Zoning Commission voted 4-3 to recommend approval of the draft ordinance amendment with the two revisions noted above. The Commission has not seen the revisions recommended by the consultant. Staff recommends that City Council consider adoption of the revised telecommunications facilities ordinance, which establishes new standards for telecommunications towers and related facilities, with all revisions.

Mr. Paul Rosa, consultant retained by the City to develop the wireless telecommunication facilities ordinance, reviewed the substantive revisions to the ordinance since the original draft was presented to City Council on September 1, 1998. We had five types of facilities in the 9-1-98 draft, the microcell, concealed facilities, co-location, conventional telecommunication towers and a concealed telecommunications support structure. The changes are as follows:

- Definition for "Microcell" and "Wireless Telecommunication Facility, Microcell." The original definition restricted equipment enclosures to 25 cubic feet, and antennas to 3 feet in height and a combined surface area of 10 square feet. These restrictions were based on microcell specifications provided by a number of microcell manufacturers. The revised definition has expanded these parameters to allow equipment closures of up to 40 cubic feet, and antennas of up to 8 feet in height and 30 square feet total surface area. This allows use of full-sized antennas, yet restricts equipment enclosures to a smaller size than is typically found with full size base stations.
- Concealed Wireless Telecommunications Facilities - Increased Antenna Heights. The earlier draft limited antennas concealed behind an RF-transparent facade to 6 feet in height. Revisions allow panel antennas up to 8 feet in height, and allow omnidirectional (whip-type) antennas concealed behind an RF-transparent facade that is at least 8 feet in height to extend above the facade a distance equal to the facade height.

- Height Extensions of Electric Distribution Poles in Residential Areas. Revisions allow wooden electric transmission poles to be extended in height to the lesser of 20 feet above the vegetative canopy (as determined by the City Arborist) or 80 feet. This allows wireless facilities to service virtually all areas of the City of Asheville, particularly on ridges where they may be few parcels with a public use character where Concealed Telecommunication Support Structures would be allowed as a conditional use. No more than one such pole may be extended in height within 1230 (1/4 mile) of a similar extended-height pole. Height extensions would be allowed in all residential areas for Microcells, and in Residential Multiple zoning districts for Concealed facilities.

- Co-location Treated as a Use by Right, Subject to Special Requirements. The earlier draft treated co-location as a Conditional Use in order to give the City Council the opportunity to determine whether specific nonconforming towers could be decommissioned, reduced in height, or relocated. This was seen as cumbersome by industry. Since the majority of nonconforming towers targeted by the original provision were government-owned, it was felt that the City and its instrumentalities could exercise their role as property owners to limit undesired co-location. By making co-location a Use by Right, Subject to Special Requirements, an incentive is provided to encourage industry to co-locate.

- Primary Public Safety Provider Exception Eliminated. The earlier draft included an exception for Primary Public Safety Providers allowing them to exceed the 100 foot height limitation (up to 199 feet) and permitting them to place towers on Restricted Mountain Ridges. Even though legally permissible under the Telecommunications Act of 1996, it was felt that the City should hold itself to the same standards imposed on industry. Since only one additional tower is in issue, it was felt that this was a reasonable accommodation.

- Notice of Intent to Remove Abandoned Wireless Facilities. Industry has asked for written notice to be given by the City of Asheville prior to removing abandoned or unused wireless facilities to preclude administrative oversights of permit renewal requirements at their corporate headquarters. The revised draft requires the City to give 30 days written notice to affected wireless providers prior to removing such facilities.

- Flexible dates for Crane/Balloon Tests. Industry has asked for flexibility in notifying affected property owners of scheduled dates for crane/balloon test simulations of proposed Telecommunication Towers and Concealed Telecommunication Support Structures to accommodate inclement weather conditions. The revision provides that applicants shall notify affected property owners at least 10 days in advance of the primary test date, and shall specify primary and alternate dates, as well as a range of test dates.

- Natural Disaster Performance Standards. Based on advice that Asheville was located on a known earthquake fault line, the earlier draft contained specifications regarding survivability of wireless facilities. In order to accommodate industry concerns that these provisions were overly restrictive, and in light of the fact that the likelihood of earthquakes was fairly remote, these provisions have been eliminated.

Mr. Rosa said that he has given Council a specifications sheet for a Personal Communication Services (PCS) Antenna Combiner. He felt this is a way to co-locate now with this combiner for the PCS carriers.

He said that the one thing they did not concede was the height limit. He felt it was vitally important for communities today to establish a height baseline and he would recommend not going above that height. He explained his reasons for his recommendation.

Mr. Rosa noted that they create on additional new zone, which is the Controlled Access Facilities Zone (essentially the State highway rights-of-way). Staff has not completed the full text of that, so any adoption of the ordinance should include a reference that that supplemental text will be provided by staff.

He presented Council with an article on a 130 foot BellSouth Clock Tower which provides for three wireless carriers in Charlotte, N.C. Companies are building nice things elsewhere, they should build them here in Asheville as well. When you look at costs, you just can't look at the City of Asheville. These companies have between 2-5 million customers or more and the costs are spread across networks.

Mr. Rose felt that this ordinance reflects what they have heard from the community - low profile wireless infrastructure and access everywhere. He felt they accomplished that with the proposed ordinance while trying to be fair to industry.

Upon inquiry of Councilman Cobb, Mr. Rosa explained that it will be a few years before satellite communications will be competitive.

Mr. Larry McDevitt, attorney representing Bell Atlantic Mobile, said that he would not be speaking for the industry, however, they would like to address areas of common concern to the companies. He felt there are some items in the proposed ordinance that are not fair from an industry prospective. He explained briefly how a cellular telephone works and the necessity of the towers. He handed out to Council a document entitled "Requested Changes to the Proposed Text Amendments to the City of Asheville Unified Development Ordinance relating to Wireless Telecommunications Facilities." He then started to review the six main concern points addressed in the document as follows:

He strongly urged Council to consider an amendment to the 100 foot limitation height. He said their experts have told them that the minimum height they need in this area for optimum service to this community is 114.6 feet - that is without any co-location. If another company is on the same tower, you have to have about 20 feet, not from the tips of the antennas, but from the core of the tower. If you are at 115 feet and you want two other companies, you will need 145-150 feet for a triple location tower. Their concern is that with the 100 foot limitation, there will be times when the area will be such that they can provide very good service with a 100 foot tower, however, other times it will simply be too low and not suitable. Most of the time a 100 foot tower will destroy the ability of co-location, limiting only one company per tower. That will result in increases in the number of communication towers that will be needed. He proposed that if the limit remains at 100 feet, the ordinance be amended so that City Council can approve a tower of up to 150 feet if the applicant can demonstrate five specific standards. If Council does not accept this proposed amendment, at a bare minimum, the height limitation needs to be at 115 feet. A study revealed that people from all segments of society are applying for these services demonstrating that the people of Asheville want cellular telephone services.

He next issue is the five year conditional use renewal requirement. He said he has already expressed concern about the legality of this requirement. He felt it was not fair for the industry to make an investment in land and property and then have it taken away for no reason after five years. He requested some objective standards by which the City will judge whether to remove the tower or not. It was his understanding from discussions with Mr. Green, City Attorney Oast and Mr. Rosa that this was a good idea and that proposals would be included in the ordinance to address that issue. However, it is also his understanding that it was not done and there was not enough time to do it. He asked that City Council not consider this section today, but ask that staff come back in perhaps 30 days with another section that incorporates ascertainable, identifiable standards. He felt it was only fair for the industry to know what they had to do before someone tells them they can't use their tower.

Their next topic of concern is the annual wireless telecommunication facility permit. He said that Mr. Rosa amended the ordinance to add 30 day written notice requirement prior to removing the telecommunication facility. He said because there are a lot of people working in this area, that the opportunity to miss a renewal date can easily happen. His proposal asks that the industry be given 30 days notice that they have not filed for their renewal permit, so that they will have an opportunity to renew it.

Mr. Gary Pennington, attorney representing Bell Atlantic Mobile, said that the flexibility of setback requirements should be amended. He said that as the ordinance reads, at a minimum, if the tower is adjacent to a residentially zoned property or a property on which is located a residence, the tower has to be set back at least one-half the height of the tower (50 feet if the tower height is limited to 100 feet). He asked City Council insert some flexibility into that standard to give the City Council the discretion to examine, on a case by case basis, each application. Since each piece of real property in Asheville is unique and if the overall goal is to lessen the aesthetic or visual impact of the tower, he felt that City Council should have some flexibility to meet or achieve that goal by having some discretion on what that setback should be.

Mr. Pennington said their next issue of concern is the use of an outside consultant for application review by the City of Asheville. The industry feels that this item should be deleted. There is a $2,500 application fee and in addition to the application fee, they would be required, if the City deemed it necessary, to submit a $5,000 bond to reimburse the City for the cost of using a consultant to review the application and to advise the City Council on the application. As a compromise, they request that the City prepare a list (perhaps five) of qualified individuals who could serve as consultants if necessary. The industry should then have the opportunity to exclude some, but not all, of the consultants. They are concerned with the qualifications of the consultant and his impartiality as to the City or the applicant. The City would have final say in the selection from the remaining names.

He then said that their final concern is the required use of electric transmission towers. The ordinance, as written now in two instances, requires that before a tower is approved or before a concealed telecommunications support structure is approved, that the applicant utilize an existing electric transmission tower to place its antenna. Primarily, they've asked that the language "... within one-quarter mile (1320 feet)" be deleted from the text and insert "... within the search area." He explained that what they are asking is that if there is a transmission tower within their search area, they will attempt to us it, with some exceptions (items which they have no control over that would make that transmission tower unsuitable). He then explained what is meant by a search area.

Vice-Mayor Hay was concerned that if we do not act on the portion of the text relative to the five year conditional use renewal requirement at this point, there will be a hole in the ordinance. He was uncomfortable in leaving a portion of the ordinance out. He wondered if it would be possible to act on the ordinance with this requirement in it and then take action to schedule a review of changes to that portion of the ordinance.

Councilman Cloninger reminded Council that it will be five years before that requirement will take effect. He felt Council should adopt the ordinance as is and then amend it at some later date, if appropriate, to add some additional language.

City Attorney Oast said that if Council wanted to try to address some of the concerns raised by the industry representatives, it may be appropriate to give staff direction to re-examine those issues. He said that staff is willing to work with industry representatives and reconsider any issue upon direction by Council. Regarding Council's not acting on the language about the five year conditional use renewal requirement, he would feel more comfortable if Council either acted on it or deleted it with the intention of not doing anything about it, rather than leave it undetermined for some period of time.

Councilman Tomes was concerned that no RF Engineer was involved in this ordinance drafting, given the kind of scientific data involved. Mr. Green said that to his knowledge, the only RF engineers that have been involved in the review of this were those who work for or who were under contract for the providers of telecommunication facilities. Mr. Green said that based on his knowledge of the ordinance and in working with Mr. Rosa in the drafting of this ordinance, it is his opinion that Mr. Rosa has the necessary credentials to prepare the draft ordinance submitted to Council. He felt that with his limited knowledge, the RF engineering would come into play until the detailed siting of the telecommunication facilities and the actual construction of those facilities.

Upon inquiry of Councilwoman Field regarding the five years conditional use permit renewal, City Attorney Oast explained that if the requirement remains in, then the five year limitation doesn't affect anyone for five years. However, he thinks that the industry raises the point that it does affect them now because that's a decision they have to make going into the situation. Mr. McDevitt is asking that Council delete that requirement from the stated requirements of the ordinance which, if an operator makes application for a conditional use permit and that provision is not in the ordinance, then if the permit is granted, they may be able to have the tower up in perpetuity.

When Councilwoman Field asked Mr. Rosa if it would be possible to come up with some objective standards that a company would have to meet after five years to continue their conditional use, Mr. Rosa said that he did think that would be possible and that it would take some time in that he didn't know what criteria the industry or City Council would want included.

Upon inquiry of Mayor Sitnick about a statement which said that City staff and Mr. Rosa promised to include in the proposed ordinance certain objective standards for the five year review, Mr. Green responded that he did remember stating that they would work on the standards, however, he did not recall having promised that it would be included in this draft ordinance.

Councilman Cobb said that on page 33 of the draft ordinance, the sentence reads "Before a permit shall be issued or renewed, an applicant or permitee must certify that: ..." It then lists six different conditions to be met. He felt those standards should suffice as the objective standards for the five year review. Mr. McDevitt responded that those standards just apply for the annual permit, not for the five year conditional use renewal.

Mr. George Saenger, attorney representing Triton and America Tower, do support the six major concerns that Mr. McDevitt and Mr. Pennington outlined above. However, as the draft ordinance now reads, Triton and America Tower are opposed to it. He felt that the effect of the ordinance is limiting the providers to provide new technology. Triton would provide better service at a lower cost, however, this ordinance precludes that from being offered across the board to the citizens of Asheville. This ordinance provides for limited service and limited access. He felt that the City needed to do a better balancing act than just meeting the legal requirements. You need to find a system that will allow you to have the best wireless communications system in the town and still meet the other aesthetic goals. He explained that even if Council amended the ordinance with the six amendments outlined by Mr. McDevitt and Mr. Pennington, they are not saying that they have no other objections to the ordinance. However, they would be willing to participate in any further review and then make known their specific objections over and above what the six concerns.

Mr. Jack Tate, attorney representing U.S. Cellular, supported Mr. McDevitt and Mr. Pennington's comments. He said they hired an expert, Mr. Hodnett, who is the Chief Radio Engineer for the FBI and also a consultant for the Dept. of Defense, who made the determination of the height minimum of 114.6 feet in this area because of our topography. On that basis alone combined with this Council's goal of providing service that the community wants, we would submit there needs to be flexibility to go above the 100 feet height limit. They would prefer the 200 foot limit, but are willing to work and demonstrate that in any particular case, they need a different height above the 100 feet. Since he was told there has only been one application in two years, he could not see the rush in adopting this ordinance without even considering the six major concerns previously mentioned.

Upon inquiry of Councilman Cobb, Mr. Tate said that there are maybe 8-12 U.S. Cellular towers in this area now, but did not have the information with him on their height.

Mr. Steve Lewotsky, representing SBA, agents for BellSouth, agreed with the prior comments made earlier by industry representatives. He felt that there has been a lot of information presented to City Council in ways that this ordinance can be made more effective and better for the community and providers. He would appreciate it if Council would look at the information again to come up with a better ordinance.

Mr. Mike Lewis felt that the towers represent the degeneration of Asheville and our quality of life. Cellular towers have become blight on the landscape. The over-riding consideration is not how badly do we need cell service in this community, but one of aesthetics because Asheville has two things going for it - quality of life and our people. He urged Council to consider very hard about making any changes to the proposed ordinance. He felt some consideration should be given to the type of notice the City gives before termination of a license and taking down a tower. If Council does want to consider the six amendments, then Council should put a moratorium for the duration on any new towers until the sections of the ordinance can be worked out. The proposed ordinance seems to suit Asheville's needs and he urged Council to consider adoption of the proposed ordinance and work on the glitches as time goes on and we learn more about it.

Mr. Leonard Smith agreed with the comments made by Mr. Lewis. He felt no one should tell the City of Asheville who they can use as a consultant, especially someone who is trying to do business with the City. He said that any group who gets a license to have a tower and then forgets to renew it shouldn't be given the license in the first place, due to inefficiency. He recommended City Council adopt the proposed ordinance and then come back and review the five year conditional use renewal requirement. He felt there was good arguments on why it should not be a perpetual license.

Mr. U. Morrison encouraged City Council to consider carefully all the information that has been presented. He said the industry does have some major fine points, however, he does not appreciate the massive towers. He felt that a specialist on the City's behalf seemed like a good idea.

Mr. Rosa said that the only change that he would make that the industry has suggested is on the notice provision. He felt that it would not be unreasonable to add in a requirement that they be notified 30 days before their renewal date, in addition to the 30 days before a facility is removed.

Mr. Rosa said that respect to the height, he gave an example of an actual installation on a wood pole that is flush with the tree line in the immediate area. To say that it will not work below 100 feet, is not a fair characterization. In fact, he has seen a U.S. Cellular installation with their name on it that is on a wood pole in Roanoke, Virginia, that is 10 feet in height.

Mr. Rosa responded to the RF engineer concern. He said that he is aware that engineers could be brought in if necessary. He said BellSouth Mobility offered to make their engineers available to the City. The City did provide them some data on alternative locations and after we received no response, we were told they preferred to withhold the data.

When Councilman Cobb asked what advantages would an additional 15 feet be to the height, Mr. Rosa said that the 100 foot height restriction is a baseline that is reasonable and which was arrived at after a lot of factors were discussed and analyzed.

Mayor Sitnick closed the public hearing at 7:16 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field said that she was fairly uncomfortable with the issue of the 100 vs. 115 feet height restriction. Since she has not heard any good, substantial reasons for why the height restriction is 100 feet, she would like to have an engineer advise her what the difference is between 100 feet and 115 feet. She had a real problem with the staff not having some engineering backup on the choice of 100 feet. She said that she would be willing to adopt the proposed ordinance today if there could be some direction to staff to look at the industry comments within some sort of timeframe. She felt there are some points the industry has raised that makes sense and she would support.

Councilman Tomes echoed the same comments as Councilwoman Field relative to the engineer issue. He said that he would be willing to vote for the ordinance with the condition that we be in a position to come back and amend it later, if necessary.

Mayor Sitnick didn't think there was any problem with City Council adopting the ordinance today and then working on amendments. She said that Council can instruct staff to look at any one of the proposals brought forth by industry, as well as other revisions.

Councilman Cloninger strongly encouraged City Council adopt the proposed ordinance as is at this time and would be supportive of reviewing amendments in the future. He felt we are on the threshold of having many applications filed for towers and he would much rather have those be applications filed under this revised ordinance than the one that is currently in effect. He did feel that the revised ordinance is an excellent ordinance and it does meet the goals set out by City Council.

Councilman Cloninger moved to adopt Ordinance No. 2535, with the provision that the text for the new Controlled Access Facilities Zone will be inserted by staff. This motion was seconded by Councilman Tomes.

Vice-Mayor Hay supported voting for the revised ordinance as is and then directing staff to review the industry comments. He did think that Council needs to be open to some amendments because he would like to have an ordinance which is flexible. He said he was more interested in the flexibility to 150 feet than he was to setting the restriction at 115 feet. What the industry proposes does put the burden on them to come to City Council to either approve or deny the request. Regarding the five year conditional use renewal requirement, he felt that Councilman Cobb was correct in that there are some standards in the ordinance and the industry would like to know that it will be renewed in five years. However, he was not sure that's what a conditional use permit is meant to be under these circumstances. Regarding the notice requirement, he felt that was the easiest thing for Council to amend because that will not come up for a year. He felt that the setback issue and the list of consultants can be considered in due course to see if that's the kind of flexibility we want to bring in.

Mayor Sitnick would like to see some fair exchange regarding the 100 foot height restriction. If Council considers more flexibility in the height, she would like to see if the industry would perhaps go to their 200 foot towers and apply some stealth technology or lower them if 200 feet is not a necessity. She echoed Vice-Mayor Hay's concerns on the five year conditional use and wanted to be very cautious on how the City proceeds with that. With regard to notification, she's not sure the City should be burdened with notifying industry that there is a permit renewal requirement coming up. She would like to adopt the revised ordinance as is and direct staff to work with Mr. Rosa and with the industry on some of the points outlined today.

The motion made by Councilman Cloninger and seconded by Councilman Tomes carried unanimously.

City Manager Westbrook said that since the Planning & Development staff has a current list of priorities from City Council that they are currently working on, he suggested that at an upcoming worksession the matter relative to possible amendments as a result of industry comments be brought back along with all the other priorities so that they can be prioritized in the overall scope.

Councilwoman Field felt that the industry deserved to have the staff come back with their comments on these recommendations within 60 days.

Vice-Mayor Hay noted that if the ordinance is amended, it will have to go back to the Planning & Zoning Commission for their recommendation and then back to City Council.

At the suggestion of Councilman Cloninger, it was the consensus of Council that at Council's annual retreat in approximately two weeks, that a timeline be discussed for possible amendments to this ordinance.

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At this time 7:33, Mayor Sitnick announced a short break.

D. PUBLIC HEARING TO CONSIDER THE REALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FROM HILL STREET/CHERRY STREET TO CITY-WIDE REHABILITATION

ORDINANCE NO. 2536 - BUDGET AMENDMENT TO REALLOCATE $160,000 IN COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FROM HILL STREET/CHERRY STREET TO CITY-WIDE REHABILITATION

Mayor Sitnick opened the public hearing at 7:58 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Ed Vess, Field Services Coordinator, said that this public hearing will be to consider the reallocation of $160,000 of Community Development Block Grant (CDBG) funds from the Hill Street/Cherry Street Project to the City Wide Rehabilitation Program in order to utilize current funds according to immediate needs.

The Hill Street/Cherry Street Project is the CDBG budget title for the Head of Montford Redevelopment Project activities. The need for Redevelopment Project activities has diminished with the increase in private investment in the Montford area. Indeed the increase in property values in Montford has outdone the average for Asheville by two times. To a large extent all of the goals of the redevelopment plan have been realized. Although some work remains to be done, funding for such activities should be routed through the CDBG funding process as specific projects are developed. The project budget has a current balance of $172,600 which has been carried over from prior years and represents funds that were not needed to carry out the activities for which they were originally scheduled. The projected need to fund currently planned activities amounts to approximately $12,600 leaving a balance of $160,000. The City Wide Rehabilitation Program has an immediate need for funds for homeowner rehabilitation loans. In assessing the need for funds in Montford compared to the shortfall of funds for homeowner rehabs Community Development staff have determined that a greater need exists in the City Wide Rehab Program.

The reallocation of $160,000 for which no activities are currently planned from the Hill Street/Cherry Street Project to the City Wide Rehabilitation Program will enable the rehabilitation of an additional five to seven homes.

Councilwoman Field said that this did come before the Housing & Community Development Committee and some people from the Head of Montford wanted to reserve this money. She said that in the future if there is a project to fund, we can certainly consider that. However, the Committee felt that the opportunity to do something with the money now was an appropriate reallocation. She again noted that this will not close the door on future projects.

Upon inquiry of Mayor Sitnick, Mr. Vess said that there would be no assurance that the funds would be available in the future for a Head of Montford Project other than the fact that the City of Asheville does receive annually CDBG entitlement funds. Each year the City goes through a funding process where they invite applications from non-profit groups for projects that are eligible. The Head of Montford's application would be just like any other non-profit group completing an application. Their application would be evaluated, along with any other applications, as to its merits.

Mayor Sitnick said that the City of Asheville has invested quite a bit of money over the years into the Montford community to preserve a wonderful historic district. She hoped that for future projects there would be some ease of that area getting the necessary funds for future projects.

Discussion surrounded the Hill Street/Cherry Street original project and how many factors came together to make the Head of Montford a success. He noted that all to a large extent, all of the goals originally set for the Head of Montford Project have been realized since 1987.

Upon inquiry of Councilwoman Field, Mr. Vess said that in excess of $5.5 million of CDBG money in the Montford community since 1987. He said that did not even include the private dollars that were leveraged as a result of much of this public investment. He also noted that Montford, like any other community within the City limits where there are low income people living, would still be eligible for the City-Wide Rehab Program. There would not be any withdrawal from Montford, it's just a matter of there is not currently a project designated for those funds.

When Mr. H.K. Edgerton asked if the money can be used for projects on the river, Mr. Vess recommended that if they are interested for a project which is not in place yet, that they apply for the CDBG funding cycle.

Ms. Elizabeth Graham, property owner in the Hill Street/Cherry Street area, said that Mr. Vess is saying that if the money is reallocated from this project area, that all the goals that can be met, have been met. She asked Council that if they are going to reallocate the money from the Montford area that Council adopt a resolution which states that the Montford Redevelopment Plan is now terminated. She said that Asheville has a history of starting plans and not always ending them in a nice, clean package. She said that if Council is not going to terminate the Plan and put it in writing so that all the property owners are aware of that, then she suggested Council leave the money where it is.

Ms. Lake encouraged the City Council to reallocate the funds to the City-Wide Rehab Program. She represents an 81 year old lady who has been on a waiting list for seven years for rehab.

Upon inquiry of Mayor Sitnick if it is customary to close out a plan when money is reallocated, Mr. Vess said that it is not, under the Community Development Program, necessary to go through any type of official close-out. It's just a matter of Council acknowledging that the project has been completed and you no longer fund it as a project. Again, that does not mean that the community cannot receive CDBG funds for various projects in the City-Wide Rehab Program.

Councilwoman Field said that the Housing & Community Development Committee would be happy to review the request for a closing out the Montford Redevelopment Plan and report back to City Council their recommendation. She said that she would be interested in knowing the pros and cons of closing out the Plan.

When Councilman Tomes noted that he knew a couple of people in that area whose homes were in need of rehab, Mr. Vess said that there are three houses in the Montford area now that will be rehabilitated with the reallocation of these funds. He also said that if there are homes in the Hill Street area that people know about, he encouraged them to contact the Community Development Division and submit an application, or give him their names and addresses and he would contact them.

Mr. Vess responded to questions from Mr. H.K. Edgerton of what other types of programs are available for rehabilitation

Mayor Sitnick closed the public hearing at 8:30 p.m.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilwoman Field moved to adopt Ordinance No. 2536, to reallocate $160,000 of Community Development Block Grant funds from the Hill Street/Cherry Street Project to the City Wide Rehabilitation Program. This motion was seconded by Councilman Cobb and carried unanimously.

Councilman Cloninger moved to refer to the Housing & Community Development Committee the question of whether or not to recommend appropriate action to terminate the Head of Montford Project. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 240

E. PUBLIC HEARING TO CONSIDER THE ADOPTION OF A SMALL AREA PLAN KNOWN AS THE CHARLOTTE STREET CORRIDOR PLAN AS AN ADDENDUM TO THE COMPREHENSIVE PLAN FOR THE CITY OF ASHEVILLE (ASHEVILLE CITY 2010 PLAN)

RESOLUTION NO. 99-11 - RESOLUTION TO CONSIDER THE ADOPTION OF A SMALL AREA PLAN KNOWN AS THE CHARLOTTE STREET CORRIDOR PLAN AS AN ADDENDUM TO THE COMPREHENSIVE PLAN FOR THE CITY OF ASHEVILLE (ASHEVILLE CITY 2010 PLAN)

Mayor Sitnick opened the public hearing at 8:32 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Mike Matteson, Urban Planner, said that this is the consideration of adoption of the Charlotte Street Corridor Plan, a small area plan developed by the Planning and Development Department for Charlotte Street from I-240 north to the end of the street.

In January of 1996, the Asheville City Council directed the City Planning and Development Department to develop a small area plan for the Charlotte Street Corridor. Staff has completed a draft plan for the corridor which is largely based upon input and participation from various stakeholders of the community. This input and participation included numerous advisory committee meetings, a half-dozen community meetings, a two-day Charette, as well as recent meetings with various groups and individuals representing both the business and residential communities.

The Charlotte Street Corridor Plan addresses three primary issues which were identified by the community as being the most important issues facing the street. These three issues are;

1) vehicular and pedestrian circulation
2) land use, and
3) streetscape and appearance.

For each of the three major issues, the plan establishes a set of goals and recommendations. The goals are broad statements of purpose and describe the desired end result of the plan - what is to be accomplished. The vehicular and pedestrian circulation goals are (1) to improve the safety and efficiency of all modes of transportation within the Charlotte Street corridor; and (2) promote increased pedestrian activity as well as alternate means of transportation within the Charlotte Street corridor. The land use goals are (1) continue the existing balanced mix of uses on Charlotte Street between commercial, residential, institutional and open space; and (2) encourage compatible new development that serves adjacent neighborhoods and helps to create an economically vibrant pedestrian environment. The streetscape and appearance goal is to improve the appearance of Charlotte Street and create a unique and unifying image for the corridor. He then reviewed the recommendations which outline ways in which the goals can be accomplished. The plan emphasizes cooperation and incentives as the keys to successful implementation of the plan.

Upon adoption by the City Council, the Charlotte Street Corridor Plan will become part of the Asheville City Plan: 2010 and will serve as a guide for future development and improvements along the street.

With regard to goal no. 2 under vehicular and pedestrian circulation, the Planning & Zoning Commission recommended that within a year from adoption of the plan, this issue should be examined at a workshop by experts from such fields as traffic engineering, transit, planning and pedestrian planning in order to develop alternate methods of achieving this goal. This workshop was a recommendation of the Planning & Zoning Commission who also asked City Council to set aside some funding in the budgeting process this spring to provide for that workshop.

Recently, the Charlotte Street business community has offered comments and expressed concerns regarding an earlier version of the draft plan. Following review of these comments/concerns, the Planning and Development staff met with various groups and individuals representing both the business community and the surrounding neighborhoods. Staff then proposed a number of modifications to the plan which were based upon the meetings with these various groups and individuals.

At their December 2, 1998, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the small area plan with some minor revisions to the Plan which have been included in this draft. The Planning and Development Department also recommends approval of the small area plan.

Mr. Matteson said that this small area plan is intended to be a guide for future development and improvements on the street. It is not intended to be a regulatory document nor is it intended to lead to new regulations. The Planning staff feels very strongly that the best way to implement this plan is through cooperation between the various groups that will benefit from the plan - the business and property owners, the residential neighborhoods, and the City. The staff also feels that incentives can and should be a key in implementing this plan as well.

Upon inquiry of Councilman Sellers of the estimate of the cost of the workshop requested by the Planning & Zoning Commission, Mr. Matteson said that he did not have an estimate at this point but would have an estimate in plenty of time for the budgeting process.

Ms. Jane Mathews, speaking as liaison from the Planning & Zoning Commission, said that at the Commission's December 2, 1998, and January 6, 1999, meetings, the Commission did make specific changes to the plan and requested that those changes be included as worded by the Commission. She felt the workshop is very important to help resolve some outstanding issues. The Commission felt that a neutral third party to facilitate the dialog and with some technical expertise in terms of creative solutions that would look at not only the vehicular traffic issues, but all of the other issues in a way that would be acceptable to everyone involved. Regarding the Capital Improvement Program allocation, she hoped that members of the business and neighborhood community might contribute through grants or through gifts to the community to help fund that process. Regarding the issue of transition overlay, she said the Commission changed the wording to "explore applications of an overlay zoning district" to not necessarily nail it down to transition or other planning strategy or tool.

Mr. Mike Ward, resident of 15 Terrace Road in Albemarle Park, said that the essential theme which has evolved from all the meetings centers around traffic. He, too, suggested the workshop described by Ms. Mathews. He also suggested that the link to downtown from North Asheville should be Central Avenue and that this too be included in the collaboration of the workshop. During the advisory board meetings, he has struggled with the 1997 traffic study as done by the City Traffic Division in that there is an underlying assumption that whatever benefits or facilitates traffic also is a positive for the pedestrian. He said that it has been a rough 2-3 years, however, he does think we have a good plan with still some details to work out.

Mayor Sitnick closed the public hearing at 8:57 p.m.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Tomes moved for the adoption of Resolution No. 99-11, with the specific wording amendments adopted by the Planning & Zoning Commission at their December 2, 1998, and January 6, 1999, meetings as reflected in their minutes. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 120

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 99-12 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PRECISION CONTRACTING INC. FOR THE SHORT-TERM STABILIZATION OF ZEALANDIA BRIDGE

ORDINANCE NO. 2537 - BUDGET AMENDMENT, IN THE AMOUNT OF $50,000, FOR THE SHORT-TERM STABILIZATION OF ZEALANDIA BRIDGE

Ms. Suzanne Molloy, Assistant Public Works Director, said that as directed by Council, staff developed a public/private partnership to both stabilize the Zealandia Bridge and establish guidelines for the long-term funding of full bridge restoration.

At City Council's December 15th meeting staff was directed to (1) seek and evaluate short and long-term private funding sources; and (2) obtain access easements from adjacent property owners.

On December 22nd, staff held a community meeting to discuss the above issues. Attendees included Windswept Drive property owners, members from the Historic Resources Commission, and interested citizens. The group unanimously endorsed the short-term stabilization of the bridge (with a private pledge of $40,000), fencing off the bridge from curious citizens in order to prevent loitering, and the formation of a committee to work with the Parks and Recreation Department to fund and develop a park on City property adjacent to the bridge.

A combined effort of Quality Forward, the Historic Preservation Society, and private individuals has resulted in the raising of $40,000 for the initial stabilization project. A committee with these individuals and organizations will immediately be established and responsible for raising the remaining funds for the permanent rehabilitation effort of the Zealandia Bridge and park development. Estimated costs for the entire project may range up to $800,000.

Quality Forward will coordinate the transfer of $40,000 to the City for Phase I of the project. In conjunction with the committee, Quality Forward will oversee additional fundraising efforts for the remainder of the project. The City will develop a Memorandum of Understanding with the committee outlining requirements for fundraising to be completed no later than January

1, 2002. Upon raising 80% of the funds, the Parks and Recreation Department will update Council on the project.

The Parks and Recreation Department will be responsible for designing and programming the park development at the Beaucatcher reservoir. The Water Resources Department is amenable to park development subject to easement restrictions (for water lines).

Staff is still seeking two access easements to the bridge.

Beaumont Street is currently closed to vehicular traffic pending stabilization efforts.

Staff recommends approval of (1) a budget amendment for $50,000 for the short-term stabilization of the bridge (80% private funding and 20% public contribution); (2) authorizing the City Manager to enter into a contract with Precision Contracting, Inc. for the short-term stabilization of the bridge; and (3) direction to staff to draft a Memorandum of Understanding with the fundraising committee and Quality Forward specific to funding, deadlines, park development, and full bridge restoration.

Upon inquiry of Councilman Cobb, Ms. Molloy said that the City will have temporary construction easement agreements.

Mr. Robert Griffin recognized that if people were going to invest private funds into restoring the bridge, then it would be nice to have some opportunity for the bridge to be enjoyed by the public. Using that property to the north of the bridge would not only create that opportunity but could in fact create the opportunity for something larger than just this bridge project that would make even more fundraising possible. He said that since mid-December they have raised approximately $1,000 a day toward this project and he felt comfortable that they could raise more to take it beyond what the initial Phase I stabilization was, so that all of that work could be used toward Phase II. They objective is to assist the City in coming up with the funds necessary to spend the money in a reasonable way so that we don't have to un-do anything for the final restoration of the bridge. They have presently raised $37,000 toward their goal of $40,000 and he feels comfortable that they can raise the remaining. He would also like to work with staff to look at the possibilities of enhancing that even further. He passed out to Council a list of donors.

Mr. Dan Foy, resident at 10 Windswept Drive and representative of the residents that live from 10 to 400 Windswept Drive, said that they were concerned about the bridge being restored because they have so many problems up there now, i.e., people shooting guns, vandalism, spray painting on the rock cliffs, etc. They feel that if the bridge is restored, all we are doing is giving them a nice place to trash. The park is a good idea and should be built without the bridge. There are really no views from the bridge now because of the trees grown up on both sides of it.

Mr. Harry Weiss, Director of the Preservation Society, thanked Mr. Griffin for his leadership in spearheading the fundraising efforts. He pointed out that a substantial amount of the funds pledged to this project from the private sector, including the Preservation Society, expresses a contingency that this is tied into the concept of a bridge with a park. He said the funds that are forthcoming for this are essentially in a package deal in terms of their participation. He said there is a lot of activity that goes on around the reservoir and that by creating some active uses in terms of a park, that will hopefully increase the level of participation, stewardship, and policing of the activity that occurs there.

Councilwoman Field said that there is certainly a commitment from City Council to do a park if we can, but there is not money in the budget and the City cannot guarantee to any of the donors that we would end up with a park. The intent is there and it sounds like a good idea, but the money isn't.

Ms. Susan Roderick, representative of Quality Forward, felt that this is one of the greatest public/private projects she has ever seen. She feels that we can make a park up there and we do need to think of what our priorities are. She felt that one way to fix some of the problems the residents are having is by having a care-taker/maintenance person who lives in the area.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2537. This motion was seconded by Vice-Mayor Hay and carried unanimously.

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Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 99-12. This motion was seconded by Councilman Tomes and carried unanimously.

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Councilman Sellers moved to direct staff to draft a Memorandum of Understanding with the fundraising committee and Quality Forward specific to funding, deadlines, park development, and full bridge restoration. This motion was seconded by Councilman Cobb and carried unanimously.

B. FURTHER DISCUSSION OF APPOINTMENTS TO THE ASHEVILLE SCHOOL BOARD

Vice-Mayor Edward Hay said that the terms of Brian Weinkle and Roy Harris, as members on the Asheville School Board, expire on April 1, 1999. He explained that both are eligible for reappointment. He then reviewed the board appointment process and how the School Board appointment process is a long and involved process.

He personally felt that Mr. Weinkle and Mr. Harris are both doing particularly good jobs and we currently have a balanced School Board, both racially and geographically. While we have a long way to go in the City schools, we have made progress in the last two years and the City schools are taking steps in the right direction. He thinks that is because there is a teamwork approach with the School Board and the Superintendent that may well doing what City Council would like to see done with the City schools in the long run.

He said that according to Council's appointment process, we can wait one month and then start talking about reappointment, or we can start talking about reappointment now. If we have an expectation that way, then we need to be talking openly about what we might do in a month. It also gives people an opportunity to comment to Council on what they feel about reappointment.

Mr. Joe Bly passed out data received from the state report card from 1996-97 school year and the 1997-98 school year. He did not propose to stop reappointment of Mr. Weinkle or Mr. Harris because he felt they are doing the best they can, but they are not doing good enough. He represented the 1,000 children in the City school system who cannot read and write in grades 3-8. He hoped his data demonstrates that saying that we need a certain number of African Americans on the School Board, a certain number of women, and a certain number of people living in Asheville geographically is not working.

Mr. H.K. Edgerton felt that Mr. Weinkle and Mr. Harris should be reappointed. He hoped that this Council will have a better influence on our School Board to see that there is some aggressive behavior to ensure that our children have a better chance in succeeding in this community.

Councilman Tomes said that until this community registers it's displeasure over the staggering kind of dilemma that many of our children, African Americans and poor Whites, find themselves in, we will never correct it. The School Board is accountable, but they can only respond to the voice of the community. He didn't think there has been a collaborative, collective effort on the part of community. He felt that if White children were falling through the cracks they would have shut down the school, privatized them or turn it over to someone else. Until the community rallies and make it a community effort, we will be continued to be plagued with this beyond the 21st Century. With the proliferation of technology and the kind of skills and expertise that the labor force is looking for, he felt the community needs to think in terms of the vibrancy and health of the total community, not segments of the community.

As a result of a comment by Mr. Bly about the School Board not being accountable because it is an appointed school board, Mayor Sitnick suggested Mr. Bly contact her to discuss an elected school board vs. an appointed school board.

VI. OTHER BUSINESS:

A. UPDATE ON THE WATER CRISIS

Mr. Tom Frederick, Director of Water Resources, updated City Council on the water crisis stating that as of today, we have 96 days of water left. Recent rains is not a reason to stop conserving. He explained all the efforts being made to educate the public in water conservation and the steps being taken by the City to conserve water as well.

Mr. Frederick responded to a question relative to a commercial bottler buying Asheville water and selling it.

Mayor Sitnick asked for an update from the Water Resources Director and the City Attorney relative to a portion of the City Code dealing with droughts.

B. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 15, 1998, AND THE WORKSESSION HELD ON JANUARY 5, 1999

Councilman Cobb moved for the adoption of the minutes of the regular meeting held on December 15, 1998, and the worksession held on January 5, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

C. CLAIMS

The following claims were received by the City of Asheville during the week of December 11, 1998 - January 7, 1999: John Senechal (Water), Eric Fronrath (Civic Center), Joe Treadway (Water), Kelly McKibben (Traffic Engineering), Dina Herig (Civic Center), James D. Allen (Water), Natalie Grant (Streets), Ryan Dickson (Streets), Benjamin Rogers (Streets), Bill Devlin (Streets), Riveria Mallory (Streets), Margie Gaddy (Streets), Kemper Brown (Water) and David Pilcher (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

D. LAWSUIT

The following lawsuit was received on December 16, 1998, regarding Patrick L. Johnson v. City of Asheville and Metropolitan Sewerage District of Buncombe County, North Carolina. The nature of the proceeding is negligence alleged due to MSD "raising" a manhole structure above the street pavement level to facilitate the resurfacing of the street by the City.

The City Attorney recommends this be handled by an outside attorney.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. ASHEVILLE MOTOR SPEEDWAY

City Attorney Oast said that just prior to this meeting, he received word from Carolina Motorsports, headed by Danny Jones, that they were withdrawing from negotiations to lease the Asheville Motor Speedway for 1999. He said that this was disappointing because they had high hopes for Carolina Motorsports and Mr. Jones and the City had gone far towards getting the necessary approvals from the necessary parties. He did say that this may have happened soon enough that we can perhaps begin negotiations with the other interested party. We still have a lot of things to work out in that respect, however time is of the essence.

Councilman Sellers said that there are a lot of things that are actually behind schedule with the Asheville Motor Speedway if it's going to operate this year. Sponsors, advertisers, car builders, mechanics, etc. need to know whether they should move forward with operating at the Asheville Motor Speedway or start gearing towards another racetrack, such as Hickory or Spartanburg.

Councilman Sellers moved to instruct the City Manager and City Attorney to pursue negotiations with John Huffman and James Young and that they report back to Council with their recommendations as soon as possible. This motion was seconded by Councilwoman Field and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:55 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - January 19, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Bids for Relocation & Refurbishing of Existing Furniture at the Municipal Building

Summary: The consideration of a resolution authorizing the City Manager to enter into a service contract with Office Environments of Asheville Inc. to relocate and refurbish existing furniture to be used at the Municipal Building, when renovations are complete.

In an effort to reduce costs for new furniture in the Municipal Building, when renovations are complete, City staff will be using refurbished existing furniture as much as possible. City staff solicited sealed bids from 18 furniture contractors, 3 of which were minority contractors, for relocation and refurbishing of 585 pieces of existing furniture currently being used by City staff throughout the City. Only one bid from Office Environments of Asheville, in the amount of $37,100 was received.

Approved funding is available in the Municipal Building construction account to pay for the relocation and refurbishing of existing furniture, designated for use in the Municipal Building.

The Parks and Recreation Department requests City Council authorize the City Manager to enter into a service contract with Office Environments of Asheville Inc., in the amount of $37,100, to relocate and refurbish existing furniture to be used at the Municipal Building, when renovations are complete.

Bids for New Furniture for the Municipal Building

Summary: The consideration of a resolution to award Bid Request No. 488-99 for the purchase of new office furniture for the Municipal Building.

Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were received to furnish and install miscellaneous office furniture, as described in Section A through G of the bid documents, in the Municipal Building. Seven bids were received. Bids have been reviewed for technical compliance to specifications by Lyle Willis, Project Coordinator and his concurrence was received in the following recommendations.

Funds for these purchases have been budgeted in Account No. 666-4680-461.70-04.

Subject to Council's approval, it is recommended that awards be made for the furniture proposed by the low bidder of each section as follows:

Section A - Metal Bookcases, Shelving - award to the low bidder, Interior Systems, West End, N. C., in the amount of $14,469.00.
Section B - Metal Casegoods, Desk, Credenza - award to the low bidder, Corporate Express, Greenville, S. C., in the amount of $26,627.63.

Section C - Wood Casegoods - award to the low bidder, Corporate Express, Greenville, S. C., in the amount of $9,672.55.
Section D - Wood Bookcases - award to the low bidder, Mac Thrift Office Furniture, Winston-Salem, N. C., in the amount of $3,146.86.
Section E - Panels System - award to the low bidder, Corporate Express, Greenville, S. C., in the amount of $41,553.36.
Section F - Metal Seating - award to the low bidder, Hoyle Office Supply, Arden, N. C., in the amount of $40,324.96.
Section G - Wood Seating - award to the low bidder, Office Environments, Asheville, N. C., in the amount of $11,596.00.
Grand total of all awards as recommended $147,390.36.

Request for City to be Fiscal Agent regarding the Community Image Survey

Summary: Private funding to carryout the Community Image Survey Project has been identified and a request that the City act as fiscal agent on behalf of the Metropolitan Planning Organization for the project will need City Council approval.

An overview of the Community Image Survey Project was presented to City Council at their February 17, 1998, meeting. Since that time, private funding of $55,000 has been identified and should be adequate to carry out the project. The Metropolitan Planning Organization can sponsor the project, however, since they are not a fiscal entity, the City will need to act as fiscal agent for the project and provide limited staff support as such. If City Council desires that the City participate in the project by being the fiscal agent, a project budget ordinance will be prepared and presented to City Council for adoption.

Upon City Council concurrence to act as fiscal agent, City staff recommends City Council adopt a budget for the Community Image Project, in the amount of $55,000, with the funding provided by private sources.

Setting of a Public Hearing on February 9, 1999, to Adopt Amendments to the City of Asheville Personnel Policy

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

RESOLUTION NO. 99-13 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AMENDMENT OF A LEASE WITH SKYLAND VOLUNTEER FIRE DEPARTMENT TO PERMIT USE OF THE PREMISES AS A POLICE SUBSTATION

City Attorney Oast said that this is the consideration of a resolution authorizing execution of an amendment to the lease with Skyland Volunteer Fire Department (Skyland VFD) to permit establishment of a police substation.

In December of 1995, the City entered into a ground lease agreement with the Skyland VFD, allowing the City to build a fire station on the Skyland VFD property. Subsequent developments have resulted in the size of the City's building being reduced, and sharing some of the facilities with Skyland VFD.

In an effort to improve service to the southern part of the City, the Police Department would like to establish a police substation in the Skyland area, and the City's facility can be configured to accommodate the police, and this work is underway. The Lease Agreement with Skyland VFD currently addresses occupancy only by the Fire Department, and an amendment is necessary to allow occupancy by the Police Department. The term of the Police Department's lease is 10 years, renewable for an additional 10 years. No additional rent is involved, but the City is agreeing to reimburse Skyland VFD for the legal costs incurred in connection with negotiating and finalizing this amendment, and is providing additional paved parking.

City Attorney Oast said that because the Skyland VFD's Board only meets once a month and they will be meeting on January 25, 1999, he requested City Council consider adoption of the resolution at this meeting.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Sellers moved to waive the rules and proceed with formal action at this meeting. This motion was seconded by Councilman Tomes and carried unanimously.

Councilman Tomes moved to adopt Resolution No. 99-13. This motion was seconded by Councilwoman Field and carried unanimously.

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PRESENTATION BY THE HOMES FOR ASHEVILLE-BUNCOMBE TASK FORCE

Joyce Harrison and Scott Dedman, co-chairs of the Homes for Asheville Buncombe Task Force, presented a proposal for a Housing Trust Fund for Asheville, to be funded from local sources.

Ms. Harrison explained why a local housing trust fund is needed for Asheville:

(1) The Asheville Housing Trust Fund is needed to meet the goals set out in the City's Housing Action Plan.

- The City's Housing Action Plan, adopted in October 1998, calls for establishing a local Housing Trust Fund. The Housing Trust Fund was accepted for future action, in conjunction with increasing public awareness of the need and additional strategic planning. This background work should take place by spring 1999, so that a Housing Trust Fund can be formed beginning with the 1999-2000 budget;
- A Housing Trust Fund can double the City's efforts to assist working families and elderly and disabled citizens. A proposed $2.1 million in local revenues each year will assist an additional 190 families. This number is approximately 17% of the City's annual Housing Production target, and will more than double the number of families currently assisted.

(2) It makes economic sense - A local Housing Trust Fund pays back:

- Asheville will benefit economically from the Asheville Housing Trust Fund, which will
  - Generate new tax revenues. Develop attractive new homes on abandoned lots and improve or replace vacant, dilapidated homes. Example: a $12,000 vacant lot, after it is developed into a $90,000 property with a new home, will pay $1,053 per year in new tax revenues for City and County services and schools.
  - Help renters become homebuyers - so they can build savings or equity for their future. Low interest second mortgages from the Trust Fund will make modest homes affordable to low income working families. The first mortgage is provided by local banks.

- Make loans, not grants. This way families who are helped to buy homes can pay their own way. All loans for development housing should be payable to the Trust Fund to create a revolving pool of money.
- Create jobs and help local business. Local homebuilders create jobs and buy materials here at home - unlike mobile homes which are made outside of the Asheville area.
- Bring in private investment. Work with private lenders, corporations, builders, donors. A combination of non-profit, business, charitable, local government, and volunteer effort brings the strongest public support and accountability.

(3) Better homes improve the safety, stability, and quality of life of the entire city.
- Preserve existing homes, improve neighborhoods.
- Convert absentee, neglectful ownership which has abandoned property or failed to care for it, into local ownership which will maintain, improve, and pay taxes.
- Promote attractive design which fits into existing neighborhoods.
- Provide safe, attractive homes and neighborhoods for working families, children, the elderly, and disabled citizens. Families who work in our community should be able to live in our community, in safe, attractive housing. Children need decent homes to get a good education and move up in life. Elderly and disabled citizens need and deserve safe, attractive homes and neighborhoods.

(4) It has been successful in other North Carolina cities.
- Winston-Salem, Raleigh, Durham and Greensboro have successful housing bond programs.
- Durham and Greensboro automatically set aside a portion of their property tax revenues for housing, and both cities have leveraged their trust funds by issuing general obligation housing bonds.
- Durham's $21 million in housing bonds leveraged two dollars of private investment for every public dollar invested. Over $675,000 in new property taxes are paid each year on housing built with bond funds. Approximately 1,200 new jobs were created.

(5) There is strong public support for new local revenues for affordable housing
- A recent opinion poll shows that 62% of voters in the City and County will support increasing their property taxes $15 per year to provide affordable housing. Furthermore, 65% of Asheville's registered voters would vote for a housing tax or bond which would raise their individual property taxes by $15 per year (December 1999 - January 1999 poll). Higher income voters and retirees show even stronger support.
- The Homes for Asheville-Buncombe County Task Force, a broad coalition of business, neighborhood and civic leaders, has voted to support the creation of a local housing trust fund. Other groups, such as the Home Builders Association and the Mortgage Lenders Association, have also voted to support this concept.
- A recent community forum sponsored by the Asheville Citizen-Times identified housing as a top priority for community attention.

(6) There are options for how to fund the Asheville Housing Trust Fund.
- As a community we have options as to how to secure the resources.
    - A two cent set-aside of property taxes. Two cents per $100 of value would raise property taxes $15 per year for a property valued at $75,000. $20 per year for a property valued at $100,000. This method alone would raise approximately $870,000 of revenue each year.
    - A housing bond. This method, if used in combination with the two cent set-aside of property taxes, would speed the flow of funds and production, providing approximately $2 million of improvements each year over a five year period.

- A hotel/motel tax to be used for affordable housing or shared with other services. The recent voter poll also showed support for this option.

- Of course a combination of these may be feasible. The steering committee of the Homes for Asheville-Buncombe Task Force looks forward to a partnership with the City to assess the best methods of securing resources for the Asheville Housing Trust Fund. It is recommended that one or more of the above methods be adopted before July 19999 for the 1999-2000 budget year. However, if a housing bond is one of the methods selected, they recommend that such a bond not be put before the voters before the fall of 1999.

They also reviewed two spreadsheets prepared jointly by Task Force members and City staff. The first spreadsheet illustrates how $2.1 million a year could be used to create 190 units of housing a year, and the second demonstrates the financial costs and benefits of funding such a program through general obligation bonds. It indicates that increased tax revenues would be very roughly equal to the interest on the bonds.

They recommended that Council consider providing for a local housing trust fund in its 1999-2000 budget. If a housing bond is the method selected, they recommend putting this to the voters in the fall of 1999.

Upon inquiry of Councilman Cloninger, Mr. Dedman explained the concept of leveraging.

After discussion, it was the consensus of Council that the Housing & Community Development Committee begin addressing this issue and that they invite the Buncombe County Commissioners to be a part of those meetings in an effort to coordinate City/County cooperation in the County-wide problem of affordable housing.

PRESENTATION OF REPORT OF CHURCH COMMITTEE

Mr. Gerald Green, Senior Planner, said that City Council directed Planning and Development staff to work with a committee composed of representatives of the religious community and neighborhood representatives to review the definition of church found in the Unified Development Ordinance (UDO) and the development standards for churches in residential districts and provide recommendations for appropriate revisions to these.

As a result of concerns expressed by the religious community that the definition of "church" in the UDO was too restrictive, City Council in September 1998 directed Planning and Development Department staff to work with a small committee to review the definition of "church" and to recommend appropriate changes. The Committee was also instructed to review the development standards for churches in residential neighborhoods and to suggest revisions to these standards. A committee composed of four ministers, four representatives of neighborhoods, and one Council member was formed to carry out this task (Rev. Jerry Young, Rev. Bill Clark, Bob McCarthy, Tom Lewis, Rev. Randy Young, Betty Garofano, Brian Peterson, Rev. John Grant, Council Member Earl Cobb).

Following a number of meetings, the Committee developed a set of recommendations which address the definition of "church" and development standards for churches in residential neighborhoods. The recommended definition of "church," now termed "place of worship," is broadened to include all those facilities intended for religious services. The Committee recommends that places of worship be categorized according to the number of seats in their sanctuary as follows:

- Small place of worship - up to 400 seats;
- Medium place of worship - 401 to 800 seats;
- Large place of worship - more than 800 seats.

It is recommended by the Committee that development standards for places of worship in residential districts be related to their size; the larger the place of worship the more restrictive the location requirements. Recommendations of the Committee are that the larger the place of worship, the higher the functional classification of the street on which it must be located. In addition to the location requirements, the Committee also recommended development standards for large places of worship located in residential districts. He then reviewed the detailed recommendations from the Committee as follows:

Committee Purpose: The Committee was formed to carry out the following tasks:

- Review the definition of "church" as currently set forth in the UDO (Unified Development Ordinance) and recommend any needed revisions to make the definition more compatible with the expanding role of churches;
- Review current development standards for churches in residential districts and recommend revisions which would permit reasonable growth of churches while protecting residential neighborhoods; and
- present recommendations to the City Council for their consideration and action.

Committee Recommendations: The Committee presents the following recommendations for the consideration by the City Council:

- Definition of church - the Committee unanimously (Dr. Grant abstained from voting) recommends that the following definition be adopted in lieu of the current definition of church:
    - Place of worship - a building (s) or structure(s) including, but not limited to, accessory classrooms, meeting rooms, offices, and housing quarters for religious leaders, that are primarily intended for religious services and which operate as a private, non-profit, tax exempt institution. The term includes, but is not limited to, churches, synagogues, and temples.
- Development standards for churches (places of worship) in residential districts - the Committee recommends that the following development standards be adopted for churches (places of worship) located in residential districts. All but one of the recommendations are presented with the unanimous approval of the Committee (Dr. Grant abstained from voting in all but one of the recommendations - the location requirement for large places of worship is recommended with a 5 - 4 vote of the committee).
    - The Committee unanimously (Dr. Grant abstained from voting) recommends that places of worship be divided into three (3) categories, based on the number of seats in the sanctuary(ies), for determining the appropriate development standards when locating in residential districts. The categories are:
        - Small place of worship - up to 400 seats;
        - Medium place of worship - 401 to 800 seats; and
        - large place of worship - more than 800 seats.
    - The Committee voted unanimously (Dr. Grant abstained from voting) that the following location requirements for small and medium places of worship in residential districts:
        - Small places of worship may locate anywhere in residential districts; and
        - Medium places of worship may locate in residential districts if the facility is located on a major or minor thoroughfare or is located on a residential collector street if the facility (located on a residential collector street) is located:

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    - within 300 feet of a major or minor thoroughfare if the collector street passes through an area with residential uses; or
    - within 1000 feet of a major or minor collector if the collector street passes through an area with non-residential uses.
- The Committee voted 5 - 4 (Dr. Grant did vote on this issue) to recommend the following location requirement for large places of worship:
  - Large places of worship may locate in residential districts only if located on a major thoroughfare.

(Rev. Bill Clark called after the report was distributed and said that he thought he was voting opposite of the way he actually voted. Therefore, the majority of the Committee (4-5) voted against large places of worship locating in residential districts only if located on a major thoroughfare.)

- The Committee unanimously (Dr. Grant abstained from voting) recommends that large places of worship be treated as a conditional use in residential districts. The following development standards are recommended for large places of worship located in residential districts:
  - Minimum lot area shall be four (4) acres;
  - Minimum setbacks shall be as follows:
    - Front - 50 feet
    - Side - 50 feet
    - Rear - 50 feet
    - All active recreation areas shall be setback at least 30 ft from property lines
    - If a publicly maintained street is located between the place of worship and adjacent residential uses, the side and rear setbacks may be reduced by ½;
  - Parking shall not be located in front of the building(s) (between the street and the buildings) and shall not be located any closer than 30 feet to any property line. In addition, parking areas shall be buffered with a minimum of a "B" buffer as described in Sec, 7-11-2 of the UDO (20 ft wide buffer with mixture of trees and shrubs). The buffer shall incorporate a wall, landscaped berm, or shrubs with a minimum height of 30 inches. If a landscaped berm is used, the berm shall be completely covered with landscaping within 24 months of the issuance of the Certificate of Completion. If shrubs are used, the shrubs shall form a dense barrier with a minimum height of 30 inches within 24 months of the issuance of the Certificate of Completion.
  - The primary access for the place of worship shall be from a street with a minimum classification of residential collector. Secondary points of access may be located on local residential streets, but shall not exceed one point of access per local residential street and a total of two (2) secondary points of access on all local residential streets.
  - Height of buildings shall not exceed 50 feet, provided that for each one foot in height over 30 feet, the building shall be set back an additional one foot beyond that otherwise required. Steeples, spires, bell towers, etc. shall not be subject to the height limitation.
  - Impervious surfaces shall not exceed 70% of the total lot area.
  - Outdoor lighting standards shall not exceed 16 feet in height. Lights shall be shielded and directed away from residential areas. Lights on buildings for the purpose of illuminating buildings or signs are exempt from the height limitation.

- Enrollment at day care centers which are operated by the place of worship and/or located on the site of the place of worship shall not exceed 100 children unless otherwise approved by City Council as part of the initial approval of the place of worship.
- Offices associated with the place of worship shall not exceed 20% of the total floor area of all buildings on the site.
- Public address systems shall be permitted for special purposes only and shall not be used for continuous broadcast(s).
- No commercial activities shall be permitted.
- No warehousing activities shall be permitted.
- No facilities for vehicle maintenance shall be permitted.
- Parking for vehicles owned and/or used by the place of worship shall be located at the rear of the property and screened with vegetation from adjacent residential uses.
- No grading shall be permitted within 20 feet of any property line, other than for utilities, landscaping, and access points.
- No grading shall occur until site development plans for the place of worship have been approved..

The Committee presents their recommendations to City Council for consideration and action. Should Council determine that amendments to the UDO are appropriate to deal with these recommendations, the recommendations, with appropriate direction, must be provided to the Planning and Zoning Commission for their review and recommendation.

The Planning and Development Department staff recommends that Council forward the recommendations of the Church Committee to the Planning and Zoning Commission with appropriate direction for the development of amendments to the UDO.

Mr. Green said that he received two letters from Committee members after distribution of the report to the Committee members. One letter received on January 5, 1999, from Ms. Betty Garofano reads: "The definition of church is too long, inaccurate, and unfair to those religions which do not choose to feed from the public trough (private, non-profit tax exempt institution). My definition which is simple and inclusive is, 'Place of worship: A building or a structure in which a religious group or sect worships its God or Gods to its beliefs and practices, provided those practices do not conflict with the government's lawful authority to promote public health, safety, and welfare.' This would include the Christian church, Jewish Synagogue, Islamic center and mosque, Hindu and Buddhist temple and Sikh gurdwaras, etc. etc. Conditional use is subjective and has the potential for abuse by empowering those in authority to make exceptions for their favorites and to discriminate against those who do not meet their test. Minority religious are most often the casualties. Also the extra time required of the planners to work with the petitioners would be costly and would not include neighbors. While churches and other religious institutions are thought to contribute to public welfare, they can, if broadly defined, injure a residential neighborhood by creating extra traffic, noise, lights, and litter and by shifting the property tax burden to the other landowners. The use of land and not the nature of the using organization must be the controlling factor in zoning. Precisely defining the terms of a zoning is the best way to avoid litigation." Mr. Green responded to the issues Ms. Garofano raised in her letter.

The other letter received today was from Rev. Jerry Young. Mr. Young's letter reads: "While preparing today's presentation and review for City Council I have found several errors in the report which I would like to formally bring to your attention: (1) I realized that we never formally adopted the rules which would govern our voting. That is, my file is devoid of any guidelines in relation to absentee voting, quorum, etc.; (2) On page one: Development

Standards for Churches, you note that the committee 'unanimously recommends that places of worship be divided into three categories ...' This is incorrect, I was not present to vote on that issue as I was out of the United States on October 30th, when the same was presented; (3) On page one: 'The committee unanimously recommends the following location requirements for small and medium places of worship ...' I remember at least one person abstaining from voting on these. It is also important to note that we dealt with this in 'piece meal format.' It would be difficult to say that we could accurately judge the full effect of the votes; and (4) On page two: 'The committee voted 5 to 4 to recommend the following location requirements for large places of worship ...' I believe you were informed by Bill Clark that he was confused and voted incorrectly and would like to correct his vote. Finally, we were never able to have a final vote with a full copy of the 'report.' Instead we were only mailed a copy and asked to comment. I question the fact that this report represents the committee's 'recommendations' given the fact that there was no vote on the total package to codify the same. Did any other members contact you and request revisions? If so did you make them? I wanted to inform you of these concerns prior to your presentation to City Council. Perhaps the Committee should go back to the table and formally vote on the entire report." Mr. Green responded to the issues raised by Rev. Young.

Mr. Green also said Rev. Clark's phone call relative to his vote was the only other comment received after the committee report was distributed.

At the request of Mayor Sitnick, Mr. Green read the following letter from Brian Peterson, President of the Coalition of Asheville Neighborhoods, which he faxed to her today: I was unable to attend this weeks City Council meeting due to a family vacation and therefore ask the Mayor to read this brief statement to Council before any action is taken on the recommendations of the Church Committee. As a member of the Church Committee appointed by Council to examine the City's zoning regulations concerning churches, I am happy to report that the Church Committee was able to reach a significant compromise proposal. I believe that this compromise is fair to both churches and to neighborhoods. The compromise proposal balances the needs of churches to fulfill their ministries and to have reasonable growth with the needs of neighborhoods to have safe and peaceful residential communities. The compromise does not merely look to address the problems of one church or one neighborhood. The compromise seeks to serve all of our city's religious institutions and residential neighborhoods. Gerald Green and Bob Oast both deserve recognition for their willingness to take a broad view and to offer the Committee helpful information on what other cities have done. Gerald in particular was very patient with the Committee members on this difficult issue. I realize that this proposal is a significant departure from the City's current zoning of churches. Also, I realize that this is a complicated proposal. However, I believe that it is necessary to properly take into account the fundamental changes that have occurred in religious institutions in Asheville and across the country. This proposal will help clarify for church leaders and nearby res-(sic). An integral part of this compromise is the restrictions upon the mega-churches - that is those over 800 seats. These mega-churches are like a Super Wal-Mart. They serve a regional population drawn from all over Buncombe and surrounding counties. They offer a tremendous variety of programs and services to their members and to the larger public. Their multifaceted ministries usually operate seven days a week. Because of their enormous size and impact, these mega-churches should not be located in residential areas. It was my initial position that the mega-churches should not be permitted in residential areas at all. It is a position that I believe most neighborhood leaders share. However, in the spirit of compromise, I agreed to the proposal before you that would allow mega-churches in residential areas but restrict their locations to major thoroughfares. This limitation is a necessary part of the overall compromise that was reached and should be included in any final changes to the UDO."

Mr. Green responded and explained several issues raised by Council, some being, but not limited to: fundraising, recreational facilities, and day care facilities.

Upon inquiry of Vice-Mayor Hay on why Dr. Grant abstained from voting on all matters but one, Mr. Green said that Dr. Grant said that he had not attended enough of the meetings to be fully knowledge about all the issues.

Councilwoman Field felt that perhaps the Committee should reconvene and clarify the one issue relative to the location requirement for large places of worship.

Vice-Mayor Hay agreed with Councilwoman Field in that it seems like there is unanimity on all issues except for that one issue.

Discussion then surrounded a letter received by Mayor Sitnick dated January 18, 1999, from the Carrier Heights Neighborhood Association. Said letter requested that City Council postpone the Technical Review Committee (TRC) meeting scheduled for January 20, 1999, to consider further expansion of the Trinity Baptist Church project until the process of citations/injunctions/revocation of permits on current violations of ordinances by the Church are resolved, and until the proposed amendments to the UDO related to churches are adopted.

City Attorney Oast said that City Council has the right to ask TRC to postpone action on the plan, but he didn't think they would have to do it, because there is some right on behalf of the applicant to insist that they go ahead. He said that if the applicant has requested approval of their building plans pursuant to one set of ordinances and regulations that, without their consent, the City cannot make an after-adopted ordinance or regulation applicable to them. Mr. Green also responded in that the Church's plans have been submitted as required by our ordinance.

Upon inquiry of Mayor Sitnick about if there any citations/injunctions/revocation of permits on current violations of ordinances, City Attorney Oast said that he has just recently received the letter and he would like an opportunity to meet with the Planning & Development Department staff to see where those issues stand.

Mayor Sitnick said that the TRC, when deliberating this particular project, should be informed of the discussion that has taken place today and should be made aware that there are UDO amendment proposals that have not been adopted. Mr. Green assured the Mayor that he would make the TRC members aware of the proposed ordinance and the discussions taken place at this meeting.

Mayor Sitnick noted that there were some postponements already granted in this process. She said that considering the timing of this and it's all happening fairly concurrently, that some consideration be made to the issues pointed out by the neighborhood association. She said a postponement was granted to Trinity Baptist Church representatives when they wanted it and needed it, and she felt that at the very least beyond postponing, that the TRC should be made aware of the fact that these are happening right now.

Mr. David Payne, attorney for Trinity Baptist Church, was concerned that City Council was talking about TRC issues in a Church Committee report presentation.

Mr. Bob McCarthy felt there was a conflict of interest for Councilman Cobb being a voting member on the Church Committee.

Ms. June Lamb reiterated the request for TRC to postpone the Church's project, noting that they have already proceeded to install street lights and paved sidewalks.

Mr. Green responded to several points of clarification raised by Rev. Jimmy Dykes , Pastor of the North Asheville Baptist Church.

Vice-Mayor Hay moved to (1) refer the Church Committee's report to the Planning & Zoning Commission for their review and recommendation to the City Council, and (2) request that the Church Committee reconvene to clarify the issue relative to the location requirement for large places of worship, with said clarification given to the Planning & Zoning Commission when the matter is discussed by the Commission. This motion was seconded by Councilman Cloninger and carried unanimously.

Mayor Sitnick requested that the TRC, when deliberating this particular project, be informed of the discussion that has taken place today and should be made aware that there are UDO amendment proposals that have not been adopted.

At 4:50 p.m., Mayor Sitnick announced a short break.

DISCUSSION OF ALCOHOL SALES AT BELE CHERE

Mr. Irby Brinson, Director of Parks & Recreation, said that the Bele Chere Alcohol Task Force has been meeting for several months to make a recommendation to City Council regarding the sale of alcohol at the Festival.

In January, 1997, a five-year strategic plan for the Bele Chere Festival was approved by City Council. One goal of that plan was to empower the Alcohol Task Force to resolve the issues surrounding the selling and consumption of alcohol throughout the Festival. The Task Force has met consistently since 1997 to resolve the Festival's alcohol concerns. The Task Force is made up of members from downtown merchants, a representative from both the Asheville Police Department and Alcohol Law Enforcement, Councilman Sellers, City Attorney, Festival staff and Bele Chere Board Members. Since 1997, significant improvements have been made in regard to alcohol sales and consumption which have resulted in major improvements to the festival. These include reduction of arrests by 60%, merchants selling responsibly and self-policing their operations, a stricter accountability system with mandatory alcohol training, use of wristbands to curtail under age drinking in the Festival, and exceeding the requirements of State law in regard to rules and regulations.

The Task Force has developed three options in regard to alcohol sales and consumption at future Bele Chere Festivals. These options are included in the staff report and will be discussed in length during the work session.

Mr. Tim Richards, Chair of the 1999 Bele Chere Festival, said that on January 11, 1997, a five-year strategic plan for Bele Chere was approved by City Council. One goal of this plan was to empower an Alcohol Task Force to "resolve the issues surrounding the selling and consumption of alcohol at the festival." The objectives of the Task Force were to minimize liability and maximize control and accountability for the city, to improve the public's perception, and to facilitate a phased transition of beer sales from the City to sales by a more appropriate organization. This Task Force has met consistently since 1997 to resolve the festival's alcohol concerns.

Not only has the Task Force implemented many changes suggested in the Strategic Plan, they have also created new policies and procedures to improve the alcohol environment at the festival.

The Task Force has followed the objectives outlined in the Strategic Plan of a phased transition of the city from the sale of alcohol:

- In 1997, the number of city-operated booths was reduced from thirteen to nine.
- In 1998, the number of booths was further reduced to six.

Accomplishments since the Task Force's inception:

- In the first year of the Task Force, arrests decreased by 60%.
- On the whole, merchants are now selling responsibly; self-policing has resulted in better sales procedures.
- The accountability system and mandatory training for alcohol servers for the Bele Chere booths have dramatically improved.
- The merchant/City relationship has strengthened.
- Wristbands helped curtail underage drinking.
- The festival has exceeded the requirements of state law in certain aspects in order to be as vigilant as possible. The festival adopted the position to check the ID of every person, every time, and requires that all servers be 21.

It should also be noted that throughout the twenty year history of Bele Chere only three claims have been made against the City, and none of those was alcohol-related. The City was found not to be negligent in all three cases.

The Alcohol Task Force is invested in continuing with the plans they have implemented in order to fine-tune alcohol policies and procedures that benefit downtown, the festival, and especially the community at large. The Task Force is cognizant of the survey done at the 1998 festival by ProGen Research that found that 76% of festival attendees support the sale of alcohol. Their goal is to keep the festival financially viable, while allowing the downtown merchants a greater share of alcohol sales. Festival staff, with the help of the Task Force, has researched alternate sources of revenue to replace alcohol sales and sponsorships. In two years, no feasible alternatives have been found to replace the 30% of gross festival revenue generated.

The following are three different alternatives for City Council to consider.

OPTION 1 - **Continuation of the Alcohol Task Force's Plan as set forth in the Strategic Plan**

The Alcohol Task Force proposes that a non-profit organization take responsibility for beer and wine sales at Bele Chere. The Merchants Action Coalition (MAC), a registered non-profit organization, has been approached to be this group and is considering it with acceptance pending a full membership vote. The selected non-profit group would hold all alcohol permits and staff the six booths at the festival with well trained volunteers, thus removing the city from the sale of alcohol. (Please note: it may be necessary to contact other experienced non-profit groups for the first year in the event that a single group cannot provide adequate staffing.) The organization would pay the city a percentage of the profits (to be determined later), defined as gross sales less all costs minus any shortages. The exact details of this arrangement will be mutually agreed upon by the City and the approved non-profit organization.

The advantages to Option 1 include: Effectively allows the City to be out of the alcohol business; Retains most of the control over procedures and consumption; Minimizes the loss in the $23 million economic impact to the Asheville community; Minimizes lost revenue and keeps the festival financially stable since alcohol sales and sponsorship represent 30% of gross revenue; Reduces risk of lost attendance; The financial stability of this plan maintains a quality festival; Allows MAC and staff to work together, fostering a cooperative spirit; Retain alcoholic beverage sponsors currently committed to $38,000 in 1999; Eliminates the risk of alienating festival sponsors; and trained and experienced supervisors in each booth.

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Disadvantages to Option 1 include: City may retain some level of liability for alcohol; The City loses some control at point of sale compared to 1998; City could potentially be seen as still selling alcohol; and continued overtime costs for Police Department.

OPTION 2 - Alcohol-free Sunday

The Alcohol Task Force has developed additional measures to further limit the consumption of alcohol. The basic recommendation of a non-profit organization staffing the beer booths is still in place, but is further enhanced. This plan establishes Sunday as an alcohol-free day of the festival and allows any persons not wanting to be exposed to alcohol sales on the street to be able to enjoy all aspects of the festival.

The advantages to Option 2 include: User-friendly to all constituents of the community; Those preferring an alcohol-free event can attend on Sunday; Increased "family" appeal; Further reduces the level of alcohol consumption; Possible lower level of police presence required on Sunday in future years, reducing costs; Possible increase in attendance by those who avoid it due to alcohol; and Sunday attendees who wish to consume alcohol can do so inside a licensed downtown establishment further enhancing merchant sales.

Disadvantages to Option 2 include: Challenge of effectively communicating this change to the public; Possible reduction in alcohol-related sponsorships; Loss of some sales revenue; and arrests will increase on Sunday.

It was noted that all advantages and disadvantages from Option 1 continue to apply to Option 2.

OPTION 3 - Alcohol-free Bele Chere

The third possibility is to completely prohibit all alcohol on the streets during Bele Chere.

The advantages to Option 3 include: City out of the alcohol business; Festival seen as more "family" oriented; Possible increase in non-alcoholic drink sales; Substantially reduce the City's level of liability; and possible reduced police presence required in future years.

Disadvantages to Option 3 include: Loss of all control over alcohol consumption; Likely increase in hard liquor consumption (easier to conceal), glass bottles, off-site consumption, and binge drinking; Overcrowding likely at downtown establishments serving alcohol with possible fire marshal concerns and public safety problems resulting; Increased arrests; Risk of decreasing the $23 million economic impact to the Asheville community; An immediate loss of $149,000 in revenue necessitating the downsizing of the event and reduction in the quality of entertainment and other programming offered; Possible decreased attendance. According to 1998 survey, 76% of current attendees support alcohol sales; Jeopardizes ability to meet festival Mission Statement; Jeopardizes the ability to meet Goal One of the Strategic Plan: to develop financial stability and to become self-sustaining; Jeopardizes ability to meet twenty objectives specified in the strategic plan; Likely loss or reduction in many other sponsors concerned about the consequences of this change; Loss of all alcohol-based sponsors; Loss of revenue by downtown merchants from loss of "to go" sales; Challenge of effectively communicating this change to the public; Inability to accomplish many needed festival improvements; Possible reduced police presence may increase perception of unsafe environment; Increased overtime for fire department; and full ramifications of changes not felt until Bele Chere 2000.

After careful consideration of all information and possible advantages and disadvantages, the Alcohol Task Force recommends Option 1 as the best course of action available. This recommendation allows an approved non-profit organization to be responsible for the alcoholic beverage sales, therefore alleviating the City from direct alcohol sales.

City Council discussed the three options, noting that we would lose 15% of our beer sales revenues if Council proceeds with Option 2. However, other ways to recoup that loss were also discussed.

A representative from Max's Deli briefed Council on their history with Bele Chere and supported the Task Force's recommendation.

Councilman Sellers said that he is totally in support of Option 3, but in the spirit of compromise, he would support Option 2. He said that he would like to revisit this issue in one year.

After discussion, City Council felt that Option 2, which includes all the advantages and disadvantages from Option 1 would be best for the City of Asheville at this time.

Councilwoman Field suggested that Sunday be set aside as the day for all local performers.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RESOLUTION NO. 99-14 - RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE A LEASE FOR CITY PROPERTY ON AMBOY ROAD

Councilman Cloninger said that his firm represents Mr. Young on an on-going basis, but they have not done any legal work in connection with this work. Therefore, Councilwoman Field moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilman Sellers and carried unanimously.

City Attorney Oast said that this is the consideration of a resolution to authorize the City Manager to negotiate a lease for a portion of the Amboy Road property for use as a speedway ("Subject property").

Pursuant to the direction from City Council at your November 24, 1998, meeting, a Lease Agreement was drafted incorporating the basic terms that Council reviewed and approved at that meeting. The City received three inquires about leasing the Subject Property for 1999, and furnished a copy of the draft lease to each person who requested one. Some changes were made to the draft, and those changes were also supplied to the interested parties. Meetings were arranged with each of the three parties, but one party pulled out prior to the meeting, and only two meetings were held. One group that was interviewed included John Huffman, the South Carolina businessman who owns the Hickory Motor Speedway (HMS) ; the other group (Carolina Motorsports) included Danny Jones, who is seeking to develop a speedway in Henderson County.

On January 12, 1999, Carolina Motor Sports withdrew from further negotiations, and Council authorized negotiations to be reopened with John Huffman. We have reached a tentative agreement for $75,000 for the season, and some details remain to be worked out between the City and HMS. The remaining major terms and conditions of the Lease are essentially unchanged from previous versions. The parties who hold the restrictions and the easement still need to agree to the proposed use, but we are working with them. Their approval is a stated contingency in the Lease and the resolution.

Accordingly, the City's staff recommends that the City accept the proposal made by HMS, LLC, represented by John Huffman for leasing the Subject Property for 1999, and that it authorize the City Manager to negotiate and sign the lease in substantial conformity with the draft lease, and for a rent of $75,000. This approval is subject to appropriate permissions being obtained, and some other details being addressed.

If City Council agrees with staff's recommendations, Council should adopt the resolution.

Councilman Sellers moved to waive the rules and proceed with taking formal action on this matter. This motion was seconded by Councilwoman Field and carried unanimously.

Councilman Sellers moved for the adoption of Resolution No. 99-14. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 123

OVERVIEW OF IMPACT FEES

Mr. S. Douglas Spell, Assistant City Manager, said that as requested by City Council, staff is providing an overview on the topic of impact fees.

Impact fees provide a method of shifting all or a portion of the financial burden for new or expanded facilities away from the community at large to the direct user. The aim of impact fees is to require new development to account for its fiscal impact on the community by contributing its proportionate share of the cost of new or expanded facilities.

Impact fees are single payments required to be made by builders or developers at the time of development. The fee is calculated based upon a proportionate share of the capital cost of providing major facilities. This one-time payment based upon "impact" differentiates the fee from a tax.

Types of Impact Fees: Impact fees have been assessed for a variety of public purposes. The most common use of impact fees is for water and sanitary sewer facilities. The next most common purpose is for street and highways. The list of other purposes also include parks, libraries, police and fire facilities, hospitals, schools, solid waste facilities, and cemeteries.

In most cases, the impact fee is paid directly up front as a part of the development cost. For example a new subdivision may be charged the fee based upon the number of dwelling units for such purposes as utilities or streets. In some cases, the developer may be allowed to dedicate right of way for thoroughfare improvements or real estate for park land development to offset the actual fee imposed for the development.

Legal Requirements: Impact fees have been explicitly authorized by only a few states since the 1980's. Based on my research, the states that have authorized such impact fees consist of Arizona, California, Georgia, Illinois, Maine, Maryland, North Carolina, Tennessee, Texas, Vermont, West Virginia, and Washington.

North Carolina, as well as several of the other aforementioned states, have only authorized impact fees for some local governments. Therefore, cities in North Carolina must obtain enabling legislation in order to assess an impact fee for a specific purpose.

The legal rationale for impact fees is referred to as *rational nexus.* In order to be legally and constitutionally valid, there must be a rational nexus between the fee charged and the purpose for which it is assessed. The rational nexus test involves several issues. First, there must be clear legal authority to impose the fee. In North Carolina, as noted above, this authority takes the form of local legislation. Next, the relationship between the fee and its stated purpose must be established. That is, the fee must be reasonable in amount and it must be intended for use in a way that advances or promotes its stated objective. Third, the fee must actually be used for expenditure in a manner and time that specifically promotes the stated objective. The objectives or purpose for which impact fees are collected should be identified on the comprehensive plan or the capital improvements plans and should generally be expended within three to five years of collection.

Impact Fees in Asheville: Development in the City of Asheville is currently imposed an impact fee for water and sanitary sewer service. North Carolina General Statutes provide specific legal authority for an "Authority" or "District" to adopt and assess impact fees.

The Regional Water Authority began charging an impact fee effective January 1, 1989 and the fee is referred to as a "Development Fee". The fee amount is based upon the type of user (e.g. residential, commercial, industrial, etc.) and the size of the facility for non-residential uses. The Development Fee is based on meter size and therefore for a typical single family residence the fee amount would be $200.00.

He reviewed Attachment #1 which was a copy of the fee schedule for the Regional Water Authority outlining the development fee for all uses. I would also note that this fee amount was increased effective July 1, 1998, by doubling the prior amount. The revenue collected as a result of this fee is used as a funding source in the Water Fund.

The Metropolitan Sewerage District of Buncombe County (MSD) charges new development a "Facility Fee". As with the Development Fee charged by the Regional Water Authority, the MSD Facility Fee is based upon the type of use of the proposed development. The Facility Fee for an average residence with 1400 to 3000 square feet is $750.00.

He then described Attachment #2 which is the "Facility Fee Computation" provided to customers by MSD. The revenue collected by MSD from Facility Fees is earmarked for providing or upgrading sanitary sewer services. The last revision to the fee schedule was effective July 1, 1997.

He noted that both the Regional Water Authority and MSD allow a fee reduction for "affordable housing". In such instances, a governmental agency must provide certification that the residential unit is part of a program of affordable housing. The Regional Water Authority reduces the Development Fee and other water connection charges by 50% and MSD reduces their facility fee to $300.00.

Fees Charged by Other Cities: In North Carolina, 22 cities and three counties have received legislative authority to assess impact fees. This authority was granted to those local governments by the General Assembly between the years of 1985 and 1991. He reviewed Attachment # 3 which provides an overview of these cities, the type of fees charged, and the fee amount. Based on the information on this attachment, the total impact fees for cities in North Carolina range from $805 to $4,739 for residential development.

He also reviewed Attachment #4 which is a listing of "National Averages of Impact Fees By Type" from the "Growth Management Studies Newsletter" comparing fees in 1988 and 1991. The averages are listed by fee type and provide a range of "low," "average," and "high".

Process to Adopt an Impact Fee: Previously in this report, reference is made to the *rational nexus test*. In consideration of this, the following steps should be taken by a local government prior to assessing an impact fee:

1) Identify the specific purpose for which impact fee revenues are intended to be used, and the type, or basis, of the fee;

2) Request and obtain legal authority (local legislation) from the General Assembly enabling the governmental unit to charge the specific impact fee;

3) Utilize the Master Plan to determine the proportionate share of each element (water, sewer, parks, etc.) intended to be paid for from impact fees;

4) Establish the timing for expenditure of impact fee revenue, and identify the specific purpose or facilities for which the funds will be expended;

5) Adopt ordinances or policies, as appropriate, establishing the impact fee amount, and the procedure for collection, accounting, reporting and expenditure of revenue collected from the impact fee.

Other Issues: As a part of the consideration of impact fees, a jurisdiction should be aware of various issues surrounding the assessment of impact fees. The primary argument presented pertains to the increased costs to the home buyer and the effect on affordable housing. He then reviewed Attachment #5 which is information provided by the N.C. Home Builders Association which consists of items of consideration regarding impact fees.

This report is being provided to City Council as an overview on the topic of impact fees.

Mayor Sitnick said that she preferred to call these fees "participation fees." She felt that there are some things that the City should consider as the price of doing business in the City when a development is going to levy a cost to the members of the community. She said that she asked for this information in order for City Council to evaluate it and consider it as something they might want to look into as time goes by.

REPORTS ON BOARDS/COMMISSIONS

Vice-Mayor Hay announced the Annual Board/Commission luncheon will be held on March 2, 1999, at Noon at the Asheville Civic Center.

SUPPORT OF THE STUDY OF THE BASF SITE FOR FUTURE ECONOMIC DEVELOPMENT

City Manager Westbrook said that Carolina Power and Light (CP&L) and BASF have entered into an agreement which gives CP&L the exclusive right to evaluate and assess the BASF property for possible future economic development. One of the critical elements in economic development for the City of Asheville is identifying potential sites for quality economic development. The study by CP&L could possibly identify the BASF site as a strong economic development candidate and, thus, enhance Asheville's ability to attract quality economic development. The City, therefore, should endorse and cooperate with CP&L in its endeavor to perform this study.

After the City Council adopts the resolution, City staff will work with CP&L and others to provide any information we have concerning the BASF site. The City and CP&L feel this is a team effort which also includes the County and the Chamber of Commerce.

Staff recommends that City Council adopt the resolution supporting the study of the BASF site for future economic development potential.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CLOSED SESSION

At 6:12 p.m., Councilman Cloninger moved to go into closed session to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee - statutory authorization is G.S. 143-318.11 (a) (6). This motion was seconded by Councilman Sellers and carried unanimously.

At 8:00 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Vice-Mayor Hay and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:00 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - January 26,1999 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor Edward C. Hay Jr., Presiding; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Leni Sitnick (National Conference of Mayors in Washington, D.C.)

INVOCATION

Vice-Mayor Hay gave the invocation.

ADDITION TO AGENDA

Vice-Mayor Hay asked that the City Council retreat agenda beginning on Friday, January 29, 1999, be discussed under Other Business.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING 1999 AS "THE YEAR OF THE OLDER PERSONS"

Councilman Cobb read the proclamation proclaiming 1999 as "The Year of the Older Persons" in the City of Asheville. He presented a proclamation to Mr. Willie Jones, Senior Volunteer of the Year, and Ms. Emma Williams, President of the Senior Opportunity Center Seniors Advisory Board.

Ms. Williams said that she would present Ms. Roberta Anderson, President, NC Association of Senior Citizens Clubs - District IX and Ms. Betty Moody, President of the Harvest House Senior Advisory Board, with a copy of the proclamation as well.

II. CONSENT:

A. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 9, 1999, TO CONSIDER AMENDMENTS TO THE CITY OF ASHEVILLE PERSONNEL POLICY

B. RESOLUTION NO. 99-15 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SERVICE CONTRACT WITH OFFICE ENVIRONMENTS OF ASHEVILLE INC. TO RELOCATE AND REFURBISH EXISTING FURNITURE FOR THE MUNICIPAL BUILDING

Summary: The consideration of a resolution authorizing the City Manager to enter into a service contract with Office Environments of Asheville Inc. to relocate and refurbish existing furniture to be used at the Municipal Building, when renovations are complete.

In an effort to reduce costs for new furniture in the Municipal Building, when renovations are complete, City staff will be using refurbished existing furniture as much as possible. City staff solicited sealed bids from 18 furniture contractors, 3 of which were minority contractors, for relocation and refurbishing of 585 pieces of existing furniture currently being used by City staff throughout the City. Only one bid from Office Environments of Asheville, in the amount of $37,100 was received.

Approved funding is available in the Municipal Building construction account to pay for the relocation and refurbishing of existing furniture, designated for use in the Municipal Building.

The Parks and Recreation Department requests City Council authorize the City Manager to enter into a service contract with Office Environments of Asheville Inc., in the amount of $37,100, to relocate and refurbish existing furniture to be used at the Municipal Building, when renovations are complete.

RESOLUTION BOOK NO. 25 - PAGE 124

C. ORDINANCE NO. 2538 - BUDGET AMENDMENT FOR THE COMMUNITY IMAGE PROJECT

Summary: Private funding to carryout the Community Image Survey Project has been identified and a request that the City act as fiscal agent on behalf of the Metropolitan Planning Organization for the project will need City Council approval.

An overview of the Community Image Survey Project was presented to City Council at their February 17, 1998, meeting. Since that time, private funding of $55,000 has been identified and should be adequate to carry out the project. The Metropolitan Planning Organization can sponsor the project, however, since they are not a fiscal entity, the City will need to act as fiscal agent for the project and provide limited staff support as such. If City Council desires that the City participate in the project by being the fiscal agent, a project budget ordinance will be prepared and presented to City Council for adoption.

Upon City Council concurrence to act as fiscal agent, City staff recommends City Council adopt a budget for the Community Image Project, in the amount of $55,000, with the funding provided by private sources.

ORDINANCE BOOK NO. 17 - PAGE 245

D. RESOLUTION NO. 99-16 - RESOLUTION AWARDING BIDS FOR NEW FURNITURE FOR THE MUNICIPAL BUILDING

Summary: The consideration of a resolution to award Bid Request No. 488-99 for the purchase of new office furniture for the Municipal Building.

Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were received to furnish and install miscellaneous office furniture, as described in Section A through G of the bid documents, in the Municipal Building. Seven bids were received. Bids have been reviewed for technical compliance to specifications by Lyle Willis, Project Coordinator and his concurrence was received in the following recommendations.

Funds for these purchases have been budgeted in Account No. 666-4680-461.70-04.

Subject to Council's approval, it is recommended that awards be made for the furniture proposed by the low bidder of each section as follows:

Section A - Metal Bookcases, Shelving - award to the low bidder, Interior Systems, West End, N. C., in the amount of $14,469.00.
Section B - Metal Casegoods, Desk, Credenza - award to the low bidder, Corporate Express, Greenville, S. C., in the amount of $26,627.63.

Section C - Wood Casegoods - award to the low bidder, Corporate Express, Greenville, S. C., in the amount of $9,672.55.
Section D - Wood Bookcases - award to the low bidder, Mac Thrift Office Furniture, Winston-Salem, N. C., in the amount of $3,146.86.
Section E - Panels System - award to the low bidder, Corporate Express, Greenville, S. C., in the amount of $41,553.36.
Section F - Metal Seating - award to the low bidder, Hoyle Office Supply, Arden, N. C., in the amount of $40,324.96.
Section G - Wood Seating - award to the low bidder, Office Environments, Asheville, N. C., in the amount of $11,596.00.
Grand total of all awards as recommended $147,390.36.

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E. RESOLUTION NO. 99-17- RESOLUTION ADOPTING THE 1999 CITY COUNCIL MEETING SCHEDULE

The following schedule of the meetings of the Asheville City Council for 1999 be, and the same is, hereby established as follows: (1) City Council Worksessions - 3:00 p.m. - 1st and 3rd Tuesdays of each month - 1st Floor North Conference Room - City Hall Building, Asheville, N.C.; and (2) City Council Formal Meetings - 5:00 p.m. - 2nd and 4th Tuesdays of each month - Council Chamber - 2nd Floor - City Hall Building, Asheville, N.C.

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F. RESOLUTION NO. 99-18 - RESOLUTION IN SUPPORT OF THE STUDY OF THE BASF SITE FOR FUTURE ECONOMIC DEVELOPMENT POTENTIAL

Summary: Carolina Power and Light (CP&L) and BASF have entered into an agreement which gives CP&L the exclusive right to evaluate and assess the BASF property for possible future economic development. One of the critical elements in economic development for the City of Asheville is identifying potential sites for quality economic development. The study by CP&L could possibly identify the BASF site as a strong economic development candidate and, thus, enhance Asheville's ability to attract quality economic development. The City, therefore, should endorse and cooperate with CP&L in its endeavor to perform this study.

After the City Council adopts the resolution, City staff will work with CP&L and others to provide any information we have concerning the BASF site. The City and CP&L feel this is a team effort which also includes the County and the Chamber of Commerce.

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Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Tomes moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE AN OFFICE II ZONING DISTRICT

ORDINANCE NO. 2539 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE AN OFFICE II ZONING DISTRICT

Vice-Mayor Hay opened the public hearing at 5:05 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Senior Planner Gerald Green said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) to create an Office II District.

The Asheville Planning and Zoning Commission, at their January 6, 1999, meeting, reviewed and recommended approval of an amendment to the UDO which would create an Office II District. The need for this district was identified during the annual review of the UDO. The proposed Office II District would serve as an intermediate office district between the current Office District and the Office Business District. As proposed, the Office II District would permit a range of office uses similar to those permitted in the Office District. In addition to the office uses, a limited number of related uses are permitted. These include beauty shops and salons, day care centers, and restaurants (with restrictions). Structures within the proposed Office II District may have a footprint of up to 8,000 square feet, with a gross floor area up to 16,000 square feet. The minimum lot size permitted in the proposed district is 10,000 square feet. Single family and multi-family residential uses are permitted at maximum density of 12 units per acre. The Planning and Zoning Commission has tentatively identified locations for the mapping of the Office II District. This matter will be brought to Council at a later date.

Mr. Green said that an omission in the ordinance before Council is an amendment to section 7-16-1 (c) 37. A subsection (d) should be added which reads "Restaurants shall not exceed 4,000 square feet in gross floor area.

The Asheville Planning and Zoning Commission voted 6 to 0 to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the amendment.

Upon inquiry of Councilman Tomes, Mr. Green explained that staff interprets the term accessory apartment to mean that that apartment is not the principle use on that site, but is secondary to some other principle use, whether it's an office, a church or a single-family home on that site.

Mr. Green also explained the definition of assisted living.

Vice-Mayor Hay closed the public hearing at 5:15 p.m.

Vice-Mayor Hay said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2539. This motion was seconded by Councilman Sellers and carried unanimously.

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B. PUBLIC HEARING RELATIVE TO ZONING SECTION 12 OF BILTMORE PARK TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

Mr. Bruce Black, Urban Planner, said that the RS-4 Residential Single-Family Medium Density District zoning, which was requested by the petitioner Mr. Robert Sulasky, would give the developers at 25 foot front setback. A recorded plat was discovered that shows 20 foot front setbacks. Therefore, Mr. Sulasky has requested that he be allowed to withdraw this request and go back through the zoning process to request an RS-8 Residential Single-Family High Density District zoning.

Upon inquiry of Councilwoman Field, City Attorney Oast said that since the petitioner is requesting a more intensive zoning than RS-4 and there is not a problem regarding the timing of the zoning, it was his recommendation that it go through the normal review process of the Planning & Zoning Commission and then back to City Council.

Councilman Sellers moved to withdraw this item from the agenda, pursuant to the petitioner's request. This motion was seconded by Councilman Tomes and carried unanimously.

C. PUBLIC HEARING RELATIVE TO ZONING SECTION 11 OF BILTMORE PARK TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

ORDINANCE NO. 2540 - ORDINANCE ZONING SECTION 11 OF BILTMORE PARK TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

Vice-Mayor Hay opened the public hearing at 5:16 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that this is the consideration of an ordinance to zone Section 11 of Biltmore Park RS-4 Residential Single-Family Medium Density District.

The owner and applicant, Biltmore Farms Inc., has requested the zoning of Section 11 of Biltmore Park Subdivision to RS-4 Residential Single-Family Medium Density District. This section was annexed into the City of Asheville effective December 23, 1998.

The Planning staff reviewed the rezoning request and recommended approval to the Planning and Zoning Commission. At their January 6, 1999, meeting, the Planning & Zoning Commission voted six to zero to recommend approval of the initial zoning of Section 11 of Biltmore Park Subdivision as RS-4 Residential Single-Family Medium Density District.

Vice-Mayor Hay closed the public hearing at 5:21 p.m.

Vice-Mayor Hay said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2540. This motion was seconded by Councilman Tomes and carried unanimously.

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D. PUBLIC HEARING RELATIVE TO REALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS TO NEW HOPE COMMUNITY HEALTH CENTER

ORDINANCE NO. 2541 - BUDGET AMENDMENT TO REALLOCATE $27,000 OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS TO NEW HOPE COMMUNITY HEALTH CENTER

RESOLUTION NO. 99-19 - RESOLUTION AMENDING THE 1998/99 CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT/HOME PLAN TO PROVIDE FOR A $27,000 GRANT TO NEW HOPE COMMUNITY HEALTH CENTER

Vice-Mayor Hay opened the public hearing at 5:22 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of a resolution amending the 1998/99 Consolidated CDBG/HOME Plan to provide for a $27,000 grant to New Hope Community Health Center and adoption of a budget amendment to reallocate surplus Community Development Block Grant (CDBG) funds from the Section 108 Debt Service project to New Hope Community Health Center.

One hundred and sixty-four thousand ($164,000) in CDBG funds was allocated for repayment of Section 108 Loan Program debt in 1998-99. Since that program is only now getting under way, there will be a substantial surplus (about $160,000) in the allocation.

The Housing and Community Development Committee has approved the reallocation of $27,000 of this surplus to New Hope Community Health Center. These funds will be used to support the Social Behavior Modification Plan and Drug Abuse Prevention Plan. The remainder of the surplus Section 108 debt service funds will be reallocated in the spring along with 1999-2000 funds.

New Hope Community Health Center, located at 46 South Market Street, has proposed a two-pronged attack on adverse social conditions in the Eagle/Market Streets area (the Block):

1) Social Behavior Modification Plan
   - Teams of volunteers will hold a nightly dusk to dawn vigil in the area
   - They will be trained in non-confrontational outreach and vigilance
   - Two community coordinators will organize and oversee the vigil
   - Positive activities will be organized (e.g. musical events)
   - The goal will be to decrease current antisocial behaviors (public drinking, drug use, prostitution, littering, loitering, gambling, panhandling, and profanity)
   - Reducing the number of 911 calls from the area will be a key performance measure.

2) Drug Abuse Prevention Plan
   - The Center will contract with a certified substance abuse counselor
   - Community substance abuse advocates will be recruited and trained
   - Substance abuse counseling sessions will be held
   - Case management services will be provided
   - A women's drop-in center will be opened

The proposed $27,000 grant will enable the program to start and operate for at least 6 months.

Since opening in 1994 (full-time in 1998) the New Hope Community Health Center has been a positive force for change on the Block, offering medical and some social services in a non-traditional, client-friendly setting. The proposed programs will enable the Center to reach out to some of the most disadvantaged and despairing people in our community. If successful, these programs may achieve lasting social changes on the Block, paving the way for economic regeneration.

Staff recommends City Council hold a public hearing to consider the reallocation of surplus CDBG funds.

Ms. Bonnie Love, Project Coordinator of New Home Community Health Center, spoke in support of the appropriation and talked about the many activities they have planned for their project. She also described the training for the volunteers and their productive goals for the programs.

Vice-Mayor Hay Councilwoman Field and Councilman Tomes all spoke in support of these projects.

Mr. Randall Richardson, Executive Director of New Hope, loaned through the Executive Loan Program at Mission-St. Joseph's Health Care System, said that he was excited about this opportunity to participate not only in the CDBG initiative, but in other initiatives as well.

Vice-Mayor Hay closed the public hearing at 5:40 p.m.

Vice-Mayor Hay said that members of Council have previously received a copy of the ordinance and the resolution and they would not be read.

Councilman Tomes moved for the adoption of Resolution No. 99-19. This motion was seconded by Councilwoman Field and carried unanimously.

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Councilman Tomes moved for the adoption of Ordinance No. 2541. This motion was seconded by Councilwoman Field and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. MOTION TO ALLOW AN APPROVED NON-PROFIT ORGANIZATION TO BE RESPONSIBLE FOR THE ALCOHOL BEVERAGE SALES AT THE BELE CHERE FESTIVAL, ESTABLISH SUNDAY AS AN ALCOHOL-FREE DAY AT THE FESTIVAL, AND A REVIEW OF THE OPTION 2 POLICY CHANGE BE INCLUDED IN THE ANNUAL REPORT ON FESTIVALS

Mr. Irby Brinson, Director of Parks & Recreation, said that in January, 1997, a five-year strategic plan for the Bele Chere Festival was approved by City Council. One goal of that plan was to empower the Alcohol Task Force to resolve the issues surrounding the selling and consumption of alcohol throughout the Festival. The Task Force has met consistently since 1997 to resolve the Festival's alcohol concerns. The Task Force is made up of members from downtown merchants, a representative from both the Asheville Police Department and Alcohol

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Law Enforcement, Councilman Sellers, City Attorney, Festival staff and Bele Chere Board Members. Since 1997, significant improvements have been made in regard to alcohol sales and consumption which have resulted in major improvements to the festival. These include reduction of arrests by 60%, merchants selling responsibly and self-policing their operations, a stricter accountability system with mandatory alcohol training, use of wristbands to curtail under age drinking in the Festival, and exceeding the requirements of State law in regard to rules and regulations.

The Task Force has developed three options in regard to alcohol sales and consumption at future Bele Chere Festivals. These options were reviewed in depth at the January 19, 1999, City Council worksession, along with the advantages and disadvantages which were developed during the meetings of the Task Force. Based upon discussion with City Council on January 19, 1999, the Alcohol Task Force is recommending that Option 2 be approved that would allow an approved non-profit organization to be responsible for the alcoholic beverage sales along with the establishment of Sunday as an alcohol-free day at the festival.

Councilwoman Field asked about what impact this might have on the Asheville Downtown Association ("ADA") since they have been holding the alcohol permit for the City in the past. Mr. Brinson said that even though the ADA has held the permit, they were reluctant to do that because of the liability concerns. Mr. Brinson did say that the details still need to be worked out on what non-profit organization would be responsible for the beer and wine sales at Bele Chere.

Mr. Keith Thompson, owner of a downtown business, suggested that in the future we look to re-direct some of this economic development from downtown into other areas of the City like Haywood Road or the River area.

Councilwoman Field personally preferred Option 1, however, would be willing to support Option 2 as the compromise. She did, however, want to see some strong follow-up to find out what kind of impact this is having on the festival and how people are responding to it. She also suggested keeping the Bele Chere Festival the same for at least 2 years for consistency.

Councilman Cobb felt that Option 2 was a good compromise.

Councilman Sellers felt that Option 2 will be a good test to see how the alcohol fee day works. He asked that this issue be re-visited after this year's festival in order to try to get a handle on the effect of Option 2.

Upon inquiry of Vice-Mayor Hay, Mr. Brinson said that as part of the Strategic Plan, they report back to City Council annually on the festivals. He said that as part of the annual report, he would include not only the financial impact of Option 2, but the attendance and the programmatic side information as well.

Upon inquiry of Mr. H.K. Edgerton, Mr. Brinson said that this has no affect on the Goombay Festival.

Councilman Sellers moved to allow an approved non-profit organization to be responsible for the alcoholic beverage sales at the Bele Chere Festival, establish Sunday as an alcohol-free day at the Festival, and a review of the Option 2 policy change be included in the annual report on festivals. This motion was seconded by Councilman Cloninger and carried unanimously.

Councilman Cloninger thanked the Alcohol Task Force for their efforts on this particular issue.

B. RESOLUTION NO. 99-20 - RESOLUTION AWARDING THE SALE OF THE 1999 REFUNDING BONDS

Finance Director Bill Schaefer said that this is the consideration of a resolution which confirms the sale of the City's refunding bonds to Wachovia Capital Markets, Inc., establishes the interest rates for said bonds and provides direction to the Finance Director regarding disposition of the proceeds of the sale.

At the City's request, the Local Government Commission solicited bids for $17,170,000 of City of Asheville General Obligation Refunding Bonds, Series 1999; the proceeds of which will be used to pay cost of issuance of the Refunding Bonds and to refund:

$2,600,000 General Obligation Street and Sidewalk Bonds, Series 1986;
$1,950,000 General Obligation Street and Sidewalk Bonds, Series 1990;
$8,800,000 General Obligation Water Bonds, Series 1992; and
$2,425,000 General Obligation Water Bonds, Series 1994.

Five bids were received. Wachovia Capital Markets, Inc. submitted the lowest bid which produced a true interest cost of only 4.013998%. The resulting savings to the City from the refunding totals $914,000 over the life of the bonds. Savings during the remaining five months of this fiscal year will be $26,781 and savings each year thereafter, until the bonds' final maturity in 2012, will range from $66,230 to $70,030. The present value of those savings is $818,151.

The proposed resolution establishes the interest rate for each maturity of the bonds (the interest rate corresponds to that offered in Wachovia's bid); awards the bonds to Wachovia Capital Markets, Inc. and provides direction to the Finance Director regarding disposition of the proceeds of the sale.

City staff recommends City Council adopt the proposed resolution.

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Tomes moved for the adoption of Resolution No. 99-20. This motion was seconded by Councilman Cobb and carried unanimously.

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VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 12, 1999, AND THE WORKSESSION HELD ON JANUARY 19, 1999

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on January 12, 1999, and the worksession held on January 19, 1999. This motion was seconded by Councilwoman Field and carried unanimously.

B. CITY COUNCIL 1999 RETREAT SCHEDULE

Vice-Mayor Hay said that Mayor Sitnick had requested that the economic development discussion and the annexation study discussion be rescheduled to Saturday, January 30, instead of Friday, January 29, in order that she may participate in the discussions. Vice-Mayor Hay noted that the Mayor would not be back from her trip from Washington, D.C., until Saturday morning.

City Manager Westbrook said that the economic development discussion would pose no problem to reschedule since staff was making that presentation. However, he asked for Council's guidance relative to the annexation study discussion since the consultants who would be making the report are not available to come to the retreat on Saturday.

Councilman Cobb suggested moving the annexation study discussion to a worksession. City Manager Westbrook said that the two hours scheduled on this topic could be handled at a short worksession agenda, however, staff needs direction from City Council soon on this particular issue.

Councilwoman Field said that since Mayor Sitnick is pretty up-to-speed on this issue, perhaps that topic could remain on Friday and the City Manager or the consultant brief her. She also suggested that the discussion be recorded.

Vice-Mayor Hay said that the purpose of the retreat is goal and priority setting for the upcoming year and if we don't take into account what we may or may not do about annexation, he was not sure Council could set goals in other areas.

It was the consensus of City Council to reschedule the Civil Service Law topic to Friday instead of Saturday and in it's place on Saturday, hear the economic development topic. It was also the consensus of Council to keep the annexation study discussion on Friday.

C. CLAIMS

The following claims were received by the City of Asheville during the weeks of December 8, 1998 - January 14, 1999: Elizabeth Douglass (Water), John Leslie (Water), Dan Fiore (Water), Stroupe Sheet Metal (Streets), Phillip D. Stover (Water) and Mike Evolga (Police).

The following claims were received by the City of Asheville during the weeks of December 15, 1998 - January 21, 1999: Pauline Hessler (Water), Jeanette Turner (Water), BellSouth (Water), BellSouth (Water) and Elbert Taylor (Finance).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. RETREAT

Upon inquiry of Mr. H.K. Edgerton, Vice-Mayor Hay said that the retreat is for City Council to work together and there will be no opportunity for public input. He did note that the public is invited and encouraged to attend and observe.

Mr. Edgerton asked if the Rule of 3 would be part of the Civil Service Law discussion. City Manager Westbrook said that in the context of the staff's discussion, it would be discussed in general as a problem that we see from the staff's standpoint. Mr. Edgerton urged City Council to consider the Rule of 3 since it does not allow ethnic minorities to advance in City government, especially as it relates to employment in the Asheville Police Department.

Mr. John Hayes also urged City Council to seriously review the Civil Service Rule of 3.

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VIII. ADJOURNMENT:

Vice-Mayor Hay adjourned the meeting at 6:10 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

City Council Annual Retreat
Friday - January 29, 1999 - 1:00 p.m. -
Sunday, January 31, 1999 - 10:30 a.m.
Highland Lake Inn, Flat Rock, N.C.

Mayor Leni Sitnick, Presiding (Mayor Sitnick was unable to attend the retreat on January 29 due to the U.S. Conference of Mayor's meeting in Washington, D.C.); Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Friday, January 29, 1999

Annexation Study - Richard Flowe, Consultant from Benchmark Inc., reviewed the fundamentals of annexation, annexation purposes and strategy, net cost of annexation based upon hypothetical residential property values, urban territory surrounding the City including development patterns and public services provided, and setting of goals of objectives for future growth.

It was the consensus of Council to instruct Mr. Flowe to develop a plan on the direction City Council should implement the extension of the municipal boundaries over the next several years. Said plan should consist of (1) cleaning up small service inequities; (2) looking at the economic base diversity; (3) addressing those residential areas that lie immediately outside the City limits that have full infrastructure services; (4) looking at those residential areas that lie immediately outside the City limits that don't have complete urban area infrastructure; and (5) mix and always view future development opportunities. Said plan was requested to come back before City Council after April 1, 1999, with a proposed timeline.

Civil Service Law - City Attorney Bob Oast and Personnel Director Jeff Richardson reviewed with Council (1) a brief history of the Civil Service Commission (2) statutory and case law relative to personnel administration since the adoption of the civil service law; and (3) existing conflicts between the Civil Service Law and federal/state personnel law.

Discussion surrounded the Civil Service Law being amended starting with the inconsistencies with federal and state law. Staff suggested a group of employees be recruited, along with a Council member and a member of the Civil Service Board, to discuss possible amendments, along with discussion of changes only affecting future employees, not current ones. This topic would be discussed further in the goal setting process.

Y2K Report - Finance Director discussed the City of Asheville's Year 2000 Project status. Mayor Sitnick requested the City write a letter to Buncombe County voicing our concern about the County's preparedness for Y2K.

Stormwater Regulations - Phase II - City Engineer Cathy Ball updated City Council on the Phase II Stormwater Regulations. The City of Asheville will be required to comply with these regulations by April 2002. The regulations require the City to develop a stormwater program to include the following minimum measures (1) public education and outreach on stormwater impacts; (2) public involvement/participation; (3) illicit discharge detection and elimination; (4) construction site stormwater runoff control; (5) post-construction stormwater management in new development and redevelopment; and (6) pollution prevention/good housekeeping for municipal operations. She noted that in the 1999-2000 budget she will request $125,000 to have a consultant prepare: (1) a program detailing what must be done to comply with Phase II Stormwater Regulations; (2) information that can be used for the public education/awareness portion of the program; and (3) the application necessary to get a general permit from the Environmental Protection Agency.

Target Based Budgeting - Budget Director Ben Durant explained that under target-based budgeting, each department is given a maximum dollar figure for its budget based upon projected growth in the overall City revenues. As a part of his presentation, it was mentioned that staff was going to work with a policy in which there will be no new major initiatives without new revenues sources. City Council expressed an interest to be more involved in the budget process regarding the vision of the departments.

Minimum Housing Code Issues - Director of Building Safety Terry Summey reviewed with City Council significant dates of the Housing Code Enforcement Program, future Housing Code initiatives, substandard vacant residential structures update, summary of inspections, and the inspections needed based on the Housing Code schedule. He updated Council on the efforts made to increase the number of residential rental properties in the City that are inspected and brought up to the Minimum Housing Code. In addition, he reviewed the efforts to date to address vacant substandard residential structures which negatively impact neighborhoods. In order to reach the City's goals of inspecting all units by July 1, 1999, Mr. Summey outlined the additional assets he would need.

It was the consensus of City Council to refer this report and information to the Housing and Community Development Committee for their recommendation prior to July 1, 1999, in case the Committee's report has budgetary ramifications.

Fire Department Accreditation - Fire Chief John Rukavina updated City Council on the progress of their work in preparation for accreditation through the National Fire Service Accreditation Program. Their goal is to bring an accreditation evaluation team to Asheville in time for the millennium in early 2001.

Saturday, January 30, 1999

MSD Sewer Consolidation Agreement - Assistant City Manager Doug Spell reviewed with City Council the MSD Policy and the MSD Sewer consolidation agreement. The following issues of concern were addressed (1) the financial philosophy of the MSD Board utilizing a "pay as you go" philosophy; (2) the "Fund Balance" amount in the general fund is at $23,653,349 for Fiscal Year 1999; and the policies of the MSD Board do not include provisions for sanitary sewer line extensions beyond those identified in exhibits which are part of the Sewer Consolidation Agreement.

It was the consensus of City Council to direct the City Manager to send a letter to MSD enumerating the City's concerns.

Economic Development - City Manager Westbrook reviewed the background of the City Business and Development Coordinator along with the City Business and Development Commission. With the recent turnover in the City Business and Development Coordinator, he explained why he felt the reporting status for the position should be transferred from the Planning & Development Department to the City Manager's Office. He anticipated this position being filled by April 1999.

Mr. Westbrook then explained the five specific projects which the City has provided funds as part of the economic development incentives. These developments are indicators of the City's initiative to facilitate an economic development program consisting of retention of business, expansion of business, and new business development and attraction.

Mr. Westbrook explained that three request for proposals have been received, which scope of work includes the focus on efforts to assist the City in preparing the Strategic Plan for Economic Development. Staff will present this information to City Council soon and request that a consulting firm be selected and that the City Manager be authorized to enter into a contract with the selected firm. An appropriation will be required by City Council in order to fund the Strategic Plan, with estimates ranging from $60,000 to $162,000. The Community Development Block Grant funds in the amount of $11,000 are available and have previously been allowed for planning activities.

Mayor Sitnick was interested in establishing a task force made up of Council and staff to go out to praise and market Asheville.

Report on Unaccounted for Water - Water Resources Director Tom Frederick explained the many contributing factors that make up for unaccounted water, with water leaks being only one of those factors. He stated that this is a widely misunderstood problem, and the City is trying to correct the misunderstanding by being proactive with the information.

Mayor Sitnick would like to review the rate structure in general, the lack of equity in the City and County governments not paying for water, and the water efficiency program.

It was the consensus of City Council for staff to prepare a press release about unaccounted for water.

Report on the Asheville Transit System - Urban Planner Bruce Black briefed City Council on the background of the Transit Authority, it's employees, equipment, relation to the operating company, relation to the union, funding and budget process. He reviewed the current responsibilities of the Transit Authority along with their current powers. Mr. Black then reviewed the relationship between the City and the Transit Authority. He then reported on the alternative organizational relationships between the City Council and the Asheville transit system. Currently the transit system is managed by the Asheville Transit Authority, with operational responsibility contracted to an operating company. He compared each alternative organizational structure by highlighting the strengths and weaknesses of each form of organization.

The theory in the approach is to define two ends of the spectrum, namely complete control and autonomy to the extent allowed by law by the Asheville Transit Authority, and, at the other end of the spectrum, the complete control of the transit system by the City Council. A third point on the spectrum between these alternatives is the present structure, namely a hybrid system which tends to disperse authority and responsibility to different parties.

After presenting all information, Mr. Black concluded that the organizational structure that presented the clearest alignment of authority, and responsibility while retaining the greatest degree of simplicity and directness and allowing for the greatest oversight was the organizational structure calling for complete control by the City Manager with policy set by the City Council. The next best organizational structure that responds to these criteria is complete control by the Asheville Transit Authority. The least responsive to these criteria is the present hybrid organizational system. He then outlined the advantages and disadvantages of moving the transit system under the City Council.

It was the consensus of City Council to further investigate the possibility of complete control by the City of Asheville with the information coming back to City Council as part of the budget process, which will allow staff time to work out the details, talk with the Transit Authority, etc.

Legislative Update - City Attorney Bob Oast reviewed with Council some changes that would affect Asheville relative to annexation, sexually-oriented businesses and economic development. He then reviewed with Council the results of the three requests Asheville made to the legislature. He said that the deadline to introduce bills was March 31, 1999.

It was the consensus of City Council to proceed with re-submission of the Asheville-Buncombe Community Relations Council's request to become a local EEOC deferral agency.

Corporate University Management 21 Employee Development Program - Personnel Director Jeff Richardson and Assistant Personnel Director Kevin Wilson reviewed with City Council the status to date and the plan for the future in the creation of a Corporate University.

It was the consensus of City Council to support the formation of a Corporate University to ensure staff development remains aligned to strategic initiatives and close the gaps which may exist.

City Council Goal Setting Process - Budget Director Ben Durant gave a status report on City Council's top 10 goals from last year. He also reviewed the status of the second set of goals from last year as well. Mr. Durant then explained the goal setting process. He began with the organizational mission and theh moved to the top 40 livability factors that impact a citizens "quality of life." Council then determined the critical "quality of life" issues Asheville must address to achieve its mission and then group related the issues into broad service areas based on common themes. He noted that the goals should address the general ends or outcomes that Asheville wants to direct its efforts in the upcoming fiscal year. Goals should address key issues by stating policy intention and should be broad enough in scope to allow senior management and staff to propose objectives and strategies during the budget process to meet City Council's established goals.

After considerable discussion, three lists were formulated: 1999-2000 Goals, Council's On-Going Support, and Miscellaneous items.

The following are the 1999-2000 Goals with strategies:

Preserve the environment

- Coordinate with existing initiatives (Land-of-Sky Regional County, Buncombe County, etc.) on household hazardous waste control
- Expand recycling program beyond single family
- Coordinate anti-litter campaign with Buncombe County, Chamber of Commerce and the N.C. Dept. of Transportation
- Improve sign ordinance enforcement
- Encourage more aggressive water efficiency and water conservation program
- Reduce vehicle emissions through traffic engineering enhancements

Improve the quality of life through enhancing cultural, arts, recreational and entertainment opportunities

- Expand the benefits of the cable franchise
- Civic Center expansion/improvement
- Public/private partnership to establish an Asheville Museum of History
- Promote passage of parks, recreation and greenway bond
- Implement parks, recreation and greenway Master Plan
- Develop policy on public art
- Move ahead on public access channel
- Promote quality of life issues for our children and our youth

Improve all transportation systems through innovative and cost effective planning and operations

- Develop plan for City operation of transit system
- Follow through on comprehensive public participation transportation planning process
- Promote passenger rail service to Asheville
- Implement Pedestrian Thoroughfare Plan
- Maintain downtown sidewalks and construct new sidewalks
- Traffic calming

Promote economic vitality through planned and sustainable growth

- Identify suitable industrial sites
- Approve and implement Economic Development Strategic Plan, i.e., Council/staff business recruitment support team - on-going corporate help; emphasis on eco-nomic efforts (create new theme to market Asheville like making Asheville the National Institute of Environment)
- Implement Downtown Plan
- Finalize plans for property at Airport
- Fiscal responsibility for City government (i.e., new revenues, no tax increase, efficient operation)
- Continue annexation study
- Identify and fund infrastructure needs
- Review participation fees
- Continue visiting, promoting and growing of existing businesses
- Encourage cost effective conservation efforts for businesses and industry
- Work with Carolina Power & Light Company, Buncombe County and Chamber of Commerce to develop the BASF site

Expand all housing opportunities in Asheville

- Promote, fund, identify revenue and implement the Housing Action Plan
- Fund the Housing Action Plan by promoting a Housing Trust Fund referendum
- Encourage general assembly to increase state housing trust fund
- Revisit the Minimum Housing Code compliance
- Encourage lending institutions to be more creative with financing for affordable housing and minority lending
- Encourage the Community Development staff to work closely with federal funding options
- Encourage public/private partnerships

The following is the Council's On-Going Support List: (1) quality education; (2) safe cities; (3) civic pride and citizenship; (4) support regional approach to cell tower regulation; and (5) Council Chamber renovations.

The following items were discussed and placed on the miscellaneous list: (1) City/County relations; (2) Media relations; (3) press releases be prepared after City Council trips; (4) organization of a special celebration for the new millennium, other than First Night; (5) exploring cooperative efforts with Buncombe County on the PEG Channel, and (6) taking a pro-active approach to let the community know what is happening.

Mayor Sitnick stressed that the Council's On-Going Support list and the miscellaneous items list will be "living" lists.

Mayor Sitnick hoped that the litter kick-off effort in March would be a cooperative effort among the City of Asheville, Buncombe County, Chamber of Commerce.

Sunday, January 31, 1999

The following items were discussed and consensus of Council to place on future worksessions: (1) Request for Whit Webb from N.C. Dept. of Transportation to talk about the I-26 connector delay; (2) Meet with groups (A-B Technical College, High Schools, Warren Wilson College, Mars Hill College, Montreat College, etc.) to find out what they are doing to prepare students to go into the work force; (3) Update from various members from the Eagle/Market Streets community on improvements to the Eagle/Market Street area; (4) Solutions for youth downtown; (5) Reports from Department Directors from the Best Practices Book on which ideas might work well for Asheville; (6) Ways to expand the City's Home Page, i.e. insert the Parcel Identification Number and it will tell you what the property is zoned and if it is in the City's extra-territorial jurisdiction area; (7) Report on reaction to the television production of City Council meetings and how to make the meetings more useful to the public;

Councilwoman Field shared with City Council information on her recent trip to Raleigh, N.C., to attend the N.C. League of Municipalities Board of Director's meeting.

At the request of Vice-Mayor Hay, City Attorney Oast said that he would report back to City Council at their February 16, 1999, the options available to City Council regarding the election process.

It was the consensus of City Council to instruct the Personnel Director to begin working with a task force composed of department representatives, a Council member and a member of the Civil Service Board to re-tool the Civil Service Law, starting with the recruitment and section process. The City Attorney was instructed to see if legislation could be drafted prior to the local bill closing date of March 24, 1999.

Councilwoman Field reported on the status of the public art policy. She proposed that streetscape and other similar boards or commissions could in some ways be blended together to streamline the process. It was the consensus of City Council to proceed with the public art policy with the coordination of the different plans, i.e., streetscape plan, downtown design review plan, etc.

Mayor Sitnick reviewed with City Council the proposed agenda of the joint City/County/area municipalities meeting to be held on February 19-20, 1999, at the Owen Conference Center at UNC-Asheville. It was the consensus of Council for the meeting not to be confrontational with no policy decisions being made at that meeting.

Mayor Sitnick shared with City Council information on her recent trip to Washington, D.C., to attend the U.S. Conference of Mayor's meeting.

Mayor Sitnick adjourned the meeting at 10:30 a.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - February 2, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Mowing Contracts

Summary: The consideration of resolutions authorizing the City Manager to enter into service contracts to mow City right-of-ways, parks and other public areas.

In an effort to reduce costs, promote competitive bidding and improve the quality of work for mowing City right-of-ways, parks and other public areas, City staff has divided City grass areas into six separate bidding sections. City staff has solicited sealed bids from twelve (12) mowing contractors, five (5) of which were minority contractors, to mow City right-of-ways, parks and other public areas throughout the City. City staff reviewed all bids and have determined the qualified lowest bidders per section, based on bid specifications to be the following:

Bidder:	Section:	Bid Amount:
Donnie Appleseed's	Central	$37,667.35
*Professional Lawn Care Ser.	East	$26,170.00
	West	$38,999.00
	Right-of-ways	$49,998.00
	North	$31,025.00
*Williams and Williams	South	$ 7,175.00
	Total Cost	$ 191,034.35

*Professional Lawn Care Service and Williams & Williams have stated that all specified mowing equipment will be on hand at the time of contract signing. City staff has notified both mowing contractors that upon review of equipment at the time of contract signing, if all equipment required by the bid specifications are not on hand, then the mowing contract for their sections will be awarded to the next lowest qualified bidder.

Approved funding is available in the City mowing contract account to pay for mowing City right-of-ways, parks and other public areas. The recommended total cost for the award of the recommended contracts compares to the previous contract amount for the prior two (2) years is $202,833.00.

The Parks and Recreation Department staff requests City Council to direct the City Manager to enter into service contracts with Donnie Appleseed's, *Professional Lawn Care Service and *Williams & Williams respectively, *or the next highest qualified bidder, if specified equipment is not on hand at the time the contract is ready for execution.

When Mayor Sitnick suggested that the mowers have bags attached to their equipment to catch what is mowed (in particular litter), Mr. Willis responded that it is hard to attach a bag to some commercial mowers. However, they will be coordinating the mowing with the Adopt-A-Street Program and will monitor the areas after they have been mowed. He also stated that there is a mechanism in the contracts to assess a monetary penalty in order to get the contractors to do a better job.

Upon inquiry of Councilman Cobb, Mr. Willis stated that he would review the contracts to see if the contractors will be required to maintain creek banks.

Offer to Purchase Vacant Lot on Park Place

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for a vacant lot on Park Avenue.

A bid from David J. Heetderks, in the amount of $8,700.00, has been received for the purchase of a vacant lot on Park Avenue. The bid is not less than the established minimum price of $8,700.00.

The property is a commercial industrial zoned lot at the end of Park Avenue comprising 7,000± square feet of land. The property has an irregular shape and modest slope. It has approximately 78 feet of frontage along Park Avenue. There is no current or contemplated use for the property by the City. Mr. Heetderks is a resident of the West End community where the property is located.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff recommends adoption of the resolution.

Upon inquiry of Vice-Mayor Hay about if the community is aware of this potential purchase of land, Mr. Vess said that even though he has not officially contacted the neighborhood organization, Mr. Heetderks, the potential purchaser, is very active in that community organization.

Set Public Hearing on February 23, 1999, for Urban Mass Transit Operating Grant Application

Summary: The consideration of setting a public hearing in order to apply for Mass Transit Funding in the amount of $470,631 for Fiscal 1998/99.

The Fiscal 1998/99 Annual Operating Budget included Asheville Transit Authority funding as follows:

Operating revenues	$675,000
Operating subsidy:	
City of Asheville	813,485
State funding	182,165
Federal funding	470,631
Total funding	$2,141,281

In order to receive the Federal funding, the City Council must hold a public hearing at which time the service will be discussed, and certain environmental, land use planning and social impacts of the service will be outlined. Upon completion of the public hearing, a resolution authorizing the Mayor to file an application for the Grant and provide certain required assurances to the U.S. Department of Transportation should be considered.

Staff recommends City Council schedule a public hearing to consider authorizing the Mayor to file an application for Mass Transit funding in the amount of $470,631 for Fiscal Year 1998/99.

List of Festivals & Special Events

Summary: The consideration of a motion approving the 1999 Parks and Recreation Department's festival and special events schedule.

In March of 1995, the Asheville City Council adopted a festival's policy. A segment of that policy requires that City Council approve the list of festivals on an annual basis. These festivals and special events are co-sponsored by the City of Asheville. The Parks and Recreation Department is recommending the approval of the following festivals and special events:

EVENT	DATE
Sunday in the Park - Quality Forward	TBA
March of Dimes/Walk America	24-Apr
Very Special Arts Festival	7-May
Asheville Youth Symphony Concert	16-May
Moonlight-Downtown	4-Jun
La Fiesta - Asheville Art Museum	5-Jun
Honda Hoot 22-26	22-Jun
Downtown After Five	25-Jun
Riverlink - Riverfest 25-27	25-June
Shin Dig on the Green	3-Jul
July 4th	4-Jul
Downtown After Five	9-Jul
High Country Art and Craft Show (10-11)	10-Jul
Shin Dig on the Green	10-Jul
Shin Dig on the Green	17-Jul
Bele Chere 23-25	23-Jul
Shin Dig on the Green	31-Jul
Downtown After Five	13-Aug
Shin Dig on the Green	14-Aug
Shin Dig on the Green	21-Aug
Goombay 27-29	27-Aug
Shin Dig on the Green	28-Aug
Shin Dig on the Green	4-Sep
Downtown After Five	10-Sep
Great Smokies Brewfest	18-Sep
Greek Festival 1-3	1-Oct
A Walk into History - Urban Trail	3-Oct
American Lung Association - Reindeer Romp	21-Nov
Christmas Parade - Asheville Merchants Assoc.	24-Nov
Light Up Holidays	27-Nov
First Night	31-Dec

The Parks and Recreation Department staff recommends approval of the above festivals and special events for 1999.

Upon inquiry of Mayor Sitnick, City Manager Westbrook explained that Honda Hoot is strictly a for-profit organization on this non-profit list.

Shiloh Recreation Center HVAC Contract

Summary: The consideration of a resolution authorizing the City Manager to enter into a Heating/Ventilating/Air-conditioning contract for the Shiloh Recreation Center.

In an effort to improve quality of service through the City of Asheville daycare and after school programs, City staff, through the capital improvement process, has designated the Shiloh Recreation Center to receive heating/ventilating/air-conditioning up-grades. City staff solicited sealed bids from eight (8) Heating and Air-Conditioning Contractors, three (3) of which were minority contractors, to supply and install heating/ventilating/air-conditioning up-grades at the Shiloh Recreation Center. City staff divided the bid package into three (3) base bids to allow for maximum flexibility in awarding a contract based on limited funding of $ 35,000.00. The following bids were received:

Bolton Corporation	$ 58,300.00
Elcon Service	$ 50,579.00
McNutt Service Group	$ 48,699.00
Carolina Comfort Heating & Cooling	$ 49,558.00

City staff has reviewed all bids and determined that McNutt Service Group, Inc. is the lowest bidder and based on the limited budget of $ 35,000.00, recommends acceptance of base bid #1, #2 and part "B" of base bid #3 for a combined total of $34,409.00.

Approved funding is available in the capital improvement project account to pay for this renovation to the heating/ventilating/air-conditioning system at the Shiloh Recreation Center.

The Parks and Recreation Department staff requests City Council authorize the City Manager to enter into a contract for $ 34,409.00 with McNutt Service Group, Inc.

Budget Amendment relative to Hockey Related Expenses

Summary: The consideration of a budget amendment, in the amount of $305,000, to amend the Civic Center's Fiscal Year 1998-99 budget in order to fund hockey related expenses.

In October 1998, the City of Asheville and Asheville Smoke, Inc. entered into an agreement to provide a minor league hockey program at the Asheville Civic Center. In June 1998, however, when the Civic Center's annual budget was initially adopted, no formal agreement existed between the City and Asheville Smoke, Inc. As such, expenditures and revenues related to the minor league hockey program were not included in the Civic Center's original FY 1999-1999 budget.

With the minor league hockey program now fully operational, the Civic Center has incurred hockey related expenses, i.e. building maintenance, renovations, concessions, temporary labor, etc. that were not included in the original budget. These expenditures are estimated to be $305,000.

In addition to increased expenditures related to hockey, the Civic Center has generated new revenues, primarily from increased concession sales, that were not included in the Civic Center's initial revenue projections. The Civic Center has also generated additional revenue from its new public skating program. These new revenues will be sufficient to offset the $305,000 in additional hockey related expenditures. Thus, it is recommended that Council increase the Civic Center appropriation by $305,000 to be offset by $305,000 in additional revenue generated from hockey ticket sales.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

DROUGHT RELATED EXPENSES

Mr. Tom Frederick, Director of Water Resources, said that this is the consideration of a budget amendment to amend the Regional Water Authority's Fiscal Year 1998/1999 balanced budget in order to fund drought related expenses.

Critically low water levels in the North Fork and Bee Tree Reservoirs prompted the Regional Water Authority to declare Phase III mandatory water restrictions on December 15, 1998. Reservoir levels continue to remain critically low which has resulted in unexpected operational expenses including the purchase of approximately 2 million gallons of water per day from Hendersonville. The total cost of drought related expenses is estimated to be $334,750 through the end of February 1999.

The Fiscal Year 1998/1999 Water Fund Budget does not contain a provision for expenses related to emergencies such as droughts or floods, so it will be necessary for the Authority to adopt a revised budget to fund this severe drought.

Highlighted below are drought related operational expenses that are expected to be incurred through the end February 1999:

Water Conservation Kits	$17,000
Public Education/Advertising	10,000
Recycle Backwash Water	12,000
Replace Bee Tree Filter Media	5,000
Electrical/Pumping Costs	26,250
Treatment Chemicals	8,750
Consultant Fees (CDM)	15,000
Overtime Water Maintenance/Plants	60,750
Contractor Assistance (Leak Repair)	20,000
Total	$174,750

In addition, there is the expense of purchasing water from Hendersonville and other utilities through the end of February 1999 that is expected to cost approximately $160,000.

The operating expenses highlighted above totaling $174,750 can be funded by decreasing or postponing the following budgeted expenses/projects:

Repairs to equipment/buildings/watershed roads	$30,000
Training	4,000
Mills River Utilities (due to delays in start-up)	15,000
Spring Image Enhancing/Water Eff. Campaign	10,000
Vacancies throughout the Department that were unfilled during first half of 98/99 as well as the frozen Admin. Assist. and Eng. Tech.	115,750
Total	$174,750

There are no other areas in the operating budget that can be cut in order to fund the purchase of water from other utilities without reducing critical programs and/or customer service. It is, therefore, recommended that the Fiscal Year 1998/1999 Water Fund Budget be amended to provide funding in the amount of approximately $160,000.

It is possible that there may be enough revenue collected from surcharges that were implemented as part of the Phase III mandatory water restrictions on December 15, 1998, to cover the purchase of water from Hendersonville and other utilities. Since that time, water production has decreased approximately 5%, indicating that the surcharges have encouraged customers to reduce consumption by that same amount. Although it is difficult to accurately predict the effect of conservation efforts; it is estimated that if this trend in reduced consumption continues, revenue of nearly $175,000 may be realized from the surcharges. However, if consumption drops to 10% of normal, revenues will drop by nearly $130,000.

Since conservation efforts and the surcharges realized from them are unpredictable, it may be necessary for staff to request another budget amendment as early as next month. If the drought worsens, there may also be additional expenses that will need to be funded in the near future.

Staff recommends approval of reducing or postponing the budgeted line items highlighted above in order to fund operating expenses related to the drought. In addition, staff recommends review and approval of amending the Authority's Fiscal Year 1998/1999 balanced budget in order to fund the purchase of $160,000 of water from Hendersonville though the end of February 1999.

Mr. Frederick responded to several questions and comments from Council, some being, but are not limited to: is it possible to purchase water from the Town of Black Mountain and the Town of Weaverville, what is the target date for the Mills River Treatment Plant to come on line, is there a possibility to capture water when hydrants are flushed for public health and safety needs, why doesn't the Water Fund budget contain money for emergencies, are there any federal agencies that the City can look to in times of drought, is the Water Efficiency Program actually being decreased by $10,000, and the need for a press release explaining the 25% water loss.

Mayor Sitnick asked to participate in discussions with the Regional Water Authority on their rate structure to see if something can be done to create an emergency fund so that in times of drought individual residential users are not so heavily penalized.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CARTER COVE ROAD SEWER PROJECT

Mr. John Echeverri, Assistant City Engineer, said that this is the consideration of a budget amendment to appropriate $200,000 from the General Fund Contingency for sewer improvements for the Beaverdam Annexation - Carter Cove Area.

On November 10, 1998, City Council awarded the contract for the Beaverdam Annexation - Carter Cove Area project to Cooper Construction Company in the amount of $442,278. It has been determined that $250,000 exists in the project budget. Staff is requesting an additional appropriation of $200,000 from the City's General Fund Contingency to cover the additional cost of the project and an additional 10% contingency to complete the project. The Water Authority is paying approximately $16,500 of the cost for the installation of the water line which is a part of this project.

Staff has held several meetings with the residents of Carter Cove to prepare for the installation of the water line and the sewer line. Construction will be ready to begin as soon as the one additional easement is acquired. This is the easement of Robert M. and Lenoir Swicegood. Staff has met with Mr. Mac Swicegood several times in an effort to obtain this easement. Staff is actively pursuing obtaining this easement by providing Mr. Swicegood with all the information he needs to get his parents signature on the easement. Staff's goal is to have construction begin in four to six weeks.

Staff recommends that City Council appropriate $200,000 from the General Fund Contingency for the Beaverdam Annexation - Carter Cove Area Sanitary Sewer Improvements.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REPORT ON NATIONAL LEAGUE OF CITIES MEETING IN KANSAS CITY, MISSOURI

Vice-Mayor Hay, Councilwoman Field and Councilman Tomes all reported on their recent trip to the National League of Cities meeting which was held in Kansas City, Missouri. Each shared important information with Council as it related to issues affecting the City of Asheville.

Mayor Sitnick asked that City Council consider reporting on their trips at formal Council meetings so that members of the community can hear the reports since the formal meetings are broadcast.

BOARDS AND COMMISSIONS

Vice-Mayor Hay reviewed the options of the appointment to the Citizens-Police Advisory Committee and the Asheville School Board.

Upon recommendation of the City Council Boards/Commission Committee, it was the consensus of City Council not to interview the two central area candidates for the Citizens-Police Advisory Committee but to place the appointment on the next formal meeting agenda for consideration.

Upon recommendation of the City Council Boards/Commission Committee, and after further discussion of the reappointment process and the excellent credentials of the applicants, it was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Roy Harris and Brian Weinkle to the Asheville School Board.

OTHER BUSINESS

Urban Sprawl and Ways to Control It

At the request of Hazel Fobes, Mayor Sitnick read the following letter dated February 2, 1999, from Hazel W. Fobes: "Yesterday, February 1, I delivered to the Mayor's office letters addressed to each of you containing copies of an article from the Christian Science Monitor, (one of the nation's leading newspapers) January 20, 1999 titled 'Suburbs Create Sprawl-free Zones to Control Growth' and information on a letter to opinion, Mt. XPRESS, January 27, '99 from a reader, John Murrell-Kisner, who is forming with David Stewert a group, Smart Growth Partners, focusing on livable, healthy communities. Their next meeting is February 25, at noon, 29-1/2 Page Ave. Tel: 253-8265 and 285-0810. They encourage interest and input. I bring this to your attention now because urban sprawl needs to be addressed and curbed now and because among your top issues for the council's 1999 goals are transportation, local economy, environment and quality of life. All of these relate to uncontrolled suburban development. A growing concern in the nation and in Asheville and Buncombe Co. is the rapid growth of our suburbs. This brings traffic, smog, crime, wider highways, destruction of farmlands, some residential areas, vilifies open-spaces. To curb this unrestrained development in our suburbs and encourage planning, growth management movements have organized programs in 12 states, including New York, New Jersey, Maryland and California. The term being used for these programs is 'Smart Growth'. Remember Asheville is 'Smart Growth Partners'. I ask you to give serious concern to this problem and contact our local group."

St. Dunstans Road

Because City Council doesn't normally take public comment at a worksession, Vice-Mayor Hay moved to waive the rules and take public comment in order to hear a neighborhood road concern that needs a decision on the following day. This motion was seconded by Councilman Cobb and carried unanimously.

Mr. and Mrs. May, residents on St. Dunstans Road, said that their family moved to St. Dunstans Road in 1997 at the time the road was closed. It was their understanding, and the neighbors in the area, that the road was to remain closed after the construction was completed by the N.C. Dept. of Transportation ("NC DOT") on the McDowell Street bridge project. It was also their understanding that the road would not be re-opened as a connector street from McDowell Street to Biltmore Avenue and that the NC DOT was to cul-de-sac St. Dunstans Road. They have just received a letter from the NC DOT that says that unless they hear differently from the City of Asheville on or before tomorrow (February 3, 1999) they will continue to proceed with the re-opening of St. Dunstans Road. They urged City Council to notify the NC DOT to keep the road closed because St. Dunstans is a narrow road and if re-opened with a traffic light at the intersection of McDowell Street and St. Dunstans Road, will attract a large amount of traffic through this residential neighborhood. They said that two petitioners were given to the City of Asheville to keep the road closed. At the very least, they urged City Council to hold a public hearing in order to hear the residents' concerns regarding this street being re-opened.

City Manager Westbrook explained that the City's official position has been, and remains, to re-open St. Dunstans Road for public safety purposes. He explained that the road was temporarily closed for about two years for NC DOT's construction project.

Councilwoman Field recalled that when this NC DOT project came before City Council, an issue arose about cutting down trees in that area and the NC DOT worked with the City to resolve that issue. She did not recall the road closing being an issue expressed by the neighborhood.

Assistant City Manager Doug Spell explained that the City's position is that the road be re-opened from a public safety standpoint. He did not recall that there were any problems associated with the traffic or cut-through when the road was open. He felt that if people were going to try to cut through from McDowell Street to Biltmore Avenue that they would probably use Doctor's Drive because it is a straighter road. He said that NC DOT planning documents show that in future years the amount of cars anticipated to be traveling on St. Dunstans Road would be minimal traffic for a residential street. He did note that if the road were re-opened, the City has many traffic calming methods that can be used to address any traffic problems they may encounter. Regarding the width of St. Dunstans Road, he said the width is not out of the ordinary for residential streets in Asheville.

Fire Chief John Rukavina explained the Fire Department's response time with the road open vs. the road being closed. He said that from a public safety standpoint, his recommendation would be to re-open the road.

A resident at 172 St. Dunstans Road, said that there used to be a one-way sign on St. Dunstans Road prior to the closing and now the sign is gone. She also urged Council to keep the road closed due to the anticipated increase in traffic. She felt that if the road were to be re-opened, the road would need to be widened and more one-way signs installed on the road.

Discussion surrounded the proposed cul-de-sac and who would have to pay for any right-of-way needed for that construction; and the procedure which would need to be followed for a formal street closing as required by the General Statutes.

City Council instructed the City Manager to contact Mr. Smart with the NC DOT, the next day to see if the deadline date of February 3, 1999, can be postponed until City Council can discuss this matter at a formal meeting with NC DOT representatives and area neighbors. If the February 3, 1999, deadline cannot be postponed, the City's original position to re-open St. Dunstans Road would remain intact as recommended by City staff.

CLOSED SESSION

At 5:27 p.m., Councilwoman Field moved to go into closed session for the following reasons: (1)to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange or lease - G.S. 143-318.11(a)(5); and (2) to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuit about which the Council expects to receive advice are: Richard A. Black, individually and in his capacity as Administrator of the Estate of Dorcas Faye Black; Michelle Hughes Elliott; Douglas Charles Elliott; the City of Asheville; James Cheeks; the North Carolina Department of Transportation; Ken Putnam; Merry Maids Limited Partnership; Munchel Enterprises, Inc., d/b/a Merry Maids; Archie Franklin Lail, Edda Lail; and Karl Heinz Lail - G.S. 143-318.11(a)(3). This motion was seconded by Councilman Cloninger and carried unanimously.

At 6:10 p.m., Councilwoman Field moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:10 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

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Tuesday - February 9, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Sellers gave the invocation.

AGENDA ADDITION

At the request of City Manager Westbrook, City Council added the item of Community Development Budget Amendment under the "Other Business" section of the agenda.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JANUARY 31, 1999, AS "REV. DR. WESLEY GRANT SR. DAY" IN THE CITY OF ASHEVILLE

Councilman Tomes read the proclamation proclaiming January 31, 1999, as "Rev. Dr. Wesley Grant Sr. Day" in the City of Asheville. He presented the proclamation to Rev. Grant.

B. PROCLAMATION PROCLAIMING THE MONTH OF MARCH AS "BLACK HISTORY MONTH"

Mayor Sitnick read the proclamation proclaiming the month of February, 1999, as "Black History Month" in the City of Asheville and presented the proclamation to Mr. John Hayes, President of the local chapter of the NAACP.

II. CONSENT:

A. RESOLUTION NO. 99-21 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SERVICE CONTRACT WITH DONNA SPRATT, D/B/A DONNIE APPLESEED'S LANDSCAPING, TO MOW THE CENTRAL SECTION AREA OF THE CITY OF ASHEVILLE

Summary: The consideration of resolutions authorizing the City Manager to enter into service contracts to mow City right-of-ways, parks and other public areas.

In an effort to reduce costs, promote competitive bidding and improve the quality of work for mowing City right-of-ways, parks and other public areas, City staff has divided City grass areas into six separate bidding sections. City staff has solicited sealed bids from twelve (12) mowing contractors, five (5) of which were minority contractors, to mow City right-of-ways, parks and other public areas throughout the City. City staff reviewed all bids and have determined the qualified lowest bidders per section, based on bid specifications to be the following:

Bidder:	Section:	Bid Amount:
Donnie Appleseed's	Central	$37,667.35
*Professional Lawn Care Ser.	East	$26,170.00
	West	$38,999.00
	Right-of-ways	$49,998.00
	North	$31,025.00
*Williams and Williams	South	$ 7,175.00
	Total Cost	$ 191,034.35

*Professional Lawn Care Service and Williams & Williams have stated that all specified mowing equipment will be on hand at the time of contract signing. City staff has notified both mowing contractors that upon review of equipment at the time of contract signing, if all equipment required by the bid specifications are not on hand, then the mowing contract for their sections will be awarded to the next lowest qualified bidder.

Approved funding is available in the City mowing contract account to pay for mowing City right-of-ways, parks and other public areas. The recommended total cost for the award of the recommended contracts compares to the previous contract amount for the prior two (2) years is $202,833.00.

The Parks and Recreation Department staff requests City Council to direct the City Manager to enter into service contracts with Donnie Appleseed's, *Professional Lawn Care Service and *Williams & Williams respectively, *or the next highest qualified bidder, if specified equipment is not on hand at the time the contract is ready for execution.

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B. RESOLUTION NO. 99-22 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SERVICE CONTRACT WITH RANDY PITTS, D/B/A PROFESSIONAL LAWN CARE SERVICE, TO MOW THE NORTH, EAST, WEST AND RIGHT-OF-WAY SECTION AREAS OF THE CITY OF ASHEVILLE

Summary: See Item A. above.

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C. RESOLUTION NO. 99-23 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SERVICE CONTRACT WITH ALFRED WILLIAMS, D/B/A WILLIAMS AND WILLIAMS, TO MOW THE SOUTH SECTION AREA OF THE CITY OF ASHEVILLE

Summary: See Item A. above.

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D. RESOLUTION NO. 99-24 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE A VACANT LOT ON PARK AVENUE

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for a vacant lot on Park Avenue.

A bid from David J. Heetderks, in the amount of $8,700.00, has been received for the purchase of a vacant lot on Park Avenue. The bid is not less than the established minimum price of $8,700.00.

The property is a commercial industrial zoned lot at the end of Park Avenue comprising 7,000± square feet of land. The property has an irregular shape and modest slope. It has approximately 78 feet of frontage along Park Avenue. There is no current or contemplated use for the property by the City. Mr. Heetderks is a resident of the West End community where the property is located.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff recommends adoption of the resolution.

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E. **MOTION SETTING A PUBLIC HEARING ON FEBRUARY 23, 1999, TO CONSIDER THE FILING OF AN APPLICATION FOR MASS TRANSIT FUNDING IN THE AMOUNT OF $470,631 FOR FISCAL YEAR 1998/99**

F. **MOTION APPROVING THE 1999 PARKS AND RECREATION DEPARTMENT'S FESTIVAL AND SPECIAL EVENTS SCHEDULE**

Summary: The consideration of a motion approving the 1999 Parks and Recreation Department's festival and special events schedule.

In March of 1995, the Asheville City Council adopted a festival's policy. A segment of that policy requires that City Council approve the list of festivals on an annual basis. These festivals and special events are co-sponsored by the City of Asheville. The Parks and Recreation Department is recommending the approval of the following festivals and special events:

Sunday in the Park - Quality Forward	TBA
March of Dimes/Walk America	24-Apr
Very Special Arts Festival	7-May
Asheville Youth Symphony Concert	16-May
Moonlight-Downtown	4-Jun
La Fiesta - Asheville Art Museum	5-Jun
Honda Hoot 22-26	22-Jun
Downtown After Five	25-Jun
Riverlink - Riverfest 25-27	25-June
Shin Dig on the Green	3-Jul
July 4th	4-Jul
Downtown After Five	9-Jul
High Country Art and Craft Show (10-11)	10-Jul
Shin Dig on the Green	10-Jul
Shin Dig on the Green	17-Jul
Bele Chere 23-25	23-Jul
Shin Dig on the Green	31-Jul

Downtown After Five	13-Aug
Shin Dig on the Green	14-Aug
Shin Dig on the Green	21-Aug
Goombay 27-29	27-Aug
Shin Dig on the Green	28-Aug
Shin Dig on the Green	4-Sep
Downtown After Five	10-Sep
Great Smokies Brewfest	18-Sep
Greek Festival 1-3	1-Oct
A Walk into History - Urban Trail	3-Oct
American Lung Association - Reindeer Romp	21-Nov
Christmas Parade - Asheville Merchants Assoc.	24-Nov
Light Up Holidays	27-Nov
First Night	31-Dec

The Parks and Recreation Department staff recommends approval of the above festivals and special events for 1999.

G. ORDINANCE NO. 2542 - BUDGET AMENDMENT TO AMEND THE REGIONAL WATER AUTHORITY'S FISCAL YEAR 1998/99 BALANCED BUDGET IN ORDER TO FUND DROUGHT RELATED EXPENSES

Summary: The consideration of a budget amendment to amend the Regional Water Authority's Fiscal Year 1998/1999 balanced budget in order to fund drought related expenses.

Critically low water levels in the North Fork and Bee Tree Reservoirs prompted the Regional Water Authority to declare Phase III mandatory water restrictions on December 15, 1998. Reservoir levels continue to remain critically low which has resulted in unexpected operational expenses including the purchase of approximately 2 million gallons of water per day from Hendersonville. The total cost of drought related expenses is estimated to be $334,750 through the end of February 1999.

The FY 1998/1999 Water Fund Budget does not contain a provision for expenses related to emergencies such as droughts or floods, so it will be necessary for the Authority to adopt a revised budget to fund this severe drought.

Highlighted below are drought related operational expenses that are expected to be incurred through the end February 1999:

Water Conservation Kits	$17,000
Public Education/Advertising	10,000
Recycle Backwash Water	12,000
Replace Bee Tree Filter Media	5,000
Electrical/Pumping Costs	26,250
Treatment Chemicals	8,750
Consultant Fees (CDM)	15,000
Overtime Water Maintenance/Plants	60,750
Contractor Assistance (Leak Repair)	20,000
Total	$174,750

In addition, there is the expense of purchasing water from Hendersonville and other utilities through the end of February 1999 that is expected to cost approximately $160,000.

The operating expenses highlighted above totaling $174,750 can be funded by decreasing or postponing the following budgeted expenses/projects:

Repairs to equipment/buildings/watershed roads	$30,000
Training	4,000
Mills River Utilities (due to delays in start-up)	15,000
Spring Image Enhancing/Water Eff. Campaign	10,000
Vacancies throughout the Department that were unfilled during first half of 98/99 as well as the frozen Admin. Assist. and Eng. Tech.	115,750
Total	$174,750

There are no other areas in the operating budget that can be cut in order to fund the purchase of water from other utilities without reducing critical programs and/or customer service. It is, therefore, recommended that the FY 1998/1999 Water Fund Budget be amended to provide funding in the amount of approximately $160,000.

It is possible that there may be enough revenue collected from surcharges that were implemented as part of the Phase III mandatory water restrictions on December 15, 1998, to cover the purchase of water from Hendersonville and other utilities. Since that time, water production has decreased approximately 5%, indicating that the surcharges have encouraged customers to reduce consumption by that same amount. Although it is difficult to accurately predict the effect of conservation efforts; it is estimated that if this trend in reduced consumption continues, revenue of nearly $175,000 may be realized from the surcharges. However, if consumption drops to 10% of normal, revenues will drop by nearly $130,000.

Since conservation efforts and the surcharges realized from them are unpredictable, it may be necessary for staff to request another budget amendment as early as next month. If the drought worsens, there may also be additional expenses that will need to be funded in the near future.

Staff recommends approval of reducing or postponing the budgeted line items highlighted above in order to fund operating expenses related to the drought. In addition, staff recommends review and approval of amending the Authority's FY 1998/1999 balanced budget in order to fund the purchase of $160,000 of water from Hendersonville though the end of February 1999.

ORDINANCE BOOK NO. 17 - PAGE 256

H. RESOLUTION NO. 99-25 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MCNUTT SERVICE GROUP INC. TO SUPPLY AND INSTALL A HEATING/VENTING/AIR CONDITIONING SYSTEM AT THE SHILOH RECREATION CENTER

Summary: The consideration of a resolution authorizing the City Manager to enter into a Heating/Ventilating/Air-conditioning contract for the Shiloh Recreation Center.

In an effort to improve quality of service through the City of Asheville daycare and after school programs, City staff, through the capital improvement process, has designated the Shiloh Recreation Center to receive heating/ventilating/air-conditioning up-grades. City staff solicited sealed bids from eight (8) Heating and Air-Conditioning Contractors, three (3) of which were minority contractors, to supply and install heating/ventilating/air-conditioning up-grades at the Shiloh Recreation Center. City staff divided the bid package into three (3) base bids to allow for maximum flexibility in awarding a contract based on limited funding of $ 35,000.00. The following bids were received:

Bolton Corporation	$ 58,300.00
Elcon Service	$ 50,579.00
McNutt Service Group	$ 48,699.00
Carolina Comfort Heating & Cooling	$ 49,558.00

City staff has reviewed all bids and determined that McNutt Service Group, Inc. is the lowest bidder and based on the limited budget of $ 35,000.00, recommends acceptance of base bid #1, #2 and part "B" of base bid #3 for a combined total of $34,409.00.

Approved funding is available in the capital improvement project account to pay for this renovation to the heating/ventilating/air-conditioning system at the Shiloh Recreation Center.

The Parks and Recreation Department staff requests City Council authorize the City Manager to enter into a contract for $ 34,409.00 with McNutt Service Group, Inc.

RESOLUTION BOOK NO. 25 - PAGE 143

I. ORDINANCE NO. 2543 - BUDGET AMENDMENT FOR THE BEAVERDAM ANNEXATION AREA CARTER COVE SANITARY SEWER IMPROVEMENT PROJECT

Summary: The consideration of a budget amendment to appropriate $200,000 from the General Fund Contingency for sewer improvements for the Beaverdam Annexation - Carter Cove Area.

On November 10, 1998, City Council awarded the contract for the Beaverdam Annexation - Carter Cove Area project to Cooper Construction Company in the amount of $442,278. It has been determined that $250,000 exists in the project budget. Staff is requesting an additional appropriation of $200,000 from the City's General Fund Contingency to cover the additional cost of the project and an additional 10% contingency to complete the project. The Water Authority is paying approximately $16,500 of the cost for the installation of the water line which is a part of this project.

Staff has held several meetings with the residents of Carter Cove to prepare for the installation of the water line and the sewer line. Construction will be ready to begin as soon as the one additional easement is acquired. This is the easement of Robert M. and Lenoir Swicegood. Staff has met with Mr. Mac Swicegood several times in an effort to obtain this easement. Staff is actively pursuing obtaining this easement by providing Mr. Swicegood with all the information he needs to get his parents signature on the easement. Staff's goal is to have construction begin in four to six weeks.

Staff recommends that City Council appropriate $200,000 from the General Fund Contingency for the Beaverdam Annexation - Carter Cove Area Sanitary Sewer Improvements.

ORDINANCE BOOK NO. 17 - PAGE 258

J. ORDINANCE NO. 2544 - BUDGET AMENDMENT RELATIVE TO HOCKEY RELATED EXPENSES

Summary: The consideration of a budget amendment, in the amount of $305,000, to amend the Civic Center's Fiscal Year 1998-99 budget in order to fund hockey related expenses.

In October 1998, the City of Asheville and Asheville Smoke, Inc. entered into an agreement to provide a minor league hockey program at the Asheville Civic Center. In June 1998, however, when the Civic Center's annual budget s initially adopted, no formal agreement existed between the City and Asheville Smoke, Inc. As such, expenditures and revenues related to the minor league hockey program were not included in the Civic Center's original FY 1999-1999 budget.

With the minor league hockey program now fully operational, the Civic Center has incurred hockey related expenses, i.e. building maintenance, renovations, concessions, temporary labor, etc. that were not included in the original budget. These expenditures are estimated to be $305,000.

In addition to increased expenditures related to hockey, the Civic Center has generated new revenues, primarily from increased concession sales, that were not included in the Civic Center's initial revenue projections. The Civic Center has also generated additional revenue from its new public skating program. These new revenues will be sufficient to offset the $305,000 in additional hockey related expenditures. Thus, it is recommended that Council increase the Civic Center appropriation by $305,000 to be offset by $305,000 in additional revenue generated from hockey ticket sales.

ORDINANCE BOOK NO. 17 - PAGE 260

K. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 23, 1999, TO REZONE PROPERTY LOCATED ON CENTRAL AVENUE, ORANGE STREET, LIBERTY STREET, CLAYTON STREET AND ORCHARD STREET FROM OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT

L. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 23, 1999, TO REZONE PROPERTY LOCATED ON MAUDE AVENUE AND SUMMIT AVENUE FROM OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT

M. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 23, 1999, TO REZONE PROPERTY ON ASHELAND AVENUE, GROVE STREET AND MORGAN STREET FROM OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Sellers moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO CONSIDERING AMENDMENTS TO THE CITY OF ASHEVILLE PERSONNEL POLICY

RESOLUTION NO. 99-26 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ADOPT A REVISED CITY OF ASHEVILLE PERSONNEL POLICY

Mayor Sitnick opened the public hearing at 5:16 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Personnel Director Jeff Richardson said that this is the consideration of a resolution amending the City of Asheville Personnel Policy and amendment to Section 2-230 (b) of the Code of Ordinances of the City of Asheville relative to the departmental pre-disciplinary conference.

Mr. Richardson said that the City has not amended the Personnel Policy since December 20, 1994. During that period, administrative policies and practices have been updated. The Personnel Policy in Section 5.D. outlines that the policy shall be reviewed every three years. These proposed changes reflect the most recent review of this policy by the Human Resources Department. The proposed amendments serve to better clarify appropriate application of City policy and/or are mandated by State or Federal law.

Mr. Richardson stated that the Civil Service Board reviewed the amendments and had concerns with Section 43 relative to Annual Leave and Section 52 relative to Bereavement Leave.

The proposed amendments are as follows:

Section 7. Definitions:

A. Probationary Employee: A newly hired or promoted employee who has not successfully completed the guidelines set forth in Section 24 of this policy.

B. Seasonal and/or Temporary Employee: An employee who has been hired with the understanding that the employment will continue only for a specified period of time, not to exceed twelve (12) continuous months.

C. Part-Time Regular Employee: An employee who has been hired into a budgeted position that is funded between 20 hours and 37.5 hours weekly and has successfully completed probationary period.

D. Full-Time Regular Employee: An employee who has been hired into a full-time budgeted position and has successfully completed probationary period.

Reason for Change: These definitions better reflect the different employment statuses with the City and their respective meaning, due in part to the City's recent decision to begin providing part-time pro-rated benefits to regular part-time employees. I have also included "seasonal temporary employee" as a new definition.

Section 24. Probationary Period.

(a) All newly appointed or promoted employees shall serve a probationary period of 180 days, during which time the employees shall be deemed "probationary employees". Probationary employees shall be entitled to benefits as provided in the City's Personnel Policy.

(b) No later than 10 days after a probationary employee's first day at work, the supervisor shall establish the employee's work plan, which shall have been approved by the Department Director. At intervals not later than 90 days and 150 days after the first day of work, the supervisor shall review with the probationary employee his/her performance under the work plan. Said review shall include the following criteria:

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1. The employee's accomplishments, needed improvements, strengths and weaknesses;
2. Whether the employee is performing satisfactorily in his/her work;
3. What the employee must do to bring his/her work up to satisfactory level if it is unsatisfactory.
4. What the supervisor can do to help the employee bring his/her work up to a satisfactory level; and
5. The length of time the employee has, if any, to make the necessary improvements.

The work plan and review criteria established above may be supplemented according to the needs of the department or the requirements of the particular position, and shall be furnished to the employee at the time the work plan is established. The reviews set forth herein need not be formal; however, notice of any problems or deficiencies must be provided in writing to an employee in order to satisfy the writing requirements of this section.

(c) Any person hired by the City of Asheville may, during the probationary period, be dismissed by the director of the employing department for any reason not contrary to the laws of public policy of North Carolina. Such action shall not take place until the department director has consulted with the Human Resources Director. Such reasons shall be set forth in writing by the department director and made available to the affected employee at the time of the dismissal. In the event that such action is reviewed by the Civil Service Board, compliance with the writing requirement of paragraph (b) shall be deemed sufficient justification for the action taken. In such matters, the Chairman of the Civil Service Board may act for the Board.

(d) The probationary period may be extended for up to ninety (90) additional days by the department director, with the written concurrence of the Human Resources Director.

(e) This section shall apply to former City employees who are rehired after a period of separation from employment with the City.

(f) This section shall apply to non-probationary employees who are transferred to new positions with the City; provided, that any disciplinary or performance-based action other than returning the employee to the former position, shall be in accordance with the policies and rules applicable to non-probationary situations.

(g) Exceptions for certain employees: The probationary period for new or rehired employees in police and fire departments shall commence with the first day the employee is available for regular duty following completion of the training or education necessary to fulfill the minimum requirements for certification as imposed by North Carolina law. The time period required for such training or education shall be established by the department director of the respective department in consultation with the Human Resources Director, and approved by the Civil Service Board.

(h) Probationary employees who fail to receive notification from departmental management as to their employment status by the 180th day shall rightfully assume status as a regular employee with all non-probationary City policies applicable to them at that time.

In the case of employees in other departments whose positions may but do not always require minimum certifications or training, a probationary period for that employee maybe established by the Department Director in consultation with the Human Resources Director, and shall be reported to the Civil Service Board. In no case shall a probationary period established pursuant to this paragraph be less than 180 days.

Reason for change: This change reflects what is commonly recognized across North Carolina public sector as a true probationary employment, with the employee in an "at-will" status for the length of the probation. This is consistent with the vast majority of other municipalities/counties in North Carolina, as well as the State.

Section 43: Annual Leave.

Strike the sentence that disallows probationary employees from using annual leave until the conclusion of the probationary period.

Reason for change: Departmental management needs the discretion as to whether to grant annual leave during probation. Job finalists often have already made vacation plans prior to being hired and the City needs to honor those arrangements if possible.

Section 47: Family Leave

4. An eligible employee is entitled to a total of twelve (12) weeks of FMLA leave per 12 month period measured backward from the date an employee uses any FMLA leave; provided, however, that husbands and wives who are both employed by the City are only entitled to an aggregate of twelve (12) weeks of FMLA leave per 12 month period. An employee who is on FMLA leave is guaranteed the same or comparable job when he/she returns to work.
5. An eligible employee may, with the City's consent, take intermittent leave or have a modified work schedule due to the arrival of a new child so long as the cumulative leave does not exceed twelve (12) weeks per 12 month period measured backward from the date an employee used any FMLA leave.

Reason for change: The City has the choice under the Federal guidelines of the Family Medical Leave Act (FMLA) of how it counts its twelve (12) weeks. The proposal to count the twelve (12) week period per 12 month period will ensure that employees who qualify for FMLA do not have an advantage of taking two (2), separate twelve (12) week periods based on the time of calendar year the qualifying event occurs.

Section 47: Family Leave

C. Parental Leave For the Involvement in Children's Schools

Chapter 509 of the 1993 Session Laws amended G.S. 95-28.3 to require at least four (4) hours of leave per year so that a parent, guardian or any person standing "in loco parentis" of a school-aged child may attend or otherwise be involved in activities at the child's school under the following conditions:

1) The leave shall be at a mutually agreed upon time between the employer and employee;

2) The employer may require an employee to provide the employer with a written request for the leave at least 48 hours before the time desired for the leave; and

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3) The employer may require that the employee furnish written verification from the child's school that the employee attended or was otherwise involved at that school during the time of leave.

The definition of school includes public and private schools, church schools, and preschools. It also includes day care facilities as defined under G.S. 110-86. Please note that this leave is not guaranteed paid leave, but rather guaranteed time-off. Employees wishing to take this leave would have to use accrued annual or compensatory leave in order to be paid.

Reason for addition of this language: The City needs this language incorporated into its Personnel Policy as other municipalities in North Carolina have done since it being passed into General Statute in 1993.

Section 49: Military Leave.

Military leave shall be granted to all employees who are members of a reserve component of the United States Armed Forces or National Guard for annual training, monthly drills, war or national emergency. Proof of any military duty/orders shall be submitted to the employee's supervisor or department director within thirty (30) calendar days of the date of the assignment, except in the case of national emergency.

For purposes of paragraphs (I) and (II) below, employees granted leave with pay will be paid the difference between their base military pay and their current City salary provided military pay is the lesser.

In each case, the following policy and procedures will be in effect:

I. **Annual Military Training:**

An employee who has been ordered to active duty for annual training, including monthly drills and service schools, shall be granted military leave. Such leave shall be with pay for up to fifteen (15) scheduled work days per Federal fiscal year (i.e. one hundred twelve and a half (112.5) hours for those employees on a 37.5 hour work week, one hundred twenty (120) hours for those employees both on a 40 hour work week and a 14 or 28 day work cycle, one hundred forty-two and a half (142.5) for those employees on a 16 or 25 day work cycle and one hundred eighty (180) hours for those employees on a 112 hour work cycle). Additional leave will be charged to accrued annual leave, holiday leave, compensatory time, or taken without pay, at the employee's option.

II. **National Emergency/War:**

An employee who has been ordered to active duty for a national emergency or war shall be granted military leave. Such leave shall be with pay for up to one hundred eighty (180) calendar days. In the event a national emergency or war continues beyond one hundred eighty (180) calendar days, the City Manager may extend paid leave for a reasonable period of time, not to exceed an additional one hundred eighty (180) calendar days, unless additional time is authorized by City Council.

(a) Insurance: When an employee is called to active duty for national emergency or war, the City shall continue the reservist and his/her family on any City benefit plan(s) which the employee participates in. During such period of time, the reservist shall be responsible for paying any premiums(s) due through payroll deduction or other arrangements made with the Human Resources Department. Health and dental coverages shall be continued until the reservist is covered by the Military Health Insurance Plan (i.e. CHAMPUS) - generally a period of thirty (30) calendar days; however, if the reservist chooses, (s)he may continue individual and/or family coverage pursuant to current COBRA regulations. In the event a reservist discontinues individual and/or family coverage during active duty, the reservist and his/her family member(s) may be re-enrolled subject to current HIPAA regulations upon the reservist's return from active duty and presentation of a Certificate of Honorable Discharge from the United States Government.

(b) Leave: Annual, sick and holiday leave shall be earned by the employee as if the employee had been working.

(c) Re-employment: Upon release from active duty, the reservist must immediately notify his/her supervisor with (s)he will return to work. All reinstatement employment rights under the Veterans Re-employment Rights Law shall apply.

Reason for change: The new Military Leave policy brings the City into compliance with the Uniformed Services Employment and Reemployment Rights Act of 1994. The new policy is also easier to understand and more equitable for City employees.

Section 52: Bereavement Leave.

Full-time employees may be granted two (2) consecutive work days of bereavement leave with pay due to the death of a member of his/her immediate family or significant other.

For purposes of this section, "immediate family" includes spouse, mother, father, legal guardian, son, daughter, sister, brother, grandparent, or grandchild and any combinations or half- or step- or in-law- that can be derived from those named. "Significant other" is defined as a person with whom the employee cohabits and maintains an intimate relationship regardless of marital status.

If additional time off is needed, employees may request to use accrued annual leave, compensatory time, or leave without pay.

Employees who need time off to attend the funeral of a co-worker, close personal friend or relative not included as "immediate", may request the use of accrued annual or compensatory time or time without pay.

Reason for change: The current policy is too liberal and is confusing to administer. Current application throughout the City is inconsistent as policy allows for up to three days off for immediate family member death. Past interpretation has directed departments to base the amount of days on where the death was and the amount of travel time necessary to attend the funeral. The proposed change streamlines the policy and should eliminate confusion and inconsistent practice across departments.

Section 62: Investigative Suspension.

Investigation status is used to temporarily remove an employee from work status and may be used for the following reasons:

1. To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action.

2. To avoid disruption of the work place and/or to protect the safety of persons or property.
3. To provide time to schedule and conduct a pre-disciplinary conference.

Investigative suspension with pay does not constitute a disciplinary action as defined in this article. Management must notify an employee in writing of those reasons for investigative suspension not later than the second working day after beginning of the suspension. Investigative suspensions that last beyond (30) calendar days must be approved by the City Manager and in no case shall the suspension extend beyond (60) calendar days.

Reason for change: Current policy is not effective personnel practice in that employees may be placed on non-paid suspensions for up to 90 days in order for an investigation of possible wrong inappropriate action can be reviewed by City management. The employee should continue to be in a "on pay status" until management determines the facts of the issues, therefore rendering no disciplinary action prematurely. In addition, 30 days is more than enough time to conduct an administrative investigation in the vast majority of circumstances. The State of North Carolina moved to paid investigative suspensions about seven (7) years ago for the same reasons as outlined.

Because the employee remains on pay status, there would be no need to provide any type of grievance rights due to the fact that the employee would continue in his/her employee pay status until the conclusion of the investigation.

Section 69. Departmental Pre-Disciplinary Conference.

Procedure for Conference. The pre-disciplinary conference shall be attended by and limited to (1) the employee, (2) the supervisor(s) of the employee, (3) the department director and (4) a representative from the Human Resources Department when requested by the employee or department director. Such Human Resources representative shall be the Director or his/her designee. No attorneys may be present for either side during this meeting.

Reason for Change: The pre-disciplinary meeting is an administrative meeting. The main purpose of the meeting is to afford the employee a full opportunity to address the issues that have led to the consideration of disciplinary action. No disciplinary action has been taken and therefore to involve attorneys serves to inhibit management's effort to get at the facts of what has transpired. If disciplinary action is taken after the pre-disciplinary meeting, the employee is granted full access of representation through the grievance process.

In addition, the North Carolina Institute of Government strongly urges local governments from allowing attorneys to be present at these meetings for the reasons noted above. The State of North Carolina goes as far as to disallow attorneys from these meetings as noted in the State Personnel Act, as does many local governments.

If City Council concurs with the proposed amendment to Section 69 (Departmental Pre-Disciplinary Conference), an amendment to Section 2-230 (b) of the Code of Ordinances will need to be considered to conform the ordinance to the policy.

City staff is recommending that City Council (1) consider a resolution amending the City of Asheville Personnel Policy, and (2) consider an amendment to Section 2-230 (b) of the Code of Ordinances of the City of Asheville reflecting amendments being made to the pre-disciplinary conference.

Mr. Mike Knisely, President of the Asheville Firefighters Association, supported all the amendments except for the amendment to Section 69 which excludes an employee of having attorney representation at the pre-disciplinary conference. They feel that having the option of attorney representation was positive and felt that the potential exists for a violation of due process.

Mr. Richardson responded to several questions from Council, some being, but are not limited to, what happens in a pre-disciplinary conference, how many conferences have there been in the past year and how many employees brought attorneys, what is the difference between a pre-dismissal conference and a pre-disciplinary conference, are pre-disciplinary conferences recorded, what are some examples of when a pre-disciplinary conference would be initiated, does the City have an attorney present at these pre-disciplinary conferences, and who pays for the employee's attorney.

Councilwoman Field felt that when attorneys are present, it creates more of an adversarial position and sometimes presents no option for a solution.

City Attorney Oast said that it was his experience that when attorneys are involved in pre-disciplinary situations like this, it's typically because there is some other legal action pending or there it is a possibility of other legal action, such as wrongful discharge, worker's compensation, or something like that.

Councilman Cloninger asked if at the pre-disciplinary conference stage, could information be obtained from an employee that would ultimately be used in a criminal prosecution of that employee. City Attorney Oast said that pursuant to N.C. Gen. Stat. 160A-168, you cannot use any of the information in a subsequent criminal prosecution.

Councilman Tomes felt that many employees going into these hearings may not have the knowledge or verbal skills to adequately represent themselves so they immediately feel intimidated. He wondered if there was a way to bring an innovative sensitivity to the conferences, like a mediator or an outside facilitator. Mr. Richardson explained that the representative of the Human Resources Department is the neutral arbitrator in the conferences.

City Manager Westbrook explained that a pre-disciplinary conference is no more than a fact-finding meeting and that the City owes it to it's citizens to be able to talk to an employee to find out what happened and their side of the story.

Mayor Sitnick felt that it might be a good idea for the employee to be allowed to have a friend allowed at the pre-disciplinary conference so as to take noes on behalf of the employee.

Councilman Cloninger suggested that Section 69 title be changed from "departmental pre-disciplinary conference" because it implies that disciplinary action will be the outcome,

Mr. Knisely said that he would be willing to meet with City representatives to see if another solution could be worked out with respect to Section 69.

Vice-Mayor Hay voiced several concerns about not having an attorney present and supported staff re-visiting the amendment to Section 69 to see if another solution could be reached.

Mr. John Hayes, former City employee, felt that Councilman Tomes made a good point in that some employees may feel intimidated when meeting with management staff.

Mayor Sitnick closed the public hearing at 6:29 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Cloninger moved to adopt Resolution No. 99-26, with the exception of Section 69 and further instructed staff to study the language in that Section including the title of the section and the content. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 145

IV. UNFINISHED BUSINESS:

A. DISCUSSION OF ST. DUNSTANS ROAD

Assistant City Manager Doug Spell said that at the February 2, 1999, Council worksession, City Council indicated that they would like to receive public comment at the February 9, 1999, Council meeting regarding St. Dunstans Road.

Mr. Spell gave a project history of the McDowell Street viaduct as follows: (1) added to the N.C. Dept. of Transportation ("NC DOT") 10-year Transportation Improvement Program before November 1983; (2) public hearing on the NC DOT Project was held on August 10, 1994; (3) City Council approved the Municipal Agreement on June 25, 1996; (4) construction began on December 12, 1996; and (5) the project completion is scheduled for November 1, 1999. He then reviewed an aerial map of the area designating the area surrounding St. Dunstans Road, along with a map which showed the general road layout and the number of dwelling units in this area. Mr. Spell indicated that the February 3, 1999, date given in the letter from Division Engineer Bill Smart to the Mays was not arbitrary. This was based upon the construction contract as a part of the McDowell Street Viaduct Project. This date was provided to allow the contractor to begin grading for the roadway construction along St. Dunstans Road and to avoid delaying the contractor on the project. They indicated that if a decision were made at the February 9, 1999, Council meeting, NC DOT would entertain a change depending on the stage of construction and progress made over the prior week. However, this portion of work is critical with regard to proceeding to shift traffic to the newly constructed bridge section. NC DOT also indicated that they may ask the City to bear the cost difference if a design change is necessary which results in additional costs as a part of the contract.

Mr. Spell reviewed the following area traffic volumes with Council: (1) Doctor's Drive @ 1270 vehicles per day ("vpd"); (2) Grindstaff Road @ 173 vpd; (3) St. Dunstans Road (near Sterling Street) @ 194 vpd and (4) St. Dunstans Road - Year 2016 projected at 500 vpd. He then reviewed the following comparison with other streets: (1) Edgewood Road at Chatham Road @ 1369 vpd; (2) Vermont Avenue north Onley Road at 379 vpd; (3) Kimberly Avenue north of Evelyn Place at 3943 vpd; (4) Coleman Avenue between Merrimon Avenue and Murdock Avenue @ 1073 vpd; and (5) Hillside Street west of Charlotte Street at 834 vpd.

City staff recommends St. Dunstans Road remain open.

Mr. Spell said that the street closing process for the City is as follows: (1) submittal of a street closing application and payment of a $2,500 street closing fee; (2) City Council sets a public hearing on the street closing request; (3) public hearing advertised and notification to property owners and utility providers; (4) public hearing held; and (5) Council action on the street closing request.

Mr. Spell the presented the following issues relative to closing the street: (1) emergency response (e.g., fire, police, ambulance) as a through street at 1 minute 40 seconds vs. 3 minutes 17 seconds if closed; (2) street has been a through street since 1929; (3) the cost difference is estimated at

$16,200 and the City is unsure at this time whether the City will have to pay this cost or whether the NC DOT will include it in the project cost; and (4) there are more mutually beneficial ways to address traffic issues in lieu of street closings.

Mr. Spell said that some reasons to keep the road open is (1) emergency vehicle response; (2) previously opened to traffic since 1929; (3) the layout is not conducive to cut through traffic; (4) traffic volumes projected on St. Dunstans Road are extremely low; (4) there are other means to control traffic in lieu of closing the street; and (5) not all residents want it closed.

Mr. Spell then presented the following alternatives to closing St. Dunstans Road: (1) evaluate traffic after project completion, perform traffic counts, and receive input from residents of the larger area; (2) post the street for "No Through Traffic"; (3) incorporate traffic calming measures into the street design; and (4) designate a portion of St. Dunstans Road as "One-Way" from McDowell Street to Grindstaff Road.

The following individuals spoke in support of keeping St. Dunstans closed for various reasons, some being, but are not limited to: St. Dunstans is a community of 30 house, one day care and one group home; the neighborhood was under the impression the road was to remain closed; there is an alternate route that is almost the same distance to alleviate any emergency response concerns; if the closing of St. Dunstans is a danger, then why has it been closed for two years without some type of emergency exit; from the Grindstaff intersection with St. Dunstans to the end of McDowell, the road width is narrow; traffic volume studies performed may be inaccurate; St. Dunstans is an extremely fragile neighborhood which has been encroached upon by the McDowell viaduct and zoning changes on the Biltmore side; noise has increased in the area; St. Dunstans is a mixed-race, mixed-class neighborhood and should be preserved; there was speeding through the neighborhood when the road was open; St. Dunstans Circle will again become an attractive site for illegal drug dealers and other dangerous activity; when St. Dunstans Road was open, the road was not a visible access from McDowell to Biltmore but now it will be emphasized by a four-way traffic signal at the intersection of McDowell Street and St. Dunstans Road; St. Dunstans will be an easy access through road from McDowell Street to Biltmore Avenue resulting in an increase in traffic; St. Dunstans Road is not prepared for increased traffic since it is not wide enough for two-way traffic, a portion of the road is currently one-way, and the road needs repairs; motorists do not pay any attention to construction signs stating that St. Dunstans Road is closed, so they will probably not pay any attention to one-way signs; group home residents have the ability to get out and walk, run and ride bikes in the neighborhood with minimal supervision since the road has been closed; there has been a 50% decrease in crime since the road has been closed; residents would like to have a cul-de-sac in the area instead of St. Dunstans Road being re-opened; St. Dunstans Road has blind curves and a shaded area that is not plowed or sanded in the winter; people enjoy walking in the street; the road will have to be re-striped; the Police Department will have to start patrolling the street; and re-opening St. Dunstans Road will decrease property values.

Ms. Julie May, resident of 151 St. Dunstans Road (passed out a booklet and stated she had 9 letters in support of the closing)
Mr. Tim May, resident of 151 St. Dunstans Road (passed out a map showing the response distance to St. Dunstans Road)
Ms. Maurine Killoran, resident on St. Dunstans Circle
Ms. Brooke Roberts, resident of 172 St. Dunstans Road
Ms. Jeannie Cagle, Clinical Social Worker and Director of Mountain Area Residential Facilities which operate the group home on St. Dunstans Circle
Ms. Nicole McKinney, resident of 145 St. Dunstans Road (passed out a crime analysis report for the St. Dunstans Road area and read a letter from Asheville Day Nursery)
Ms. M. C. Edmonds, resident of 141 St. Dunstans Road

Councilman Tomes said that City Council has previously dealt with the Hillcrest community issue of closing the bridge. Council did listen to the residents of the area and kept the bridge closed. Since

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this is a fragile neighborhood with valid concerns, he felt that City Council should be consistent as they respond to different communities.

Upon inquiry of Mayor Sitnick, Fire Chief Rukavina said that there was a fire on St. Dunstans Road since the road closure and if you apply the response times that have been identified, then it took longer than it normally would because the street was closed for the first fire truck to arrive on the scene. He said that his preference remains the same and that is to re-open the road. He understood the concerns of the neighborhood, however, he needs to look at the neighborhood that the street serves.

Fire Chief Rukavina responded to questions from Council about the alternative routes proposed by the neighbors and also how emergency vehicles respond on one-way traffic streets.

Councilman Cobb said that although the City wants to protect the neighborhood, they have to be concerned with all the flow of the traffic in the City. He felt that traffic is a part of our society and we have to control it, not eliminate it.

Upon inquiry of Councilman Cobb, Ms. May stated that the NC DOT said that if City Council voted to keep the road closed, they would consider a cul-de-sac on the road as part of the project.

As a result of some discussion relative to closing the street, City Attorney Oast said that if the road were re-opened, it does not prohibit anyone from going through the street closing process.

Mayor Sitnick said that even though the City Council requested that the Hillcrest bridge remain closed, there was an incident on Edgewood Road where the neighborhood worked with the City and the Police Department to install some major traffic calming options that have worked real well. After visiting the area, she felt that if anyone wanted to cut through from McDowell Street to Biltmore Avenue, the natural inclination would be to cut across Doctor's Drive instead of St. Dunstans Road because Doctor's Drive is a quicker, straighter route. While she is sympathetic to this cause, she said that the position of the City and the recommendation of our Fire Chief who deals with life and death issues weights very heavily on her mind. If she didn't think there was another way to deal with the legitimate concerns expressed by the neighbors about traffic she might feel differently. However, at this time, she would support leaving the road open, imposing severe traffic calming measures into that neighborhood, and monitor those measures carefully and constantly. She said that after those measures have been monitored and the results reveal that the road should be closed, then a street closing process can be initiated.

Councilman Cloninger moved to not begin the street closing process but direct staff to begin working on the following alternatives to closing St. Dunstans Road: (1) evaluate traffic after project completion, perform traffic counts, and receive input from residents of the larger area; (2) post the street for "No Through Traffic"; (3) incorporate traffic calming measures into the street design and any other measures that seem applicable to making sure that we protect the integrity of the neighborhood; and (4) direct staff to study designating a portion of St. Dunstans Road as "One-Way" from McDowell Street to Grindstaff Road. After the alternatives are instituted, City staff and the neighborhood can come back and report to City Council on how the alternatives are working. This motion was seconded by Councilman Cobb and carried unanimously.

V. NEW BUSINESS:

A. RESOLUTION NO. 99-27 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS-POLICE ADVISORY COMMITTEE

Vice-Mayor Hay said that there exists a vacancy until June 30, 1999, for a central representative on the Citizens-Police Advisory Committee.

Councilwoman Field nominated Paul Godfrey.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, he asked for a vote to appoint Paul Godfrey and the vote was unanimous. Therefore, the resolution will appoint Mr. Paul Godfrey as a member of the Citizens-Police Advisory Committee, to serve the unexpired term of Fairfax Arnold, term expiring June 30, 1999, and then to serve a full three year term, term to expire June 30, 2002, or until his successor has been appointed and qualified.

RESOLUTION BOOK NO. 25 - PAGE 152

B. RESOLUTION NO. 99-28 - RESOLUTION REAPPOINTING MEMBERS TO THE ASHEVILLE SCHOOL BOARD

Vice-Mayor Hay said that the terms of Brian Weinkle and Roy Harris, as members on the Asheville School Board, expire on April 1, 1999. This resolution will reappoint Mr. Weinkle and Mr. Harris to each serve an additional four year term, terms to expire April 1, 2003, or until their successors have been appointed.

Vice-Mayor Hay spoke about the process that was used in this section process and his support of the entire School Board and the job they are doing.

Mayor Sitnick said that she would like to see more consistent communication between City Council and the School Board during the year to talk about ways we can support each other and work together. She said that City Council wants to work with the School Board to make the Asheville City Schools the best they can be and to maximize their potential. Mayor Sitnick then asked staff to set up a roundtable between the School and City Council to start the process.

Councilman Tomes supported reappointment of both candidates, however, was concerned about the drop out rate of African American students and others in the community.

Mayor Sitnick said that she visits the schools on a regular basis and is very impressed with the teachers in the community. She suggested City Council might like to do the same since one of Council's goals is work with the children and youth of our community.

Ms. Susan Fisher, Chair of the Asheville School Board, thanked City Council for their support of the School Board and briefed the Council on the progress of some of their programs.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Hay moved for the adoption of Resolution No. 99-28. This motion was seconded by Councilman Sellers and carried unanimously.

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C. RESOLUTION NO. 99-29 - RESOLUTION ENDORSING APPOINTMENT TO THE OPPORTUNITY CORPORATION OF MADISON-BUNCOMBE COUNTIES

Vice-Mayor Hay said that the term of Doris Hill Brewer expires in March 1999. The Opportunity Corporation has requested that Ms. Brewer be reappointed for an additional three year term, term to expire March 2002. Vice-Mayor Hay noted that this is the Mayor's appointment.

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Hay moved for the adoption of Resolution No. 99-29. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 154

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 26, 1999, AND THE WORKSESSION HELD ON FEBRUARY 2, 1999

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on January 26, 1999, and the worksession held on February 2, 1999. This motion was seconded by Councilman Cobb and carried unanimously.

B. ORDINANCE NO. 2545 - BUDGET AMENDMENT RELATIVE TO THE COMMUNITY DEVELOPMENT FUND

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of a budget amendment to transfer $14,000 from the General Fund fund balance to the Community Development Fund, in order to resolve a recent HUD finding concerning unsupported costs paid from the CD Fund

In July 1998, HUD's Office of the Inspector General (OIG), acting on a complaint, initiated a limited survey of the CDBG-funded activities carried out by the Eagle/Market Streets Development Corporation (EMSDC). The City received a copy of the OIG's report on December 29, 1998, followed by a letter from the HUD Field Office requiring a response to the OIG recommendations by February 5.

The OIG report does not indicate any evidence of misuse of funds for ineligible purposes or serious negligence but it did identify some mistakes by EMSDC and some weaknesses in the City's oversight of its subgrantee. All but one of the recommendations are for improvements in the City's procedures for training and monitoring subgrantees. These improvements are being implemented and a letter has been sent to HUD describing them.

The other OIG recommendation is for repayment of $14,000 to the City's CDBG program from non-federal funds. This represents the difference between the amount paid by EMSDC for a property at 70 South Market Street and the appraised value of the property. The OIG found that $14,000 of the total $85,000 purchase price was an unsupported cost because there was no formal written justification or HUD approval for paying more than the appraised value of $71,000. The repayment of the $14,000 is not a penalty or fine, but simply a way of correcting the original transaction so that the CDBG funding for the acquisition is fully supported by the documentation available (the appraisal). The $14,000 will remain in the City's CDBG account for use in other eligible activities, which could include other EMSDC activities.

Staff has requested EMSDC to reimburse the $14,000. EMSDC has responded orally that it does not have sufficient funds on hand to make this reimbursement. The agency is seeking other non-federal sources of funds that it could apply to this repayment.

Staff recommends that the City comply, without delay, with HUD's requirement to reimburse the $14,000 to the CDBG fund. The General Fund fund balance appears to be the only possible source. It is possible that some or all of this amount may be reimbursed by EMSDC in the near future.

Staff recommends approval of the budget ordinance amendment to transfer $14,000 from the General Fund fund balance to the Community Development Fund.

Councilwoman Field said that the reason this did not appear on the agenda is that the City was trying to give EMSDC as much time as possible to obtain sufficient funds to reimburse the City. They did state that they will be working with the City to repay the $14,000..

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2545. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 262

B. CLAIMS

The following claims were received by the City of Asheville during the week of January 22-28, 1999: Phyllis Walker (Streets), Edward Mike Pressley (Streets) and Shamika Griffin (Police).

The following claims were received by the City of Asheville during the week of January 29-February 4, 1999: Charlotte Sarti (Water), Charles Morgan (Water) and BellSouth (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

C. LAWSUIT

The City received the following Complaint on January 25, 1999: Darlene Worley v. City of Asheville - small claims action for injuries sustained at a tennis junior tennis program sponsored by the City.

This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Business Relocation and Expansion

Mayor Sitnick reported that the Chamber of Commerce is doing an outstanding job of recruiting business to the City of Asheville.

Roy Harris

Mr. Roy Harris thanked City Council for reappointing him to the Asheville School Board. He reported that he was proud of the accomplishments they have made and the professional manner in which they conduct business.

Closed Session.

At 8:15 p.m., Vice-Mayor Hay moved to go into closed session to consult with an attorney employed or retained by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuit about which the Council expects to receive advice are Jennifer Jacobs and the City of Asheville - G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Sellers and carried unanimously.

At 8:22 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilman Cloninger and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:22 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - February 16, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; Assistant City Attorney Patsy Meldrum; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Earl Cobb, Councilman M. Charles Cloninger and City Attorney Robert W. Oast Jr.

CONSENT:

Budget Amendment re: Sale of 110 Morris Street

Summary: The consideration of a budget amendment appropriating the funds from the sale of 110 Morris Street into capital projects designated for Parks and Recreation.

Over the past year, the City of Asheville has been working to sell the dwelling at 110 Morris Street located on the property at West Asheville Park administered by the Parks and Recreation Department. The closing of this property has occurred and funds totaling $74,354.00 need to be allocated into a capital fund for improvements at the park. The Parks and Recreation staff currently plans to make improvements and upgrades to the playground facility at West Asheville Park. These improvements will result in the playground being in compliance with the Americans With Disabilities Act and the recommendations by the Consumer Product Safety Commission.

The Parks and Recreation staff is recommending approval of the budget amendment to appropriate $74,354 into a capital fund for improvements at West Asheville Park.

Support Funding for Land & Water Conservation Program

Summary: The consideration of a resolution to endorse the reestablishment of Land and Water Conservation Funds through the Federal Government.

For over 30 years the Land and Water Conservation Fund (LWCF) established by the Federal Government assisted local parks and recreation departments specifically for the purpose of acquiring and developing natural resources that would provide recreation opportunities for future generations. Funding for the Land and Water Conservation Program was generated from revenues produced from off-shore drilling rights. Over the past three years, funding for LWCF has not occurred which has greatly diminished opportunities for further development of parks and recreation facilities by local governments. During the last session of Congress, Bills were introduced by both the House and the Senate which would reinstate funding from the Land and Water Conservation Fund. City Council is well aware of the needs identified in the Parks, Recreation and Greenway Master Plans. Funding for the LWCF or similar Bill would greatly help meet the needs of this community.

The Parks and Recreation staff recommends City Council approving a resolution supporting funding for the Land and Water Conservation Program.

Naming of Reid Annex in Memory of Lonnie D. Burton

Summary: The consideration of a resolution naming the Reid Annex Building in memory of Lonnie D. Burton.

The Opportunity Corporation has entered into a 10-year lease on the Reid Center Annex Building and is renovating the facility in order to open a Head Start Child Development Center. This program will offer education and socialization activities to low-income children and their families. Mr. Lonnie D. Burton served as Executive Director of this organization for 23 of the 28 years of his employment here. He was passionate about this program and believed that early intervention is a way to move people out of poverty. Therefore, the Opportunity Corporation wants to honor his memory and his family by naming this Head Start facility and City-owned building the "Lonnie D. Burton Child Development Center."

The Parks and Recreation Advisory Board and staff support this request and recommends that City Council approve renaming the Reid Center Annex Building as the "Lonnie D. Burton Child Development Center."

Resolution of Intent to Annex City-Owned Non-Contiguous Property known as "Richmond Hill Property" and setting a public hearing on March 9, 1999

Resolution of Intent to Annex City-Owned Non-Contiguous Property known as "Bent Creek Property" and setting a public hearing on March 9, 1999

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PEDESTRIAN THOROUGHFARE PLAN

Ms. Suzanne Molloy, Assistant Director of Public Works, said that the Public Works Department is planning to recommend adoption of the Pedestrian Thoroughfare Plan this upcoming May after a series of public meetings, public input, and final revisions to the document.

The Public Works Department in conjunction with the Bicycle and Pedestrian Task Forces and the prior work of the Pedestrian Awareness and Community Evaluation (PACE) Committee has developed a preliminary Pedestrian Thoroughfare Plan. The purpose of the plan is to serve as a basis for pedestrian planning and prioritizing capital improvement and maintenance projects. The goal of the plan is to promote pedestrian activity, provide guidelines and design recommendations, and improve the pedestrian environment in the City of Asheville.

Ms. Molloy and Mr. Oliver Gajda briefed Council on the Plan which identifies: 1) existing sidewalks needing reconstruction, 2) sidewalks requiring ADA improvements, 3) sidewalks with pedestrian obstructions, 4) pedestrian hazard areas, 5) needed pedestrian crossings, and 6) needed pedestrian linkages, including linkages adopted in the *Master Greenway Plan*. The total cost for the plan is estimated at $35,619,730 with the plan recommending methods for financing which include local funding mechanisms (UDO, posting, impact fees); public/private partnerships (special assessments)l and pursing state and federal funding. The plan also recommends a series of action steps to ensure the implementation of the plan, i.e., establish a bicycle and pedestrian coordinator, update the UDO and engineering standards manual, development funding mechanisms (impact fees, NC DOT), incorporate pedestrian concerns into current and proposed plans, and support the bicycle and pedestrian task forces. Benefits of the plan include smart growth, air quality, health, community safety, economic development, livability and intermodal transportation.

On March 1st, printed copies of the draft plan will be available to the public.

Ms. Elizabeth Teague, representative from the Land-of-Sky Regional Council, spoke about the joint cooperation between the City and the Asheville Urban Area Metropolitan Planning Organization's Pedestrian and Bicycle Thoroughfare Plan. A series of public meetings will be hosted during the months of March and April. The public comment period will end on April 23rd.

Ms. Molloy said that after incorporation of public comment and recommendations, a final plan will be brought back to City Council on May 25th for adoption. The final adoption of the plan will be coordinated with a series of events (such as Strive Not to Drive Day) sponsored by the City of Asheville, the Bicycle and Pedestrian Task Forces of the Asheville Urban Area Metropolitan Planning Organization, and Land of Sky Regional Council.

Ms. Molloy said that over the next several months, the government access channel, will be running a series "Perils for Pedestrians" which highlights positive pedestrian programs and events. The City of Asheville's draft Pedestrian Thoroughfare Plan and the Urban Trail are both recognized in this program. This series is intended to raise awareness on the importance of pedestrian planning and programs. Additional information pertaining to the plan and public input sessions will be advertised via the newspaper and the government access channel.

The purpose of this report is to apprise City Council of the process to be used to gain public review and input as a part of the ultimate adoption of a Pedestrian Thoroughfare Plan.

Councilwoman Field liked the idea of some kinds of flexibility in the Plan and noted that Portland, Oregon, has some interesting solutions to ADA problems. She stressed that as part of the greenway master plan, we need to make sure that we think about the Pedestrian Thoroughfare Plan as part of that process.

Mayor Sitnick suggested that some type of flow chart be created to inform the public about the structure of local government and what City Council has control over. She also hoped that the City sets aside some funds every year for new sidewalks. She urged City staff to look at all kinds of materials (pervious and impervious) for walkable opportunities.

City Council suggested avenues to try to identify funding sources for the Plan.

PURCHASE OF PROPERTY AT THE CORNER OF BELL ROAD AND NEW HAW CREEK ROAD

Mr. Irby Brinson, Director of Parks & Recreation, said that this is the consideration of a resolution and budget amendment, in the amount of $55,000 out of Fund Balance, to purchase property located at the corner of Bell Road and New Haw Creek Road to be used for parking at Bullman Park.

Currently, the East Asheville Youth Activities Program is serving over 500 children in the youth baseball and softball program. For many years, problems have occurred in regard to adequate parking for the activities at the park. The Parks and Recreation Advisory Board has identified this needs as a high priority within the department. For several months, staff has been working with an adjacent property owner for the purchase of 2.09 acres at the corner of Bell Road and New Haw Creek Road. This purchase would be used for the development of a parking lot to meet the above need. The current property owner has agreed to a price of $55,000. Staff is requesting an appropriation from Fund Balance to go towards the purchase of this property.

The Parks and Recreation Advisory Board and staff recommend City Council authorize the City Manager to enter into any agreements for the purchase of this property and approval of a budget amendment in the amount of $55,000 for the purchase of 2.09 acres at the corner of Bell Road and New Haw Creek Road.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PRITCHARD PARK FUNDING STRATEGIES

Mr. Alan Glines, Assistant Landscape Architect, said that the Parks and Recreation Department has been directed by Council to study funding options for the estimated budget for the Pritchard Park project.

Since the presentation to Council by Genesis Group Inc., the City's consultant for the redesign of Pritchard Park on January 5, 1999, staff has reviewed options for funding and organizing the project. The project budget is estimated to be $1.4 million. This figure does not include possible traffic changes that may be needed throughout the downtown system nor any utility improvements. This major fundraising campaign could take from one to two years.

There are numerous ways to organize the fundraising effort:

1. City Council leads the fundraising effort. They may appoint a member of the community to spearhead the effort. Staff would support their efforts with back up information and grant writing.

   Advantages of this option include:
   - a strong City identity for the project is created;
   - a consistent message is given.

   Disadvantages of this option include:
   - time consuming commitment for City Council;
   - Staff time for this project will compete with other duties;
   - experience in handling this unusual type of campaign may be an issue;
   - City may not be eligible to apply for some grants which have restricted funding unless a partnership is developed with a Non-Profit Agency which may apply for grants on behalf of the City.

2. Establish a Fundraising Committee led by a professional fundraiser who manages the project and who is paid by way of a grant or a percentage of fundraising manages the project.

   Advantages of this option include:
   - professional expertise in handling the project;
   - fundraiser may be able to devote more time to the project;
   - may accelerate the timeline for fundraising.

   Disadvantages of this option include:
   - negative perception by the public that funds raised are being used to pay a consultant instead of actual project construction;
   - success of the campaign is dependent on the experience of this key individual;
   - fundraiser may not be a member of this community;
   - City may not be eligible to apply for some grants which have restricted funding unless a partnership is developed with a Non-Profit Agency which may apply for grants on behalf of the City.

3. An outside Non-Profit Agency and the Fundraising Committee leads the campaign (either entity could manage the process), writes grants and accepts funds on behalf of the City.

Advantages of this option include:
- ready experience of a Non-Profit Agency in grant writing;
- ability to apply for grants which have restricted funds;
- positive impression of being a community-wide effort;
- may reduce Staff time required on this project.

Disadvantages of this option include:
- the fundraising effort is only as effective as the Non-Profit Agency's resources, experience and skills;
- time commitment may be too great for a Non-Profit Agency in light of their existing commitments;
- a distinct leadership role with the project may be unclear to the community.

4. A Fundraising Committee coordinated by City staff composed of individuals from several departments and disciplines, manages the project. This could include City Council and Non-Profit Agency involvement.

Advantages of this option include:
- diverse skills brought by the different participants;
- restricted funding sources may still be available if a Non-Profit Agency could be involved;
- The project would still have clear City leadership;
- The City benefits from the partnerships formed.

Disadvantages of this option include:
- Staff time constraints with their regular job duties;
- differing interests and priorities from departments participating;
- since this project is large and complex there may not be the needed level of Staff experience;
- fundraising timeline may take longer.

Time Frame - Before May 1999, the fundraising committee could be organized and research begun for grants and donor sources. Thereafter fundraising and grant writing efforts could begin.

Funding Sources for the Project:

- City Capital Improvement Project Budget: Approximately 1/3 of proposed budget over the next two years applied for through the Capital Improvement Project process to provide seed money to match grants.
- Grants: Relevant state, federal and private grant sources can be identified and applied for.
- Donations: Private individuals, organizations and corporations may be a source of funds for the project.
- Grass Roots Fundraising: Community generated activities may be effective in raising funds for the project.

Staff is providing an update for City Council on possible funding scenarios of the Pritchard Park project.

Council discussed the options presented, stressing that only $300,000 is for the actual park itself and the rest of the $1.4 million is for traffic issues, resignalizations, streetscape things, art work, etc.

Councilwoman Field was pleased that there is currently some funds in the Capital Improvement Plan to begin work on this project. She stressed that she would be willing to help raise funds for this very important project.

Councilman Tomes wanted to make sure that we communicate to the community in a precise manner the source of funding, rather than leave the impression that it may end up being a taxpayer responsibility and burden.

Mr. Glines explained why Pritchard Park was not included in the Parks, Recreation and Greenways Master Plan.

City Council suggested some possible funding sources for the project.

City Council expressed interest in hiring a professional fundraiser to help with this fundraising effort, as long as no City money is involved.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CHANGING METHOD OF MAYOR AND COUNCIL ELECTION FROM PRIMARY-GENERAL TO GENERAL-RUNOFF

Assistant City Attorney Patsy Meldrum said that this is the consideration of an amendment to the City Charter to change the method of election of Mayor and Council to General Election – Runoff.

She reviewed with Council the current method of election (non-partisan primary and general election) and the method under consideration (general election and run-off).

a. Legal Authority. Part 4 of Article 5 of Chapter 160A permits a municipality to modify certain aspects of its form of government by amending its Charter. This is accomplished by adopting an ordinance following a public hearing. One of the forms of government that may be changed in this way is the manner of election of the Mayor and Council. Past recent changes have included; at large election of the mayor; non-partisan elections; and four-year staggered terms.

b. Process. Currently, the manner in which the Mayor and Council are elected is by primary-general election. In order to change this to the general election - runoff method, Council must first adopt a resolution of intent to consider an ordinance effecting the change. At the time the resolution of intent is adopted, the Council must also set a date for a public hearing on the proposed change, to be held within 45 days. The public hearing must be advertised at least once, not less than 10 days prior to the date of the hearing. At a regular meeting following the public hearing, but not more than 60 days thereafter, the ordinance effectuating the change may be adopted. This will involve amending Section 6 of the Charter.

Assuming that Council adopts the resolution of intent to consider the above-described change at its February 23 meeting, the earliest that a public hearing could be held would be March 9, and the earliest that the ordinance could be adopted would be March 23.

c. Effect on timing of election: filing. Pursuant to G.S. 163-279, for cities using the non-partisan primary-general election method, the general election is held on the first Tuesday after the first Monday in November, and the primary is 4 weeks earlier. When the method is changed to general-runoff, the runoff is held on the first Tuesday after the first Monday in November, and the general election is four weeks earlier. It appears that the filing date for elections under this system would be the same as it currently is. G.S. 163-294.2(c).

d. Other issues. The statute provides that the ordinance amendment may be put to a vote of the people, either by Council, or by a petition signed by 10% of voters qualified to vote in municipal elections. Obviously, if this occurs, the timing of the process will be altered.

If Council wishes to change its method of election to the primary-runoff method, the resolution of intent should be adopted. The proposed resolution assumes that the schedule discussed above is acceptable, but Council can adjust the schedule within certain limitations.

Vice-Mayor Hay explained why he felt that the current method seems inefficient and is also a campaign finance issue.

Councilwoman Field felt that there are pros and cons to both methods and wanted to hear from the public on how they feel about this.

Upon inquiry of Councilwoman Field, Ms. Meldrum briefed Council on some other municipalities in North Carolina that use the general election-runoff method.

Ms. Meldrum said that she would gather some statistics from the Board of Elections

Mayor Sitnick also felt that there are advantages and disadvantages of the general election-runoff method.

Ms. Meldrum then responded to various questions from Council and on questions which she was unable to respond to, noted that she would research those and be ready to report back to Council when this item is considered at the next formal meeting.

Vice-Mayor Hay suggested Ms. Meldrum contact the City of Wilmington's Board of Elections for a history on their experience with the general election-runoff method, assuming they don't have districts and have non-partisan elections.

Councilman Tomes was concerned that people have the mind-set that the first election is only a primary (with normally very poor turn-out) and normally general election is held in November. If Council changes this method, the general election will be the first election, and only if necessary, a run-off would be in November.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ECONOMIC DEVELOPMENT STRATEGIC PLAN

Assistant City Manager Doug Spell said that this is the consideration of selecting a consultant to prepare a Strategic Plan for economic development for the City of Asheville.

One critical component for the future positive growth of the City of Asheville pertains to an aggressive economic development program. In order to have an effective economic development program the focus must be well defined. Therefore, staff prepared a request for proposals (RFP) for a Strategic Plan for Economic Development. The RFP outlined a Scope of

Work consisting of ten (10) tasks as a part of the preparation of a Strategic Plan. He reviewed the Scope of Work from the RFP.

The RFP was advertised in The Asheville-Citizen Times and The Charlotte Observer on December 6, 1998. Additionally, staff sent out notices to prospective consulting firms including three potentially interested firms from the list of certified minority businesses.

The City received proposals from four consulting firms. The cost estimate from the proposals received ranged from $60,000 to $162,500. Additionally the range in time schedules outlined in the proposals stipulated that the Strategic Plan would be completed in six to ten months.

A selection panel comprised of Dale Carroll, Executive Director for AdvantageWest, Bruce Tompkins, Local Merchant and Chairman of the City Business and Development Commission, Jim Westbrook, and Douglas Spell reviewed and evaluated the proposals. An evaluation criteria was prepared in order to objectively consider each proposal. The evaluation criteria included items such as:

- prior experience in the tasks comprising the Scope of Work;
- firm's approach to accomplish the plan;
- involvement of stakeholders;
- availability to begin the project and time schedule to complete;
- cost estimate included in the proposal.

The selection panel recommended the selection of Lockwood Greene Consulting, Inc. to prepare the Strategic Plan for Economic Development. This recommendation is based upon the national scale of economic development, experience of the firm, significant client contact, opportunity for new ideas, closer proximity of firm location, and national identity of firm. Their cost estimate is in the amount of $66,000 plus estimated expenses of $12,700 for travel and other reimbursables for a total estimate of $78,700.

The Strategic Plan has been listed as a priority project of City Council. In order to initiate the Strategic Plan a budget ordinance amendment will be required. The amendment will appropriate $67,700 from Fund Balance for this project. Additionally, funds in the amount of $11,000 are available from Community Development Block Grant (CDBG) funds which have previously been earmarked for "planning." The Strategic Plan will provide some elements of economic diversification consistent with HUD direction for CDBG funds. If City Council concurs, staff will include the CDBG funds in the budget amendment.

Staff recommends the selection of Lockwood Greene Consulting, Inc. to prepare the Strategic Plan for Economic Development for the City of Asheville in the submitted proposal amount of $78,700 and approval of an appropriation from Fund Balance to fund this project.

Mr. Bruce Tompkins, Chair of the City Business and Development Commission, spoke in support of the selection of Lockwood Greene.

Discussion surrounded the importance for the selected firm to understand how unique Asheville is and the need to come up with some creative and innovative ideas. Therefore, it was the consensus of Council to meet with the project manager of Lockwood Greene to discuss Council's desires regarding economic development, to include, but not limited to, discussion of creative ways of going about economic development, how they feel about economic development incentives and what those incentives would be, how they would market Asheville's strengths, etc.

NEXT COMMUNITY MEETING

It was the consensus of City Council to hold their next scheduled community meeting on Tuesday, March 30, 1999, at the East Asheville Community Center, 906 Tunnel Road, Asheville, N.C. City staff will be available beginning at 6:00 p.m. to answer any questions from the public and the community meeting will begin at 7:00 p.m.

REPORTS ON BOARDS/COMMISSIONS

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:17 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - February 23,1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Tomes gave the invocation.

AGENDA CHANGES

At the request of City Manager Westbrook, Item A on the Consent Agenda was removed due to an upset bid being received.

At the request of Mayor Sitnick, the following item was added to the agenda under Other Business: consideration of appointing Vice-Mayor Hay to the Joint Task Force of the Chamber of Commerce and Tourism Development Authority Product Development Task Force.

I. PROCLAMATIONS:

A. RESOLUTION NO. 99-30 - RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE EDWARD A. LEMON

City Manager Westbrook said that Edward A. Lemon has been employed by the City of Asheville for over 26 years and has requested retirement from his position, effective March 1, 1999, as Construction Inspector in the Engineering Department.

Resolution No. 99-30 was adopted by acclamation.

RESOLUTION BOOK NO. 25 - PAGE 155

B. RECOGNITION OF THE PARKS AND RECREATION DEPARTMENT ACCREDITATION

Mayor Sitnick said that in February 1994, the Asheville Parks & Recreation Department ("APRD") became the first municipal recreation department to receive national accreditation from the Commission for Accreditation of Park and Recreation Agencies. Every 5 years an accredited agency must be reviewed to ensure compliance with the 154 standards established by the Commission. The standards represent all areas of operations for municipal parks and recreation. She said that on February 12 1999, APRD was re-accredited.

Mayor Sitnick then recognized Parks and Recreation Director Irby Brinson for his Department's hard work in receiving the honorary designation.

C. PROCLAMATION PROCLAIMING THE WEEK OF FEBRUARY 22-27, 1999, AS "BIG SOUTH CONFERENCE BASKETBALL WEEK"

Vice-Mayor Hay, member of the Big South Steering Committee, read the proclamation proclaiming the week of February 22-27, 1999, as "Big South Conference Basketball Week" in the City of Asheville.

II. CONSENT:

A. RESOLUTION AUTHORIZING THE SALE OF A VACANT LOT ON PARK AVENUE TO DAVID J. HEETDERKS

This item was removed from the Consent Agenda due to an upset bid being received.

B. ORDINANCE NO. 2546 - BUDGET AMENDMENT APPROPRIATING FUNDS FROM THE SALE OF 110 MORRIS STREET INTO CAPITAL PROJECTS DESIGNATED FOR PARKS AND RECREATION

Summary: The consideration of a budget amendment appropriating the funds from the sale of 110 Morris Street into capital projects designated for Parks and Recreation.

Over the past year, the City of Asheville has been working to sell the dwelling at 110 Morris Street located on the property at West Asheville Park administered by the Parks and Recreation Department. The closing of this property has occurred and funds totaling $74,354.00 need to be allocated into a capital fund for improvements at the park. The Parks and Recreation staff currently plans to make improvements and upgrades to the playground facility at West Asheville Park. These improvements will result in the playground being in compliance with the Americans With Disabilities Act and the recommendations by the Consumer Product Safety Commission.

The Parks and Recreation staff is recommending approval of the budget amendment to appropriate $74,354 into a capital fund for improvements at West Asheville Park.

ORDINANCE BOOK NO. 17 - PAGE 264

C. RESOLUTION NO. 99-31 - RESOLUTION SUPPORTING FUNDING FOR THE LAND AND WATER CONSERVATION PROGRAM

Summary: The consideration of a resolution to endorse the reestablishment of Land and Water Conservation Funds through the Federal Government.

For over 30 years the Land and Water Conservation Fund (LWCF) established by the Federal Government assisted local parks and recreation departments specifically for the purpose of acquiring and developing natural resources that would provide recreation opportunities for future generations. Funding for the Land and Water Conservation Program was generated from revenues produced from off-shore drilling rights. Over the past three years, funding for LWCF has not occurred which has greatly diminished opportunities for further development of parks and recreation facilities by local governments. During the last session of Congress, Bills were introduced by both the House and the Senate which would reinstate funding from the Land and Water Conservation Fund. City Council is well aware of the needs identified in the Parks, Recreation and Greenway Master Plans. Funding for the LWCF or similar Bill would greatly help meet the needs of this community.

The Parks and Recreation staff recommends City Council approving a resolution supporting funding for the Land and Water Conservation Program.

RESOLUTION BOOK NO. 25 - PAGE 156

D. RESOLUTION NO. 99-32 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS TO PURCHASE 2.09 ACRES AT THE CORNER OF BELL ROAD AND NEW HAW CREEK ROAD TO BE USED FOR PARKING FOR BULLMAN PARK

Summary: The consideration of a resolution and budget amendment, in the amount of $55,000 out of Fund Balance, to purchase property located at the corner of Bell Road and New Haw Creek Road to be used for parking at Bullman Park.

Currently, the East Asheville Youth Activities Program is serving over 500 children in the youth baseball and softball program. For many years, problems have occurred in regard to adequate parking for the activities at the park. The Parks and Recreation Advisory Board has identified this needs as a high priority within the department. For several months, staff has been working with an adjacent property owner for the purchase of 2.09 acres at the corner of Bell Road and New Haw Creek Road. This purchase would be used for the development of a parking lot to meet the above need. The current property owner has agreed to a price of $55,000. Staff is requesting an appropriation from Fund Balance to go towards the purchase of this property.

The Parks and Recreation Advisory Board and staff recommend City Council authorize the City Manager to enter into any agreements for the purchase of this property and approval of a budget amendment in the amount of $55,000 for the purchase of 2.09 acres at the corner of Bell Road and New Haw Creek Road.

RESOLUTION BOOK NO. 25 - PAGE 157

E. ORDINANCE NO. 2547 - BUDGET AMENDMENT FOR THE PURCHASE OF 2.09 ACRES AT THE CORNER OF BELL ROAD AND NEW HAW CREEK ROAD

Summary: See Item "F" above.

ORDINANCE BOOK NO. 17 - PAGE 266

F. MOTION SETTING A PUBLIC HEARING ON MARCH 9, 1999, TO REZONE PROPERTY LOCATED ON LIVINGSTON STREET, SOUTH FRENCH BROAD AVENUE AND CHOCTAW STREET FROM OFFICE DISTRICT TO OFFICE II DISTRICT

G. RESOLUTION NO. 99-33 - RESOLUTION RENAMING THE REID ANNEX BUILDING IN MEMORY OF LONNIE D. BURTON

Summary: The consideration of a resolution naming the Reid Annex Building in memory of Lonnie D. Burton.

The Opportunity Corporation has entered into a 10-year lease on the Reid Center Annex Building and is renovating the facility in order to open a Head Start Child Development Center. This program will offer education and socialization activities to low-income children and their families. Mr. Lonnie D. Burton served as Executive Director of this organization for 23 of the 28 years of his employment here. He was passionate about this program and believed that early intervention is a way to move people out of poverty. Therefore, the Opportunity Corporation wants to honor his memory and his family by naming this Head Start facility and City-owned building the "Lonnie D. Burton Child Development Center."

The Parks and Recreation Advisory Board and staff support this request and recommends that City Council approve renaming the Reid Center Annex Building as the "Lonnie D. Burton Child Development Center."

RESOLUTION BOOK NO. 25 - PAGE 158

H. RESOLUTION NO. 99-34 - RESOLUTION STATING THE INTENT OF THE CITY OF ASHEVILLE TO CONSIDER THE ANNEXATION OF NONCONTIGUOUS PROPERTY KNOWN AS THE "RICHMOND HILL ROAD PROPERTY" AND SETTING A PUBLIC HEARING ON MARCH 9, 1999

Summary: The consideration of a resolution stating the intent of the City of Asheville to consider the annexation of noncontiguous property known as the "Richmond Hill Property" and setting a public hearing on March 9, 1999.

In order to annex City-owned property, the North Carolina General Statutes specify that the City Council initiate the process by adopting a resolution stating its intent to annex the property, and to fix a date on a public hearing to permit any resident of the City to appear and be heard on the question of the desirability of the annexation.

This annexation area would be a satellite annexation as it is not directly adjacent to the existing corporate limits. The standards for such annexations are specified in N. C. Gen. Stat. sec. 160A-58.1 and include: (1) The annexation area may not be more that 3 miles from the existing corporate limits; (2) The annexation area may not be closer to another city or town; (3) The city must be able to provide the same services to the annexation area that it provides in the rest of the city; (4) If the area is part of a subdivision, the entire subdivision must be included; and (5) The sum of the area in satellite areas may be no more than 10% of the area in the primary corporate limits. This area meets these standards.

The Richmond Hill property consists of 183 acres located between Richmond Hill Drive, Adams Hill Road and the Norfolk Southern Railway tracks along the French Broad River. It is located approximately 70' west of the existing City limits along Richmond Hill Drive. Both water and sewer lines are not extended to the property, but are available approximately 250' to the east of the property.

The Planning and Development Department recommends City Council adopt a resolution stating its intent to annex and set a public hearing for March 9, 1999.

RESOLUTION BOOK NO. 25 - PAGE 159

I. RESOLUTION NO. 99-35 - RESOLUTION STATING THE INTENT OF THE CITY OF ASHEVILLE TO CONSIDER THE ANNEXATION OF NONCONTIGUOUS PROPERTY KNOWN AS THE "BENT CREEK PROPERTY" AND SETTING A PUBLIC HEARING ON MARCH 9, 1999

Summary: The consideration of a resolution stating the intent of the City of Asheville to consider the annexation of noncontiguous property known as the "Bent Creek Property" and setting a public hearing on March 9, 1999.

In order to annex City-owned property, the North Carolina General Statutes specify that the City Council initiate the process by adopting a resolution stating its intent to annex the property, and to fix a date on a public hearing to permit any resident of the City to appear and be heard on the question of the desirability of the annexation.

This annexation area would be a satellite annexation as it is not directly adjacent to the existing corporate limits. The standards for such annexations are specified in N. C. Gen. Stat. sec. 160A-58.1 and include: (1) The annexation area may not be more that 3 miles from the existing corporate limits; (2) The annexation area may not be closer to another city or town; (3) The city must be able to provide the same services to the annexation area that it provides in the rest of the city; (4) If the area is part of a subdivision, the entire subdivision must be included; and (5) The sum of the area in satellite areas may be no more than 10% of the area in the primary corporate limits. This area meets these standards as follows:

The Bent Creek property consists of two tracts of land which together are located between Brevard Road and I-26 along the French Broad River. One tract consists of 137 acres and the other tract consists of 1.78 acres. The tracts are located approximately 4,500' south of the existing City limits in the Biltmore Square Mall area. The two tracts together are served by both water and sewer.

The Planning and Development Department recommends City Council adopt a resolution stating its intent to annex and set a public hearing for March 9, 1999.

RESOLUTION BOOK NO. 25 - PAGE 162

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

III. PUBLIC HEARINGS:

Vice-Mayor Hay moved to amend the agenda to consider the public hearing regarding rezoning on property located on Asheland Avenue, Grove Street and Morgan Street at this time. This motion was seconded by Councilman Tomes and carried unanimously.

A. PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED ON ASHELAND AVENUE, GROVE STREET AND MORGAN STREET FROM OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT

Mayor Sitnick opened the public hearing at 5:15 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, said that this is the consideration of an ordinance rezoning property located on Asheland Avenue, Grove Street and Morgan Street from Office Business District to Office II District.

The Asheville Planning and Zoning Commission, at their February 3, 1999, meeting, reviewed and recommended approval of the rezoning of property located on Asheland Avenue from Office Business District to Office II District. Eight parcels are included in the area to be rezoned. Three of the parcels front on Asheland Avenue, four on South Grove Street, and one is a through lot with frontage on both Asheland Avenue and South Grove Street. Current land uses on the parcels include medical offices, residential structures used for offices, and residential uses. Structures up to 30,000 sq. ft. in gross floor area are permitted under the current Office Business zoning. The proposed zoning would reduce the permitted structure size to a footprint of 8,000 sq. ft. and a maximum gross floor area of 16,000 sq. ft. The smaller scale of development permitted in the Office II District would be a better fit with the residential uses found on South Grove Street and could also be better served by the streets in the area, particularly South Grove Street. There were significant comments from the residents of South Grove Street during the public hearing. The residents were fearful that the proposed rezoning would permit more intense development in the area. Concern was also expressed regarding traffic on the residential streets, particularly cut-through traffic using Dailey, South Grove, and Morgan Streets as a short cut between South French Broad and Asheland Avenues.

The Asheville Planning and Zoning Commission voted 6 to 0 to recommend approval of the rezoning. The Planning and Development staff recommends approval of the rezoning.

Mr. Green said that he recently spoke with the property owners in the area and they requested a one foot strip be zoned residential along the Grove Street side to prohibit traffic from exiting onto Grove Street. Mr. Green felt it would be better to talk to the Traffic Engineer to find more comprehensive ways to address the traffic in the neighborhood.

Upon inquiry of Councilman Tomes, Mr. Green said that prior to adoption of the Unified Development Ordinance, South Grove Street was zoned commercial service, which was a much more intensive use, and staff is now trying to refine that zoning to be more compatible with the scale of the residential area that abuts it.

When Councilman Cobb asked about what type of traffic studies have been done in the area, Mr. Green said that no studies have been done yet. However, Planning staff will work with the Traffic Engineer to find a solution to problems with cut-through traffic and other types of traffic problems the area is currently experiencing.

Upon inquiry of Vice-Mayor Hay, Mr. Green said that the Planning and Zoning Commission did not have the one foot strip suggestion in front of them for consideration, however, they did hear the traffic concerns.

The following residents spoke in opposition to the proposed rezoning, unless there was a one foot strip of residential land on the Grove Street side. Some comments were, but are not limited to: the Office II District is not in the scale of the residential neighborhood; concerns about more traffic onto the narrow S. Grove Street; need to keep the neighborhood in tact and affordable for minorities; there is a lot of on-street parking on S. Grove Street already;

Mr. Mel Thomason, owner of 9 Blanton Street
Mr. Joe Craig, 155 S. Grove Street
Mr. Gary Sanford, 139 S. Grove Street
Ms. Mary Warren, 136 S. Grove Street

Dr. Gray, Senior Managing Physician for Asheville Women's Medical Center and owner of some of the property under discussion, said that he accepted the City's request to "down-size" his property from Office District to Office II District because of his sensitivity to the neighborhood. He understands that the primary problem is the amount of cut-through traffic from South French Broad to Asheland Avenue. However, as a property owner, he has a serious problem in accepting the one foot strip limitation, which further reduces his use of that property in the future. He said they have commercial access to that property now and the one foot restriction would limit that commercial access and would make that piece of property not useful.

Dr. Gray responded to questions from Councilman Tomes relative to the rental properties he owns in the area.

Councilman Tomes was concerned with how fragile the neighborhood is and personally felt that if we are going to embrace the sensitivity in a holistic manner, one foot would not be asking too much. He was concerned about the encroachment into the residential neighborhood in five-ten years from now.

Councilwoman Field asked if there is, at the present time, access to any of the lots that serve Asheville Women's Medical Center, from S. Grove Street. Dr. Gray responded that two lots (5418 and 5402) are commercial property that have been developed as commercial property and there is access from there to S. Grove Street. The other two lots (5544 and 5650) could potentially have access out of 5418 and 5402, so to put a foot restriction would only further limit any architectural development that would meet the requirements allowed for that property.

Upon inquiry of Councilwoman Field, Mr. Green said that if Council zoned the one foot strip residential, the access would remain.

There was some discussion about the property Dr. Anderson owns (5698).

Councilman Cloninger suggested remanding this matter back to the Planning and Zoning Commission for their review of the one-foot strip of residential land. The Commission, and/or City staff, may think of other creative ideas to protect the neighborhood. Or, if Council did not want to remand the matter back to the Commission, he suggested a delay in the decision for two weeks so that Council can visit the area with the one foot strip in mind.

Mr. Green said that the earliest this matter could be reviewed by the Planning & Zoning Commission would be at their April 7, 1999, meeting.

Mayor Sitnick closed the public hearing at 6:14 p.m.

Councilman Cloninger moved to remand this matter back to the Planning and Zoning Commission to consider the one-foot strip, as well as any other ideas that the Commission, or staff or the public might come up with to accomplish the same goal of protecting the neighborhood. This motion was seconded by Councilman Tomes.

Upon inquiry of Councilwoman Field, Mr. Green said that he would research the impacts of split zoning and report back to Council his results.

Vice-Mayor Hay asked Mr. Green to contact Dr. Anderson and report back to Council his feelings about this rezoning.

The motion made by Councilman Cloninger and seconded by Councilman Tomes carried unanimously.

Councilman Sellers moved to amend the agenda to consider the presentation by Speedway 99 at this time. This motion was seconded by Councilwoman Field and carried unanimously.

B. ASHEVILLE MOTOR SPEEDWAY

On behalf of Speedway 99, Mr. Ron Crane expressed their appreciation to the Asheville City Council, the City Manager, the City Attorney and Parks & Recreation Director Irby Brinson for their work associated with restoring racing at the Asheville Motor Speedway for the 1999 racing season. Each member of Speedway 99 presented the Mayor, City Council and City Attorney Oast with a model race car. They especially thanked Councilman Sellers as the lead Council member who worked directly with their Committee.

On behalf of City Council, Mayor Sitnick said that this was a very unified effort by everyone who participated in it, from City staff, to City Council, to RiverLink, to the donors, to the spokespeople for Speedway 99, but mostly to the people of Speedway 99 who were so passionate from the very beginning, yet so willing to work things out for everyone's best interest. She felt this was a model for any kind of dealings in the future that bring people together who don't necessarily agree, but who can work through their difficulties and concerns.

C. PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED ON CENTRAL AVENUE, ORANGE STREET, LIBERTY STREET, CLAYTON STREET AND ORCHARD STREET OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT

ORDINANCE NO. 2548 - ORDINANCE TO REZONE PROPERTY LOCATED ON CENTRAL AVENUE, ORANGE STREET, LIBERTY STREET, CLAYTON STREET AND ORCHARD STREET OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT

Mayor Sitnick opened the public hearing at 6:30 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, said that this is the consideration of an ordinance rezoning property located on Central Avenue, Orange Street, Liberty Street, Clayton Street and Orchard Street from Office Business District to Office II District.

The Planning and Zoning Commission, at their February 3, 1999, meeting, reviewed and recommended approval of the rezoning of property located on Central Avenue and Orange Street from Office Business District to Office II District. Fifty-four parcels are included in the area to be rezoned. In addition to Central Avenue and Orange Streets, streets providing access to the parcels are Orchard, Clayton, and Liberty Streets. Current land uses on the parcels include a wide range of offices, churches, clinics, and residential uses. With the exception of a few structures, the buildings are of a residential scale and design. Structures up to 30,000 sq. ft. in gross floor area are permitted under the current Office Business zoning. The proposed zoning would reduce the permitted structure size to a footprint of 8,000 sq. ft. and a maximum gross floor area of 16,000 sq. ft. The smaller scale of development permitted in the Office II District would be a better fit with the residential scale uses found in the area and in the Office District to the north. The residential scale streets in the area, on which parking is permitted, could better accommodate the smaller scale structures permitted in the Office II District. There were a few comments in support of the rezoning from property owners in and around the area to be rezoned. One property owner was concerned about an existing use which is non-conforming under the Office Business zoning and would remain non-conforming under the Office II zoning.

The Asheville Planning and Zoning Commission voted 6 to 0 to recommend approval of the rezoning. The Planning and Development staff recommends approval of the rezoning.

Councilwoman Field asked if she would have a conflict of interest since one of the properties which contains the non-conforming use is a client of the firm that she works for. City Attorney Oast said that he felt there was no conflict of interest.

Mr. Al Austin, President and CEO of Teleco Credit Union and Affiliates located at 7 Orchard Street (Lot 0295), said that long range plans for expansion of their facility will be virtually eliminated if their property is rezoned to Office II District.

Upon inquiry of Councilwoman Field about excluding Lot 0295 from the rezoning request, Mr. Green said that would create an unusual zoning pattern, however, it could be a transition lot from Office Business to Office II to Office.

Mayor Sitnick closed the public hearing at 6:43 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Hay moved for the adoption of Ordinance No. 2548, excluding PIN No. 9649.19-52-0295, which is to remain zoned Office Business District. This motion was seconded by Councilman Cloninger and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 268

D. PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED ON MAUDE AVENUE AND SUMMIT AVENUE FROM OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT

ORDINANCE NO. 2549 - ORDINANCE TO REZONE PROPERTY LOCATED ON MAUDE AVENUE AND SUMMIT AVENUE FROM OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT

Mayor Sitnick opened the public hearing at 6:44 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, said that this is the consideration of an ordinance rezoning property located on Maude Avenue and Summit Avenue from Office Business District to Office II District.

The Planning and Zoning Commission, at their February 3, 1999, meeting, reviewed and recommended approval of the rezoning of property located on Maude Avenue and Summit Avenue from Office Business District to Office II District. Sixteen parcels, all located at least one lot back from Hendersonville Road, are included in the area to be rezoned. Current land uses on the parcels include offices, a bank, residential uses, and vacant. The current Office Business zoning of the property permits structures up to 30,000 sq. ft. in gross floor area. The proposed zoning would reduce the permitted structure size to a footprint of 8,000 sq. ft. and a maximum gross floor area of 16,000 sq. ft. The streets which access the property are narrow and it is felt that the scale of development permitted under the Office II zoning can be better accommodated by the limited street capacity in the area. The smaller scale of development permitted in the Office II District would also fit better with the scale of adjacent development. There were no comments from the public regarding this request.

The Asheville Planning and Zoning Commission voted 6 to 0 to recommend approval of the rezoning. The Planning and Development staff recommends approval of the rezoning.

Ms. Charlotte Penley, 1 Summit Avenue, asked if the City could maintain Summit Street and what impact the rezoning would have on her property. Mr. Green said that rezoning the property would have no impact on Summit Avenue. He said that Summit Street has never been developed as a City street and the City has no obligation to maintain it. However, if the property were developed for any type of office use or single- or multi-family residential, other than a single lot, the developer would be required to provide an access that met the standards set forth in the City's Standards and Specifications Manual.

Mayor closed public hearing at 6:50.

Councilman Tomes questioned stormwater runoff control by the City.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2549. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 270

E. PUBLIC HEARING RELATIVE TO FILING OF AN APPLICATION FOR MASS TRANSIT FUNDING

RESOLUTION NO. 99-36 - RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION WITH THE FEDERAL TRANSIT ADMINISTRATION

Mayor Sitnick opened the public hearing at 6:51 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that this is the consideration of a resolution applying for Mass Transit Funding in the amount of $470,631 for Fiscal 1998/99.

The Fiscal 1998/99 Annual Operating Budget included Asheville Transit Authority funding as follows:

Operating revenues	$675,000
Operating subsidy:	
City of Asheville	813,485
State funding	182,165
Federal funding	470,631
Total funding	$2,141,281

In order to receive the Federal funding, the City Council must hold a public hearing at which time the service will be discussed, and certain environmental, land use planning and social impacts of the service will be outlined. Upon completion of the public hearing, a resolution authorizing the Mayor to file an application for the grant and provide certain required assurances to the U.S. Department of Transportation should be considered.

Staff recommends City Council consider authorizing the Mayor to file an application for Mass Transit funding in the amount of $470,631 for Fiscal Year 1998/99.

Mayor Sitnick closed the public hearing at 6:53 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Tomes moved for the adoption of Resolution No. 99-36. This motion was seconded by Councilman Cobb and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 165

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. MOTION DIRECTING STAFF ON HOW TO PROCEED WITH FUNDING THE PRITCHARD PARK PROJECT

Mr. Alan Glines, Assistant Landscape Architect, said that the Parks and Recreation Department has been directed by Council to study funding options for the estimated budget for the Pritchard Park project.

Mr. Glines reviewed the following project highlights: lighting in park space and street lighting; rock work and small water feature in the park; outdoor tables and chairs along sidewalks and the park; sidewalk expansion and use of special paving materials; park landscape plantings; benches along sidewalks and the park; improvements to pedestrian crosswalks and connections to the park; community gathering space in the park; traffic calming measures and roundabouts; public art which may include historical markers and sculptural elements and artwork; and street trees, tree grates and decorative sidewalk planters.

He said that the total estimated project budget is $1.4 million. This includes: demolition (pavement, bus shelter removal and tipping fees) - $150,000; streets and sidewalk improvements (including roundabouts) - $590,000; park space development - $300,000; public art components - $160,000; and design fees and contingency - $200,000. He said that approximately $350,000 would be for the park itself, with the balance of the estimate being traffic improvements, sidewalk and streetscape improvements.

He said funding sources for the project include: City Capital Improvement Project Budget (approximately 1/3 of the proposed budget over the next two years to provide seed money to match grants and to support partial construction); grants from relevant state, federal and private grant sources to be identified and applied for; donations from private individuals, corporations, organizations; and grass roots fundraising.

As a result of the discussion at the February 16, 1999, worksession, Council directed staff to coordinate the fundraising committee with City Council members being closely involved and helping in the fundraising efforts for the project. We might include the assistance of a non-profit agency to apply for some of the grants that have restricted funds. The non-profit agency would hold the money for the project and then turn it over on behalf of the City for construction. We could also seek possible funding, through a grant, to hire a professional fundraiser to manage the project for the City. He said the are still in the process of evaluating the conceptual plan for traffic feasibility. He said we are also looking at the option of phasing in portions of the plan.

Upon inquiry of Vice-Mayor Hay, Mr. Glines said that they will pursue funding options with the N.C. Dept. of Transportation.

When Vice-Mayor Hay asked if it would be possible to do the park before we got the traffic improvements done, Mr. Glines said that sometimes it's hard to expand a park footprint and not have the traffic improvements in place, however, they will work with the consultant on phasing options.

Mr. Chris Peterson, representing the Merchants' Action Coalition ("MAC"), read the following letter dated February 16, 1999, from Joe Eckert, President of MAC: "We the members of MAC which consists of downtown business and property owners were excited to receive information on the 18 million dollar Bond Issue for Parks and Greenways. However, after we reviewed the information we were extremely disappointed that no money has been allocated for Pritchard Park or for that matter any other parks located in downtown. As downtown property owners who have helped revitalize the city we as a group cannot support this Bond Issue until it is revised to include Pritchard Park. If you have any questions please contact Beth Stickle at 254-6447 who is a member of our Budget Committee." He urged City Council to re-direct $1 million of the bond money to complete the Pritchard Park Project.

Mr. Irby Brinson, Director of Parks & Recreation, explained that there was a 100 member citizens committee that went through a public process to prioritize projects for the bond. Basically every issue that was identified in the Parks & Recreation Master Plan was on that list. Issues that were currently funded, which Pritchard Park was currently funded with $250,000, were not included as far as prioritization. The committee went through a multi-voting process and identified the top issues. He said that in addition to the $200,000 in the Capital Improvement Project ("CIP") for Pritchard Park, he is requesting an additional $300,000 be included in the CIP for this year, which would be the City's 1/3 funding. He said that the Finance Director felt that the Parks, Recreation and Greenway Bond should deal with parks and recreation issues only and that the traffic issues should be addressed with the N.C. Dept. of Transportation.

Councilman Cloninger said that the fact that Pritchard Park is not in the bond referendum package is not a reflection that it's not a high priority. Actually, that it's already in the CIP project budget indicates that it is an extremely high priority and that it's one that will go forward, regardless of what happens with the parks, recreation and greenway bond referendum. He was concerned with the $1.4 million estimate for the Project. He felt we needed to look at ways to cut that down and concentrate on making that park itself a useable, attractive greenspace as quickly as possible.

Mayor Sitnick noted that the park itself can be completed with the City's one-third. The street and sidewalk improvements and the roundabouts will have a N.C. Dept. of Transportation component. She also noted that the public art might have to wait for another phase of the project.

Mr. John Driscoll, architectural intern, showed an illustration of the park where the street configuration utilizes the center of the square rather than the perimeter. He felt that the City should direct the money towards greenspace primarily so we have a true park.

Ms. Regina Trantham, President of the Battery Hill Association and member of MAC, felt that the Pritchard Park plan is a well thought out plan, however, she felt it was too expensive. She suggested maybe volunteerism, use of prison labor or use of interns. As a business owner, she was concerned about how long the project will take to be completed. Since the buses have been moved from Pritchard Park, business has declined 10-15% because of the state the park has been left in. She also supported MAC's position that Pritchard Park be included in the bond referendum.

As a fundraising idea, Ms. Cynthia Wade suggested citizens purchase bricks (with their names engraved) that could be incorporated into the overall design. She said $2. 5 million could be raised if 125,000 bricks were purchased at a price of $20 a brick.

Councilman Cloninger felt that making the area an attractive, usable greenspace at Pritchard Park should be a high priority. His concern is that if we can't raise $1.4 million, we're not even going to go forward expeditiously on improving the park itself. He said that we should start with making the park a nice area and then improve on the surrounding area if the money is raised. The design the consultant came up with is great, however, we can't afford it. A million dollars will be hard to raise for this project and he wasn't sure if we really want to raise $1 million for a project that is only going to affect one City block. He encouraged Council to scale down the project and concentrate on the design and building of the greenspace in such a way that in future years we can improve the surrounding area. If we don't specifically concentrate on the park area now and if we don't put ourselves on a specific timeline for improving that park, he sees this plan sitting on the shelf and nothing being done.

Councilman Tomes agreed with Councilman Cloninger. He, too, felt we should scale the project down with a beautiful greenspace. Several people have told him that our infrastructure needs should be a major priority over a $1 million park.

Councilwoman Field said felt it was very important to coordinate the demolition work at Pritchard Park at the same time we put in the water lines down Haywood Street because of how it will affect the merchants. To that end, she felt like we should do the whole Pritchard Park Project at one time. The roundabouts are very important to her in that they are a new concept that the N.C. Dept. of Transportation has just said they are very supportive of. She thinks that we can get that portion of the money from the N.C. Dept. of Transportation enhancement funds. The $160,000 for public art is something that we can easily put out as a public/private partnership and we have been able to get large contributions for artwork on the Urban Trail. The largest portion of the $150,000 for demolition is for tipping fees at the County Landfill. Perhaps we can get the County to waive some of those tipping fees. If we consider one of our goals this year to be able to provide for the cultural, arts, recreation and entertainment of the City, then downtown and Pritchard Park is very important to achieving that goal. The merchants of downtown deserve the park and deserve to have the opportunity to have the wonderful design that has been designed by a very long public process. She strongly supported that the project be done all at once as designed. She felt Pritchard Park is the key to the very best downtown in all of North Carolina and strongly supported moving forward.

Mayor Sitnick agreed with Councilwoman Field. She did note that if the bond referendum fails, the Pritchard Park project will still move forward. Asking the County to waive the tipping fees is a great idea since Pritchard Park is in Buncombe County. In addition, there is the potential of Better America Bonds that have been proposed for greenspaces. Pritchard Park is an aggressive design and we have other needs in the community, however, she felt that there are ways that we can scale this back a little and still create a magnificent downtown focal point. She would like for us to work with the design that has been created, find the ways to be more efficient with the money that we have and then go from there. She urged the City Manager to include the $300,000 request in the CIP for Pritchard Park next fiscal year.

Vice-Mayor Hay recalled that the consultant said that this project can be completed in phases, that we wouldn't have to raise the money all at one time, and that they would come back with a plan for all that. He felt that we really need to determine how much money we really do need to raise after taking out all the different aspects, like possible N.C. Dept. of Transportation funds. He would like to see some effort put into phasing the project in, like creating the greenspace first.

Councilman Cobb supported the project being developed. He felt that after we take out all the possible funding sources, we could possibly reduce the $1.4 million needed to $650,000, most of which the City will have earmarked for this project. He felt the citizens of Asheville would love to contribute and be a part of this project. He felt that the project would need to be completed in phases.

After Mayor Sitnick expressed concerned that MAC would not support the bond referendum if Pritchard Park was not included in the bond, Mr. Brinson said that he would be happy to attend the next MAC meeting to make them aware of why Pritchard Park was not included in the bond referendum, in addition to the many things that the City does to support the downtown.

When Mr. Peterson said that MAC was willing to work with the City and suggested adding $1.5 million to the bond referendum, Mr. Brinson explained that the bond referendum amount could not be changed.

Councilwoman Field suggested a Council committee meet with staff and resolve some of these problems on how we are going to proceed and report back to the full Council with a recommendation. Since the traffic study on the roundabouts won't be completed for at least two months, that will give the committee time to make some decisions so they can give staff clear direction on how to proceed.

Councilman Cloninger suggested Council direct staff to start looking at ways to phase in this project, as opposed to doing it all at once.

Mayor Sitnick said that she would formally request that Buncombe County consider waiving the tipping fees for demolition for Pritchard Park.

It was the consensus of City Council for Councilwoman Field and Councilman Cloninger (Council committee) to meet with City staff and decide on how the City should proceed in the Pritchard Park Project and report back to the full Council with a recommendation. Staff will also begin looking at ways to phase in the project.

B. RESOLUTION NO. 99-37 - RESOLUTION OF INTENT TO CONSIDER AN ORDINANCE AMENDING THE CHARTER AND RELATED LAWS OF THE CITY OF ASHEVILLE TO PROVIDE FOR SELECTION OF THE MAYOR AND CITY COUNCIL BY NON-PARTISAN ELECTION AND RUNOFF AND SETTING A PUBLIC HEARING ON MARCH 9, 1999

Ms. Patsy Meldrum, Assistant City Attorney, said that this is a resolution of intent to consider an amendment to the City Charter to change the method of election of Mayor and Council to General Election – Runoff and setting a public hearing on March 9, 1999.

She reviewed with Council the current method (non-partisan primary and general election) and then the method under discussion (general election and runoff).

Assuming that Council adopts the resolution of intent to consider the above-described change at its February 23 meeting, the earliest that a public hearing could be held would be March 9, and the earliest that the ordinance could be adopted would be March 23.

The statute provides that the ordinance amendment may be put to a vote of the people, either by Council, or by a petition signed by 10% of voters qualified to vote in municipal elections. Obviously, if this occurs, the timing of the process will be altered.

If Council wishes to change its method of election to the primary-runoff method, the resolution of intent should be adopted. The proposed resolution assumes that the schedule discussed above is acceptable, but Council can adjust the schedule within certain limitations.

Ms. Meldrum then reported the results of various questions Council raised at their worksession on February 16, 1999, i.e., who can call for a runoff, and information from the City of Wilmington and the City of Monroe who have non-partisan general and runoff elections.

Vice-Mayor Hay said that he was concerned about the October general election and whether that would reduce voter participation, which is not what we want to do. He said that if there are no runoffs, it is in furtherance of one of our goals which is to reduce the cost of running for election. If there is only one election, whether it be campaign finance or just simply the cost of holding the election, it seems like that is something that City Council should look into. He would like to go forward with the public hearing process and see if we want to consider making a change.

Upon reviewing the information Ms. Meldrum submitted for the City of Wilmington, she asked Ms. Meldrum to find out the percentage of the voter turnout in the City of Wilmington elections. She said that her tendency at this time is to leave the elections as they are now, but would like to see what the community thinks.

Councilman Cloninger also preferred to keep the election process as it is now, however, he did feel that it is a good idea to go through the process and get additional information.

Mr. Brian Peterson felt that since City Council has been making some changes in their election process in the last few years (change in how the Mayor is elected, change to four-year staggered terms, partisan elections to non-partisan elections), he felt that the citizens might need time to get adjusted to those changes before making another change. He understood the concern about the expenses, but given the way that this system will be set up, it's generally going to be the incumbents and the well-known candidates who will save money because if you're an unknown you're not going to win that first time and you're still going to have to campaign in the run-off. It gives the appearance that it's the incumbent's protection plan. He also felt it might make it more difficult for a minority candidate to get elected to City Council.

Councilman Cobb said that if the voters wanted the election process changed, he would have no objection making a change.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Hay moved for the adoption of Resolution No. 99-37. This motion was seconded by Councilman Cloninger and carried on a 5-2 vote, with Mayor Sitnick and Councilman Cobb voting "no".

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C. RESOLUTION NO. 99-38 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH LOCKWOOD GREENE CONSULTING INC. TO PREPARE THE STRATEGIC PLAN FOR ECONOMIC DEVELOPMENT

ORDINANCE NO. 2550 - BUDGET AMENDMENT TO INITIATE THE STRATEGIC PLAN FOR ECONOMIC DEVELOPMENT

Assistant City Manager Doug Spell said that this is the consideration of selecting a consultant to prepare a Strategic Plan for economic development for the City of Asheville.

One critical component for the future positive growth of the City of Asheville pertains to an aggressive economic development program. In order to have an effective economic development program the focus must be well defined. Therefore, staff prepared a request for proposals (RFP) for a Strategic Plan for Economic Development. The RFP outlined a Scope of Work consisting of ten (10) tasks as a part of the preparation of a Strategic Plan. He then reviewed the Scope of Work from the RFP.

The RFP was advertised in The Asheville-Citizen Times and The Charlotte Observer on December 6, 1998. Additionally, Staff sent out notices to prospective consulting firms including three (3) potentially interested firms from the list of certified minority businesses.

The City received proposals from four (4) consulting firms. The cost estimate from the proposals received ranged from $60,000 to $162,500. Additionally the range in time schedules outlined in the proposals stipulated that the Strategic Plan would be completed in six (6) to ten (10) months.

A selection panel comprised of Dale Carroll, Executive Director for AdvantageWest, Bruce Tompkins, Local Merchant and Chairman of the City Business and Development Commission, Jim Westbrook, and Douglas Spell reviewed and evaluated the proposals. An evaluation criteria was prepared in order to objectively consider each proposal. The evaluation criteria included items such as:

- prior experience in the tasks comprising the Scope of Work;
- firm's approach to accomplish the plan;
- involvement of stakeholders;
- availability to begin the project and time schedule to complete;
- cost estimate included in the proposal.

The selection panel recommended the selection of Lockwood Greene Consulting, Inc. to prepare the Strategic Plan for Economic Development. This recommendation is based upon the national scale of economic development, experience of the firm, significant client contact, opportunity for new ideas, closer proximity of firm location, and national identity of firm. Their cost estimate is in the amount of $66,000 plus estimated expenses of $12,700 for travel and other reimbursables for a total estimate of $78,700.

The Strategic Plan has been listed as a priority project of City Council. In order to initiate the Strategic Plan a budget ordinance amendment will be required. The amendment will appropriate $67,700 from Fund Balance for this project. Additionally, funds in the amount of $11,000 are available from Community Development Block Grant (CDBG) funds which have previously been earmarked for "planning." The Strategic Plan will provide some elements of economic diversification consistent with HUD direction for CDBG funds. If City Council concurs, Staff will include the CDBG funds in the budget amendment.

Staff recommends the selection of Lockwood Greene Consulting, Inc. to prepare the Strategic Plan for Economic Development for the City of Asheville in the submitted proposal amount of $78,700 and approval of an appropriation from Fund Balance to fund this project.

Upon inquiry of Councilwoman Field about contingency, Mr. Spell said this is a not to exceed amount so if there were unanticipated expenses, they would have to come back to City Council for an additional appropriation.

Mr. Spell and Mr. Kalzow, consultant with Lockwood Greene, responded to Councilman Tome's inquiry about their experience in dealing with ethnic groups.

Mayor Sitnick said that she feels very strongly that we have to assess as part of our economic plan the impact of poverty in general and the impact of the economic gap that exists here and across this nation and to make every single person a part of our investment portfolio. She said the Chamber of Commerce and Advantage Asheville has been very successful in many of their efforts to grow the economy and keep it vibrant. She would like to concentrate on those types of positive efforts that have occurred in this community and concentrate on the positive comments from people in the community as the process begins. She wants to do everything in our power to say away from the misrepresenting negative comments that often times comes from certain segments of the community that are not necessarily reality. There is more good happening here than negative happening here. She stressed that we need to accentuate the positive rather than concentrate on the negative.

Mr. H.K. Edgerton, Board Director for the Housing Alliance Committee for Buncombe County, said that until all issues of affordable housing for the poor and the working poor have been worked out that will allow the poor people of this community to realize their dreams of home ownership, he is personally opposed to any expenditure of funds for economic development. He felt there was not enough ethnic minority components throughout the City of Asheville.

Mr. Brian Peterson said that as the consultant is developing his study, the City might give some thought to its structure of the Planning & Development Department in conjunction with the Economic Development Director.

Mayor Sitnick asked that all references to economic development be prefaced with the word "sustainable."

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and ordinance and they would not be read.

Councilman Cobb moved to adopt Resolution No. 99-38. This motion was seconded by Councilman Tomes and carried unanimously.

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Councilwoman Field moved for the adoption of Ordinance No. 2550. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 272

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE ANNUAL RETREAT HELD ON JANUARY 29, 1999, THE REGULAR MEETING HELD ON FEBRUARY 9, 1999, AND THE WORKSESSION HELD ON FEBRUARY 16, 1999

Councilman Tomes moved for the adoption of the minutes of annual retreat held on January 29, 1999, the regular meeting held on February 9, 1999, and the worksession held on February 16, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

B. PRODUCT DEVELOPMENT TASK FORCE

At the request of Mayor Sitnick, Councilman Sellers appointed Vice-Mayor Hay to the Joint Task Force of the Chamber of Commerce and Tourism Development Authority Product Development Task Force. This motion was seconded by Councilman Cobb and carried unanimously.

C. CLAIMS

The following claims were received by the City of Asheville during the week of February 5-11, 1999: Robin Bokur (Civic Center) and Howard Frankel (Water).

The following claims were received by the City during the week of February 12-18, 1999: Asheville Transit (Water), Kim Duncan (Water), Jr. League of Asheville (Water), Katrina Robinson (Fire) and Rhea Ferguson Jr. (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

CLOSED SESSION

At 8:57 p.m., Councilman Sellers moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange or lease - G.S. 143-318.11(a)(5); (2) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee - G.S. 143-318.11(a)(6); and (3) To consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuits about which the Council expects to receive advice are: (A) CC&J Enterprises, Jackson Park/Woolsey Neighborhood Association, and City of Asheville; and (B) SBA, Inc., BellSouth Carolina PCS, L.P., d/b/a BellSouth Mobility DCS, Paul Tescione and City of Asheville - G.S. 143-318.11(a)(3). This motion was seconded by Councilwoman Field and carried unanimously.

At 10:20 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilman Cobb and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:20 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - March 2, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Engineering Contract - Brevard Road Water Main Extension

Summary: The consideration of a resolution concurring with the Regional Water Authority's action on February 16, 1999, to approve the award of an engineering services contract to Mattern & Craig, not to exceed $30,000, for engineering to complete a 24" water main extension along Brevard Road.

On December 15, 1998, the Water Authority adopted a budget resolution amending the 29 Fund to allow available contingencies for the Mills River Water Treatment Plant to be transferred for engineering expenses to extend an existing 24" water line in Brevard Road. This extension will be part of a future major transmission loop as recommended in the long-term Master Plan adopted by the Water Authority in 1995. This particular section of work will start in front of Biltmore Square Mall, extend under I-26 with a cased bore under the highway, and tie into an existing 6" main near Jim Barkley Toyota. The project will also include removal of a failed 6" pipe hanging under the Brevard Road bridge over I-26.

Eventually, a 24" transmission main will be extended along Brevard Road from I-240 to near Long Shoals Road, and will become part of a major transmission corridor from Henderson County as the Mills River Water Treatment Plant expands. The short section described above is needed now to restore a loop severed when the pipe on the bridge over I-26 failed due to age. By extending a 24" pipe now, we eliminate the need for a second costly bore under I-26 later.

Mattern & Craig has previously worked for the Water Authority in this area after the pipe failed on the bridge, and is very familiar with the work required. A favorable fee not to exceed $30,000 has been negotiated with Mattern & Craig which will provide engineering services through the completion of construction.

City staff recommends City Council's concurrence with the Regional Water Authority's action on February 16, 1999, to approve the award of an engineering services contract to Mattern & Craig, not to exceed $30,000, for engineering to complete a 24" water main extension along Brevard Road.

Amendment to Fees & Charges Manual regarding Recreation Center Rental Fee & Park Permit Fee

Summary: The consideration of a resolution revising the Fees and Charges Manual to amend the community center rental fees and temporarily waive park permit fees.

On January 19th, the City's Fees & Charges Committee held a public meeting to discuss revising the City's community center rental fee and park permit fee.

The City currently charges a minimum rental fee of $150 to various groups and organizations for private use of community centers during non-operating hours. This fee provides for three hours of usage, with an additional fee of $25 for each hour thereafter. Staff was asked by City Council to re-examine the current fee to determine how it compared with community center rental fees in other North Carolina cities. Based on survey data collected by Parks & Recreation staff, the Fees & Charges Committee is recommending that City Council revise its current community center rental fee to $50 per hour with no minimum fee. Usage that is less than a full hour will be prorated and charged in 30 minute increments.

The City also charges a $25 park permit fee to individuals or groups requesting the use of a park facility for a private function or event. This fee is set to defray the cost of additional maintenance and clean-up that the City incurs when a private function or event is held in a City park. *Food Not Bombs*, a non-profit organization, recently requested that due to the humanitarian nature of their service, they be allowed to use the City/County Plaza facility to serve food to homeless persons without paying the $25 park permit fee. Under current City policy, waivers of park permit fees are not granted for any individual or organization that uses a park facility for a private event, regardless of the nature of that event. In addition, it should be noted that services to the homeless are already being provided and supported in Asheville through various homeless shelters and programs. In light of *Food Not Bombs'* request, however, the Fees & Charges Committee is recommending waiving the park permit fee for 90 days to allow *Food Not Bombs* time to identify a funding source in which to pay the park permit fee in the future. Upon the conclusion of the 90 day waiver, *Food Not Bombs* will be required to pay the park permit fee for any future events held at Asheville park facilities as is required of all other individuals and organizations.

City staff recommends City Council approve the recommendations of the Fees & Charges Committee.

Offer to Purchase Two Vacant Lots on Sara Street

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase two vacant lots on Sara Street.

A bid from MGS, LLC, in the amount of $10,700.00, is not less than the established minimum prices for the property on Sara Street.

The two lots comprising 10,400 square feet are zoned residential and located in the Montford community. The topography is gently sloping down from street grade.

Approval of the resolution will initiate the sale of the Sara Street lots through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff recommends adoption of the resolution authorizing the City Clerk to advertise an offer to purchase two vacant lots on Sara Street.

Budget Amendment re: Public Information Officer

Summary: Over the past three to four months we have been trying to make staffing changes to accomplish a higher level of effort with regard to the Public Information Officer (PIO). The incumbent in that position (Community and Public Involvement) has assumed additional duties over the past several years. Those duties include cable television, Community Oriented Government, special projects involving media/advertising related matters, and others. It has become evident over that period of time as a result of the additional work, especially cable television, that we are not meeting the Council's or the organization's expectations of providing quality PIO services. I anticipate cable television becoming even more involved in the future. As you know, we want to expand the programming on the governmental channel. In addition we are working with Council to provide the framework for the educational and public channels. In order to provide a full range of PIO services to the City, I would like to add a position whose responsibility would entirely be the PIO function. I have discussed this with each of you over the past several weeks and feel that Council's expectations, and that of the organization, are greater than the service level we are currently providing. Since this is a mid-year addition to the budget, it would require a budget appropriation of $12,541. This appropriation is for one and a half month's salary, personal computer and related specialized software, and other items necessary to start a new employee in this type of job. We anticipate the recruiting, selection, and hiring process to take approximately ten weeks; therefore, our target date for having someone in the position is May 15, 1999.

Staff recommends Council appropriate $12,541 in order to fund the Public Information Officer position.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

EDUCATIONAL ACCESS CHANNEL COMMISSION

Councilman Cobb said that the cable franchise agreement adopted by City Council designates three initial access channels to be used for public, educational and/or governmental programming. In November, 1998, City Council discussed several possible ways to organize the creation of the educational and public access channels. This presentation will address the formation of an educational access commission.

Notices were sent to Asheville City Schools, Buncombe County Schools, University of North Carolina at Asheville (UNC-A), Asheville-Buncombe Technical College (A-B Tech), the Asheville branch of Shaw University, the Council of Asheville Independent Parochial Schools, the local representative of North Carolina Home School Educators, and the Francine Delany Charter School. State and local officials were contacted to ensure that the accurate contacts were identified. Notices were also printed in the Asheville Citizen-Times and in CityWorks.

The first meeting was held on December 14, 1998. Representatives from Asheville City Schools, Buncombe County Schools, UNC-A, A-B Tech, and Citizens for Media Literacy were in attendance. A second meeting was held on January 14, 1999. The same members attended as well as Bob Brummond. All those on the original mailing list received notices of both meetings. The following recommendations were made concerning the ordinance establishing the Education Access Channel Commission.

Recommendations from the education community

- A 9 person Commission with membership as follows:
  2 members representing Asheville City Schools
  2 members representing UNCA
  2 members representing AB-Tech
  1 member representing Buncombe County Schools
  2 members at-large representing the public and organizations such as private schools, charter schools, home schools, MAHEC, The Health Adventure, etc.

- Delete the requirement of at least 60% educational programming and no more than 40% athletic programming. The programming mix, which includes athletics, should be determined by the Commission.

- The Commission members should serve four year staggered terms.

- The Commission should solicit wide-spread community input.

Recommendations from others interested in the Educational Access Channel Commission

- An 11 person Commission with membership as follows:
  2 members representing Asheville City Schools
  2 members representing UNCA
  2 members representing AB Tech
  1 member representing Buncombe County Schools
  4 members at-large representing the public and organizations such as private schools, charter schools, home schools, MAHEC, The Health Adventure, etc.

- The programming mix, which includes athletics, should be determined by the Commission. This mix should be of substantial educational interest.

- The Commission members should serve four year staggered terms.

- The Commission should solicit widespread community input.

Councilman Cobb said that he, Councilman Tomes and the City Manager request that a compromise including expanding the Buncombe County representation to a two and the at-large representation to three be considered. Given the fact that Charter has purchased InterMedia in this area, it is feasible that the educational access channel could become county-wide. If this occurs, having two members from Buncombe County Schools will be invaluable.

He said they also request that the Commission establish operating guidelines for the channel that will be reviewed and approved by City Council. This will maintain the integrity of the channel while allowing the educational community to work together to provide the best programming possible.

Ms. Robin Westbrook, Public and Community Information Coordinator, pointed out the following change to the proposed ordinance: The Commission shall serve four year staggered terms, with six of the first appointees serving four year terms and five of the first appointees serving two year terms so that the terms may be staggered.

Upon inquiry of Councilwoman Field, Ms. Westbrook talked about what kind of programming will be aired on this channel. Ms. Carolyn Moore from the Asheville City Schools also said the possibilities were unlimited, including using already prepared programs and also programs that they will have the opportunity to create. A representative from UNC-A talked about how they would be able to utilize this channel as well.

Ms. Westbrook responded to various questions from Council, some being, but not limited to: when will the educational channel go on the air; and will the Commission have access to the kind of material that is educational in nature, like on the Discovery Channel.

Mayor Sitnick said that she would like to see as much student produced material as possible.

Councilman Cobb hoped that in the future we can have live programming from the classrooms.

Councilwoman Field said that since there is a possibility of the educational access channel becoming regional or county-wide, she felt it would be good for the commission to look at how that would happen and how funding would be proportioned. Ms. Westbrook responded that there has already been some discussion in the group about that.

A representative from UNC-A said that UNC-A and A-B Tech do not have cable drops and requested the City ask InterMedia for those drops. City Manager Westbrook responded that they will work with InterMedia on that request.

Upon inquiry of Councilman Cloninger, Mr. Joe Haight, General Manager of InterMedia, said that all the free Internet cable drops are in except for four locations.

City Manager Westbrook responded to the question raised by Ms. Katherine Southerland about the progress of the public access channel.

Mr. Wally Bowen, representative of the Citizens for Media Literacy, was concerned about the following items relative to the public access channel: (1) the origination sites not at UNC-Asheville and A-B Tech, (2) how the money will be divided up amongst the educational, public and government channels; (3) the lack of progress on the public access portion; and (4) the rationale behind developing the Request for Proposals first and then appointing a commission. He hoped that Council will consider some collaboration between education and public access channels.

Mr. Talmadge Neece, representing the League of Women Voters, read a statement which urges City Council to consult with the Buncombe County Commissioners and the authorities governing other municipalities in the County with a view, first, to conforming the principles and conditions for public use of cable television channels in the county. The consultation should aim at a compact for the operation of common public television facilities for governments and the public of the entire county. The League is prepared to offer its guidance and oversight in working towards the accomplishment of this public vision. The League stands ready to submit a proposal which would strive for maximum public input into, public use of, and public benefit from, these dedicated channels.

Vice-Mayor Hay and Councilman Cloninger agreed that Council felt the best way to facilitate this was to develop our system as fully as we could and then invite others to join in. The City didn't want to put their system on hold until everyone was ready to join in.

Mr. Haight said the management and operational changes with Charter would not happen until the 3rd or 4th quarter of this year and he agreed that the educational access channel should be county-wide. He also said that he would be happy to work with A-B Tech and UNC-Asheville about the Internet drops.

Mayor Sitnick said that our responsibility to the educational access channel is clear and vivid and City Council is committed and dedicated in keeping the educational channel for education. Regarding the combination of the public access and education channels, she felt that there may be a possibility to combine operations and equipment as a cost savings device, however, City Council is committed to making sure that each channel serves their specific purpose in the community.

Mr. Jack Fobes spoke in opposition of the separation of the public access and education channels.

Ms. Gay Fox, representing the Vice-Mayor of Black Mountain Sara Marshall Rafter, urged City Council to wait and get the total input from all the communities before proceeding with the public access channel. In response, Mayor Sitnick said that every two months she and the City Manager meet with the other Mayors and City Managers in Buncombe County. She asked the City Manager to add to their topics of discussion cable and PEG cooperation.

Ms. Rebecca Campbell suggested City Council tour other cities that have successful public access channels.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CHANNEL 20 UPDATE

Ms. Robin Westbrook, Public and Community Information Coordinator, updated City Council on what is being aired on the Government Channel (20). Some items aired are the City Council meetings, Open Net on Tuesday and Thursday nights, the community bulletin board, a program about the pedestrian thoroughfare plan, and other programs provided to them on a 3/4 inch format. She stressed that they are limited on the programs they can show because they do have to be on a 3/4 inch format.

Ms. Westbrook introduced Mr. Jeff Reble, the new Cable Access Coordinator for the City, who discussed ways to expand the channel, if the City had more equipment.

Vice-Mayor Hay suggested that the times the City Council meetings will be aired should be included in CityWorks as well as on the City's Home Page.

Vice-Mayor Hay wondered if it was possible, during the airing of the City Council meeting, that the agenda be shown to let the public know exactly what topic they are discussing if they happen to tune in to the show during the middle of the meeting. City Manager Westbrook responded that the equipment to do those specialized features is expensive, however, Ms. Westbrook is working on a partnership that will allow us to borrow some of that equipment so we will have the capability of providing some of those specialized features.

Mayor Sitnick suggested that during the taping of the City Council meetings, that the camera stationed near the front of the room be moved a little more to focus on the speaker or the audience.

Councilwoman Field felt that the interview session of Ms. Westbrook relative to the water situation that was aired on the Government Channel was very informative. Ms. Westbrook responded that we did have to pay for the production time, however, it was at a minimal cost and considering the number of time it ran, it was an excellent way of getting the information to the community.

Mayor Sitnick suggested Ms. Westbrook contact Karen Rankin and other people on the Litter Committee to develop a program that focuses on the upcoming Asheville-Buncombe Clean-Up Campaign being kicked off on March 25. Mayor Sitnick also suggested the possibility of other boards, like the Planning & Zoning Commission, Board of Adjustment and the Tree/Greenway Commission, being taped for viewing on the Government Channel.

After a brief discussion regarding the taping of the City Council meetings once the renovation work was completed in the Council Chamber, it was the consensus of Council to have staff explore the ways of having City Council meetings be shown live and still have the capability of showing them more than once.

SKATEBOARD PARK PRESENTATION

Mr. Irby Brinson, Director of Parks and Recreation, said that the Parks and Recreation Department is seeking City Council's approval to proceed with the development of a Skateboard Park at the corner of Flint and Cherry Streets.

For almost two years, the Skateboard Task Force has been working toward the development of a permanent skateboard park. The criteria that was established early on specified a need to find a location that was close to the downtown area in order to assist in solving the problems with skateboarders in the downtown business area. City Council authorized staff to develop a temporary site located at the top of the Civic Center Parking Deck. This temporary site has been open since August of 1998 and has been a tremendous success. The park averages 40 - 50 participants during good weather and has virtually stopped complaints received by the Police Department and downtown merchants concerning skateboarders. Staff has met with representatives from the N. C. Department of Transportation and discussed preparation of an encroachment agreement which would allow the City to use this property to develop the park. Staff has also contacted Bell South who currently uses the area for parking and solicited their approval to this proposal if additional parking can be found for them at other locations. Staff is proposing that the gravel lot located on the west side of Flint and Cherry Streets be enhanced and expanded to include additional parking spaces not only for Bell South employees but also for overflow parking for the Civic Center. The Task Force has presented a conceptual design for the Skateboard Park to the Montford Community Club and has received overwhelming support from them for this location. It is anticipated that the cost for the park will be approximately $150,000 - $200,000 with additional funding needed for parking improvements to the parking area on the west side of Flint and Cherry Streets. Staff is soliciting private donations to assist in the funding for this project.

The Skateboard Task Force is soliciting City Council support to (1) proceed with the development of the Skateboard Park at the corner of Flint and Cherry Streets; (2) authorize the City Manager to enter into any agreements with the North Carolina Department of Transportation for the use and development of this property; and (3) keep the temporary site located at the top of the Civic Center Parking Deck open until a permanent site is built.

Upon inquiry of Councilman Cobb relative to charging a fee for use of the new Skateboard Park, Mr. Brinson said that the Task Force is debating that issue. Councilwoman Field felt that there may be other ways to off-set the expense of the Park other than to charge the children that use it.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

LAKE CRAIG/JOHN MOYER PROPERTY

Mr. Irby Brinson, Director of Parks & Recreation, said that this is the consideration of a resolution to proceed with investigating the purchase of properties known as the Lake Craig and John Moyer properties.

Mr. Brinson said that for several years, the Parks and Recreation Department has been working towards the purchase of 68 acres in East Asheville known as the Lake Craig property.

The property is located near the Swannanoa River adjacent to the Recreation Park operated by Buncombe County Recreation Services. The Lake Craig Task Force was formed in 1996 and is made up of RiverLink, Western North Carolina Soccer Foundation, Western North Carolina Youth Sports Complex, and the City of Asheville. The intended use for this property would be to develop soccer fields and other facilities on this site. The Parks, Recreation and Greenway Bond has earmarked $2 Million for the Lake Craig property. There are still some outstanding issues, for example, property surveys have to be obtained and there is a need for a feasibility study, and soil compaction and tests.

In addition, approximately 1 year ago, the Public Works Department approached Parks and Recreation Department with regard to developing a partnership to expand this project to include the purchase of property owned by John Moyer.

Ms. Suzanne Molloy, Assistant Director of Public Works, and Ms. Karen Rankin, Solid Waste Coordinator, explained that after working with a charter team and evaluating our customers' needs, the Public Works Department has decided to develop a Natural Resource Facility to provide a central location for a composting/mulching facility, a small educational eco-park to showcase the usage of recycled materials and backyard composting demo-sites, and to utilize a site for beneficial fill activities for long-term park development needs. The 78-acre tract will help in the proper management of the City's organic resources and inert debris that can be re-used and recycled. The current methods for managing these materials is not sustainable. White Fawn Reservoir is closing due to its reaching its capacity.. Henson's is relocating and the City's passive leaf composting site on Broadway is too small. Should the city not develop a facility, a transfer station would have to be sited to transfer all of these materials to the Buncombe County Landfill at an estimated annual cost of $700,000 a year. The Moyer property is a logical alternative due to it's central location, prior land usage and potential for park develop. Benefits of site include: located within the city; convenient access for crews and residents; Swannanoa River Greenway link; potential for long-term use; cost savings over current operations; and revenue opportunities.

Ms. Molloy explained the following site development requirements which must be addressed: infrastructure development (roads, bridges); Blue Ridge Parkway Viewshed; composting and mulching must be allowed at parks facilities (UDO); and stormwater management/wetland remediation.

Mr. Brinson said that the next steps would be: surveys and appraisals; community input from public input sessions, informational material, and on-site open house; engineering and planning studies; and phased site construction.

The Parks and Recreation Department and the Public Works Department request City Council's approval to proceed with investigating the purchase of both the Lake Craig Property and the John Moyer Property. In addition, both departments are requesting City Council's approval to work with adjacent property owners and other interested parties in discussing plans for the property and to solicit their input prior to bringing this back to City Council for formal adoption.

City Council spoke in support of this project noting it was an excellent example of a public/private partnership, parks and recreation is the highest and best use for the property, and the location will be ideal for out of town travelers since it is close to hotels, motels and eating establishments right off of I-40.

Upon inquiry of Councilwoman Field about traffic concerns on Azalea Road, Mr. Brinson said that they will address that in their feasibility study.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

At 5:20 p.m., Mayor Sitnick announced a short break.

Councilman Tomes moved to change the agenda and add the I-26 Connector Project discussion at this time. This motion was seconded by Councilwoman Field and carried unanimously.

I-26 CONNECTOR PROJECT DISCUSSION

Mayor Sitnick said that at no point has she ever asked the N.C. Department of Transportation ("NC DOT") or any member of the NC DOT to halt or delay the I-26 Connector Project. It is clear that the I-26 Corridor is almost complete, that we cannot be building a road to nowhere and we must accommodate whatever flow of traffic occurs on the I-26 Corridor when it comes to the Asheville area. She did not appreciate the fact that she has been told that because questions have been asked by herself and other members of City Council that we have halted the project by expressing concern and asking for answers that have been asked of us by our constituents. Most of the phone calls she has been getting are from members of the business and residential community thanking City Council for asking the questions we have been asking. They have been unsatisfied by the information they have received at the public hearing and at the National Guard Armory many months ago and wanted us to satisfy their concerns and, that's what we did. When the NC DOT representative came to the worksession, we asked questions relating to air pollution, noise, construction dirt, the transporting of hazardous waste and nuclear materials through our City, the increase in drug trafficking when highways go through cities, the increase of accidents involving large trucks, and the increase of litter. The citizens have also asked why are we building this road through the City for trucks that really want to just get to the other side of the City. She said that it appears that an elected body who chooses to ask questions of a state agency is somewhat punished by being told that they have delayed a very important project. We have never asked for a delay or for the project to be halted. City Council simply wanted to be responsive and accountable to the taxpayers and citizens of Asheville.

Councilman Cobb said that he was never opposed to the I-26 connector, however, they did not think the route should be through the City of Asheville. He asked that if it is true that City Council's questioning of the project did delay the project, he wanted a letter from the State stating that was the reason for the delay. He felt that if the I-26 connector route is the appropriate route, it should stand up for scrutiny and questions.

Councilwoman Field explained what she understood was the reasoning for the delay of the I-26 connector project. She said that the Asheville Connector is funded separately and is on a different tract from other NC DOT projects. The bond money appropriated for all connector projects was to be spent by a certain date within two years. The Asheville Connector was originally scheduled to be funded in the first year. After the NC DOT meeting in West Asheville, they discovered they had to do an environmental justice impact process so that delayed the project eight months and knocked the project out of the first year funding. When the NC DOT representative came to the City Council worksession and Council asked them to look at the possibility of going to 6 lanes instead of 8 lanes, they said that they would need to research traffic studies, etc. and that slowed them down. As a result of our request, that knocked us out of the second year funding. We are now in the third year of funding. She was upset that NC DOT did not point out at the time the request was made for them to look at the 6 lanes vs. 8 lanes that the research would knock them into the third year funding. She said that even though we may not agree on where the connector should go, or whether to widen from 6 or 8 lanes, she felt the entire Council agreed that the project should continue and perhaps a resolution in support of the timely completion of the project would be appropriate.

Mayor Sitnick said that since Asheville is topographically challenged, concerns about truck traffic are legitimate. She also said that since the original plan was to go to 6 lanes, she didn't understand why they had to go back to the drawing board to research the Council's request.

Mayor Sitnick noted that we still have received no response to the questions raised at the worksession from NC DOT. She suggested City Council write individual letters to Secretary Tolsen to let him know how you feel about this project and the timely completion of it. She also suggested a formal stand be made and that Council consider adopting a resolution stating that the City Council is committed to support the timely completion of the I-26 Connector Project.

Councilman Tomes said that regardless of route is ultimately decided upon, that the environmental justice issues be embedded in the construction.

Upon inquiry of Councilman Cobb, Councilwoman Field said that the reason why they chose this route through the City was that it was the least expensive, the shortest distance, had the least impact on the community, and solved a lot of other problems.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

COUNCIL CHAMBER RENOVATION

Mr. Lyle Willis, Construction Manager, said that this is the consideration of a resolution authorizing the City Manager to enter into construction renovation and media equipment contracts for renovation of the City Hall Council Chamber.

City staff, upon direction from City Council, has developed construction renovation drawings and design specifications through Electronic Interiors Inc. and Mathews & Glazer Architects to renovate the City Hall Council Chamber. The City of Asheville solicited sealed bids from general contractors to renovate the Council Chamber. City staff along with the Office of Minority Affairs reviewed all bids and have determined the lowest responsible bidder to be A&B Construction & Development, Inc., including a base bid amount of $179,403 plus bids for Add Alternate #1 at $17,300 and Add Alternate #3 at $9,723.

Alternate 1 consists of the stand alone electronic presentation kiosk, housing a 37" monitor, rear screen projector, camera port, video-camera recorder and computer tower. Alternate 3 consists of a moveable wheelchair lift.

City staff have estimated costs for the electronic media presentation equipment to be installed once the construction renovations are complete and have broken-down the costs into two separate phases. The first phase includes the basic media equipment needed and the second phase includes the electronic presentation equipment needed. This would allow for the equipment to be purchased and installed over two separate funding years. City staff will solicit sealed bids for the Phase I media equipment separately and award a contract to the lowest responsible bidder when funding as been approved by City Council.

Mr. Willis reviewed the total costs of the two separate phases. The first phase would include the construction renovations, contingency, miscellaneous furniture and the basic media equipment for $289,803. The second phase would include Add Alternates #1 and #3 and the electronic presentation equipment for an additional $134,023.

Funding has not been approved and City Council will need to appropriate funding for the project prior to contracts being awarded.

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The Parks and Recreation Department staff requests City Council: (1) direct the City Manager to appropriate funding for Phase 1 for $289,803; (2) enter into a general contract with A&B Construction & Development Inc. for the base bid amount of $179,403; and (3) direct the City Manager to solicit bids for the basic media equipment and enter into a contract with the lowest qualified bidder for the media equipment.

Discussion surrounded the construction portion of the amount being driven by the Asheville-Buncombe Historic Resources Commission ("HRC") in that they did not want mounting of electronic hardware in the historic furniture currently located in the Council Chamber.

Mr. Jeff Reble, Cable Access Coordinator for the City, explained what the basic media equipment would include, noting that if Council wanted to have the capability of having City Council meetings be shown live and still have the capability of showing them more than once, additional equipment would need to be purchased, in an approximate amount of $20,000.

Councilman Cloninger expressed concern about the amount of money the renovation will cost. He noted that the Chamber has served the public through the years and that we just need to improve the acoustics; make exhibits more visible for the public and City Council; and be able to televise the City Council meetings. He was concerned that approximately $100,000 would have to be spent because of HRC's decision. He also questioned why HRC would want the City to remove the historic furniture out of the Council Chamber just to be stored and not be able to use it in the historic Council Chamber.

Upon inquiry of Councilwoman Field if the desks in the Council Chamber are indeed the original desks, Mr. Willis said that City Council has established an ordinance which established the Council Chamber as historic along with its contents.

Mayor Sitnick said that this renovation work is in part getting ready for a paperless City Council package. She agreed with Councilman Cloninger in that we want to provide the best coverage for the public, however, the question is how much do we need to spend on it. She basically wanted everyone to hear, see the exhibits, and having the meeting aired on television frequently.

Upon inquiry of Councilwoman Field, City Manager Westbrook said that this appropriation would be coming out of Fund Balance. He noted that the City currently spends $25-30,000 annually for the City Council meetings to be televised.

When Mayor Sitnick asked if we can cut some of this cost anywhere, Mr. Willis responded that this is the tightest package that will work getting this production to television.

Upon learning that the contractor's bid bond would expire on March 14, 1999, it was the consensus of City Council to have the City Attorney write a letter to the contractor asking if the City can obtain a 30 day extension on their bid bond.

It was the consensus of City Council to have Councilwoman Field and Councilmen Cloninger and Tomes meet with the HRC Chair or other members of HRC to discuss the HRC's decision and other options available.

PROPERTY MANAGEMENT FOR COMMUNICATION FACILITIES

Mr. Gerald Green, Senior Planner, said that this is the consideration of a resolution authorizing the City Manager to enter into a management agreement with MetroSite Management, LLC, for the marketing and management of City properties for the location of communications facilities.

In late 1998, the City of Asheville solicited proposals for the marketing and management of City properties for the location of communications facilities. Two qualified proposals were submitted; one by CityScape Siting and Management, Inc. and one by MetroSite Management, LLC. After reviewing the proposals, comparing the merits of each, and assessing the ability of each firm to achieve the objectives identified by the City, staff is recommending that an agreement be entered into with MetroSite Management for the marketing and management of City properties for the location of communications facilities. Staff's recommendation is based on the following factors:

- MetroSite conducts an audit of City property to identify the appropriateness of each property for the location of communications facilities. CityScape requires that City staff identify the properties which are to be marketed;
- Based upon the information submitted in the proposal, MetroSite conducts more aggressive marketing of City property for communications facilities;
- MetroSite's plan of action is more comprehensive and meets more of the objectives established by the City for this effort; and
- MetroSite provides for the input and approval of the City on lease negotiations and agreements while CityScape reserves the exclusive right to enter into lease agreements.

Although MetroSite's management fee is higher than CityScape's (33.3% of gross lease revenue versus 25%), it is felt that the higher fee is offset by the audit of City property conducted by MetroSite and the firm's aggressive marketing campaign. As part of our recommendation, staff requests that MetroSite's plan of action either be included as part of the final management agreement or referenced by the management agreement.

Staff recommends that a management agreement be developed and entered into with MetroSite Management, LLC for the marketing and management of City properties for the location of communications facilities. The plan of action prepared by MetroSite and submitted as part of their proposal should be either included as part of the final management agreement or referenced by the management agreement.

Councilman Cloninger wanted to make sure that that the consultant studies our current telecommunications facilities ordinance in order to help further the City Council's goals with regard to telecommunication facilities.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REPORTS ON BOARDS/COMMISSIONS

OTHER BUSINESS

Councilman Cloninger recognized Councilman O.T. Tomes as being recognized by the Land-of-Sky Regional Council as the Outstanding Person of the Year. He received the award for his outstanding contributions to improved human relations and human services with area impact on the entire region. His was a key role in establishing the ABCCM Doctors Medical Clinic, the Minority Infant Mortality Reduction Project, the Positive African American Males (Males Mentoring) Project and "Building Bridges." When told some of these concepts would not work, he persisted and built consensus. These programs have brought medical care to unserved persons, mentored young males, eliminated increases in infant mortality and brought community healing. He has extended his commitment to dialogue and consensus to service on the Asheville City Council and the Regional Council. His nomination says "Rev. Tomes speaks the truth in love. He motivates others towards effective change. He promotes greater understanding through communication. He builds consensus .... He is not afraid to confront tough issues, expose painful areas, and brings about healing."

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:10 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - March 9,1999 - 5:00 p.m.

Regular Meeting

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman Earl Cobb; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	Councilwoman Barbara Field (National League of Cities Congress of Cities meeting in Washington, D.C.) and Councilman M. Charles Cloninger (Making Cities Livable Conference in St. Augustine, Florida)

INVOCATION

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF PLAYERS AND COACHES INVITED TO INVITATIONAL INTERNATIONAL BASKETBALL TOURNAMENT IN ASHEVILLE'S SISTER CITY SAUMUR, FRANCE

Mayor Sitnick recognized Dr. Robert Merrill, the players and coaches who will be attending the first Invitational International Basketball Tournament in Asheville's Sister City Saumur, France.

B. PROCLAMATION PROCLAIMING MARCH 7-13, 1999, AS "GIRL SCOUT WEEK" IN THE CITY OF ASHEVILLE

Councilman Sellers read the proclamation proclaiming March 7-13, 1999, as "Girl Scout Week" in the City of Asheville. He presented the proclamation to Ms. Patsy Meldrum, President of the Pisgah Girl Scout Council, and Ms. Judy Vernon, Girl Scout Troop #26 Leader, who briefed City Council on some activities taking place during the week.

C. PROCLAMATION PROCLAIMING MARCH 7-13, 1999, AS "DENTAL ASSISTANTS RECOGNITION WEEK" IN THE CITY OF ASHEVILLE

Councilman Cobb read the proclamation proclaiming March 7-13, 1999, as "Dental Assistants Recognition Week" in the City of Asheville. He presented the proclamation to Ms. Enana Houston, President of the Dental Assisting Class at A-B Technical College.

D. PROCLAMATION PROCLAIMING MARCH 15-19, 1999, AS "FINANCIAL FITNESS WEEK" IN THE CITY OF ASHEVILLE

Vice-Mayor Hay read the proclamation proclaiming March 15-19, 1999, as "Financial Fitness Week" in the City of Asheville. He presented the proclamation to Mr. Tom Parker who briefed City Council on some activities taking place during the week.

E. PROCLAMATION PROCLAIMING MARCH, 1999, AS "WOMEN'S HISTORY MONTH" IN THE CITY OF ASHEVILLE

Mayor Sitnick read the proclamation proclaiming March, 1999, as "Women's History Month" in the City of Asheville.

F. RECOGNITION OF COUNCILMAN TOMES

Mayor Sitnick recognized Councilman Tomes as being awarded the Outstanding Person of the Year by the Land-of-Sky Regional Council.

II. CONSENT:

Mr. Tom Lewis, Chairman of the Carrier Heights Neighborhood Association, asked that Item G. be removed from the consent agenda to be discussed individually.

A. RESOLUTION NO. 99-40 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH METROSITE MANAGEMENT, LLC, FOR THE MARKETING AND MANAGEMENT OF CITY PROPERTIES FOR THE LOCATION OF COMMUNICATION FACILITIES

Summary: The consideration of a resolution authorizing the City Manager to enter into a management agreement with MetroSite Management, LLC, for the marketing and management of City properties for the location of communications facilities.

In late 1998, the City of Asheville solicited proposals for the marketing and management of City properties for the location of communications facilities. Two qualified proposals were submitted; one by CityScape Siting and Management, Inc. and one by MetroSite Management, LLC. After reviewing the proposals, comparing the merits of each, and assessing the ability of each firm to achieve the objectives identified by the City, staff is recommending that an agreement be entered into with MetroSite Management for the marketing and management of City properties for the location of communications facilities. Staff's recommendation is based on the following factors:

- MetroSite conducts an audit of City property to identify the appropriateness of each property for the location of communications facilities. CityScape requires that City staff identify the properties which are to be marketed;
- Based upon the information submitted in the proposal, MetroSite conducts more aggressive marketing of City property for communications facilities;
- MetroSite's plan of action is more comprehensive and meets more of the objectives established by the City for this effort; and
- MetroSite provides for the input and approval of the City on lease negotiations and agreements while CityScape reserves the exclusive right to enter into lease agreements.

Although MetroSite's management fee is higher than CityScape's (33.3% of gross lease revenue versus 25%), it is felt that the higher fee is offset by the audit of City property conducted by MetroSite and the firm's aggressive marketing campaign. As part of our recommendation, staff requests that MetroSite's plan of action either be included as part of the final management agreement or referenced by the management agreement.

Staff recommends that a management agreement be developed and entered into with MetroSite Management, LLC for the marketing and management of City properties for the location of communications facilities. The plan of action prepared by MetroSite and submitted as part of their proposal should be either included as part of the final management agreement or referenced by the management agreement.

RESOLUTION BOOK NO. 25 - PAGE 168

B. RESOLUTION NO. 99-41 - RESOLUTION AUTHORIZING A CONTRACT WITH MATTERN & CRAIG FOR ENGINEERING SERVICES FOR EXTENSION OF A 24-INCH TRANSMISSION WATER MAIN ALONG BREVARD ROAD

Summary: The consideration of a resolution concurring with the Regional Water Authority's action on February 16, 1999, to approve the award of an engineering services contract to Mattern & Craig, not to exceed $30,000, for engineering to complete a 24" water main extension along Brevard Road.

On December 15, 1998, the Water Authority adopted a budget resolution amending the 29 Fund to allow available contingencies for the Mills River Water Treatment Plant to be transferred for engineering expenses to extend an existing 24" water line in Brevard Road. This extension will be part of a future major transmission loop as recommended in the long-term Master Plan adopted by the Water Authority in 1995. This particular section of work will start in front of Biltmore Square Mall, extend under I-26 with a cased bore under the highway, and tie into an existing 6" main near Jim Barkley Toyota. The project will also include removal of a failed 6" pipe hanging under the Brevard Road bridge over I-26.

Eventually, a 24" transmission main will be extended along Brevard Road from I-240 to near Long Shoals Road, and will become part of a major transmission corridor from Henderson County as the Mills River Water Treatment Plant expands. The short section described above is needed now to restore a loop severed when the pipe on the bridge over I-26 failed due to age. By extending a 24" pipe now, we eliminate the need for a second costly bore under I-26 later.

Mattern & Craig has previously worked for the Water Authority in this area after the pipe failed on the bridge, and is very familiar with the work required. A favorable fee not to exceed $30,000 has been negotiated with Mattern & Craig which will provide engineering services through the completion of construction.

City staff recommends City Council's concurrence with the Regional Water Authority's action on February 16, 1999, to approve the award of an engineering services contract to Mattern & Craig, not to exceed $30,000, for engineering to complete a 24" water main extension along Brevard Road.

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C. RESOLUTION NO. 99-42 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL REGARDING THE RECREATION CENTER RENTAL FEE AND THE PARK PERMIT FEE

Summary: The consideration of a resolution revising the Fees and Charges Manual to amend the community center rental fees and temporarily waive park permit fees.

On January 19th, the City's Fees & Charges Committee held a public meeting to discuss revising the City's community center rental fee and park permit fee.

The City currently charges a minimum rental fee of $150 to various groups and organizations for private use of community centers during non-operating hours. This fee provides for three hours of usage, with an additional fee of $25 for each hour thereafter. Staff was asked by City Council to re-examine the current fee to determine how it compared with community center rental fees in other North Carolina cities. Based on survey data collected by Parks & Recreation staff, the Fees & Charges Committee is recommending that City Council revise its current community center rental fee to $50 per hour with no minimum fee. Usage that is less than a full hour will be prorated and charged in 30 minute increments.

The City also charges a $25 park permit fee to individuals or groups requesting the use of a park facility for a private function or event. This fee is set to defray the cost of additional maintenance and clean-up that the City incurs when a private function or event is held in a City park. *Food Not Bombs*, a non-profit organization, recently requested that due to the humanitarian nature of their service, they be allowed to use the City/County Plaza facility to serve food to homeless persons without paying the $25 park permit fee. Under current City policy, waivers of park permit fees are not granted for any individual or organization that uses a park facility for a private event, regardless of the nature of that event. In addition, it should be noted that services to the homeless are already being provided and supported in Asheville through various homeless shelters and programs. In light of *Food Not Bombs'* request, however, the Fees & Charges Committee is recommending waiving the park permit fee for 90 days to allow *Food Not Bombs* time to identify a funding source in which to pay the park permit fee in the future. Upon the conclusion of the 90 day waiver, *Food Not Bombs* will be required to pay the park permit fee for any future events held at Asheville park facilities as is required of all other individuals and organizations.

City staff recommends City Council approve the recommendations of the Fees & Charges Committee.

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D. RESOLUTION NO. 99-43 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE USE AND DEVELOPMENT OF A SKATEBOARD PARK AT THE CORNER OF FLINT AND CHERRY STREETS

Summary: For almost two years, the Skateboard Task Force has been working toward the development of a permanent skateboard park. The criteria that was established early on specified a need to find a location that was close to the downtown area in order to assist in solving the problems with skateboarders in the downtown business area. City Council authorized staff to develop a temporary site located at the top of the Civic Center Parking Deck. This temporary site has been open since August of 1998 and has been a tremendous success. The park averages 40 - 50 participants during good weather and has virtually stopped complaints received by the Police Department and downtown merchants concerning skateboarders. Staff has met with representatives from the N. C. Department of Transportation and discussed preparation of an encroachment agreement which would allow the City to use this property to develop the park. Staff has also contacted Bell South who currently uses the area for parking and solicited their approval to this proposal if additional parking can be found for them at other locations. Staff is proposing that the gravel lot located on the west side of Flint and Cherry Streets be enhanced and expanded to include additional parking spaces not only for Bell South employees but also for overflow parking for the Civic Center. The Task Force has presented a conceptual design for the Skateboard Park to the Montford Community Club and has received overwhelming support from them for this location. It is anticipated that the cost for the park will be approximately $150,000 - $200,000 with additional funding needed for parking improvements to the parking area on the west side of Flint and Cherry Streets. Staff is soliciting private donations to assist in the funding for this project.

The Skateboard Task Force is soliciting City Council to (1) support to proceed with the development of the Skateboard Park at the corner of Flint and Cherry Streets (2) authorize the City Manager to enter into any agreements with the North Carolina Department of Transportation for the use and development of this property; and (3) keep the temporary site located at the top of the Civic Center Parking Deck open until a permanent site is built.

RESOLUTION BOOK NO. 25 - PAGE 171

E. RESOLUTION NO. 99-44 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE TWO LOTS ON SARA STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase two vacant lots on Sara Street.

A bid from MGS, LLC, in the amount of $10,700.00, is not less than the established minimum prices for the property on Sara Street.

The two lots comprising 10,400 square feet are zoned residential and located in the Montford community. The topography is gently sloping down from street grade.

Approval of the resolution will initiate the sale of the Sara Street lots through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff recommends adoption of the resolution authorizing the City Clerk to advertise an offer to purchase two vacant lots on Sara Street.

RESOLUTION BOOK NO. 25 - PAGE 173

F. ORDINANCE NO. 2551 - BUDGET AMENDMENT RELATIVE TO THE CITY'S PUBLIC INFORMATION OFFICER

Summary: Over the past three to four months we have been trying to make staffing changes to accomplish a higher level of effort with regard to the Public Information Officer (PIO). The incumbent in that position (Community and Public Involvement) has assumed additional duties over the past several years. Those duties include cable television, Community Oriented Government, special projects involving media/advertising related matters, and others. It has become evident over that period of time as a result of the additional work, especially cable television, that we are not meeting the Council's or the organization's expectations of providing quality PIO services. It is anticipated cable television becoming even more involved in the future. As you know, we want to expand the programming on the governmental channel. In addition we are working with Council to provide the framework for the educational and public channels. In order to provide a full range of PIO services to the City, the City Manager would like to add a position whose responsibility would entirely be the PIO function. He has discussed this with each Council member over the past several weeks and feel that Council's expectations, and that of the organization, are greater than the service level we are currently providing. Since this is a mid-year addition to the budget, it would require a budget appropriation of $12,541. This appropriation is for one and a half month's salary, personal computer and related specialized software, and other items necessary to start a new employee in this type of job. We anticipate the recruiting, selection, and hiring process to take approximately ten weeks; therefore, our target date for having someone in the position is May 15, 1999.

Staff recommends Council appropriate $12,541 in order to fund the Public Information Officer position.

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G. **MOTION SETTING A PUBLIC HEARING ON MARCH 23, 1999, TO CONSIDER A CONDITIONAL USE PERMIT FOR TRINITY BAPTIST CHURCH**

This item was removed from the Consent Agenda to be discussed separately.

H. **MOTION SETTING A PUBLIC HEARING ON MARCH 23, 1999, TO ZONE SECTION 12 OF BILTMORE PARK RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

I. **MOTION SETTING A PUBLIC HEARING ON MARCH 23, 1999, TO REZONE 49 ACRES LOCATED OFF GERBER ROAD FROM INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT**

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Sellers moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

MOTION SETTING A PUBLIC HEARING ON APRIL 13, 1999, TO CONSIDER A CONDITIONAL USE PERMIT FOR TRINITY BAPTIST CHURCH

The consideration before Council at this time is the setting of a public hearing on March 23, 1999, for a Conditional Use approval and permit, as outlined in the Unified Development Ordinance (UDO), for Trinity Baptist Church located at 216 Shelburne Road in West Asheville.

This project is for the expansion of the existing church facility. The project will include a 2400 seat sanctuary, youth classrooms, and a recreational facility. The project has been submitted and reviewed under Level Three - subsection 7-5-9(A) of the UDO by the Technical Review Committee. They approved this project with several conditions which the developer has addressed and resubmitted revised site plans. This property is within the City Limits of Asheville.

City Council must take formal action as set forth in subsection 7-5-5 (E) 2 and shall state if the proposed conditional use meets or does not meet each of the standards set forth in subsection 7-16-2 (C). Those standards are outlined below:

Conditional Use Standards:

1. That the proposed use or development of the land will not materially endanger the public health or safety;
2. That the proposed use is reasonably necessary for the health and general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region;
3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;
4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood in which it is located;
5. That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City;

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and
7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

Recommended findings on these standards will be submitted to Council in a staff report prior to the public hearing.

The Planning staff and the Technical Review Committee state that this project meets all the technical standards for development in the RM-6 zoning district.

City staff recommends City Council set a public hearing on March 23, 1999, to consider a Conditional Use approval and permit for Trinity Baptist Church located at 216 Shelburne Road in West Asheville.

Mr. Tom Lewis, Chairman of the Carrier Heights Neighborhood Association, asked that this public hearing be scheduled at a later date in order to give their attorney more time to prepare their report. He also noted that their attorney has a conflict with the March 23, 1999, date.

A representative from Trinity Baptist Church said that they have been working diligently in these matters and asked that the public hearing be scheduled on March 23, 1999.

Upon inquiry of Councilman Cobb, City Attorney Oast said that the Neighborhood Association has filed an appeal with the Board of Adjustment relating to another permit that was granted on the same property. The substance of the appeal is that it challenges the Zoning Administrator's determination that the proposed use is a church use. The Board of Adjustment will hear that matter on April 26, 1999.

Mayor Sitnick that this is a very complicated issue and we have been very understanding for a number of requests that have come before us for delays and for postponements and we want to make sure that everyone has enough time to present their case. Therefore she would vote in favor of setting the public hearing on April 13, 1999.

Councilman Tomes moved to schedule the public hearing for a Conditional Use approval and permit for Trinity Baptist Church on April 13, 1999. This motion was seconded by Vice-Mayor Hay and carried on a 4-1 vote, with Councilman Sellers voting "no".

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING 25 WHITE PINE DRIVE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT

Mayor Sitnick opened the public hearing at 5:34 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Mike Matteson, Urban Planner, said that this is the consideration of an ordinance to rezone 25 White Pine Drive from RM-8 Residential Multi-Family Medium Density District to Highway Business District.

James Kim (owner) and Arthur Carter (petitioner) are requesting to rezone 25 White Pine Drive from RM-8 Residential Multi-Family Medium Density District to Highway Business District. The property totals approximately 1.53 acres and is currently vacant. Surrounding zoning consists of Highway Business to the east, Regional Business to the south, RM-8 to the north and RS-4 to the west. Surrounding land uses are commercial to the south and east, single-family residential to the west and multi-family residential to the north. The property is located between the Kenilworth Forest neighborhood and the commercial corridor along Tunnel Road.

The RM-8 zoning district is a medium density multi-family residential district which permits residential development at a density not to exceed eight units per acre. The Highway Business zoning district was established to address the needs of commercial development along major thoroughfares. A wide range of commercial uses is permitted within the Highway Business zoning district.

The Planning and Development staff is recommending denial of the rezoning request for the following reasons:

- There is already significant traffic on this portion of the street due to the Asheville Mall entrance. The City of Asheville Public Works Department has noted existing traffic safety problems which could become worse with any additional traffic.

- The Highway Business zoning district allows a very wide range of uses. The rezoning could have a negative effect on both the Kenilworth Forest Neighborhood, as well as the apartments which are already bordered by commercial development to their east.

- The existing multi-family zoning provides a good transition between Tunnel Road and the single-family neighborhood to the west.

At their November 4,1998, meeting, the Planning and Zoning Commission voted unanimously to recommend denial of the rezoning request.

Mayor Sitnick said that on March 4, 1999, a letter was received from Art Carter to Gerald Green as follows: "As we discussed Wednesday, March 3, 1999, I am asking for a postponement of our hearing with the City Council, Tuesday, March 9, 1999 concerning the property at 25 White Pine Drive. We are making this request for two reasons: first, several people associated with preparing the presentation, including myself, have been ill with the flu. Secondly, there have been some developments pertaining to access that may make it possible for other options concerning this property. Please notify me if there is a problem concerning this request for postponing the hearing."

Upon inquiry of Vice-Mayor Hay about why this was presented to the Planning & Zoning Commission in November and the public hearing is being held in March, Mr. Matteson explained that Mr. Carter requested the public hearing be scheduled for March so that they could have a traffic engineer design all the options of putting traffic on Tunnel Road.

Mr. Jimmy Boyd, 26 East Shore Drive, said that he was opposed to continuing this matter any further. At Mr. Boyd's request, five audience members raised their hand to agree with him.

Mr. Art Carter, representative of the Real Estate Group of Asheville and also owner of the subject property, said that he is asking for a continuance in order to have a more detailed presentation regarding the traffic situation, however, he is prepared to address the Council at this time.

Because Mr. Carter was prepared to address Council, it was the consensus of City Council not to postpone the hearing.

Upon inquiry of Vice-Mayor Hay, Mr. Matteson said that during the UDO mapping, staff proposed this area to be zoned RM-16, however, the Neighborhood Association was opposed to that and the area was ultimately zoned RM-8.

Mr. Carter said that during the Planning & Zoning Commission hearing in November, the only objection by the neighborhood was that they did not want traffic on White Pine Drive because of the steep hill and already existing traffic problems. His proposal is that they want to access to Tunnel Road. He said the property the nail salon is on is zoned commercial and they will have access and egress through that property to Tunnel Road.

Mr. Fred Martin, immediate past President of the Kenilworth Forest Community Club, spoke in opposition to the rezoning request noting that anything in the Highway Business District can be built on that property. He was concerned about the already existing traffic problem on White Pine Drive and strongly objected to any rezoning of that property.

Mr. Norman Lewis, adjoining property owner, was also concerned about what could be built on that property if it is rezoned and was totally opposed to the rezoning request.

Ms. Virginia May, 27 White Pine Drive, spoke in opposition of the rezoning and felt that if the property were to be rezoned, that commercial district would be right up against a residential district.

Mr. Phil Noblett, 297 White Pine Drive and former President of the Kenilworth Forest Community Club, spoke in opposition of the proposed rezoning. He stressed there is already an ingress/egress problem on Tunnel Road, especially at that location of the nail salon property. He felt that people would want to avoid trying to get onto Tunnel Road and come onto White Pine Drive and get to the traffic signal. He felt that the proposed zoning change would encroach into the residential neighborhood.

Mr. Jimmy Boyd spoke in opposition to the rezoning noting that the nail salon property is owned by Exxon, not by the owner of the subject property requesting to be rezoned.

City Attorney Oast cautioned City Council that the underlying ownership of property is not part of Council's consideration on the rezoning request, because the parcel that is being requested to be rezoned could be sold tomorrow and the access could be cut off.

Councilman Tomes voiced concern of the encroachment into the residential neighborhood.

Mayor Sitnick said that her main concern is the neighborhood encroachment and the already existing traffic problems of exiting and entering the property from Tunnel Road.

Mr. Carter said that the nail salon property is owned by the owners of the property being requested to be rezoned and that Exxon does not own that property. He said that they would be willing to give a one-foot buffer on the Springside Park and White Pine Drive portions of the property to ensure that they will be no traffic onto White Pine Drive.

Mayor Sitnick closed the public hearing at 6:04 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

There being no motion made to rezone the property, the decision of the Planning and Zoning Commission stands to deny the rezoning petition.

B. PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED ON LIVINGSTON STREET, SOUTH FRENCH BROAD AVENUE AND CHOCTAW STREET FROM OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT

Due to a conflict of interest, Vice-Mayor Hay moved to excuse Councilman Tomes from voting. This motion was seconded by Councilman Cobb and carried unanimously.

City Attorney Oast explained that Councilman Cloninger and Councilwoman Field are both out of town and Councilman Tomes is excused from voting. Therefore, under the General Statutes in order to adopt an ordinance to rezone this property on the first reading, it would require an affirmative vote of five members of Council and there is only a four member quorum present. Even if all four Council members vote in favor of the rezoning, the rezoning request would still have to advance to the next formal meeting at which time City Council would have to vote again.

Mayor Sitnick was concerned that if the public hearing was held today, the other two Council members would not have the benefit of hearing all comments before they were required to vote.

Councilman Cobb moved to continue this public hearing until March 23, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

C. PUBLIC HEARING CONSIDERING THE AMENDMENT TO THE CHARTER AND RELATED LAWS OF THE CITY OF ASHEVILLE TO PROVIDE FOR SELECTION OF THE MAYOR AND CITY COUNCIL BY NON-PARTISAN ELECTION AND RUNOFF

Mayor Sitnick opened the public hearing at 6:10 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

City Attorney Oast said that this is the consideration of an amendment to the City Charter to change the method of election of Mayor and Council to General Election – Runoff.

He reviewed with Council the current method of election (non-partisan primary and general election) and the method under consideration (general election and run-off).

a. Legal Authority. Part 4 of Article 5 of Chapter 160A permits a municipality to modify certain aspects of its form of government by amending its Charter. This is accomplished by adopting an ordinance following a public hearing. One of the forms of government that may be changed in this way is the manner of election of the Mayor and Council. Past recent changes have included; at large election of the mayor; non-partisan elections; and four-year staggered terms.

b. Process. Currently, the manner in which the Mayor and Council are elected is by primary-general election. In order to change this to the general election - runoff method, Council must first adopt a resolution of intent to consider an ordinance effecting the change. At the time the resolution of intent is adopted, the Council must also set a date for a public hearing on the proposed change, to be held within 45 days. The public hearing must be advertised at least once, not less than 10 days prior to the date of the hearing. At a regular meeting following the public hearing, but not more than 60 days thereafter, the ordinance effectuating the change may be adopted. This will involve amending Section 6 of the Charter.

At its meeting on February 23, 1999, Council adopted Resolution No. 99-37, the Resolution of Intent to consider an ordinance making the proposed change, and setting the public hearing for March 9, 1999. As pointed out above, the ordinance cannot be adopted at this meeting; the earliest that a vote on the ordinance could occur would be the formal meeting on March 23.

c. Effect on timing of election; filing. Pursuant to G.S. 163-279, for cities using the non-partisan primary-general election method, the general election is held on the first Tuesday after the first Monday in November, and the primary is 4 weeks earlier. When the method is changed to general-runoff, the runoff is held on the first Tuesday after the first Monday in November, and the general election is four weeks earlier. It appears that the filing date for elections under this system would be the same as it currently is. G.S. 163-294.2(c).

d. Effect on voting. Assistant City Attorney Patsy Meldrum has explained through illustrations how the election-runoff system works, as compared to the primary-election system currently in use. She has provided you with information on election returns and voter turnout in cities where the election-runoff system is used.

e. Other issues. The statute provides that the ordinance amendment may be put to a vote of the people, either by Council, or by a petition signed by 10% of voters qualified to vote in municipal elections. Obviously, if this occurs, the timing of the process will be altered.

After the public hearing, Council may schedule a vote on the proposed change, and staff will draft a proposed ordinance. As noted, the earliest this could occur would be your March 23 meeting; it must occur, if at all, within 60 days, or by May 8.

At the request of Vice-Mayor Hay, Ms. Meldrum reviewed the information City Council requested from New Hanover County Board of Elections regarding the voter turnout for the last six municipal elections of the City of Wilmington.

Ms. Laura Whitley, Mr. Brian Peterson and Mr. David Whitley all were opposed to City Council making any changes in their election process at this time. Some reasons were that they felt the October general election would result in a lower voter turnout, especially since people are familiar with the general elections being held in November for national elections; this change may make it more difficult for lesser known candidates; there will be more significant adverse affect on minority candidates, and Council needs to keep the election process consistent and easy to follow.

Mayor Sitnick closed the public hearing at 6:22 p.m.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast said that City Council (1) can schedule a vote on the proposed change which must occur, if at all, within 60 days, or by May 8; or (2) do nothing and the election process will remain the same.

Vice-Mayor Hay said that he was the Council member who requested changing the election method of City Council be investigated. After going through the process and having his questions answered, he felt that City Council should not make a change in the election method at this time.

Councilman Tomes thanked Vice-Mayor Hay for bringing this issue up for discussion, however, he, too, felt that our current election method should remain.

Councilman Cobb felt that moving the general election to October will reduce voter turnout and felt that this issue should be put to a vote of the people. He would like to see Council limit campaign expenses. City Attorney Oast responded that limiting campaign expenses is not something that can be done by Charter amendment.

Councilman Sellers supported the election method remaining the same as it currently is.

It was the consensus of Council not to schedule a vote on the proposed change.

D. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF NON-CONTIGUOUS CITY-OWNED PROPERTY KNOWN AS THE "RICHMOND HILL PROPERTY"

ORDINANCE NO. 2552 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE CITY-OWNED PROPERTY KNOWN AS THE "RICHMOND HILL PROPERTY"

Mayor Sitnick opened the public hearing at 6:32 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Paul Benson, Urban Planner, said that this is the consideration of a resolution stating the intent of the City of Asheville to consider the annexation of noncontiguous property known as the "Richmond Hill Property."

In order to annex City-owned property, the North Carolina General Statutes specify that the City Council initiate the process by adopting a resolution stating its intent to annex the property, and to fix a date on a public hearing to permit any resident of the City to appear and be heard on the question of the desirability of the annexation.

This annexation area would be a satellite annexation as it is not directly adjacent to the existing corporate limits. The standards for such annexations are specified in N. C. Gen. Stat. sec. 160A-58.1 and include: (1) The annexation area may not be more that 3 miles from the existing corporate limits; (2) The annexation area may not be closer to another city or town; (3) The city must be able to provide the same services to the annexation area that it provides in the rest of the city; (4) If the area is part of a subdivision, the entire subdivision must be included; and (5) The sum of the area in satellite areas may be no more than 10% of the area in the primary corporate limits. This area meets these standards.

The Richmond Hill property consists of 183 acres located between Richmond Hill Drive, Adams Hill Road and the Norfolk Southern Railway tracks along the French Broad River. It is located approximately 70' west of the existing City limits along Richmond Hill Drive. Both water and sewer lines are not extended to the property, but are available approximately 250' to the east of the property.

Mayor Sitnick closed the public hearing at 6:35 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2552. This motion was seconded by Vice-Mayor Hay and carried unanimously.

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E. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF NON-CONTIGUOUS CITY-OWNED PROPERTY KNOWN AS THE "BENT CREEK PROPERTY"

ORDINANCE NO. 2553 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE CITY-OWNED PROPERTY KNOWN AS THE "BENT CREEK PROPERTY"

Mayor Sitnick opened the public hearing at 6:36 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Paul Benson, Urban Planner, said that this is the consideration of a resolution stating the intent of the City of Asheville to consider the annexation of noncontiguous property known as the "Bent Creek Property."

In order to annex City-owned property, the North Carolina General Statutes specify that the City Council initiate the process by adopting a resolution stating its intent to annex the property, and to fix a date on a public hearing to permit any resident of the City to appear and be heard on the question of the desirability of the annexation.

This annexation area would be a satellite annexation as it is not directly adjacent to the existing corporate limits. The standards for such annexations are specified in N. C. Gen. Stat. sec. 160A-58.1 and include: (1) The annexation area may not be more that 3 miles from the existing corporate limits; (2) The annexation area may not be closer to another city or town; (3) The city must be able to provide the same services to the annexation area that it provides in the rest of the city; (4) If the area is part of a subdivision, the entire subdivision must be included; and (5) The sum of the area in satellite areas may be no more than 10% of the area in the primary corporate limits. This area meets these standards.

The Bent Creek property consists of two tracts of land which together are located between Brevard Road and I-26 along the French Broad River. One tract consists of 137 acres and the other tract consists of 1.78 acres. The tracts are located approximately 4,500' south of the existing City limits in the Biltmore Square Mall area. The two tracts together are served by both water and sewer.

When Mr. Brian Peterson asked if this satellite zoning would change any requirements that the City has to adhere to if they wanted to annex any property in between the satellite area and the existing corporate limits, City Attorney Oast said that any contiguous annexation would have to satisfy the annexation standards.

Mayor Sitnick closed the public hearing at 6:40 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2553. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 279

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 99-45 - RESOLUTION SUPPORTING THE TIMELY COMPLETION OF THE I-26 CONNECTOR PROJECT

Mayor Sitnick read the resolution stating that the I-26 interstate project will be completed by the year 2002 and the completion of this section of I-26 will complete a missing link in the interstate system. She said that as the economic and cultural center of Western North Carolina, Asheville needs the completion of the I-26 interstate system. The Asheville City Council requests that the North Carolina Department of Transportation reevaluate its recent decision to postpone funding of the I-26 connector in Asheville. After reevaluation of the connector project, the City Council requests that immediate funding for the I-26 connector be contemporary and coordinated with the completion and opening of Interstate 26.

Councilman Cobb said that he has never been against the I-26 connector in this project going into Ohio. When this was originally discussed there were four alternative routes. He personally feels like the one west of Asheville, by-passing Asheville, was the best choice. He hoped that City Council questioning whether where the route goes did not stop the money from the N.C. Dept. of Transportation. He said that he has notes from Raleigh that all the connectors across the entire State have been delayed two years because they ran out of money. He said that we do need the money and we need it now. We need to get the project complete. He hoped that with all of the N.C. Dept. of Transportation's expertise will select the route that will have the least impact on the quality of life of Asheville.

Mayor Sitnick said that "I would first like to go on record by saying that this is a personal statement from me and does not reflect any opinions held by other members of the Asheville City Council. I would like to first say that at no point have I ever asked the DOT or any member of the DOT to halt or delay the I-26 Connector project. It is clear to anybody who knows that the I-26 Corridor is almost complete, that we cannot be building a road to nowhere and we must accommodate whatever flow of traffic occurs on the I-26 Corridor when it comes to the Asheville area. But frankly, I must also say that I don't appreciate the fact that I have been told that because questions have been asked by myself and other members of City Council that we have halted the project by expressing concern and asking for answers that have been asked of us by our constituents. Most of the phone calls I have been getting are from members of the business and residential community thanking City Council for asking the questions we have been asking. They have been unsatisfied by the information they have received at the public hearing and at the National Guard Armory many months ago and wanted us to satisfy their concerns and, that's what we did.

"I feel, personally, that we were upholding our responsibility and accountability to the tax payer by asking these questions. Perhaps some of these questions should have been asked by the business community as well. I have received many, many phone calls from Asheville business owners and residents alike with questions that run the gamut regarding the impact of the I-26 Connector. Topics including air pollution, noise, construction dirt, the transporting of hazardous waste and nuclear materials through our City, the increase in drug trafficking when highways go through cities, the increase of accidents involving large trucks (like the accidents and truck safety issues that have been profiled in our local newspaper recently). There are questions about the increase in litter that occurs when we bring traffic through town and about where folks will live and move their businesses to. The people have also been asking why are we building this road THROUGH the City for trucks that really want to just get to the other side of the City. There are also people who are wondering why the State is spending so many millions of dollars to accommodate traffic from outside of our State when that money could be better used to pave roads and repair sidewalks and build new sidewalks and greenways and bicycle paths.

"Those are some of the questions that I have been hearing from the people who elected me to represent them and, quite frankly, I would have felt remise if I had not asked these questions. Considering the fact that we are topographically challenged here in Asheville and are in an inversion factor 78% of the time, the questions about our air quality are questions that are important to ask. The Governor and The Secretary of the Department of Environment and Natural Resources will be holding a Summit here in April on Mountain Air Quality, so clearly, there is a concern statewide about the conditions of our air here in the mountains.

"I want to make it perfectly clear that as important an issue as the roadway discussion is, I consider it equally important that a City Council, asking questions of the DOT, would essentially be punished for asking those questions by having an important project delayed. I also find it curious that a little ole City Council here in Asheville can stop the DOT dead in its tracks all the way to Raleigh. The DOT historically has had opponents and proponents to their projects and I don't know that public opposition to a project has ever really stopped them from doing the things they felt they needed to do.

"At this point, it is my hope as Mayor of the City of Asheville, that the questions we are asking will be answered, that the project is completed in a timely manner, using the best route to bring us into the 21st Century. I want to make sure that we are making a decision that will carry us two or three decades into the future This Connector will be impacting our City, our area, and our region for many, many, years to come and I hope that we do it right for the long term. Things have changed in the seven or eight years since the Committee looked at this and we need to know what those changes imply regarding roads that are going to be coming through the middle of our beautiful City."

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Sellers moved for the adoption of Resolution No. 99-45. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 174

V. NEW BUSINESS:

A. ORDINANCE NO. 2554 - ORDINANCE ESTABLISHING AN EDUCATIONAL ACCESS CHANNEL COMMISSION

Ms. Robin Westbrook, Public and Community Information Coordinator, said that this is the consideration of an ordinance establishing an Educational Access Channel Commission.

The Cable Franchise Agreement adopted by City Council designates three initial access channels to be used for public, educational and/or government programming. In November, 199, the Asheville City Council directed staff to meet with the education community to gather input concerning the formation of an Education Access Channel Commission. Notices were sent to Asheville City Schools, Buncombe County Schools, University of North Carolina at Asheville

(UNCA), Asheville-Buncombe Technical College (AB Tech), the Asheville branch of Shaw University, the Council of Asheville Independent Parochial Schools, the local representative of North Carolina Home School Educators, and the Francine Delany Charter School. State and local officials were contacted to ensure that the accurate contacts were identified. Notices were also printed in the Asheville Citizen-Times and in CityWorks.

The first meeting was held on December 14, 1998. Representatives from Asheville City Schools, Buncombe County Schools, UNCA, AB Tech, and Citizens for Media Literacy were in attendance. A second meeting was held on January 14, 1999. The same members attended as well as Bob Brummond. All those on the original mailing list received notices of both meetings. The following recommendations were made concerning the ordinance establishing the Education Access Channel Commission.

Recommendations from the education community

- A 9 person Commission with membership as follows:
  2 members representing Asheville City Schools
  2 members representing UNCA
  2 members representing AB-Tech
  1 member representing Buncombe County Schools
  2 members at-large representing the public and organizations such as private schools, charter schools, home schools, MAHEC, The Health Adventure, etc.

- Delete the requirement of at least 60% educational programming and no more than 40% athletic programming. The programming mix, which includes athletics, should be determined by the Commission.

- The Commission members should serve four year staggered terms.

- The Commission should solicit wide-spread community input.

Recommendations from others interested in the Educational Access Channel Commission

- An 11 person Commission with membership as follows:
  2 members representing Asheville City Schools
  2 members representing UNCA
  2 members representing AB Tech
  1 member representing Buncombe County Schools
  4 members at-large representing the public and organizations such as private schools, charter schools, home schools, MAHEC, The Health Adventure, etc.

- The programming mix, which includes athletics, should be determined by the Commission. This mix should be of substantial educational interest.

- The Commission members should serve four year staggered terms.

- The Commission should solicit widespread community input.

City staff recommends City Council adopt an ordinance establishing an Educational Access Channel Commission.

Councilman Cobb, Councilman Tomes and the City Manager request the following membership be compromise of: 2 members representing Asheville City Schools; 2 members representing University of North Carolina at Asheville; 2 members representing Asheville-Buncombe Technical Community College; 2 members representing Buncombe County Schools; and 3 members at-large representing the public and organizations such as private schools, charter schools, home schools, MAHEC, The Health Adventure, and the cable company holding the franchise.

All Council members spoke in support of the potential of this channel and the commission.

Mr. Jack Fobes said that all three channels (government, educational and public access) should be seen as a whole for the common purpose of promoting and enhancing community learning. He said that he has provided Council with copies of proposed amendments to the ordinance which he thinks would stress the fact that the three channels are related, there is a common purpose, and would clarify the role and functions of this Educational Access Channel Commission. Developments are proceeding very rapidly and he's sure that before long Council will want to change this Educational Access Channel Commission into something much broader. He felt we needed a broad oversight for all three channels and he would have suggested a preparatory committee to investigate the experience of other communities regarding at least the public access channel before any kind of Request for Proposals was prepared.

Ms. Westbrook passed out a chart consisting of other cities and how their government, educational and public access channels are run. Said chart revealed that in North Carolina, Charlotte's educational channel is operated by Charlotte-Mecklenburg Schools, Raleigh's channel is operated by a local college, Greensboro's channel is operated by Guilford County Schools, and Greenville's channel is operated by East Carolina University.

Mayor Sitnick stressed that City Council is very committed to each of the three channels and recognizing that all three obviously be educational in one way or another, probably each channel will get much more intense focus by being held accountable to education, to government issues, and to public access opportunities. There will be a commission appointed to oversee the public access channel. She hoped that with the educational channel that we make sure that most of it is educational. She does not want to delete the requirement that a major percentage of the educational channel be devoted to education.

Ms. Westbrook said that the Educational Access Channel Commission would establish guidelines and come back to City Council for adoption of those guidelines. City Manager Westbrook also noted that Ms. Westbrook will make the Commission members aware that it is Council's guidance that the channel be mostly educational when they establish their make-up of the guidelines.

Mr. Tim Amos, Assistant Superintendent of the Asheville City Schools, read the following statement from the Asheville City Board of Education dated March 9, 1999: "The Asheville City Board of Education strongly supports the formation of an Educational Access Channel Commission. We also strongly believe that the Council has taken the correct approach and that the Educational Commission should remain separate from that of the Public Access Channel. The missions and philosophies of the two organizations providing programming are different. Additionally, the manner in which the two channels will be set up will be vastly different. Indeed, it would be an injustice for both Educational and Public Access to have a Commission which could not devote 100% of its energies to the unique requirements of each.

"The educational organizations that have been meeting together since November have the same focus and goals in educational programming and, in fact, to combine the two entities might muddy the waters and dilute the effectiveness of each group in providing for the needs of its constituents. Already in the short time that the representatives of the educational institutions have been meeting they have formed a cohesive working relationship.

"Since 1993, our Board has gained considerable experience in providing high quality location origination cable TV Programming in the Asheville Area. We now look forward to working within the framework of the Commission and are eager for the group to begin. We feel comfortable saying that in the near future, working together, the educational organizations can increase the amount of high quality educational programming offered to our community."

A Professor of Mass Communication at UNC-A said that UNC-A feels a very strong sense of support for an autonomously administered Educational Channel. He passed out to Council a Federal Communications Commission Cable Television Fact Sheet regarding public, educational and governmental access channels.

Ms. Rebecca Campbell felt that all weight should be given to autonomous commissions on each of the three channels. She urged City Council visit the sites that actually have public access channels to see how they are operated first-hand. She also felt that there is a need to have a separation of purpose but amalgamation of functions such as the recommendation for a county-wide or regional commission with one facility where the three could operate and consolidate resources.

Upon inquiry of Councilman Tomes, City Manager Westbrook said that Ms. Westbrook would investigate a few more cities regarding the public access channel and report back to Council to see if any member would like to visit the site.

Councilman Cobb assured the public that City Council will act responsibly to fairly distribute the funds that we have to each group so that each will have a chance to be successful.

At the request of Councilman Cobb, Ms. Meldrum explained why staff will not recommend that the proposed amendments be made to the ordinance as requested by Mr. Fobes.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cobb moved for the adoption of Ordinance No. 2554. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 282

B. RESOLUTION NO. 99-46 - RESOLUTION AUTHORIZING CITY STAFF TO PROCEED WITH INVESTIGATING THE PURCHASE OF PROPERTIES KNOWN AS THE LAKE CRAIG AND JOHN MOYER PROPERTIES

Mr. Irby Brinson, Director of Parks & Recreation, said that this is the consideration of a resolution to proceed with investigating the purchase of properties known as the Lake Craig and John Moyer properties.

Mr. Brinson said that for several years, the Parks and Recreation Department has been working towards the purchase of 68 acres in East Asheville known as the Lake Craig property.

The property is located near the Swannanoa River adjacent to the Recreation Park operated by Buncombe County Recreation Services. The Lake Craig Task Force was formed in 1996 and is made up of RiverLink, Western North Carolina Soccer Foundation, Western North Carolina Youth Sports Complex, and the City of Asheville. The intended use for this property would be to develop soccer fields and other facilities on this site. The Parks, Recreation and Greenway Bond has earmarked $2 Million for the Lake Craig property. There are still some outstanding issues, for example, property surveys have to be obtained and there is a need for a feasibility study, and soil compaction and tests.

In addition, approximately 1 year ago, the Public Works Department approached Parks and Recreation Department with regard to developing a partnership to expand this project to include the purchase of property owned by John Moyer.

Ms. Suzanne Molloy, Assistant Director of Public Works, explained that after working with a charter team and evaluating our customers' needs, the Public Works Department has decided to develop a Natural Resource Facility to provide a central location for a composting/mulching facility, a small educational eco-park to showcase the usage of recycled materials and backyard composting demo-sites, and to utilize a site for beneficial fill activities for long-term park development needs. The 78-acre tract will help in the proper management of the City's organic resources and inert debris that can be re-used and recycled. The current methods for managing these materials is not sustainable. White Fawn Reservoir is closing due to its reaching its capacity.. Henson's is relocating and the City's passive leaf composting site on Broadway is too small. Should the city not develop a facility, a transfer station would have to be sited to transfer all of these materials to the Buncombe County Landfill at an estimated annual cost of $700,000 a year. The Moyer property is a logical alternative due to it's central location, prior land usage and potential for park develop. Benefits of site include: located within the city; convenient access for crews and residents; Swannanoa River Greenway link; potential for long-term use; cost savings over current operations; and revenue opportunities.

Ms. Molloy explained the following site development requirements which must be addressed: infrastructure development (roads, bridges); Blue Ridge Parkway Viewshed; composting and mulching must be allowed at parks facilities (UDO); and stormwater management/wetland remediation.

Mr. Brinson said that the next steps would be: surveys and appraisals; community input from public input sessions, informational material, and on-site open house; engineering and planning studies; and phased site construction.

The Parks and Recreation Department and the Public Works Department request City Council's approval to (1) proceed with investigating the purchase of both the Lake Craig Property and the John Moyer Property; (2) work with adjacent property owners and other interested parties in discussing plans for the property and to solicit their input prior to bringing this back to City Council for formal adoption; and (3) authorize the City Manager to enter into a Memorandum of Understanding with the members of the Lake Craig Task Force.

Mayor Sitnick said that if the eco-park proves successful, it should be submitted in the U.S. Conference of Mayors' Best Practices Book.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Hay moved for the adoption of Resolution No. 99-46. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 175

C. CONSIDERATION OF WAIVING THE ASHEVILLE STANDARD SPECIFICATIONS AND DETAILS MANUAL SIDEWALK REQUIREMENT FOR SWEETEN CREEK MINI-STORAGE AT 2600 SWEETEN CREEK ROAD

At the request of the applicant, Councilman Cobb moved to continue this item until the March 23, 1999, City Council meeting. This motion was seconded by Councilman Tomes and carried unanimously.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 23, 1999, AND THE WORKSESSION HELD ON MARCH 2, 1999

Councilman Sellers moved for the adoption of the minutes of the regular meeting held on February 23, 1999, and the worksession held on March 2, 1999. This motion was seconded by Councilman Cobb and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the week of February 19-25, 1999: Richard Cosgrove (Sanitation), Urban Housing Management (Parks & Recreation), James Ducker (Water), Country Kitchen (Water) and Dana Humes (Streets).

The following claims were received during the week of February 26-March 4, 1999: Terry Owen (Water) and George Loftis (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Sitnick announced the press conference on March 25, 1999, to launch the Great Asheville-Buncombe Clean-Up. She encouraged everyone to call the City's Solid Waste Coordinator Karen Rankin, Quality Forward or the Chamber of Commerce to get a list of events that are currently scheduled.

Mayor Sitnick said that the Vision process has stated their "Let's Talk" community dialog meetings. She said that this is an opportunity for citizens to express their feelings on issues.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:36 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - March 16, 1999 - 3:00 p.m.

Worksession

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

CONSENT:

Grant from Community Foundation of WNC for Summertime Kids 1999 Program

Summary: The consideration of a resolution authorizing the City Manager to apply for and enter into an agreement with the Community Foundation of Western North Carolina for a grant to develop and implement outdoor adventure activities in the Summertime Kids 1999 Program.

Funds are available through the Community Foundation of Western North Carolina in the Summertime Kids 1999 program to provide fun and safe summer activities for youth. The Summer Teen Program is designed to provide recreation activities for teens ages 13-16 for eight weeks during the summer. The program is located at six locations throughout the city in community centers. The Teen Program will offer a wide variety of recreation activities and hands-on job training. Grant funds will be used to implement the outdoor enrichment activities including a challenge ropes course, rock climbing, rollerblading, and mountain biking. The amount of the grant request is $1,950. The Parks and Recreation Department's in-kind match of $26,708 will be in labor, administration, transportation, supplies, and training for the overall Summer Teen Program. The funds are budgeted in the Recreation Division.

The Parks and Recreation Department recommends City Council authorize the City Manager to apply for and enter into an agreement with the Community Foundation of Western North Carolina for a grant to develop and implement outdoor adventure activities in the Summertime Kids 1999 Program.

Grant for Gang Resistance Education and Training Program

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under the Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, Gang Resistance Education and Training Program.

The City of Asheville has been awarded a grant under the Fiscal Year 1999 Gang Resistance Education and Training (G.R.E.A.T.) Grant Program in the amount of $44,100.00. A local match of funds is not required. The purpose of the grant program is to fund the following three phases of G.R.E.A.T. education in the community:

Phase I: School-Based Education
Phase II: Summer Education/Recreation
Phase III: Parent Involvement Program

The specific implementation plan of the three phases has not yet been determined.

City staff recommends that the City Council authorize the City Manager to accept the Grant Resistance Education and Training Grant from the Bureau of Alcohol, Tobacco and Firearms and to adopt the budget amendment appropriating said funds.

Amendment to Traffic Consultant Agreement

Summary: The consideration of increasing the contract price for work to be performed for City of Asheville area by Kubilins Traffic Consultants, Inc., consultant, to include reviews of Traffic Impact Analysis (TIA's), speed studies, stop sign warrants, etc. as requested by the City Engineer.

The City entered into a contract with Kubilins Traffic Consultants, Inc., to perform various traffic engineering analysis during the time the City was without a Traffic Engineer. The original contract was in the amount of $20,000. Their services have proven to be extremely beneficial to the City of Asheville, in that they have been able to review TIA's very quickly, perform stop sign warrant analysis, and other traffic engineering tasks.

The City has hired a Traffic Engineer, Michael Moule, that began work on March 15, 1999. Staff would like to retain Kubilins Traffic Consultants to assist Mr. Moule in traffic engineering functions during his first six months of employment.

The funds for this amendment are in the Traffic Engineering Division's operating budget for professional services.

Staff recommends that the City Council accept this amendment to increase the contract with Kubilins Traffic Consultants, Inc. in the amount of $20,000 and authorize the City Manager to execute all necessary documents for this contract.

Budget Amendment to Reallocate Unused Henderson County HOME funds to Transylvania County Housing Corporation

Summary: The consideration of a budget amendment, in the amount of $36,529, to reallocate unused HOME funds from Henderson County to Transylvania County Housing Development Corporation.

On September 22, 1998 the City received a letter from David E. Nicholson, Henderson County Manager. It stated that Henderson County had no projects on which to use the Fiscal Year 1994 HOME funds and chose to return the funds to the Asheville Regional Housing Consortium for use on other regional projects. On December 9, 1998, the Asheville Regional Housing Consortium Board voted to reallocate the unused funds from Henderson County to Transylvania County Housing Development Corp. Transylvania County Housing Development Corp. has proposed to use these funds for new construction activities in a subdivision it is developing.

City staff recommends City Council adopt a budget ordinance amendment, in the amount of $36,529, to reallocate unused HOME funds from Henderson County to Transylvania County Housing Development Corporation.

Establishing Fair Reuse Values for 135 Cherry Street and Parcel 59X on Asheland Avenue

Summary: The consideration of a resolution establishing fair reuse values for 135 Cherry Street and Disposal Parcel 59X in order to market the properties.

Disposal Parcel 59X is located on the west side of Asheland Avenue about 400 feet north of Phifer Street and comprises 27,835 square feet. Terrain includes an elevated berm along the street, some level to gently sloping land behind the berm, and some moderately sloping land at the south end of the lot. The property is crossed by easements which occupy approximately 18.8% of the property thus severely restricting the utility of the land. The zoning is Office Business. The site is best suited for parking and/or possible small commercial building. Francis Naeger, MAI, appraised the site at $139,000 and Joseph Moore, Certified General Appraiser, reviewed the appraisal and recommended the appraised value.

Disposal Parcel 6D is located at 135 Cherry Street fronting the Montford Avenue exit ramp from I-240. The lot comprising 6974 square feet is elevated above street grade and level to gently sloping. Improvements consist of a two story, frame, residential structure of 1,984 square feet being used as offices and seven paved and striped parking spaces. The zoning is Office. Richard Jacobs, MAI, appraised the property at $105,000 and Benjamin Beasley, MAI, reviewed the appraisal and recommended the appraised value.

Community Development staff recommends adoption of the resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

SLIDE PRESENTATION BY THE TREE/GREENWAY COMMISSION

Mr. Peter Loewer and Dr. Peter Gentling, members of the Tree/Greenway Commission's Education Sub-Committee, viewed with City Council a short slide presentation to educate citizens about the role of trees in their community and about the positive role flora has in the community. They hoped that there will be a heightened awareness in the community that will provide positive benefits both today and in the future. Additionally, the Commission hopes to educate developers on the benefits of green space development and the positive impact on the public.

In summary, they urged City Council to thank about funding for City beautification and the need to save open spaces.

Mayor Sitnick was totally supportive of beautifying the City, however, we need to look for ways the community, public sector, private sector, organizations, churches, etc. can help to achieve this goal. She suggested we appeal to the development community and let them know the monetary and quality of life benefits from developing their property into an area that is nicely landscaped.

As a way to find funds for City beautification, Dr. Gentling suggested applying for funds from the Environmental Protection Agency or possibly a portion of the hotel/motel tax being earmarked for beautification. Mr. Loewer suggested developers who cut down trees should be assessed a large fine. He also felt that people who cut trees in the City should be licensed. Mr. Loewer also felt that when until the community sees that the City is making an effort to make developers and the N.C. Dept. of Transportation work to beautify their projects, businesses and foundations probably won't make much of an effort to help the City.

Councilman Cloninger agreed that the City needs to encourage more public/private partnership in the community. He suggested that there may need to be more enforcement on the City's landscape ordinance. But most importantly, encouraged the public to vote in favor of the upcoming Parks, Recreation and Greenways Bond referendum because there is a major component in the Bonds for open spaces.

Mayor Sitnick would like to see the City explore the Better America Bonds. She also encouraged City Council to adopt a new designation in the Unified Development Ordinance that would define parks or open spaces so that they are not zoned according to the area around them. She also felt that we should encourage public/private efforts so that everyone will be responsible for a little part of Asheville. She suggested this slide presentation or an extended version be shown at the various development forums hosted by the City of Asheville. She also suggested the slide program being shown on our new Government Channel and eventually on our Educational Channel.

Councilwoman Field noted that there are a lot of positive steps the City and Quality Forward is taking toward beautification.

Upon inquiry of Mayor Sitnick, Ms. Susan Roderick, Executive Director of Quality Forward, said that she would research some statistics on property values when the property is landscaped vs. when it is not.

On behalf of City Council, Mayor Sitnick thanked the Tree/Greenway Commission for all the time spend and the work they do on behalf of the entire City of Asheville.

FUTURE OF THE TRANSIT SYSTEM

Councilman Cloninger, liaison to the Asheville Transit Authority ("Authority'), said that during Council's retreat in January, City staff was instructed to devise a plan for the City to take back control of the bus system. As a result of that request, Chairman of the Asheville Transit Authority Tom Tomlin discussed with City Council the City Council's decision relative to the future of the transit system.

Mr. Tomlin noted that the Transit Authority has always had a good working relationship with City Council and City Council has been supportive of the Authority. He reviewed with Council the duties of the Authority, which include overseeing the management of the Management Company. Because the drivers of the buses are unionized, when problems arise, the Authority and the Management Company negotiate and the Management Company makes the offer to the union. If the Transit Authority were abolished, City Council would have to be the group to negotiate with the Management Company. Other advantages of the Authority is (1) they handle complaints; (2) they make recommendations to the Management Company about establishing fares and routes; and (3) they hold public hearings. He said that the Authority is vested with the general supervision and control of the transit system and feel that they have done a good job with their charge. He offered the suggestion of having a staff person that reports directly to the Transit Authority, opposed to the current arrangement of a transit planner who reports to the City. He also asked for the City's assistance in installing two phones at the Transit Center along with some "Do Not Enter" signs at the Transit Center. He spoke in support of leaving the relationship between the Authority and the City Council as it is now. However, if a change is anticipated, the Authority would recommend that City Council give up all control to the Authority and merely fund them annually.

Mr. Ron Lamb and Ms. Althea Goode, members of the Authority, both spoke in support of leaving the transit system as it currently is being operated.

Vice-Mayor Hay said that no one has suggested that the Authority has not been doing a good job, because they are. He said that City Council is talking about a reorganization to see how the City can do the best job with the transit system, and that would be taking back control of the transit system. He believed there would be a separate transit commission, similar to the Tree/Greenway Commission, to advise City Council on transit issues. He was convinced, however, that bringing the transit system back into City government is the best step for transit.

Councilman Tomes hoped that there will be an element of sensitivity when the City brings the transit system back into City government. He also felt there should be a regional commitment of trying to do more to get people from one point to another.

Councilman Cloninger said that the Authority and the City has the same goal - to provide public transportation to as many people in the community as possible, as economically and as efficiently as possible. He too said that if the City takes the system back in-house, they will need an advisory board that will give City Council recommendations. He praised the Authority members for their hard work.

Councilman Cobb agreed that City Council has an obligation to provide a wide range of services at the most economical price to our citizens. He said that we will need to look at the size buses we run and the hours the buses run. He agreed with Councilman Tomes about a regional system, perhaps with Buncombe County to start off.

Mayor Sitnick spoke in support of (1) buying buses that don't emit the fumes that harm our environment; (2) using smaller vans or shuttles when the ridership if low; (3) looking at a regional concept; and (4) reviewing after-hour travel needs. She stated that we need to be advocating on a regular basis our state legislators to remind them that Asheville does exist and has needs.

Mr. Lamb responded to the Authority having looked into rearranging routes and also the type buses to buy.

Mr. Black responded to questions from Mayor Sitnick about the lack of heat at the Transit Center and why each bus stop does not have some type of protection from the elements.

At the request of Mayor Sitnick, Mr. Black was instructed to follow-up with the new owner of the Asheville Mall about allowing buses on the Asheville Mall property.

Mayor Sitnick thanked the Authority for their input into this matter.

AT-RISK YOUTH REPORT AND SUMMER YOUTH PROGRAM

Mr. Butch Kisiah, Superintendent of Recreation, said that the Parks and Recreation Department is currently developing a multi-faceted approach to providing recreational, educational and social services to youth at-risk.

In the United States, 75% of all crime is youth related. 93% of all youth crime happens during the hours of 3:00 p.m. and 8:00 p.m. In North Carolina, the average cost of incarcerating one youth offender is $48,000. In Asheville, our youth are under a great deal of stress, at home, school and especially from their peers. A large part of our youth population are "latch key kids," who come home everyday to empty houses because their parents work. Youth today need to know there are places where they can go after school, on weekends and holidays that are both enjoyable and safe. Our youth need to have opportunities for self expression, esteem building and life skill education. Our youth need places where they can be with friends, be safe and have an adult presence to guide, support and nurture.

The following report is a brief update on how the Asheville Parks and Recreation Department is trying to meet this important community need.

The vision statement for the At-Risk Youth Initiative strategically positions the Asheville Parks & Recreation Department to effectively contribute to alleviating societal problems with at-risk youth through prevention and intervention. The goal and objective is to provide alternatives to disruptive and deviant behavior by youth through a cooperative approach with law enforcement, social services and related agencies in Asheville. In today situation (1) 75% of all crime in the United States is youth related; (2) 93% of all youth crime happens during the hours of 3:00 p.m. - 8:00 p.m.; and (3) the average cost of incarcerating a juvenile for one year in North Carolina $48,000.

Reasons why the Parks & Recreation Department is trying to meet these needs is (1) Asheville's recreation centers are spread across the entire community and are therefore more accessible for youth; (2) recreation programs are inherently appealing to large segments of youth in general, including at-risk youth, and provide the incentive for positive interaction and participation; (3) Parks & Recreation personnel are experienced in establishing empathetic relationships with their clients; (4) Parks & Recreation facilities are meant to be safe, inviting, fun places that youth want to enjoy; and (6) Parks & Recreation programs and facilities provide a non-threatening environment for interaction.

What the Parks & Recreation Department is doing now includes: (1) Providing specific programming for teens from ages 13-19 - (a) Summer Teen Program; (b) Afternoon Adventures Program during the school days; and (c) Summer Teen Street Dances; (2) Working cooperatively with other agencies to provide alternative activities for teens - (a) joint Parks & Recreation Department and Police Department "Cruise In" Program; (b) joint Parks & Recreation Department, Police Department, and YMCA "High School Basketball League" with police officers as coaches; and (c) joint Parks & Recreation Department and YMCA "3 on 3 Basketball League which are held on Friday nights outdoors during the summer; (3) Continue to support the youth "boot camp" program each summer in cooperation with the Police Department and the U.S. Marine Corp.; and (4) Increasing our ability to work with teens - (a) creating a professional staff position for Outdoor Adventure Programming.

He described the Outdoor Adventure Program: (1) in cooperation with the Daniel Boone Council of the Boy Scouts we will develop a "venture unit" for high adventure programming; (2) the venture program is specifically designed for young men and women ages 14-21; and (3) this will enable us to use the existing program curriculum of the Boy Scouts of America program and facilities such as Camp Daniel Boone. The Outdoor Adventure Program will provide opportunities for teens to experience the outdoors, i.e., develop outdoor adventure programming for teen leader groups which will include high ropes course to help develop self-esteem, low rope courses to help develop leadership and team building skills and "survival wilderness camping" to help develop self-esteem and self-confidence. The Outdoor Adventure Program will also provide other opportunities for teens to experience the outdoors, i.e., continued support for scouting programs in specific centers and field trips for leader groups to environmental education programs and facilities.

Mr. Kisiah described the teen leader group which will provide volunteer "counselors" for center activities with smaller children. A reward system will be developed so that participation in teen leader programs may result in awards such as parties, dances and trips. Also, each center will develop a teen leaders group for young men and women from ages 14-19 which will (1) provide guidance on programming for teens at the center; (2) provide assistance for other programs at the center; (3) work to get other teens involved in center programs; (4) plan activities and trips for teens; (5) build self-esteem; and (6) build teamwork.

He explained the Youth Employment Program in which the Parks & Recreation Department is working cooperatively with the Human Resources Department to re-engineer this program to (1) provide incentives for teen participation in leader groups; (2) provide career counseling and a variety of work experiences; (3) provide "real life" job seeking experience; (4) give teens jobs that require responsibility; and (5) give teens a chance to build self-esteem. Employment consideration criteria include (1) participation in teen programs at centers; (2) participation in the classroom at school; (3) letter of recommendation from school principle or teacher; (4) good behavior at school and at the center; (5) member of teen leader group, school sponsored activity group or church group. A teen who successfully participates in the "Workrelation" program will be invited to participate in future years. This successful participation will also be considered for future employment as a summer employee of the Parks & Recreation Department. This program will serve as an incentive for trying to do good, not as a reward for doing bad. Youth will work as real employees, going through the same selection process and have same expectations as other employees. During 1998, the Youth Employment Program employed 30 youth ages 14-18 in a variety of work experiences. Funding for this program is provided by City Council on an annual basis. Total funding for 1998 was $100,000. A complete accounting of these funds will be presented at a later date. The youth worked a total of seven weeks during the summer and one week in the winter during the holiday school break. During the winter break the youth (1) assisted with First Night Festival and (2) received additional training in "real world" job training, employer expectations, how to prepare resumes, interviews, etc. What they are planning to do is recreation center enhancements. Those include (1) placing older computers in centers with appropriate software and printers to help with homework and (2) provide multi-media entertainment equipment in centers to entice teens to come to the center. Cable television hook-ups will be available to all recreation centers.

What the Parks & Recreation Department needs to do is develop the Operation Safe Haven Program. They will promote the recreation centers as places where a child can go if they feel threatened in any way. A place where they will be among people who really care for them as individuals and as members of the community, with a staff that will take care of them when they come in the door. Staff will encourage churches, neighborhood associations and individuals to open their doors and be safe havens for children. In addition, the Parks & Recreation Department will strive to (1) provide for additional operating hours at centers, including weekend hours; (2) provide for access to health care when the student health services at Asheville High and Asheville Middle school are closed in the summer; (3) continue to work with the Police Department to offer programs where teens can meet police officers in a fun setting; (4) provide transportation services for teens to get to and from programs and facilities utilizing the Transit Authority, City school buses, City vans and local bus companies; (5) provide "life skills" classes for teen in conjunction with other agencies, i.e., parenting, nutrition, personal hygiene, conflict resolution, stress management and financial management; and (6) enlist the help of local businesses and industry leaders to help teens, i.e., find out about jobs in the community, find out what it will take to get a good job, and visit offices, manufacturing plants and industrial centers.

Mr. Kisiah said that the At-Risk Initiative is not a single activity or event. It must be an ongoing collective of various programs which are flexible enough to meet the changing needs of our at-risk population. It is a cooperative venture in which we all have a part. Working together we can make a difference.

Mr. Kisiah responded to various question from Council, some being, but not limited to: the estimated size of the at-risk population in Asheville, what is the definition of at-risk youth, is there a system in place to track this program to see what works and what doesn't, are we adequately providing for both the male and female populations in our programs;

Councilwoman Field suggested Mr. Kisiah contact Mr. Rich Mathews to see about their computer recycling program.

Vice-Mayor Hay said that if the City were operating the buses, the Parks & Recreation Department would not have to spend money to transport children.

Mayor Sitnick felt the program is terrific, but asked for staff to eliminate the words "at-risk" youth, noting that we do not want to put labels on anyone. City Manager Westbrook said that when grants are applied for, if you write them for "at-risk" youth, you probably have a better chance of receiving the grant than just saying it is for youth. He said that when appropriate, "at-risk" would not be used.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CITYSCAPE COMMISSION

Ms. Hojun Welker, Urban Trail Coordinator, said that this is the consideration of creating a Cityscape Commission that is charged with consolidating and/or integrating the various programs of the City that are concerned with enhancing and improving the visual quality and aesthetic character of the City.

Cityscape is a term coined to describe the unique character of the City as expressed through its culture, built environment, natural environment, public art, open spaces, streets, people and neighborhoods. It could also be called the landscape or the visual character of the City. At present, the following commissions, committees and staff are involved with various aspects of enhancing or maintaining the City's aesthetic quality.

PLANNING AND ZONING COMMISSION: The Planning and Zoning Commission has responsibility for administering the UDO and focuses on regulating private development. The proposed Cityscape Commission would focus on design review of public sector projects and the use of public property and rights-of-way and streamlining the design review portion of the UDO. It would also take the design element out of the strict regulatory environment to make it more of a development tool.

TREE AND GREENWAY COMMISSION: It was decided by City Council to split this Commission into two bodies with the Tree Commission residing in the Public Works Department and the Greenway Commission to be established in the Parks and Recreation Department. Although having a somewhat different focus than the other commissions, these commissions also have a very influential role in shaping the city's landscape and aesthetic character.

STREETSCAPE: In researching public art programs in other cities, it was found that the emerging trend in public art is to focus on making the city itself a work of art—stressing urban design and using art to enhance and/or create a "sense of place" or identity. The leading edge public art plans attempt to integrate public art and streetscape elements into the overall design of the city. Streetscape plans have also focused on urban design and creating livable, pedestrian-oriented cities with a strong visual identity. City Council has requested that policies and procedures be established to implement the *Downtown Streetscape Plan* adopted in 1993. That plan is being redesigned by the Public Works Department to be applicable to the whole city and to provide a framework for streetscape proposals included in the various area plans prepared by the Planning and Development Department. The Downtown Streetscape Committee of the Downtown Commission has served as an advisory group to this process, but lacks authority to address issues outside of the downtown and has limited authority to implement streetscape proposals within the downtown. The roles and responsibilities of both the Downtown Streetscape Committee and the Downtown Commission are currently under evaluation.

DESIGN AND HISTORIC REVIEW: At present there are mandatory review, voluntary compliance for the downtown and river districts under two separate pieces of legislation, review processes, and review bodies. Different staff are assigned to each and are responsible for "Minor Works" review. "Major Works" review for the river district is by the River District Design

Committee and for the Downtown by the Downtown Commission. The Downtown Commission is staffed by the City Development Division of the Planning and Development Department. In addition, there is a mandatory review and mandatory compliance process for 34 designated historic landmarks and three local historic districts (Albermarle Park, Biltmore Village, and Montford) administered by the Historic Resources Commission, under a separate legislative mandate. All of the staff involved are part of the Planning and Development Department.

PUBLIC ART: The City of Asheville, although listed as seventh in a national survey of favorite "art destination" cities of all sizes and ninth in terms of outstanding small town cultural centers, does not have a policy or program on public art. City Council at both its 1998 and 1999 retreats discussed the need for some sort of mechanism to deal with public art issues and to promote the installation of public art. The *Downtown Streetscape Plan* approved by City Council and the Cultural Arts Task Force of VISION, INC! both have recommended the establishment of a Public Art Commission. The Mayor has requested staff prepare a Public Art Policy. A Public Art Working Group, chaired by Council Member Barbara Field and staffed by the Streetscape and Urban Trail Coordinator, is working on developing a policy for consideration by City Council. Implementation of any sort of public art policy will require some sort of organizational structure and staff commitment. At present public art issues have been covered by the Parks and Recreation Advisory Board which does not see this as part of their mission. The city's one public art related project, the Urban Trail, is currently staffed in the Public Works Department.

All the above mentioned existing and proposed commissions and committees have somewhat unique missions and roles in enhancing the quality of life and protecting the unique character of Asheville. However, the way in which they are currently structured and staffed makes coordination difficult and creates confusion on the part of the consumer (citizen and developer).

Ms. Welker provided Council with a background sheet on the Cityscape Plan.

It was the consensus of City Council to direct staff to look into a concept, such as a Cityscape Commission, to act as an umbrella organization which would focus on public art, design review of public sector projects and the use of public property and rights-of-way.

1999 BELE CHERE BUDGET

Mr. Irby Brinson, Director of Parks and Recreation, said that the Parks and Recreation Advisory Board, Bele Chere Board, and Parks and Recreation Department staff are presenting the 1999 Bele Chere Budget for City Council approval.

This is a budget ordinance amendment appropriating revenue and expenditures for the 1999 Bele Chere Festival. This budget has been approved by the Parks and Recreation Advisory Board, Bele Chere Board, and Parks and Recreation staff. This request represents a balanced budget with appropriate revenue offsetting expenditures.

The Parks and Recreation Advisory Board, Bele Chere Board, and Parks and Recreation staff recommend City Council adopt the budget amendment to appropriate funds for 1999 Bele Chere Festival.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ORDINANCE REQUIRING THE POSTING OF PRIVATE PARKING LOTS IN DOWNTOWN ASHEVILLE

City Attorney Oast said that this is the consideration of an ordinance requiring that private parking lots in the downtown area be designated as private.

Council and staff have received complaints about enforcement of parking restrictions on private parking lots, primarily related to the towing of vehicles from those lots. Research indicates that local regulation of "motor private carriers with respect to the transportation of property" is pre-empted by federal law. This preemption has been held to apply to non-consensual towing of vehicles from private lots. The effect of the federal law is that cities may not adopt regulations affecting the manner in which privately initiated towing is carried out. To the extent that the federal government does not prohibit local regulation of towing, it appears that, in order for the City to do so, specific authorization would have to be found in State law.

Some North Carolina counties are subject to a law that requires posting of lots as a pre-condition for towing from those lots. Buncombe is not one of those counties. However, there appears to be general authority by which the City can require that private lots be so designated, and to provide that failure to comply subjects the offender (the owner or operator of the lot) to a civil fine. This does not mean that unauthorized vehicles parking in private lots may not be towed. However, it may reduce the level of inadvertent unauthorized parking, and thus reduce the number of non-consensual tows.

This application of this ordinance is limited to the Central Business District zone east of the French Broad River; we have had very few complaints from other areas of town.

He pointed out that if you are a private parking lot owner and you do not want to mind people parking in your private parking lot, you don't have to tow them. However, the private parking lot owner is still required to post the sign saying that if unauthorized cars do park there, they are doing so at their own risk.

The ordinance will become effective sixty days after adoption.

To the extent that this ordinance may help reduce the number of situations where non-consensual tows can occur, its adoption is recommended.

Vice-Mayor Hay said that he did not have a problem in his office parking lot and didn't want to go to the expense and time to put up a sign, especially when they do not want to have any vehicles towed. City Attorney Oast said that he would try to the amend the ordinance as requested by Vice-Mayor Hay in order to limit the signage requirement to privately owned or privately leased parking lots for whom the owners want the privilege of towing.

City Attorney Oast suggested posting the signs at the entrance at a height where people are likely to see it. Councilman Cloninger responded that some businesses already have adequate signage that complies with the existing sign ordinance and he would be reluctant to have them go to the expense of having to put up additional signs at their entrance. City Attorney Oast said that he has exempted these particular signs from the sign ordinance but, he can amend the ordinance to read that if you already have a sign that complies with the existing sign ordinance, you don't have to comply with this ordinance.

Councilman Cobb said that he would like to see the City of Asheville being included in the list of entities that requires posting of lots as a pre-condition for towing from those lots.

At the request of Councilwoman Field, City Attorney Oast said that he would amend the ordinance per Vice-Mayor Hay's request and send a copy to the Merchants Action Coalition and the Asheville Downtown Association to see if they have any concerns with the proposed ordinance. He said that after he receives their input, he will bring this back to Council for possible action.

REPORTS ON BOARD AND COMMISSION

Councilwoman Field said that there is a bill pending that requires anyone appointed to a local board or commission must be a registered voter and a resident of North Carolina. She pointed out that if the bill passes, this will have to be checked before appointments to City boards or commissions are made.

Councilwoman Field noted that Mr. Scott Jarvis, Chair of the Asheville Downtown Commission, resigned and since the City Council appoints the Chair, she suggested that the Commission make a recommendation to City Council for that position.

At the request of Mayor Sitnick, City Attorney Oast said that he would prepare a resolution encouraging our state legislators to support House Bill 222, which strengthens the littering law by increasing the minimum and maximum fines for persons convicted of littering.

Mayor Sitnick pointed out that for any truck that goes into the County landfill that does not have a cover over their back load is subject to a $50 fine. Also with regard to littering, she reminded citizens that the City has a law that you must keep the front, sides and back area clean around your home and business.

Mayor Sitnick reminded City Council and the public of the Great Asheville-Buncombe Clean-Up which kicks off March 25, 1999. She reviewed several clean-up efforts that will take place around the City and encouraged City Council and the public to come out and help clean-up Asheville and Buncombe County.

Mayor Sitnick said that she has a video that shows by computer animation the three routes of the I-26 Connector if any Council member would like to see it.

Mayor Sitnick said that she received an anonymous fax about escort services which were advertised in the Mountain Xpress. The fax accused the Mayor and Council of not caring about our children. She noted that both establishments are in Buncombe County and are not located within the City of Asheville.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:17 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - March 23,1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and Deputy City Clerk Phyllis Corns

Absent: None

INVOCATION

Councilman Cobb gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 99-47 - RESOLUTION SUPPORTING THE PARKS, RECREATION AND GREENWAYS BOND REFERENDUM

Councilman Cloninger read the resolution which says that the Asheville Parks, Recreation and Greenways Bond Measure would provide $18 million to expand and improve recreation opportunities through the preservation and acquisition of land for open spaces, natural areas, and greenways, the provision of new facilities, playfields and playgrounds; and renovation of existing parks and recreation facilities so as to enhance their utility and safety. The City Council of Asheville finds that neighborhood and community parks, natural areas and greenways, sports facilities and playing fields are a vital and necessary part of our community and help to preserve and improve the quality of life in the City of Asheville. The parks, recreation facilities and greenways confer significant health, environmental, and economic benefits to the community. The community parks and recreation facilities are in great need of funds to repair aging facilities and to meet the ever-growing demand for additional parks lands, greenways and facilities, and that this measure would help to address this need. The neighborhoods throughout the city will benefit from park expansion and improvement projects identified with extensive citizen input through the Parks and Recreation and Greenways Master Plans, developed and administered by the City's Department of Parks & Recreation. A broad-based coalition of citizens and community organizations has been formed to seek the approval of the voters for the Asheville Parks, Recreation and Greenways Bond Referendum. The City Council of the City of Asheville enthusiastically supports the Asheville Parks, Recreation and Greenways Bond Measure on the May 11 Special Election Ballot.

Mr. Russ Martin encouraged the City Council to encourage the voters of the City of Asheville to become informed about the measure and to vote in favor of it on May 11, 1999.

Resolution No. 99-47 was adopted by acclamation.

RESOLUTION BOOK NO. 25 - PAGE 176

B. PROCLAMATION PROCLAIMING THE WEEK OF MARCH 29-APRIL 4,1999, AS "COMMUNITY DEVELOPMENT WEEK" IN THE CITY OF ASHEVILLE

Councilwoman Field read the proclamation proclaiming the week of March 29-April 4, 1999, as "Community Development Week " in the City of Asheville. She presented the proclamation to Community Development Director Charlotte Caplan, who briefed City Council on some activities taking place during the week.

C. PROCLAMATION PROCLAIMING THE WEEK OF MARCH 29-APRIL 2,1999, AS "ASHEVILLE, MARCH TO WORK WEEK"

Vice-Mayor Hay read the proclamation proclaiming the week of March 29-April 2, 1999, as "Asheville, March to Work Week" in the City of Asheville. He presented the proclamation to Mr. Calvin Underwood Jr. who briefed City Council on some activities taking place during the week.

D. GREAT ASHEVILLE-BUNCOMBE CLEAN-UP CAMPAIGN

Mayor Sitnick announced that on March 25, 1999, the Great Asheville-Buncombe Clean-Up Campaign will be kicked off on Tunnel Road. She encouraged everyone to participate in the various anti-litter events around the City.

E. ASHEVILLE FILM BOARD

Mayor Sitnick said that the Asheville Film Board had an Oscar party to honor people on the Film Board and encourage those living here who are active in the industry to celebrate Asheville's new efforts toward this economic development aspect of our strategic plan. On behalf of the Board, Mayor Sitnick presented Councilman Cloninger, liaison to the Film Board, an Oscar.

II. CONSENT:

Mayor Sitnick stated that Item I. has been pulled from the Consent Agenda.

A. ORDINANCE NO. 2555 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FOR THE 1999 BELE CHERE FESTIVAL

Summary: The Parks and Recreation Advisory Board, Bele Chere Board, and Parks and Recreation Department staff are presenting the 1999 Bele Chere Budget for City Council approval.

This is a budget ordinance amendment appropriating revenue and expenditures for the 1999 Bele Chere Festival. This budget has been approved by the Parks and Recreation Advisory Board, Bele Chere Board, and Parks and Recreation staff. This request represents a balanced budget with appropriate revenue offsetting expenditures.

The Parks and Recreation Advisory Board, Bele Chere Board, and Parks and Recreation staff recommend City Council adopt the budget amendment to appropriate funds for 1999 Bele Chere Festival.

ORDINANCE BOOK NO. 17 - PAGE 284

B. RESOLUTION NO. 99-48 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE COMMUNITY FOUNDATION OF WESTERN NORTH CAROLINA FOR A GRANT TO DEVELOP AND IMPLEMENT OUTDOOR ADVENTURE ACTIVITIES FOR THE SUMMER TEEN PROGRAM

Summary: The consideration of a resolution authorizing the City Manager to apply for and enter into an agreement with the Community Foundation of Western North Carolina for a grant to develop and implement outdoor adventure activities in the Summertime Kids 1999 Program.

Funds are available through the Community Foundation of Western North Carolina in the Summertime Kids 1999 program to provide fun and safe summer activities for youth. The Summer Teen Program is designed to provide recreation activities for teens ages 13-16 for eight weeks during the summer. The program is located at six locations throughout the city in community centers. The Teen Program will offer a wide variety of recreation activities and hands-on job training. Grant funds will be used to implement the outdoor enrichment activities including a challenge ropes course, rock climbing, rollerblading, and mountain biking. The amount of the grant request is $1,950. The Parks and Recreation Department's in-kind match of $26,708 will be in labor, administration, transportation, supplies, and training for the overall Summer Teen Program. The funds are budgeted in the Recreation Division.

The Parks and Recreation Department recommends City Council authorize the City Manager to apply for and enter into an agreement with the Community Foundation of Western North Carolina for a grant to develop and implement outdoor adventure activities in the Summertime Kids 1999 Program.

RESOLUTION BOOK NO. 25 - PAGE 177

C. RESOLUTION NO. 99-49 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT RESISTANCE EDUCATION AND TRAINING GRANT FROM THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under the Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, Gang Resistance Education and Training Program.

The City of Asheville has been awarded a grant under the Fiscal Year 1999 Gang Resistance Education and Training (G.R.E.A.T.) Grant Program in the amount of $44,100.00. A local match of funds is not required. The purpose of the grant program is to fund the following three phases of G.R.E.A.T. education in the community:

Phase I: School-Based Education
Phase II: Summer Education/Recreation
Phase III: Parent Involvement Program

The specific implementation plan of the three phases has not yet been determined.

City staff recommends that the City Council authorize the City Manager to accept the Grant Resistance Education and Training Grant from the Bureau of Alcohol, Tobacco and Firearms.

RESOLUTION BOOK NO. 25 - PAGE 178

D. ORDINANCE NO. 2556 - BUDGET AMENDMENT TO ACCEPT THE GRANT RESISTANCE EDUCATION AND TRAINING GRANT

Summary: See Item "F" above.

ORDINANCE BOOK NO. 17 - PAGE 289

E. RESOLUTION NO. 99-50 - RESOLUTION ESTABLISHING FAIR REUSE VALUES FOR 135 CHERRY STREET AND PARCEL 59X ON ASHELAND AVENUE

Summary: The consideration of a resolution establishing fair reuse values for 135 Cherry Street and Disposal Parcel 59X in order to market the properties.

Disposal Parcel 59X is located on the west side of Asheland Avenue about 400 feet north of Phifer Street and comprises 27,835 square feet. Terrain includes an elevated berm along the street, some level to gently sloping land behind the berm, and some moderately sloping land at the south end of the lot. The property is crossed by easements which occupy approximately 18.8% of the property thus severely restricting the utility of the land. The zoning is Office Business. The site is best suited for parking and/or possible small commercial building. Francis Naeger, MAI, appraised the site at $139,000 and Joseph Moore, Certified General Appraiser, reviewed the appraisal and recommended the appraised value.

Disposal Parcel 6D is located at 135 Cherry Street fronting the Montford Avenue exit ramp from I-240. The lot comprising 6974 square feet is elevated above street grade and level to gently sloping. Improvements consist of a two story, frame, residential structure of 1,984 square feet being used as offices and seven paved and striped parking spaces. The zoning is Office. Richard Jacobs, MAI, appraised the property at $105,000 and Benjamin Beasley, MAI, reviewed the appraisal and recommended the appraised value.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 179

F. RESOLUTION NO. 99-51- RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE TRAFFIC ENGINEERING CONTRACT WITH KUBILINS TRAFFIC CONSULTANTS INC.

Summary: The consideration of increasing the contract price for work to be performed for City of Asheville area by Kubilins Traffic Consultants, Inc. , consultant, to include reviews of Traffic Impact Analysis (TIA's), speed studies, stop sign warrants, etc. as requested by the City Engineer.

The City entered into a contract with Kubilins Traffic Consultants, Inc., to perform various traffic engineering analysis during the time the City was without a Traffic Engineer. The original contract was in the amount of $20,000. Their services have proven to be extremely beneficial to the City of Asheville, in that they have been able to review TIA's very quickly, perform stop sign warrant analysis, and other traffic engineering tasks.

The City has hired a Traffic Engineer, Michael Moule, that will begin work on March 15, 1999. Staff would like to retain Kubilins Traffic Consultants to assist Mr. Moule in traffic engineering functions during his first six months of employment.

The funds for this amendment are in the Traffic Engineering Division's operating budget for professional services.

Staff recommends that the City Council accept this amendment to increase the contract with Kubilins Traffic Consultants, Inc. in the amount of $20,000 and authorize the City Manager to execute all necessary documents for this contract.

RESOLUTION BOOK NO. 25 - PAGE 180

G. ORDINANCE NO. 2557- BUDGET AMENDMENT TO REALLOCATE UNUSED HENDERSON COUNTY HOME FUNDS TO TRANSYLVANIA COUNTY HOUSING CORPORATION

Summary: The consideration of a budget amendment, in the amount of $36,529, to reallocate unused HOME funds from Henderson County to Transylvania County Housing Development Corporation.

On September 22, 1998 the City received a letter from David E. Nicholson, Henderson County Manager. It stated that Henderson County had no projects on which to use the Fiscal Year 1994 HOME funds and chose to return the funds to the Asheville Regional Housing Consortium for use on other regional projects. On December 9, 1998, the Asheville Regional Housing Consortium Board voted to reallocate the unused funds from Henderson County to Transylvania County Housing Development Corp. Transylvania County Housing Development Corp. has proposed to use these funds for new construction activities in a subdivision it is developing.

City staff recommends City Council adopt a budget ordinance amendment, in the amount of $36,529, to reallocate unused HOME funds from Henderson County to Transylvania County Housing Development Corporation.

ORDINANCE BOOK NO. 17 - PAGE 291

H. MOTION ENDORSING THE PARKS & RECREATION DEPARTMENT'S CONCEPT OF THE AT-RISK YOUTH INITIATIVE

I. RESOLUTION AUTHORIZING THE SALE OF A VACANT LOT ON PARK AVENUE

This item was pulled from Council's agenda.

J. RESOLUTION NO. 99-52- RESOLUTION ENCOURAGING OUR STATE LEGISLATORS TO SUPPORT HOUSE BILL 222, HOUSE BILL 352 AND SENATE BILL 287 WHICH STRENGTHENS THE LITTERING LAW

Summary: The consideration of a resolution endorsing and urging passage of House Bill 222, strengthening the penalties for littering violations..

On March 3, 1999, a bill was introduced in the North Carolina General Assembly to strengthen the littering laws of North Carolina by increasing the amounts of the minimum and maximum fines for violations, and by requiring community service as part of the penalty for violation. As City Council is aware, the City has identified littering as a problem of community-wide concern, and has undertaken its own efforts to improve enforcement of its anti-littering ordinances. Additionally, "The Great Asheville-Buncombe Cleanup" campaign begins on March 25, 1999, and the introduction of House Bill 222 is a useful coincidence with the announcement of this campaign. Currently, the penalty for littering of up to 15 pounds, which would encompass most of the violations that occur within the City, is a fine of from $100 to $500, and community service, in the form of picking up litter, may be required. The fines escalate as the amount (measured in pounds) of litter increases, and the type and amount of community service and other remedial actions becomes more onerous on the violator. The proposed changes to the law would have the effect of increasing the minimum and maximum possible fines for each level of violation, and would require the court to impose community service as part of the penalty for the lowest class of violation. Currently, community service is discretionary with the court.

City Attorney Oast explained two additional bills (House Bill 352 and Senate Bill 287) which also improve enforcement of littering. He asked that these two additional bills be included in Council's resolution endorsement.

RESOLUTION BOOK NO. 25 - PAGE 181

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda, with the addition of the two littering bills described by City Attorney Oast in Resolution No. 99-52. This motion was seconded by Councilman Tomes and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED ON LIVINGSTON STREET, SOUTH FRENCH BROAD AVENUE AND CHOCTAW STREET FROM OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT

ORDINANCE NO. 2558 - ORDINANCE REZONING PROPERTY LOCATED ON LIVINGSTON STREET, SOUTH FRENCH BROAD AVENUE AND CHOCTAW STREET FROM OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT

Mayor Sitnick opened the public hearing at 5:34 p.m.

Deputy City Clerk Corns presented the notice to the public setting the time and date of the public hearing.

Due to a conflict of interest, Vice-Mayor Hay moved to excuse Councilman Tomes from voting. This motion was seconded by Councilman Cloninger and carried unanimously.

Mr. Gerald Green, Senior Planner, said that this is the consideration of an ordinance rezoning property located on Livingston Street, South French Broad Avenue and Choctaw Street from Office Business District to Office II District.

The Asheville Planning and Zoning Commission, at their February 3, 1999, meeting, reviewed and recommended denial of the rezoning of property located on Livingston Street and South French Broad Avenue from Office District to Office II District. Eight parcels are included in the area being considered for rezoning. Current land uses on the parcels include medical offices, a credit union, a clinic, a community center, and some vacant land. The current Office zoning of the property permits structures with a maximum footprint of 4,000 sq. ft. and up to 8,000 sq. ft. total floor area. The proposed zoning would increase the permitted structure size to a footprint of 8,000 sq. ft. and a maximum gross floor area of 16,000 sq. ft. Three of the existing structures (out of seven) in the area are currently non-conforming due to size and a proposed structure exceeds the size currently permitted. The proposed rezoning would make those buildings conforming in terms of the footprint, except for the recreation center (over 20,000 square feet) which will still slightly exceed the maximum footprint permitted for the proposed Office II zoning. The streets which access the property are adequate to serve the scale of development permitted under the Office II zoning. The scale of existing structures in the area is varied, with the larger institutional uses on Livingston Street transitioning to the residential scale uses of South French Broad Avenue. The vacant property has been purchased by the Opportunity Corporation which wishes to build an office in that area, which original plans call for a building larger than permitted under the current Office zoning.

Comments from the public regarding this request identified a concern that the size of development permitted in the Office II District would be out of scale with the residential uses in the South French Avenue area, even though this proposal will decrease the allowable structure size.

The Planning and Development staff recommend approval of the rezoning. At their meeting on February 3, 1999, the Asheville Planning and Zoning Commission voted 5 to 1 to recommend denial of the rezoning.

The following persons spoke in opposition to the rezoning (not against the Opportunity Corporation and not against child care) for several reasons, some being, but not limited to: residents do not want to increase the allowable dimensions of office structures in this area; the Opportunity Corporation can building something in the legal requirements of the existing Office zoning or there are other sites in the City that can accommodate them; conflict of established homes in the area (around 1,000 square feet) and the proposal of allowing 16,000 square feet (with an 8,000 square foot footprint); topography of the area may cause buffering concerns between conflicting uses; additional traffic from larger buildings; area is ideal for affordable housing and Office II zoning is too intrusive for the residential area; possibility of using a rezoning proposal to essentially obscure an illegal spot zoning (Opportunity Corporation building); possible decrease in the value of homes by the appearance of a large structure; Gaston Street is a very narrow street and will not accommodate additional traffic; and the proposed entrance on Gaston Street is in a very sharp curve which will be a safety hazard to children:

Mr. Mel Thomason, property owner on Ora Street
Mr. William Coxe, resident of 24 Gaston Street
Ms. Ann Hunting Williams, resident of 48 Gaston Street
Mr. Edward Smith, representative of the Southside Community Organization
Ms. Sandra Davis, resident of 16 Gaston Street
Ms. Mildred Nance Carson, resident of Gaston Street

Upon inquiry of Mayor Sitnick, City Attorney Oast said that only a court can determine if something is spot zoning or not, however, they do look at certain factors, like if a tract of land under single ownership has been singled out for treatment different from the treatment afforded to its neighbors. The size is one factor in that, but so are the number of parcels involved.

City Attorney Oast advised Council to disregard any specific representation about what use the property may be put to because if it is rezoned to Office II, it can be used for any admissible purpose in that designation.

Ms. Vicki Heidinger, representative of the Opportunity Corporation, reviewed with Council the history of the Reid Center Annex Building. In 1997 they made a proposal to City staff to renovate the building in order to re-open it for a Head Start Child Development Center. In the spring of 1997, they submitted a request to their funders to serve 100 children at this site. Their request was approved for 96 children, however, their current plans are to serve 90 children.

When they began their design in early 1998, they discovered an error in Unified Development Ordinance language for permitted uses for child care (they were told that they could only be permitted for 50 children). At that time they did not understand that there would be a limit or a cap set on the number of children that can be served in the Office zoning designation. They believe that the impact on the community of 50 children under the current zoning versus 100 children under the proposed rezoning is limited. They believe the impact of this zoning change for this child care facility will not adversely impact the neighborhood adjacent to the Reid Center, however, the number of children in the building is absolutely critical to the Opportunity Corporation and to the viability of the project. Had they known they would be limited to 50 in the building, they would not have pursued the project. She said that their proposed building (9,000 total square feet as designed at this point), will be a very low impact in the residential-flavor neighborhood area. They will be willing to work more with the neighborhood with concerns around safety or adequacy of entrance. She said that in order to bring the building back into scale of the Office designation (8,000 square feet) would mean a significant loss of things, most notably a community resource room, and it would also create a problem for their long term viability in the area.

Mr. Calvin Underwood, Director of the Buncombe County Department of Social Services, said that this will be an asset to the low income families in the area that need quality child day care.

Upon inquiry of Mayor Sitnick about the lack of the Opportunity Corporation's notice of the Planning & Zoning Commission meeting, City Manager Westbrook said that the City uses the Buncombe County's database for notifying property owners in the area.

Ms. Willie Mae Brown, member of the Board of Directors for the Opportunity Corporation, stressed that this facility will benefit the children.

Mr. Daniel Breen suggested a one story building be built with the top being 4,000 square feet and the basement being 5,000 square feet.

Ms. D. Blake, former resident of Erskine Street, spoke about her positive experience with the child day care in the area.

Upon inquiry of Mayor Sitnick about a possible variance, Ms. Heidinger said that they did consider applying to the Board of Adjustment for a variance for the child care center, however, they were told that it was not a good idea for the City to give a variance on their own building (the Opportunity Corporation leases the building from the City of Asheville).

Mayor Sitnick closed the public hearing at 6:37 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2558. This motion was seconded by Councilman Cloninger.

Vice-Mayor Hay felt that had the Office II District been available when the Unified Development Ordinance was adopted the area probably would have been designated the Office II designation. He also felt that there wasn't any room for expansion of the existing buildings.

Mayor Sitnick said that she is basically opposed to intruding deep into neighborhoods, however, (1) we are not expanding the Office District and there is no chance that it will be expanded; and (2) the area is already developed out and won't have any more opportunity for large construction. She noted also that the Opportunity Corporation will only be adding 500 square feet to the footprint.

Councilwoman Field noted that three out of the six existing buildings in the area are out of compliance.

The motion made by Councilman Sellers and seconded by Councilman Cloninger carried unanimously.

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B. PUBLIC HEARING RELATIVE TO ZONING SECTION 12 OF BILTMORE PARK TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2559 - ORDINANCE ZONING SECTION 12 OF BILTMORE PARK TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 6:47 p.m.

Deputy City Clerk Corns presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that this is the consideration of an ordinance to zone Section 12 of Biltmore Park RS-8 Residential High Density District.

The owner and applicant, Biltmore Farms Inc., has requested the zoning of Section 12 of Biltmore Park Subdivision to RS-8 Residential Single-Family High Density District. This section was annexed into the City of Asheville effective December 23, 1998.

The Planning staff reviewed the rezoning request and recommended approval to the Planning and Zoning Commission. At their March 3, 1999, meeting, the Planning & Zoning Commission voted five to zero to recommend approval of the initial zoning of Section 12 of Biltmore Park Subdivision as RS-8 Residential Single-Family High Density District.

Mayor Sitnick closed the public hearing at 6:58 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2559. This motion was seconded by Councilman Tomes and carried unanimously.

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C. PUBLIC HEARING RELATIVE TO REZONING 49 ACRES OFF GERBER ROAD FROM INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 2560 - ORDINANCE REZONING APPROXIMATELY 21.57 ACRES OFF GERBER ROAD FROM INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Sitnick opened the public hearing at 6:59 p.m.

Deputy City Clerk Corns presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that this is the consideration of a request to rezone a portion of the Gerber industrial property on Gerber Road from Industrial District to Commercial Industrial District.

The owners and applicants, Gerber Products Company and Asheville Hendersonville Investors LLC., represented by Van Winkle Law Firm, have requested the rezoning of a portion of the Gerber property (approximately 49 acres) on Gerber Road (PIN No. 9655-09-26-4955) from Industrial District to Commercial Industrial District.

This property, located north of Gerber Road and east of Hendersonville Road, is currently occupied by an industrial structure of about 600,000 square feet. The land is flat and developed, with direct rail access. All of the land is usable for industrial purposes.

The front portion of the existing industrial structure was constructed purely for the purposes of Gerber Products Company, and is not generally usable by other industrial firms (per the Chamber of Commerce). The assumption is that any industrial or other user of the property would likely have to raize at least the southerly half of the existing structure to make use of the property. The northerly one half of the structure is more generally usable for industrial purposes. There is a water treatment facility designed for use by Gerber Products Company in treatment of process water which is located south of Gerber Road, and is currently zoned Commercial Industrial, and is not a part of the rezoning request.

The property is bounded on the east side by over 1200 feet of rail frontage. There is a rail spur onto the property. On the south side the property is traversed or bounded by Gerber Road, which has a signalized intersection with Hendersonville Road. On the west side, a small portion of the property fronts on Hendersonville Road and has an office building located on it. This did not serve as a main access for the plant traffic. The remainder of the property on the west side and all of the property on the north side is adjacent to a Highway Business District.

Gerber Road is a two lane road 22 feet in width, shown in City records to be a City maintained street. The Gerber Products plant was accessed by this road during its operation, and served general public traffic as well as plant employee traffic and semi-trailer truck traffic serving the plant.

The application for Commercial Industrial zoning would allow the property to be developed or used for either industrial or commercial uses. This could include uses similar to the Gerber plant or large scale retail commercial uses. According to the City Engineering Department, a large scale retail use on the property could increase the traffic on Gerber Road, compared to the Gerber plant when it was in operation.

At their meeting of February 23, 1999, City Council approved the selection of Lockwood Greene Consulting to perform the Strategic Plan for Economic Development for the City of Asheville. One of the tasks contained in the Scope of Work for this project includes the following:

> *Perform a location and site analysis of the City of Asheville and future growth areas for the City including an examination of select locations/sites, environmental/engineering review and financial calculations for each location/site.*

The time frame provided to complete the Strategic Plan by Lockwood Greene Consulting is four months. In discussions with Mr. Dave Kolzow subsequent to the Planning and Zoning

Commission meeting, he agreed to do the site assessment of the Gerber property and formulate a recommendation to the City regarding potential future use of the property within 30 days.

Staff feels that it is in the best interest of the City to receive input from the Strategic Plan prior to action which could result in loss of this site from the industrial zoned property inventory. The two dissenting votes by the Planning Commission members included similar concerns.

The Planning staff remains concerned about removing this property from the inventory of available industrial land in the City of Asheville, and recommends that consideration of this zoning request be delayed until the completion of that portion of the Strategic Plan for Economic Development which will focus on the Gerber Property.

The Planning and Zoning Commission, at its meeting of March 3, 1999, recommended approval by a vote of three to two. The two dissenting votes shared staff's concern regarding loss of this property from the inventory of available industrial land and the likelihood it would be developed as a commercial development.

After the Planning & Zoning Commission meeting, the attorney for the applicant met with City staff on March 22, 1999, and after discussions, the applicant indicated that they would be receptive to reducing the acreage of the rezoning request such that only the southern portion adjacent to Gerber Road, comprising approximately 22 acres, would be requested to be rezoned to Commercial Industrial.

This is based on the applicant's intention to continue the use of the northern or back part of the property, the part containing the relatively new buildings, for industrial uses consistent with the current zoning classification.

By requesting the Community Industrial zoning, it is also the applicant's intent to gain flexibility on the remaining section of the parcel which currently contains the older more specialized buildings.

The applicant has been unable to sell the Gerber Plant primarily because of the specialized construction on the southern part of the property. Due to the building construction, users would more likely either have to demolish this portion or be a "wet" type industrial user (e.g., food processor or textile manufacturer) which are not prevalent users in today's market.

The applicant also desires to maintain access to the northern portion of the property regardless of the eventual use of the southern portion of the property north of Gerber Road. To do this, the applicant must maintain an Industrial or Commercial Industrial zoning on the southern portion of the property.

Staff has continuously expressed a concern about the transference of industrial property to categories which could allow the industrial use of the property to be lost. Therefore, the applicant seems amenable to modifying the request to ask for rezoning to Commercial Industrial on only the southern portion of the property, with the northern portion of the property remaining as it currently is zoned, Industrial District. Such an action by Council is provided for in the Unified Development Ordinance under Section 7-7-5 (3) d., Pg. CD7:123.

This request would preserve about half of the property as Industrial, allow access through the Commercial Industrial section of the property to the Industrial section of the property, and create a more flexible situation for the applicant on the southern portion of the property, while satisfying the applicant's stated intent to continue to use the northern portion of the property for industrial uses.

In the event that the applicant revises the rezoning request such that only the southern portion (approximately 22 acres of the 49 acre site) is requested to be rezoned to Commercial Industrial, staff supports this request. This is based upon the necessity to demolish the southern portion of the building to facilitate new development.

Mr. Craig Justus, attorney representing the developer and applicant, said that their original request was for the rezoning of the entire 49 acre tract. He passed out an aerial photograph of the modified rezoning request. Since the Planning & Zoning Commission meeting, he has met with staff to talk about staff's concerns. After that meeting, they have decided to modify the rezoning request such that only the southern portion (approximately 21.57 acres) be requested to be rezoned Commercial Industrial and that the northern portion (approximately 25 acres) remain zoned Industrial. The original reason they asked for the entire 49 acres to be Commercial Industrial was because they were concerned about the question of whether they could drive through a Commercial Industrial zone to get back to the property zoned Industrial. Initial discussions with staff was that they could not do that, however, after the Interim Planning & Development Director's interpretation is that they can actually drive through the Commercial Industrial District to industrially zoned property.

Councilwoman Field said that the City has been accused many times about running Gerber out, by over-regulating, but was delighted to hear that we will be doing something to add to the tax base in an area that is certainly appropriate for this kind of development.

Mayor Sitnick closed the public hearing at 7:15 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2560 to rezone approximately 21.57 acres of property adjacent to Gerber Road from Industrial to Commercial Industrial. This motion was seconded by Councilman Sellers and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. CONSIDERATION OF WAIVING THE ASHEVILLE STANDARD SPECIFICATIONS AND DETAILS MANUAL SIDEWALK REQUIREMENT FOR SWEETEN CREEK MINI-STORAGE AT 2600 SWEETEN CREEK ROAD

Ms. Cathy Ball, Director of Engineering, said that this is the consideration of waiving the Unified Development Ordinance (UDO) and the Asheville Standard Specifications and Details Manual (Standards Manual) requirement for a sidewalk along Sweeten Creek Road for Sweeten Creek Mini-Storage.

Section 7-8-16 (f) (10) of the Unified Development Ordinance requires that new construction on property zoned Regional Business District place sidewalks as specified in the Asheville Standard Specifications and Details Manual (Standards Manual) along street rights-of-way. M.W.I. Properties, LLC, the developer for Sweeten Creek Mini-Storage, proposes to build a self-storage facility at 2600 Sweeten Creek Road. Sweeten Creek Road is a state maintained road.

The Standards Manual requires a five foot sidewalk along the rights-of-way for all newly developed non-residential projects. The Standards Manual requires any waiver be granted by the City Council with a recommendation presented by staff.

Staff does not recommend that City Council waive the requirement that a sidewalk be placed on Sweeten Creek Road due to the fact that Sweeten Creek Road is a major thoroughfare and according to our Standards Manual sidewalks should be placed on both sides of the road. The widening of this section of Sweeten Creek Road is currently scheduled for 2008. If the sidewalk exists at the time the N.C. Dept. of Transportation widens the road, the State pays 100% of the costs to construct a new sidewalk. Currently the City does not have a procedure whereby the developer can pay for the costs of the sidewalk in lieu of constructing it.

City staff requests that City Council not waive the requirement that a sidewalk be placed along Sweeten Creek Road as required by the UDO Section 7-8-16 (f) (10) for the Sweeten Creek Mini-Storage Facility.

Upon inquiry of Councilwoman Field about when the Pedestrian Thoroughfare Plan (which contains the provision whereby the developer can pay for the costs of the sidewalk in lieu of constructing it) will be adopted, Ms. Ball said that the Plan will be before City Council by the end of May, 1999. Ms. Ball stated that the applicant would not be able to obtain their Certificate of Occupancy until this issue is resolved.

When Councilman Sellers asked about the cost for installing the sidewalk, Ms. Ball said that since this is a very large linear footage (430 feet) so there is a substantial cost (about $6-7/foot) in putting in a five-foot concrete sidewalk.

Mr. Mike Robinson, President of M.W.I. Properties, said that in October of 1998 he filed an appeal with the Board of Adjustment and the Board was supposed to meet December 21. On the morning of December 21 he was told that he was not to appear and has yet to get his $100 filing fee returned. Since that time he has been working on getting to this point. His appeal to the Board was that there are no sidewalks (approximately 6-8 miles) from Biltmore to the Airport on Sweeten Creek Road at this time. There has been new development established within the last year down from his property and they have not had to put in new sidewalks. He felt it was not fair for the developers to install this sidewalk. He said they do plan to do more than what the landscape ordinance requires them to do. He wondered if the properties that are already built will be grand-fathered in and will the City have to build the sidewalks in the future. He also questioned who will maintain the sidewalks. He felt that since there is such a great demand for sidewalks on major thoroughfares, why isn't there a bond referendum to see if the public actually supports it, instead of just the UDO.

Mr. Dennis Weaver, representing the Ballantree Homeowners Association which is directly across this development, said that they have met with the developers and they have been very responsive to their requests in terms of lighting, signage, security concerns and a buffer zone. They are opposed to the enforcement of the requirement for a sidewalk along Sweeten Creek Road for Sweeten Creek Mini-Storage. He said this sidewalk would create a safety hazard to our children because it would be the only strip of sidewalk on a very busy road. There is no development there to cater to foot traffic. The sidewalk would go nowhere and serve no purpose.

Upon inquiry of Councilwoman Field, Ms. Ball said that in the Transportation Improvement Plan, sidewalks will be required on one side of Sweeten Creek Road.

Ms. Ball said that the three projects on Sweeten Creek Road that Mr. Robinson said did not put sidewalks in was that two of them were both approved prior to adoption of the UDO and the other project had a bond posted.

Councilwoman Field said that ultimately there will be a complete sidewalk, however, right now it makes sense for there to be a buffer.

Ms. Ball suggested that the City issue the developer a temporary Certificate of Occupancy until the Pedestrian Thoroughfare Plan is before City Council for adoption. If, in the Pedestrian Thoroughfare Plan, the provision whereby the developer can pay for the costs of the sidewalk in lieu of constructing it, is not specifically spelled out, Engineering Department staff will work with the Public Works staff to make sure make that provision is part of the Plan.

City Manager Westbrook said that there will be standards in the Pedestrian Thoroughfare Plan.

Vice-Mayor Hay said that Council is trying to find a way to avoid building a sidewalk now and still acknowledge that there will be sidewalks built all along Sweeten Creek Road.

Upon inquiry of Councilman Cloninger, City Attorney Oast said that Council can refer this back to staff to see if there are alternatives available.

Vice-Mayor Hay suggested Council authorize staff to issue a temporary Certificate of Occupancy, so the developer can proceed with his project, until staff reports back with the available alternatives.

Upon inquiry of Councilman Sellers, Mr. Robinson said that they are under construction now and the project will probably not be completed for another three to four months.

City Attorney Oast said that any Certificate of Occupancy or any approvals could be subject to compliance with whatever Council ultimately decides.

Ms. Ball said that the Pedestrian Thoroughfare Plan reads that "it is recommended that an impact fee for financing pedestrian projects be established."

City Attorney Oast said that the City may not have statutory authority to require fees in lieu of and he would like to have the opportunity to research this issue. He did think that the City can work out an arrangement whereby the developer can proceed with construction and the Certificate of Occupancy can be issued possibly subject to later compliance with whatever ordinance Council does adopt and perhaps a bond taken to secure performance.

It was the consensus of Council to defer this matter back to staff to find out what alternatives are available and then report back to Council as quickly as possible.

Councilwoman Field asked Mr. Michael Moule, the City's Traffic Engineer, to report back to Council with some information regarding street widths and the capacity of those streets. Mr. Moule said that he would give Council that information, however, it is really dependent on if there is a traffic signal, parking on the street, or other features in the area. He felt that most streets need to be reviewed on a case by case basis.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 9, 1999, AND THE WORKSESSION HELD ON MARCH 16, 1999

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Councilman Tomes moved for the adoption of the minutes of the regular meeting held on March 9, 1999, and the worksession held on March 16, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the week of February 26 - March 18, 1999: Terry Owen (Water), George Loftis (Water), George Morosani (Water) and Richard Gorglione (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Anti-Litter Campaign

Councilman Cloninger thanked Mayor Sitnick for her leadership on the anti-litter campaign.

Closed Session

At 7:49 p.m., Councilwoman Field moved to go into closed session to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuit about which the Council expects to receive advice are: CC&J Enterprise, the City of Asheville, and the Jackson Park/Woolsey Neighborhood Association - G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Sellers and carried unanimously.

At 8:07 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilman Cobb and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:07 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - March 30, 1999
East Asheville Community Center
906 Tunnel Road

7:00 p.m. - Community Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and Deputy City Clerk Phyllis Corns

Absent: None

The following topics were raised by residents and addressed by City Council and City staff: I-26 connector; speeding problems on Crockett Road and Whitson Road; trash problems in the Crockett Road area and on the bank near the Asheville Mall between the Mall and Lowe's; who is responsible for maintaining the culverts on US 70 to South Tunnel Road; the public needs to be educated about recycling in that items are put out from recycling and then are scattered by the wind; there is a deep ravine on Cisco Road near the City limit where old appliances had been dumped; support of the Parks, Recreation and Greenways bond referendum; speeding on the the exit ramp from I-240 onto Tunnel Road (heading east toward the Dept. of Motor Vehicles); what can be done to improve the appearance of the grounds of the East Asheville Community Center; there needs to be an amendment to the sign ordinance to permit community oriented directional signs in neighborhoods; what can be done to enforce the junked car ordinance, especially on Cisco Road; businesses and fast food establishments need to be encouraged to participate in the litter campaign; has the City looked at what the additional costs are for each new park, especially in terms of more Police Department patrols due to the crime parks often become a haven for; what does ADA stand for; and danger of posting signs on poles.

Councilman Cobb spoke on the importance of efforts to collect litter/trash in the Asheville area and the need to target businesses.

Mayor Sitnick advised she has asked the City Attorney to draft a cigarette butt ordinance.

Mayor Sitnick adjourned the meeting at 8:17 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - April 6, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Resolution of Intent to Permanently Close a portion of Pond Avenue off Lee Street

Summary: The consideration of a resolution of intent to permanently close a portion of Pond Avenue off Lee Street and setting a public hearing on May 11, 1999.

A petition has been received from Lucie Mae Ratliff requesting that Pond Avenue from Lee Street to the intersection with the Southern Railway Company right-of-way be permanently closed to public use.

The petition received includes the affidavit of Lucie Mae Ratliff, owner of parcels 9654.05-19-4691 and 4882. Ms. Ratliff owns all of the property with frontage on the unopened street between Lee Street and the Southern Railway right-of-way that has been petitioned to be closed.

This portion of Pond Avenue is a paper street and has never been used as a street. The City has no plans to utilize this street. All utility companies will be contacted, the resolution of intent to close a portion of Pond Avenue off Lee Street will be advertised in a local paper, and the location will be posted with the resolution of intent to close.

The Public Works Department staff recommends the resolution of intent to permanently close Pond Avenue from Lee Street in a easterly direction to the intersection with the Southern Railway right-of-way be adopted.

Resolution and Budget Amendment relative to Lustar Economic Development Grant

Summary: The consideration of entering into an agreement and appropriating funds as an economic development incentive for Lustar Dyeing and Finishing, Inc.

Lustar Dyeing and Finishing, Inc. (Lustar) is located on Caribou Road in the corporate limits of the City of Asheville. In 1997 representatives of Lustar contacted the City of Asheville requesting consideration of economic development incentives as a part of a proposal to expand their operations at the current facility. City staff reviewed the request and determined that based upon their projected investment of $3.6 million the City contribution would be in an amount not to exceed $76,950. The City's projected contribution was based upon the property tax revenue over a five (5) year period. Additionally, the development was to create approximately 20 new jobs paying an average wage of $12.50 per hour. Resolution 97-248 is related to this project and was adopted by Council on December 16, 1997.

Lustar has now completed the expansion of their facility. Staff has prepared a revised agreement for consideration by City Council. I would also note that prior to the disbursement of any funds to Lustar, they must provide the City with a Letter of Credit in the full amount of the City's contribution which will allow the City to recoup any funds paid out during the five (5) year period should Lustar not uphold the terms of the agreement.

Staff is in the process of finalizing and verifying amounts related to the agreement. Additionally, staff has prepared a budget ordinance amendment in the amount of $76,950 appropriating funds in accordance with prior City Council action.

Staff recommends that the revised agreement and budget ordinance amendment be approved by City Council allowing the disbursement of funds in the amount of $76,950 to Lustar Dyeing and Finishing, Inc.

Summer Food Service Program for Children

Summary: The City of Asheville wishes to apply for funding through the North Carolina Department of Health and Human Resources, Division of Maternal and Child Health, Child and Adult Care Food Program to provide food service in the Summer Day Camp Program.

The Summer Day Camp Program will provide supervised licensed child care, recreation, enrichment activities, and food service for children in kindergarten through 5th grade, June 7 through August 6, 1999, Monday through Friday, 7:30 a.m. 6 p.m. $75 per week for city residents, $85 per week for non-city residents. Sites will be located at Claxton, Hall Fletcher, Jones, Dickson, and Vance Elementary Schools; and Reid Community Center. Breakfast, lunch and snacks will be provided daily at no extra cost. The number of meals and amount of reimbursement will vary based on the total meals actually served each month.

The Parks and Recreation Department recommends the City of Asheville apply for the Summer Food Service Program for Children through the North Carolina Department of Health and Human Resources.

MSD Easement in Roger D. Farmer Memorial Park

Summary: The staff is recommending that the City grant an easement for an upgrade to an existing sewer line which will be upgraded in Roger D. Farmer Memorial Park.

Staff has been working with Martin-McGill, a consultant for the Metropolitan Sewerage District, in coordinating improvements to be made on an existing sanitary sewer line and its permanent easement. The Parks and Recreation staff concurs with the final easement agreement draft, addendum and other provisions which will return the site to its current condition. The existing sewer line improvement and easement will not interfere with the usage of the park.

Staff recommends that the City grant an easement for an upgrade to an existing sewer line to the Metropolitan Sewerage District which will be upgraded in Roger D. Farmer Memorial Park. The language of the easement agreement is subject to the approval of the City Attorney's office.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

STATE GRANT APPLICATION FOR WATER SYSTEM

Mr. Tom Frederick, Director of Water Resources, said that the Regional Water Authority of Asheville, Buncombe & Henderson has authorized by resolution the application for a $3

Million grant from the State of North Carolina under the Critical Needs/Infrastructure Bond Program approved by the voters of North Carolina last November.

The Water Resources Director appointed a task team within the Water Resources Department in October 1998 to develop a comprehensive list of chronic problems within the water system, including locations of repeated low pressure or repeated repairs. When the $1 Billion Critical Needs/Infrastructure Bond Referendum was approved statewide by the voters last November, the scope of this task team was amended to include developing a priority list of projects for a State grant or loan application.

To date, the task team has identified over 115 projects to resolve chronic problems, and prepared cost estimates for 73 of these projects totaling $10.35 million. Further, with the assistance of McGill Associates, 21 of these projects, prioritized based on the State's criteria for the grant/loan program, totaling $3.3 Million, have been included in a grant application submitted March 31, 1999.

Based on the State rules for the program, Water Resources staff have submitted documentation they believe will qualify us for a grant from the State. The maximum grant in any fiscal year available to a single water system is $3 million, which is the size of our grant request. The State will make a determination on grant awards by June, 1999. This program is anticipated to be a five year program.

The Regional Water Authority has already adopted a resolution and is the applicant; the information to City Council in this staff report is for information only.

Mr. Frederick answered various questions from Council, some being, but not limited to: when will approved projects be completed, any match required, who makes up the difference is a project is over-budget, does this list of projects address the projects identified in a study conducted in the early 1990's, what criteria was used in prioritizing the list of projects and is this a one-time application.

Mayor Sitnick said that she has discussed with the City Manager a way that the City can be more informative to the public on issues related to the Water Resources Department and the Regional Water Authority.

ZEALANDIA BRIDGE CONTRACT

Ms. Suzanne Molloy, Assistant Director of Public Works, said that this is the consideration of the selection of a contractor to stabilize the Zealandia Bridge located on Beaumont Gap.

Due to significant design changes, the City, through the Public Works Department, re-bid the Zealandia Bridge Stabilization project. Two bids proposals were received. The bidders were qualified and listed below:

Company	MB Part	Drug Free	Bond	Bid
Carolina Mountain Construction Co. Inc.	100%	Yes	Yes	$57,865 Alternate #1 $53,685
Taylor and Murphy	0	Yes	Yes	$73,000 Alternate #1 $78,000

Please note that Alternate #1 includes "tuck pointing" as opposed to netting the bridge as outlined in the base bid. A budget amendment of $50,000 was approved by City Council for this project on January 12, 1999. The additional $3,685 necessary to execute the contract will be covered under the Public Works Departments operational budget.

Staff from the Public Works Department recommends City Council adopt the resolution authorizing the City Manager to enter into contract with Carolina Mountain Construction Co., Inc., in the amount of $53,685, to stabilize the Zealandia Bridge.

Upon inquiry of Vice-Mayor Hay, Ms. Molloy said that the road will be re-opened at the end of April or early portion of May, 1999.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

OTHER MATTERS

It was the consensus of City Council to hold a workshop on Friday, June 11, 1999, from 8:30 a.m. - 3:30 p.m. in the William F. Wolcott Jr. Building to discuss the information received from the economic development survey sent out and to set up priorities on what the City's priorities should be on economic development. The results from this workshop will be sent to the City Business and Development Commission and ultimately back to City Council for approval. This workshop will be in lieu of City Council's mid-year retreat.

City Council instructed the City Manager to contact a representative from the Waste Reduction And Technology Transfer ("WRATT") Program (which assists businesses with innovative cost saving strategies to improve environmental and energy management) to see if they would be willing to assist the City in providing recommendations with regard to energy and waste reduction assessments.

It was the consensus of City Council to partner with Quality Forward in it's efforts to encourage businesses, organizations, churches, etc., adopting spots throughout the community.

City Attorney Oast updated Council on the posting of private parking lots in downtown. He also said that he is currently working on a cigarette butt receptacle ordinance and revisions to the noise ordinance.

Mayor Sitnick encouraged City Council's participation in the April 22, 1999, Honk Against Litter event.

CLOSED SESSION

At 4:00 p.m., Councilman Cloninger moved to go into closed session to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuit about which the Council expects to receive advice are: CC&J Enterprise, the City of Asheville, and the Jackson Park/Woolsey Neighborhood Association - G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Sellers and carried unanimously.

At 4:15 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilman Cobb and carried unanimously.

WEST ASHEVILLE BRANCH LIBRARY

Discussion surrounded the West Asheville Branch Library's use of the West Asheville Community Center. The City is planning to move its West Asheville Resource Center & Substation into the space which the Library had previously occupied, which is City-owned. The City wants to share the community room space with the Library and has offered to make additional space available to them in the Community Center.

City Manager Westbrook was instructed to set up a meeting with Councilman Cobb, Councilman Sellers, Councilwoman Field, the Police Chief, the Parks & Recreation Director, and two or three representatives of the Library to discuss how the City of Asheville can work hand-in-hand with the Library regarding the use of the West Asheville Community Center.

It was also the consensus of Council to have the City Manager provide an informational report to City Council regarding this issue on the April 20, 1999, worksession agenda.

CHAMBER OF COMMERCE'S BOARD/LEADERSHIP RETREAT

It was the consensus of City Council that any Councilmember attending the May 10-11, 1999, Asheville Area Chamber of Commerce's Board/Leadership Retreat which will be held near Cashiers, N.C., at the High Hampton Inn and Country Club, will drive.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:07 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - April 13, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Vice-Mayor Hay gave the invocation.

PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING APRIL 1999 AS "CHILD ABUSE PREVENTION MONTH"

Vice-Mayor Hay read the proclamation proclaiming April 1999, as "Child Abuse Prevention Month" in the City of Asheville. She presented the proclamation to Ms. Janet Anderson who briefed City Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING APRIL 17-30, 1999, AS "LITTER SWEEP DAYS"

Mayor Sitnick read the proclamation proclaiming April 17-30, 1999, as "Litter Sweep Days" in the City of Asheville.

C. RESOLUTION NO. 99-53 - RESOLUTION RENAMING THE PARK MAINTENANCE FACILITY AS THE RICHARD B. MEEHAN PARK MAINTENANCE FACILITY

Parks & Recreation Director Irby Brinson said that this is the consideration of a resolution renaming the Park Maintenance Facility in honor of the former Superintendent of Parks and Public Facilities Richard B. Meehan.

The staff of the Parks and Recreation Department made a recommendation to the Advisory Board that the Park Maintenance Facility be renamed to honor Richard B. Meehan. Dick worked for the Parks and Recreation Department for 31 years in the position of Superintendent of Parks and Public Facilities. During this tenure, Dick was instrumental in the development of the park facilities as they currently exist today. His dedication to the parks and recreation profession is a direct indication of the quality of the current park system. Dick has always worked diligently to find solutions to difficult problems and then served these solutions as models for future park development. The staff feels that no better recognition could be paid to Dick Meehan than to name the Park Maintenance facility in his honor.

The Parks and Recreation Advisory Board and staff recommend that City Council approve the resolution renaming the Park Maintenance Facility as the Richard B. Meehan Park Maintenance Facility.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Resolution No. 99-53 was adopted by acclamation.

RESOLUTION BOOK NO. 25 - PAGE 182

CONSENT:

A. RESOLUTION NO. 99-54 - RESOLUTION OF INTENT TO SET A PUBLIC HEARING ON MAY 11, 1999, TO CLOSE AN UNOPENED PORTION OF POND AVENUE OFF LEE STREET

Summary: The consideration of a resolution of intent to permanently close a portion of Pond Avenue off Lee Street and setting a public hearing on May 11, 1999.

A petition has been received from Lucie Mae Ratliff requesting that Pond Avenue from Lee Street to the intersection with the Southern Railway Company right-of-way be permanently closed to public use.

The petition received includes the affidavit of Lucie Mae Ratliff, owner of parcels 9654.05-19-4691 and 4882. Ms. Ratliff owns all of the property with frontage on the unopened street between Lee Street and the Southern Railway right-of-way that has been petitioned to be closed.

This portion of Pond Avenue is a paper street and has never been used as a street. The City has no plans to utilize this street. All utility companies will be contacted, the resolution of intent to close a portion of Pond Avenue off Lee Street will be advertised in a local paper, and the location will be posted with the resolution of intent to close.

The Public Works Department staff recommends the resolution of intent to permanently close Pond Avenue from Lee Street in a easterly direction to the intersection with the Southern Railway right-of-way be adopted.

RESOLUTION BOOK NO. 25 - PAGE 183

B. RESOLUTION NO. 99-55 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAROLINA MOUNTAIN CONSTRUCTION CO. TO STABILIZE THE ZEALANDIA BRIDGE

Summary: This is the consideration of the selection of a contractor to stabilize the Zealandia Bridge located on Beaumont Gap.

Due to significant design changes, the City, through the Public Works Department, re-bid the Zealandia Bridge Stabilization project. Two bids proposals were received. The bidders were qualified and listed below:

Company	MB Part	Drug Free	Bond	Bid
Carolina Mountain Construction Co. Inc.	100%	Yes	Yes	$57,865 Alternate #1 $53,685
Taylor and Murphy	0	Yes	Yes	$73,000 Alternate #1 $78,000

Please note that Alternate #1 includes "tuck pointing" as opposed to netting the bridge as outlined in the base bid. A budget amendment of $50,000 was approved by City Council for this project on January 12, 1999. The additional $3,685 necessary to execute the contract will be covered under the Public Works Departments operational budget.

Staff from the Public Works Department recommends City Council adopt the resolution authorizing the City Manager to enter into contract with Carolina Mountain Construction Co., Inc., in the amount of $53,685, to stabilize the Zealandia Bridge.

RESOLUTION BOOK NO. 25 - PAGE 184

C. RESOLUTION NO. 99-56 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH LUSTAR DYEING AND FINISHING INC. TO PARTICIPATE IN CAPITAL IMPROVEMENTS

Summary: The consideration of entering into an agreement and appropriating funds as an economic development incentive for Lustar Dyeing and Finishing, Inc.

Lustar Dyeing and Finishing, Inc. (Lustar) is located on Caribou Road in the corporate limits of the City of Asheville. In 1997 representatives of Lustar contacted the City of Asheville requesting consideration of economic development incentives as a part of a proposal to expand their operations at the current facility. City staff reviewed the request and determined that based upon their projected investment of $3.6 million the City contribution would be in an amount not to exceed $76,950. The City's projected contribution was based upon the property tax revenue over a five (5) year period. Additionally, the development was to create approximately 20 new jobs paying an average wage of $12.50 per hour. Resolution 97-248 is related to this project and was adopted by Council on December 16, 1997.

Lustar has now completed the expansion of their facility. Staff has prepared a revised agreement for consideration by City Council. I would also note that prior to the disbursement of any funds to Lustar, they must provide the City with a Letter of Credit in the full amount of the City's contribution which will allow the City to recoup any funds paid out during the five (5) year period should Lustar not uphold the terms of the agreement.

Staff is in the process of finalizing and verifying amounts related to the agreement. Additionally, staff has prepared a budget ordinance amendment in the amount of $76,950 appropriating funds in accordance with prior City Council action.

Staff recommends that the revised agreement and budget ordinance amendment be approved by City Council allowing the disbursement of funds in the amount of $76,950 to Lustar Dyeing and Finishing, Inc.

RESOLUTION BOOK NO. 25 - PAGE 185

D. ORDINANCE NO. 2561 - BUDGET AMENDMENT FOR LUSTAR ECONOMIC DEVELOPMENT GRANT

Summary: See Consent Agenda Item "C" above.

ORDINANCE BOOK NO. 17 - PAGE 299

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E. RESOLUTION NO. 99-57 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF HEALTH AND HUMAN RESOURCES TO FUND THE FOOD SERVICE FOR THE SUMMER DAY CAMP PROGRAM

Summary: The City of Asheville wishes to apply for funding through the North Carolina Department of Health and Human Resources, Division of Maternal and Child Health, Child and Adult Care Food Program to provide food service in the Summer Day Camp Program.

The Summer Day Camp Program will provide supervised licensed child care, recreation, enrichment activities, and food service for children in kindergarten through 5th grade, June 7 through August 6, 1999, Monday through Friday, 7:30 a.m. 6 p.m. $75 per week for city residents, $85 per week for non-city residents. Sites will be located at Claxton, Hall Fletcher, Jones, Dickson, and Vance Elementary Schools; and Reid Community Center. Breakfast, lunch and snacks will be provided daily at no extra cost. The number of meals and amount of reimbursement will vary based on the total meals actually served each month.

The Parks and Recreation Department recommends the City of Asheville apply for the Summer Food Service Program for Children through the North Carolina Department of Health and Human Resources.

RESOLUTION BOOK NO. 25 - PAGE 187

F. RESOLUTION NO. 99-58 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT IN FAVOR OF THE METROPOLITAN SEWERAGE DISTRICT ACROSS PROPERTY OWNED BY THE CITY OF ASHEVILLE AND KNOWN AS THE ROGER D. FARMER MEMORIAL PARK

Summary: The staff is recommending that the City grant an easement for an upgrade to an existing sewer line which will be upgraded in Roger D. Farmer Memorial Park.

Staff has been working with Martin-McGill, a consultant for the Metropolitan Sewerage District, in coordinating improvements to be made on an existing sanitary sewer line and its permanent easement. The Parks and Recreation staff concurs with the final easement agreement draft, addendum and other provisions which will return the site to its current condition. The existing sewer line improvement and easement will not interfere with the usage of the park.

Staff recommends that the City grant an easement for an upgrade to an existing sewer line to the Metropolitan Sewerage District which will be upgraded in Roger D. Farmer Memorial Park. The language of the easement agreement is subject to the approval of the City Attorney's office.

RESOLUTION BOOK NO. 25 - PAGE 188

G. MOTION SETTING A PUBLIC HEARING ON APRIL 27, 1999, TO REZONE ALL OF EIGHT LOTS LOCATED ON ASHELAND AVENUE AND SOUTH GROVE STREET FROM OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT, EXCEPT FOR A PORTION OF ONE LOT BEING REZONED FROM REGIONAL BUSINESS DISTRICT TO OFFICE II DISTRICT AND A ONE FOOT STRIP ALONG FOUR LOTS ON SOUTH GROVE STREET BEING REZONED FROM OFFICE BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

H. MOTION SETTING A PUBLIC HEARING ON APRIL 27, 1999, TO REZONE A PORTION OF ONE LOT LOCATED ON ASHELAND AVENUE FROM OFFICE BUSINESS DISTRICT TO REGIONAL BUSINESS DISTRICT, EXCEPT FOR A ONE FOOT STRIP ALONG THE LOT BOUNDARY ON SOUTH GROVE STREET BEING REZONED FROM OFFICE BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

I. MOTION SETTING A PUBLIC HEARING ON APRIL 27, 19997, TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES (UNIFIED DEVELOPMENT ORDINANCE) TO CHANGE THE METHOD FOR DETERMINING WHEN SIGNIFICANT CHANGES HAVE BEEN MADE TO PRELIMINARY PLATS SO THAT FURTHER REVIEW BY THE TECHNICAL REVIEW COMMITTEE AND/OR THE PLANNING AND ZONING COMMISSION IS REQUIRED

J. MOTION SETTING A PUBLIC HEARING ON APRIL 27, 1999, TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES (UNIFIED DEVELOPMENT ORDINANCE) TO PROVIDE REGULATIONS FOR SIGNS FOR SECOND TIER DEVELOPMENT

K. MOTION TO PRE-APPROVE A LOAN COMMITMENT FOR $349,894 IN 1999/2000 HOME FUNDS TO MOUNTAIN HOUSING OPPORTUNITIES' WIND RIDGE PROJECT

Summary: The consideration of a motion to pre-approve a loan commitment for $349,894 in 1999/2000 HOME funds to Mountain Housing Opportunities (MHO) for its Wind Ridge Project, prior to approving the entire HOME and CDBG Consolidated Plan in May.

The Asheville Regional Housing Consortium has recommended a $349,894 HOME loan to MHO as part of the City's Consolidated Plan for the 1999/2000 CDBG and HOME programs. The Consolidated Plan is currently in its public comment phase, and is due to be discussed by Council on May 4 and 11 prior to submission to HUD on May 14. However, MHO needs a written commitment of funding before April 23, in order to satisfy state application requirements for the Low Income Housing Tax Credit program.

The Wind Ridge Project will develop 40 high quality rental apartments for low-income families on 8 acres off Compton Drive (currently part of the Eliada Home property). Project financing depends on its receiving $1,682,869 in Low Income Housing Tax Credits, in addition to an allocation of HOME funds, a bank loan and other public and private support. The project has received an extremely high rating in the first round of Tax Credit reviews, but MHO must provide evidence of the other financial support before April 23 in order to proceed to the final round.

Failure to provide evidence of the HOME commitment will cause MHO to forfeit its chance of competing for 1999 Low Income Housing Tax Credits.

City staff recommends pre-approval of a loan commitment of $349,894 in 1999/2000 HOME funds for MHO's Wind Ridge Project.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Sellers moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

CLOSED SESSION

At 5:13 p.m., Councilwoman Field moved to go into closed session to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuit about which the Council expects to receive advice are: Trinity Baptist Church Inc., City of Asheville and Carrier Heights Neighborhood Association - statutory authority is G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Sellers and carried unanimously.

At 5:25, p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

ADJOURNMENT OF MEETING

At 5:25 p.m., Councilman Sellers moved to adjourn the meeting and reconvene at the Asheville Civic Center Banquet Room to conduct the public hearing on the conditional use permit for Trinity Baptist Church. This motion was seconded by Councilwoman Field and carried unanimously.

At 5:50 p.m. the City Council meeting reconvened at the Banquet Room of the Asheville Civic Center.

PROCLAMATION:

A. UNITED WAY CAMPAIGN

Mayor Sitnick recognized Mr. David Bailey, Chief Executive Officer of United Way of Asheville and Buncombe County, who outlined the support given to the United Way by employees of the City of Asheville. He congratulated the City's United Way Campaign as making the "Top Ten" Employee Campaigns for 1998.

The City of Asheville made significant contributions to United Way's 1998 campaign. City employees were the largest employee group to volunteer for Day of Caring (in fact, one City department, Fire, had more off-duty volunteers than any other single Asheville employer).

On behalf of City Council, Mayor Sitnick thanked City Campaign Co-Chairs Mr. Keith Whittington, Richard Bass and Eric Valez (who coordinated the Day of Caring) for their hard work on the United Campaign.

PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR TRINITY BAPTIST CHURCH LOCATED AT 216 SHELBURNE ROAD

Mayor Sitnick said that next on the agenda is the application a conditional use permit for Trinity Baptist Church ("Trinity") located at 216 Shelburne Road. This is a public hearing for Council to consider whether the requested permit should be issued. There being no preliminary matters to be considered, she opened the public hearing at 5:55 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing. She then administered the oath to anyone who anticipated speaking on this matter.

Mayor Sitnick reviewed the procedures for this hearing by stating that City Council will first hear from staff who will describe the proposal and provide some background information. Then the applicant may make a presentation and then comments from the public will be taken. She said that there will be an opportunity for questions and rebuttal comments, as necessary. Following the hearing, Council will then debate the proposal and will take action on the request. Hearing no questions about the procedure, she asked for staff's presentation.

Mr. Carl Ownbey, Urban Planner II, said that this project is for the expansion of the existing church facility. The project will include a 2400 seat sanctuary, youth classrooms, and a recreational facility. The project has been submitted and reviewed under Level Three - subsection 7-5-9(A) of the Unified Development Ordinance ("UDO") by the Technical Review Committee ("TRC"). They approved this project with several conditions which the developer has addressed and resubmitted revised site plans. This property is within the City limits of Asheville.

City Council must take formal action as set forth in subsection 7-5-5 (E) 2 and shall state if the proposed conditional use meets or does not meet each of the following standards as set forth in subsection 7-16-2 (C):

Conditional Use Standards:

1. That the proposed use or development of the land will not materially endanger the public health or safety;
2. That the proposed use is reasonably necessary for the health and general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region;
3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;
4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood in which it is located;
5. That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City;
6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and
7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The Planning staff and the TRC state that this project meets all the technical standards for development in the RM-6 zoning district. (City Exhibit A)

On February 15, 1999, the TRC reviewed and approved this project with the following conditions:

1. Under the RM-6, day cares are not permitted and any reference to this use must be removed from the site plan (check the notes on Z-1);
2. Indicate the "vehicular use area" calculations on the landscaping plan as required by the parking lot landscaping requirements;
3. Indicate the screened dumpster location (approved under Level II site plan);
4. With the widening of Sand Hill Road, the revised site plan indicated a proposed retaining wall. Provide a detail of this retaining wall and secure an encroachment agreement from the N.C. Dept. of Transportation;
5. Provide a detailed plan of the new driveway access onto Sand Hill Road - alignment, stacking ability, and emergency access. Driveway permit is also required;

6. Indicate that parking lot lighting will be compatible with residential neighborhoods by maintaining projected lighting beams on-site by the use of low bollard lights for visibility and security. Also, each parking level have separate controls so only the lights needed can be turned on and timers should not be used;
7. Documentation on the stormwater runoff, including quantity and velocity, in the two additional stormwater lines shown on the site plan is required. Submit of this documentation to Engineering Department and a note to the Planning & Development Department that this documentation has been submitted; and
8. Additional land disturbing activities have taken place; therefore, these grading fees must be paid (provide copy of receipt).

(City Exhibit B)

Mr. Ownbey said that the above conditions had to be satisfied before the project was scheduled before City Council. The plans were revised by Trinity and submitted again for review by Planning staff, Engineering staff and Public Works staff. The plans meet all the requirements.

Mr. Ownbey said that if Council approves the conditional use permit, staff recommends the following conditions be placed on that approval:

1. Parking lot lights must have shields;
2. Parking lot lights must be low bollard lights and must have a maximum height of 12 feet;
3. Regarding parking lot lights, each level on separate circuit that can be switched off (no timers);
4. Additional landscaping along the southern property line and the parking lots (alternative landscaping);
5. Payment of any imposed fines ($900 currently outstanding) needs to be paid;
6. Correction of storm drainage and erosion control problems resulting from on-site inspections; and
7. Any other conditions that City Council feels appropriate to impose on this project.

(City Exhibit C)

By use of a color coded site plan, Mr. Ownbey explained in detail the approximately 20 acre site at the intersection of Shelburne Road and Sand Hill Road. He explained what is currently on site. He explained what the Level II project consisted of which was approved in April of 1998. He then explained what the Level III project consists of which consists of a 2400 seat sanctuary which will also include a Kindergarten-12 grade school, youth classrooms, some offices behind the Teen Center, approximately 160 additional parking spaces as a third level, and the addition of a softball field on the back of the site. With that, the Traffic Impact Analysis ("TIA") for a Level III made recommendations that Sand Hill Road needed to be widened to three lanes to accommodate left turn movement into the site; the turning lane will begin at the intersection at Shelburne Road and Salola and Sand Hill and continue almost to the end of the Church's property on Sand Hill Road. Also the sidewalk will be moved back and coordinated with the widening of Sand Hill Road. Also, part of the TIA and staff's recommendation was that a sidewalk be placed on the Trinity's side of Shelburne Road (there currently exists a sidewalk on the other side of Shelburne Road). (City Exhibit D)

Upon inquiry of Councilwoman Field, Mr. Ownbey said the 2400 seat sanctuary and K-12 School is 107,000 square feet, and the Youth Classrooms and Office is approximately 9800 square feet.

When Vice-Mayor Hay inquired about the parking spaces, Mr. Ownbey said that the Level III parking will consist of an additional 160 parking spaces. The entire site will consist of 600 spaces, which would also accommodate the ballpark parking.

Upon inquiry of Vice-Mayor Hay, Mr. Ownbey said that there are 1500 seats in the existing family life center which is currently housed in the Teen Center.

Mr. Ownbey said that there are no improvements planned for Sand Hill Road under the Level II or what is current, however, the Level III requires (under the TIA) a widening of Sand Hill Road to accommodate the additional traffic. The improvements to Sand Hill Road, which is a State-maintained street, will be at the developer's expense.

Upon inquiry of Councilman Cobb, Mr. Ownbey said that under our present ordinance there has to be one parking space for every four fixed seats. The 600 parking spaces does comply with our ordinance.

When Councilwoman Field asked how far away Shelburne Road is from Brevard Road, Mr. Ownbey said it was probably less than one mile.

By use of a chart, Mr. Ownbey described the project review process for Level I, Level II and Level III reviews. Following the chart down, he explained that more than 100,000 square feet or more than 50 housing units is a Level III review which is staff review, TRC review and recommendation and City Council approval. (City Exhibit E)

Mr. Ownbey said that during the review process, staff did review the definition of church in the UDO. It reads " Church means a place where religious worship is conducted. The term church shall not include day care, educational, recreational, and other facilities which are incidental to the place of worship." Currently there is a committee working on revising the definition of church and also the standards for worship. This committee is composed of neighborhood representatives and some clergymen. Their last meeting was in November of 1998. They have agreed on a definition of church and have submitted that to the Planning & Zoning Commission. The Commission has reviewed it but are not making any recommendations until standards for worship have been developed by the committee and presented to the Commission.

Mr. Ownbey said that during the TRC process for the Level III project, the City did receive 14 letters in opposition to the project and a letter from the Carrier Heights Neighborhood Association (City Exhibit C). In that letter, the Association requested (1) that the shields be placed on the existing parking lot lights; (2) that we indicate in some way that there has been some grading in the buffer area and what the City plans to do to rectify that situation (the City has issued the Church with a notice of violation and will work with them to add some additional landscaping), and that a conditional of approval include payment of the $900 fine assessed.

Upon inquiry of Councilwoman Field, Mr. Ownbey said that at the time of this project review, the City of Asheville did not have a traffic engineer on staff and the City contracted out that review. Both the developer's and the City's traffic consultants are located out of town.

Upon inquiry of Vice-Mayor Hay, Mr. Ownbey said that the combination of all the square footage for the whole Level III project is 173,263 and that is why the project is being reviewed under the Level III review process.

When Councilwoman Field asked what is the average size of a home in the area, Mr. Ownbey responded that by an aerial photo, there are a lot of small homes between 800-1200 square feet and there are also some larger single family homes between 1200-1500 square feet.

Mr. Scott Conklin, Project Architect for Trinity Baptist Church with Cort Architectural Group, said that they have been before the TRC four times and have gotten a 1500 auditorium/sanctuary approved with its required parking and now they are coming back before Council for a 2400 sanctuary and school.

Mr. John Cort, Principle in Charge of Cort Architectural Group, said that the site is 1/2 mile from Brevard Road. He said that he has given Council a copy of the last TIA and also not included in the last TIA is the reconfiguration of Brevard Road, which will make a much safer intersection as Shelburne goes into Brevard Road. The technical aspect is over with in that they had done a very thoroughfare job. With regard to Finding No. 5, he said that looking back in time, the 2002 Plan of this area was historically recognized as an institutional use in this area. Regarding Finding No. 6, exhibits show that this project is on an existing minor thoroughfare, that there is adequate water and adequate sewer, all from the 2010 Plan. With regard to Finding No. 7, Wilbur Smith (for the owner) and Kubilins Traffic Consultants (for the City) are both in concurrence that the three-lane highway for N.C. Dept. of Transportation and sidewalks around the facility will create a safe traffic situation. They have eliminated an entrance and gained a much more safe entrance. Regarding Finding No. 1, he said that was the purpose of the TRC review noting that there are 16 public health and safety officers who have reviewed this and said that it is adequate. Regarding Finding No. 2, all Council has to decide is whether a church is an essential service to the region or the community. With regard to Finding No. 3, there are six adjoining or abutting property owners: (1) the Church owns approximately two acres of adjoining property; (2) on the Dr. Waller property where grading was done too close to his property line, is where the MSD main sewer line is coming and there is no use of the Dr. Waller property; (3) there is a residence that they are keeping in tact to preserve the adjoining property owners; and (4) there are six adjoining property owners and a bank which areas are heavily landscaped. With regard to Finding No. 4, he said Trinity is trying to build a church and a school. In the 1980's they tore down Newton School because it was not an appropriate scale. This is an appropriate scale in that it will be a 600 student school. A 600 student public elementary school would take 20 acres minimum and up to 100,000 square feet. If it were a high school for 600 students it would be about 140,000 square foot. If it were a typical Buncombe County school, you would park 600 cars and would have 200,000 square feet of area. This is not an appropriate high school but, but we know it is an appropriate church site in that the scale is appropriate.

Rev. Jerry Young, Associate Pastor of Trinity, reminded Council that the size and the scale is appropriate. Three City Council's before the present City Council said it was appropriate in 1993, when the site was approved, in 1994 when it was re-affirmed and in 1995 when it was re-affirmed again - the same plan in front of Council now. He said that Dr. Ralph Sexton Sr., the founding Pastor of Trinity, had a vision when he moved to congregation to Shelburne Road nearly 30 years ago. His vision was to see a site in which they could minister to the people of Asheville. The reason for the softball field is that they have a ministry to young people, Cub Scouts, Boy Scouts, and bussed kids from a lot of the projects. The reason they want to expand their educational facility is because they have a Sunday School every Sunday with over 700 in attendance. He stressed that Trinity ministers to people and their concern is that they be able to continue the ministries that are continuing to grow. The ministries have not grown because of a person or because of a problem, but simply because God has been pleased to bless the work and ministry of Trinity. He encouraged Council to vote in favor of the conditional use permit.

Upon inquiry of Councilman Cobb, Rev. Young said that there are now 30 students in their Bible College and they envision the College growing to maybe 100 students

Vice-Mayor Hay asked what the building will look like. Rev. Young said that to the highest point on the roof in the front is 50 feet (one story) . On the back side, it will be four stories.

Mr. Frank Goldsmith, attorney representing the Carrier Heights Neighborhood Association, said that as you see from the history of this process, this is just the latest step in an effort by Trinity to impose its will on this neighborhood, regardless of what the law says and regardless of whether the proposed development would be in keeping with the characteristics of that neighborhood. This process began at the end of the chart (City Exhibit E), i.e., it began with a proposed rezoning application submitted over a year ago. That process was postponed at the request of the Church for close to six months so that, according to the City Council meetings, the Church could work with the neighbors and try to develop a conditional use type of permission to use their property for its purposes. Apparently the Church was satisfied that the conditional use they are now seeking would not work because they came back then, after the lengthy hearing on August 25, 1998, and again applied for a rezoning of the property which was denied. At that meeting and thereafter, there was talk about amending the ordinances so that conditional use zoning would be permitted. It was the thinking of everyone then that under the current ordinance, conditional use zoning would not work for this particular zoning. Those ordinances have not yet been amended and yet we're here with a conditional use application by the Church. Much energy has been spent by the City and the groups of people trying to come up with a definition of Church and that process is still on-going. However, it seems to have been overlooked in this presentation, both on the part of the City staff and on the part of Trinity. There is a Level II process that is on-going and that is still pending. And now there is a lawsuit pending, not only against the City but also against the Carrier Heights Neighborhood Association. He finds it troubling that the timing of this lawsuit comes immediately before Council is meeting to decide on their conditional use permit. It seems to him the motive can be one of two things - either to suggest that this process now is clearly not going to work so they are resorting to the courts, or, it's a bullying tactic to try to coerce Council into approving a conditional use permit that should not be granted because of the treat of litigation that is now pending. Trinity is seeking not only relief against the City but against the Carrier Heights Neighborhood Association. Trinity is asking the people who own these homes in the area pay the Church's legal fees and that they be restrained from enforcing the ordinance. The neighborhood is only exercising their right to appeal a decision in the process providing for by law. That is the tactic we are seeing from this ministry.

Mayor Sitnick said that this public hearing is only about whether or not to issue a conditional use permit for the Level III project.

Mr. Goldsmith explained that the City of Asheville's zoning ordinance is different from some. Some leave conditional use permits up to a Board of Adjustment, however, the City's scheme has permitted uses within each district, uses by right within each district (which are uses that must meet certain standards that are specifically set forth in the ordinance) and then the conditional use permit that can be granted in very unusual circumstances. He explained that in the conditional use zoning, the permitted uses are very few. With respect to most of the districts, you have a conditional use that is listed that may be permitted. Generally, in all of them, they say Level III has to be compatible with other permitted uses in that district. His point is that in all of the residential classifications, including the RM-6 in which this mega-church is proposed to be located, the sole conditional use permitted is Level III (residential). It is there to ensure that the only kind of Level III project is a residential project. He felt is Council is bound by how the UDO reads. No one has said that this proposed project is a residential plan under Level III. It does not fit the definition of residential, which means houses and places to live. It does not mean a ballfield, sanctuary, college, television ministries, or a school. If they reach that magnitude in size, then under the terms in the UDO, they must be residential to be permitted as a conditional use. He felt that Council need not even reach the issue of the seven criteria that must be met. He felt that this whole proposed use is completely out of order because it is not a Level III permit application. In August, there was discussion about the need for compatibility. The whole UDO talks about a comprehensive plan for the City development and compatibility within neighborhoods and within districts. To permit the expansion of this institution, the imposition of this enormous campus of institutions that are far removed from a simple church sanctuary as defined in the ordinance, and to impose that on this neighborhood is far from creating a walkable neighborhood. He felt that Council can't skip the definition of what a church is in the process of getting to this public hearing tonight. A church is defined in a certain way under the UDO and that can't be ignored. He urged Council to look carefully at that language and to deny this application.

Councilman Tomes asked if certain conditions (light the brightness of the lights) placed on the Church by the neighborhood have been met. Mr. Goldsmith replied that they had not been met. However, the TRC has established to its satisfaction that certain technical standards have been met and part of their conditions they suggested be imposed had to do with lighting, but that does not satisfy the neighbors' objections.

Councilman Tomes said that in listening to the presentations he hears an effort being put forth on the part of Trinity to be a good neighbor.

Upon inquiry of Councilwoman Field, City Attorney Oast said that this is a Level III review because of the size of the project. Mr. Goldsmith is correct in that conditional uses under the RM-6 do say Level III (residential) and it's also true that the conditional uses in another part of the Code indicate that Level III site plan review projects are permitted in all zoning districts as conditional uses. City staff has made a determination that this is appropriate for consideration as a conditional use project in this neighborhood.

Mayor Sitnick asked the City Attorney to distinguish the difference between adjoin and abut. City Attorney Oast said that he was not sure that there really is a difference in how it affects this property. Adjoining and abutting both suggest that there is some point at which the property lines touch each other. He said that there is case law to the effect that if properties that are in the area, but not necessarily are abutting or adjoining, can show some special damage with respect to how their property values might be affected that they do have some interest in the proceeding.

Mayor Sitnick said that as an example, you don't have to abut a ballfield in order to be impacted by it.

City Attorney Oast said that in this situation, as far as the property values go, what the courts have held is that it has to touch the property line of the property that the conditional use permit is being proposed for. That is the definition of adjoining or abutting in this sense. That doesn't mean that the property owners in the area can't establish some other effect that the conditional use may have on their property.

The following individuals spoke against City Council issuing the conditional use permit for several reasons, some being, but not limited to: the average home in the neighborhood is less than 2,000 square feet and that 50 similar homes could be placed in the footprint of the proposed 107,000 square foot facility (not taking into account the existing 600 seat auditorium and yet to be constructed 1500 seat auditorium); the 2010 Plan indicates this area as low density residential; the campus oriented Trinity plan is incompatible with both the City's 2010 Plan and the UDO's definition of compatibility; the surrounding neighborhood homes will become unbalanced if a large multi-use non-residential facility is allowed to locate within the residential area; the neighborhood's uniqueness is already destroyed by earlier plans which permitted the grading and destruction of approximately 10 acres of vegetated buffer zone area; an institutional facility of the scale and density proposed will also destroy the character of the neighborhood by a massive parking facilities, institutional lighting fixtures and buildings so large in scale and bulk as to thwart the residential homes surrounding it; the proposed baseball field will generate undue noise pollution and will not benefit the children and families of the neighborhood in any way unless they are members of Trinity; the entire scope of the project will overburden an infrastructure of roads that are ill equipped to handle the amount of traffic that this facility will generate; rezoning of the property from RM-6 to Institutional has already been denied and nothing has been changed from the original site plan for the same facilities, other than attempts to have this project approved under different classifications which the UDO does not specifically list; if the project is allowed to be completed it will only serve as an ugly reminder of commercial over-development in an established residential neighborhood; there is already a traffic hazard on Shelburne Road in that the sidewalk is right next to the already busy Shelburne Road; greenspace will be eliminated; nothing commercial is allowed in a RM-6 zone; destruction of trees and land were done without a site plan; lights already burn all night long without no regard for neighbors; where is the legal zoning justification to allow one church out of 200 in Asheville to become a mega-church on a 2-lane road; no other church has objection to the UDO definition of church - they simply do the right and legal thing - they find an appropriate location and move; if we let one church do this, then Council has to let the other 199 churches have their way also; the neighborhood doesn't object to Trinity, just mega-business churches in RM-6 zoning on a 2-lane road; the 2400 seat sanctuary (convention center) will destroy the neighbors quality of life which will be detrimental to their health and welfare; this "convention center" does not belong in the City in a residential neighborhood; the project, if built, will be an emotional health problem for all of its neighbors; the UDO was supposed to protect neighborhoods from just destruction as this; the third lane on Sand Hill Road is next to nothing in terms of the traffic hazard which already exists on Shelburne Road; Trinity advertises extensively for members outside of the neighborhood and the majority of Trinity's members do not belong anywhere in the City of Asheville, particularly in West Asheville; no place to walk on either side of Shelburne Road; a traffic count should be performed; is water pressure adequate on the old water lines to accommodate this project; the City should work in collaboration with Trinity in making a historic park for West Asheville adjacent to the present buildings; with all the trees gone, the new building site could be a community pavilion; the only effort the Church made to work out the rezoning issue with the neighbors was a construction person asking one of them to "call off" the valid protest petition; because of Trinity expansion in the last four years, the homes on Shelburne Road have decreased in value; a Realtor has stated that because of the increased traffic, a home on Shelburne Road would be valued at 5% less; when the Pastor of Trinity publicly states that they are not going to live under the UDO, it is a sad day for his profession and others who obey the law; Trinity does not obey the current noise ordinance; commercial buses are parking in front of Trinity and left for hours with black smoke billowing from the buses polluting the neighborhood; Trinity has violated the sign ordinance in that they have placed a mobile sign on their residential street; 200 churches in Asheville abide by the law except for Trinity which they have clearly said they are not going to abide by the City Council's regulations and the UDO; Biltmore Baptist Church lost some of their property due to highway expansion, however, they found suitable property to continue their ministry; Trinity should not have been allowed to get to the point they are at now; Council has all the power they need to regulate churches like every other resident and business in Asheville; no problem with Church growing, but not to the detriment of the neighborhood; infrastructure is not adequate; and 600 parking spaces will not be adequate for the over 5,000 total seats of the project:

Mr. Tom Lewis, Chairperson of the Carrier Heights Neighborhood Association
Ms. Judy Davis
Ms. Leah Karpen, resident on Shelburne Road
Ms. Jessie Copeland
Ms. Ann Anderson
Ms. June Lamb, resident of 16 Carrier Street (testified she submitted her statement earlier to City Council)
Mr. J.D. Jennings, resident of 251 Shelburne Road
Ms. Jean Jennings, resident of 251 Shelburne Road

Mr. Robert C. McCarthy, resident of 243 Shelburne Road (submitted comments as Audience Exhibit B)
Ms. Barber Melton, Vice-President of Haw Creek Community Association
Mr. Norman Anderson, resident of 147 Shelburne Road

Dr. Dwayne Davis, resident on Zephyr Drive read a letter dated April 13, 1999, from Mike Miller, Realtor) (Audience Exhibit A) which reads in part that in his "professional opinion is that the proposed major expansion of the church will have a negative impact on local property values and on the overall quality of life in the Shelbourne Road area." City Attorney Oast said that it is generally preferably to have sworn testimony and he pointed out to Council that although the letter was read, there is a potential hearsay objection about that.

At 7:30 p.m., Mayor Sitnick announced a short break.

Rev. Jimmy Dykes, Pastor of North Asheville Baptist Church and Chairman of the Community Council for Biblical Values, said that this all relates to the problems with the definition of church in the UDO. In August of 1998 after the denial to rezone the property to Institutional, he was encouraged to hear Council say that the church definition in the UDO was "bad law" and that it should be amended. Since that time, the definition issue has still not be resolved. It was his contention that Trinity should not be penalized while the City fixes bad law and Trinity should be allowed to continue their ministries and expand as much as the property and the infrastructure will allow them to.

Ms. Carol Collins, speaking on behalf of the Community Council for Biblical Values, said that Trinity has a heart for children's programs, disadvantaged children, teenagers, families and the common man. She relayed to Council some success stories resulting from Trinity's ministries. Much of the criticism that churches in the area receive are from people who just don't understand what good neighbors churches are. The Charter School was allowed on Brevard Road with no impact studies, thus setting a precedent. The health issue raised about the tractor trailers, has long ago been resolved in that they have rented a warehouse at $36,000 a year to continue to conduct that ministry. Plans for Trinity been under approval since 1993 and were approved and reaffirmed in 1994 and 1995, which exempts Trinity from the UDO because they are already vested. Families who attend Trinity and live on Shelburne Road have no problems regarding the project. Trinity is improving the neighborhood by putting a sidewalk on their side of the street. Trinity lowered the height of the original building to specifically accommodate the neighbors view of Mt. Pisgah. Trinity has been a good neighbor and she urged Council to approve the conditional use permit.

Ms. Brenda Crisp spoke in support of Trinity's conditional use permit in that they minister to the needs of our children.

Rev. Ralph Sexton Jr. said that on behalf of Trinity Baptist Church they would not in any way want to inflict any discomfort on the neighborhood. They want to and have tried to be a good neighborhood for 30 years. He said that with regard to the green spaces, no one was more outspoken about not cutting trees than he was at various meetings. He said that he believes in preserving trees and the heritage that we have in that area. They have plans to put in a park all along Hominy Creek, a bird walk and a meditation walk that would be a green-link all the way across to the new green areas on the other side of the French Broad River. He admitted that they have created problems in the past with regard to their growth and sometimes mistakes are made along the journey. They are now spending $3,000 a month to rent a warehouse so the large trucks will not be a problem for the neighborhood. He also said that they have made arrangements for no more compressors running all the time. He felt like Planning & Zoning Commission let down City Council by allowing this issue to get this far. He said most mega-churches are defined as 5-10,000 seats and that is not what they are proposing. He said that a lot of what is shown on the site plan is just for the future and that's part of good planning. He didn't want the impression of being a bully to anyone because that is not what they are after.

Ms. Melanie McCoy and Mr. Wesley McCoy both spoke in support of the conditional use permit so that children can learn about God. They wished there would be more Christian schools.

Mr. Lawrence Henson, member of Trinity Baptist Church, spoke in support of Trinity Baptist Church and it's ministry to the children.

Mr. John Cort responded to Mr. Goldsmith's comments. He said that they are not imposing the will of the church, but complying with the very thorough process. He said that Council is not charged with determining the appropriateness of this development, in that the only place that appropriateness appears is in the TIA and that deals with an appropriate location with respect to traffic. The TIA has been re-done four times and everyone has conceded that the safety of Shelburne Road has been improved by putting sidewalks back, triple lanes on Sand Hill Road and a better distribution of traffic. He said that no amendments are necessary to the UDO. He noted that they comply with it as it is. He said there is nothing wrong with the church definition and it is fine for their proposal. The lawsuit is not addressed in our plans or in the ordinance. He said that anything you do of value is a long process and it takes a long time because the conditional use process is a process of care. The use they are asking for is a use by right and it is the right of the property owner to put a school or a church there. He said that with regard to the limitation to residential, that is not the way to interpret the ordinance. With regard to the comments about bussing into the site, if the site is appropriate for a school, it is the practice of the public school system to bus across town in order to achieve balances and that has been invoked by courts. He said that the whole issue is a matter of scale and urged City Council to vote in support of approving the conditional use permit.

Mr. Ownbey said that the school is a use by right and can go on this property if it meets certain development standards. The Bible College that currently exists on the property is not a permitted use, is not a use by right and cannot expand, but can exist as a grandfathered use.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 8:25 p.m.

Upon inquiry of Vice-Mayor Hay about the voting procedure, City Attorney Oast said that there is not process specified by statute, however, in the past, Council has made a motion to approve or deny the conditional use permit. In the course of voting on that, Council should state his or her basis for the decision and then direct the City Attorney to draft an Order which he will bring back to Council for them to vote on again, which contains findings and conclusions. The other way to vote on this issue would be for Council to vote on each finding individually and if any one of those findings does not pass by a majority vote, then the conditional use permit would fail. He said that Council can vote either way.

City Attorney Oast also made the procedural point that prior to the start of this hearing, he met with both attorneys and advised them that they would have the right to cross-examine anyone or ask questions of anyone who speaks. Since they have not taken advantage of that opportunity, he assumes that is their choice.

It was the consensus of City Council to vote to either approve or deny the conditional use permit and direct the City Attorney to draft an Order which will be brought back to Council for them to vote on again.

Mr. Frank Goldsmith raised a point of order being that in addition to the seven criteria in Sec. 7-16-2, he felt it was appropriate for Council to vote on whether this permit application meets the Level III residential standards. He felt that Council has to interpret that question first and that would be a valid reason, independent of the seven criteria, for turning down the application.

City Attorney Oast said that the City has to take the position that staff's interpretation of that issue and the interpretation that allowed this to go forward to the conditional use permit hearing process, is a matter that should be appealed to the Board of Adjustment, if there is an appeal. Those are interpretation issues that he did not think City Council could resolve.

Councilwoman Field asked if the City agreed with the traffic study performed by Wilbur Smith Associates for the petitioners. Director of Engineering Cathy Ball said that at the time the City received this study, they did not have a Traffic Engineer on staff so they sent it to their consultant in Charlotte for their review. There were four different revisions of it. By the time it was finally drafted, the information in the report was accepted by our consultant. There were approximately three additional requirements that our consultant imposed upon that was not part of the recommendation. Those were widening Sand Hill Road to three lanes, adding sidewalks along Sand Hill Road and improving an intersection on Shelburne Road.

Upon inquiry of Councilwoman Field about the level of service, Ms. Ball said that there are two levels of service described in the TIA, one for the road itself and the capacity of the road; and the other is for intersections. The conclusion of the report is that both roads can carry 10,000 vehicle trips per day and anything less than that it will still be a Level A, which is the best. So even with the increased amount of traffic, it still doesn't meet 10,000 vehicles per day.

Councilwoman Field asked when the 2400 seat sanctuary is completed, which may be 5-10 years in the future, was general increase in traffic in the community considered? Ms. Ball said that future increase was considered.

Councilwoman Field said that because we only have hearsay in a letter from Mr. Miller regarding the increase or reduction of abutting or adjacent property values, has the staff done any work on that to verify property value changes? Mr. Ownbey said that staff has not done any research in that area.

Councilwoman Field felt she could not make a decision if the information is not available. City Attorney Oast said that in these situations, because Trinity is applying for the permit, it is their burden to come forward with evidence to satisfy Council on that point.

Rev. Sexton said that with regard to a house and property located immediately adjacent to the Church property, they found that property was for sale through a Realtor and it was purchased for over $250,000. He said that was very much up in value because it was adjacent to the Church.

Councilwoman Field said that it's just that this size could have an impact on the value of property in the whole neighborhood and everybody knows that property in Asheville is appreciating because every time we turn around, the cost of an average house goes up. We've just done a valuation, and it doesn't seem to me that it would be too difficult to look at what the tax value was in 1994 and then look at the tax value in 1998 an aggregate.

Rev. Sexton said that he thought the biggest player you are going to have in the property values of West Asheville has nothing to do with Trinity Baptist Church. It's going to have to do with the deterioration of West Asheville in general and that we are seeing the commercial zone dissolve, we're seeing the service area, our road area go down, our sidewalk areas are down and it is now becoming a mixed ethnic community where it was an all white community in the past. And that's had more to do with the property values than anything else.

Vice-Mayor Hay felt that the present day valuations may not answer the question.

Councilwoman Field wondered why, if there is no way to substantially answer this question, are we considering it at all.

City Attorney Oast said that if the evidence is not here, it is up to Council to determine whether the evidence you have gotten is sufficient to support your findings on this and the Courts have held that generalized concerns may be considered. But, it depends on the weight that Council wants to put on them.

Mayor Sitnick felt that if Council is to make a determination on land value that they should have a real estate appraiser or someone who is considered an expert in that field give us the information we need.

Councilwoman Field said that she wouldn't feel comfortable in accepting comments from a real estate appraiser that was for one side or the other. She would want an independent real estate appraiser. As an architect, she would hope that any new construction that was done by a reputable architect would increase the value of the property. Certainly the landscaping and other things that are shown on this plan would make for higher property values in her opinion. She felt she could not make a decision on that particular issue because staff has not given her any information.

Councilman Cloninger felt that it's not necessary that Council necessarily receive evidence on all of the seven issues. The people here tonight presented Council with the evidence that they wanted us to consider in making a determination. He felt Council should make their decisions based on that and move forward. He didn't think it's essential that Council have evidence on every single point.

Mayor Sitnick said that she actually heard evidence from one gentleman who talked about property values being diminished. We heard it on both sides and apropos of Councilwoman Field's comments, you have to take the evidence presented by each side as being a bit biased. That's why she felt it would have been nice to have somebody who was an expert in property values, maybe specifically in West Asheville, present us with some information.

Councilman Cloninger agreed that it would have been nice, but he felt that Council can give whatever weight they want to on the testimony that was given.

Mayor Sitnick stated that Council has to state if the proposed conditional use meets or does not meet each of the seven standards.

Councilwoman Field noted that Finding No. 3 reads "the proposed use or development of land will not be substantially injure the value of adjoining or abutting property." The Church has addressed the adjoining or abutting property. The finding, however, doesn't say anything about the neighborhood.

Mr. Cort stated that in his presentation, he stated that the six property owners that are adjacent to the recreational use are the ones most affected and a recreational use is a permitted use without the process.

Mayor Sitnick asked if the conditions mentioned earlier by Mr. Ownbey (like shields on the lighting, shorter lights, lights on a timer, increased landscaping, payment of fines for violations and erosion and storm drain improvements) are staff imposed conditions should the conditional use permit be granted. Mr. Ownbey said that those are staff and the TRC's recommendations for conditional use approval and they must be met and be a part of the conditional use approval.

Mr. Ownbey responded to Mayor Sitnick's questions concerning the existing and proposed sidewalks on Sand Hill Road and Shelburne Road.

Upon inquiry of Councilwoman Field if there is room on the property to get a three or five foot tree lawn between the sidewalk and the street, Mr. Ownbey said that there will have to be some moving of some existing trees that were planted when the parking lot area was developed but there is room to move it back. He noted that there is a requirement for a five foot buffer strip between Shelburne Road and the sidewalk and also between Sand Hill Road and the sidewalk.

Councilman Sellers said that this is a difficult decision for him. He used to live at 195 Carrier Street for eleven years, but he can also appreciate the work the Church has done and continues to do. He feels like it is a win or lose situation and it should not be that way. He moved to approve the conditional use permit for Trinity Baptist Church located at 216 Shelburne Road, with the following conditions: (1) Parking lot lights must have shields; (2) Parking lot lights must be low bollard lights and must have a maximum height of 12 feet; (3) Regarding parking lot lights, each level on separate circuit that can be switched off (no timers); (4) Additional landscaping along the southern property line and the parking lots (alternative landscaping); (5) Payment of any imposed fines ($900 currently outstanding) needs to be paid; (6) and Correction of storm drainage and erosion control problems resulting from on-site inspections.

The motion made by Councilman Sellers was seconded by Councilman Tomes. Councilman Tomes said that this has been one of the most difficult decisions he has had to deal with since he has been on City Council. He said in the times in which we live, there is a challenge as community leaders to help bring a sense of wholeness of the social fabric of our society. Government is cutting back and there are increasing demands placed upon faith communities to deal with the total person. It's out of this kind of conviction that many of the ills in our society must be dealt with in a holistic manner. If we are going to experience the kind of vitality with the change in demographics of our society, we have to make the hard decisions. And the hard decisions must deal with the total person. It's out of that kind of conviction that he will support the motion.

Councilman Cobb agreed that this is a difficult situation, especially in light of the fact that he is a strong supporter of neighborhoods. He said Council needs to make a decision based on what they feel is the right thing to do. He said we are not here to define ministry - that is not our job. We are here to take care of the zoning restrictions and try with those to protect the neighborhood with buffers, greenspaces, safety, lighting, etc. Technically all these items have been done. His biggest problem out of the seven findings is No. 4 and that we must assure that these are complied with before we approve the permit. He said that if this is RM-6 zoning area and Trinity decided to move for whatever reason, they could sell their land to a developer and they could build six units per acre on the entire 20-23 acres that it would cover the same space that all the buildings of the Church will cover. There would be no difference in square footage. He has been here since 1954 and Trinity has been in West Asheville since 1973 and he has never heard any complaints about this Church. However, is he concerned about the neighborhood concerns. Both have been good neighbors. However, since Trinity has meet all the requirements that the City has said they need to meet, he doesn't see how the City can do otherwise but approve the conditional use permit, with the TRC's conditions.

Vice-Mayor Hay said that he would vote against the motion. He said that they are directed to not approve the conditional use permit unless each one of the seven findings are addressed in a positive way. He cannot find that No. 4, the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located. For that reason, he cannot vote to approve the conditional use permit. He said a 107,000 square foot building is, in his opinion, too big for the neighborhood.

Councilman Cloninger said that he will vote against the motion. He very much respect the good work of Trinity Baptist Church and respect all that they hope to accomplish with this project, however, he felt that this project is too big for a residential neighborhood. If this were a proposal for a commercial area, I would whole-heartedly support it. But given the project is basically surrounded by residential homes, he does not think that the motion should pass. He did not feel that Finding Nos. 1, 4 or 7 have been met.

Councilwoman Field said that she would vote in favor of the motion. She was concerned about Finding No. 3, but since she could not find any reason why the proposed use would substantially injure the value of adjoining or abutting property, she would have to say that that finding has been met. She said that the traffic study shows that there will not be undue traffic congestion caused given the additional requirements that we put on this conditional use. But most of all, she believes in mixed use and in the whole process of zoning, which is to provide buffering between inconsistent uses so that we can have a community that isn't little isolated pockets and ghettos that is all residential, or all commercial, or all institutional. We should all be able to live together. For her, it's a matter of the principles of design, zoning and planning that make for good communities. She felt we have done a lot of damage over the last 30 years putting ourselves in isolated little neighborhoods that are made with lots of dead-end streets.

Mayor Sitnick said that she has great respect for the Church, what they are doing and what they intend to do. She has great respect for the neighbors and what they have had to deal with regarding this issue. She agreed that this is a very tough decision. She will vote against the motion. She said the RM-6 zoning to Institutional was denied primarily because the Institutional zoning would have allowed all of the things that are being sought in the conditional use permit. In addition to that, she believes that Finding No. 3 has not been adequately addressed. Since she is not a Realtor, she cannot say whether ballfields and large structures are going to increase value, injure value or diminish value of adjoining or abutting properties. My personal opinion is that she would not want to buy a house across from a ballfield simply because of the noise, the lights, etc. In addition to that, Finding No. 4 is a concern of hers. It may be true that that property zoned RM-6 could accommodate so many houses that it would equal the 173,000 square feet proposed by the Church, but that would be in more character with the neighborhood. That would be single- or multi-family homes that had good design and a neighborhood kind of feel to it, rather than an institutional feel. Therefore, Finding No. 4 is not met in anyway. She also feels that Finding No. 5 is also not met because the 2010 Plan, which is a guide to City Council, calls for low density residential in that neighborhood and certainly this is not low density residential. She appreciated staff's conditions and support them fully. She would also like to say that it would be her hope that since this looks like this is going to pass, that (1) daytime, as well as nighttime noise, is ameliorated as best as possible; (2) whatever lights exist either for the ballfield or for the parking areas (which she feels strongly should provide security) be taken into account, not necessarily adjoining and abutting houses, but all of the houses within their view; (3) that whatever buffers that are put in are put in are as heavy as possible; (4) that the park and/or ballfield that was described could possibly be used by the community, maybe the ballfields could be used by the community. The City is always looking for ballfields, and I certainly wouldn't want to take them away from Church members but maybe something could be worked out. Because of Findings No. 3, 4 and 5, she was not comfortable in voting in favor of the motion. Our Constitution requires that we not discriminate for or against churches or religion in any way, no matter how we might personally support what the churches do for our community. She had to wrestle with the fact that any other use of this size, remembering that we cannot take use into consideration, Level III conditional use permits contain to size only, any other structure or development of 173,000 she could not vote for.

The motion made by Councilman Sellers and seconded by Councilman Tomes passed on a 4-3 vote, with Mayor Sitnick, Vice-Mayor Hay and Councilman Cloninger voting "no".

City Attorney Oast said that he would draft an Order that includes the conditions that Council suggested. He said that because this motion passed by a 4-3 vote, there is a statutory requirement that it come back before City Council for a second vote.

Because Vice-Mayor Hay will be out of the country on April 27, 1999, (the next formal meeting date), it was the consensus of City Council to schedule the required second vote on the approval of the conditional use permit for Trinity Baptist Church on May 11, 1999.

Rev. Sexton said that the second reading date of May 11, 1999, is not a problem at all for the Church.

UNFINISHED BUSINESS:

NEW BUSINESS:

OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 23, 1999; THE COMMUNITY MEETING HELD ON MARCH 30, 199; AND THE WORKSESSION HELD ON APRIL 6, 1999

Councilman Cloninger moved for the adoption of the minutes of the regular meeting held on March 23, 1999; the community meeting held on March 30, 1999; and the worksession held on April 6, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the week of March 19-April 8, 1999: Terry Morris (Sanitation), Bill Cogburn (Water), NC Dept. of Transportation (Water), Bell South (Water), Kerri Autry (Fire) and Janice Plemmons (Fleet Management).

These claims have been referred to Asheville Claims Corporation for investigation.

INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Claude Smith, C-4 Crowfields Condominiums, requested information from the City with regard to a fire at Crowfields, noting that he is not represented by the homeowners association. City Manager Westbrook said that he would talk with Mr. Smith to find out what documents were requested and furnish those to him, if appropriate.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:19 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - April 20, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Councilman H. Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Edward C. Hay Jr. and Councilman M. Charles Cloninger

CONSENT:

Donation of Montford Hills Property

Summary: The Parks and Recreation Advisory Board and staff are recommending that the City proceed with accepting the donation of property located in Montford Hills Community from the Neighborhood Housing Services.

The Parks and Recreation Advisory Board, at its February meeting, unanimously approved accepting the donation of property from the Neighborhood Housing Services. Several months ago, Neighborhood Housing Services approached the City of Asheville in regard to accepting eight parcels of property located near Westover Drive and Tacoma Lane in the Montford section. Staff has reviewed the potential use of this property and has determined that it could serve as a possible greenway connection in the future or as protection of open space land. Staff will continue working with the Legal Division in regard to the acceptance of this property contingent on securing a proper boundary survey, conducting a Phase I environmental assessment, and review of any deed restrictions. If, after this review, it still seems in the City's best interest to continue toward acceptance of this property, staff will proceed with securing the title.

The Parks and Recreation Advisory Board and staff are seeking City Council approval to continue the investigation of acceptance of donated property and to authorize the City Manager to enter into any agreements necessary for this transaction.

Resolution Rejecting Bids on Two Vacant Lots on Sara Street

Summary: The consideration of a resolution rejecting bids on two vacant lots on Sara Street and removing said lots from the surplus properties list.

On March 9, 1999, the City Council directed the City Clerk to advertise for upset bids on two vacant lots on Sara Street. The offer to purchase was from MGS, LLC, in the amount of $10,700. The advertisement ran in the Asheville Citizen-Times on March 12, 1999, as provided in N. C. Gen. Stat. sec. 160A-269. Upset bids were received and the property was re-advertised.

Subsequent to the advertisement for upset bids, the Parks and Recreation Department staff identified a need to retain the property as a part of Riverside Cemetery for greenway access. The Parks and Recreation Department staff have requested that all bids be rejected and the properties be removed from the surplus properties list.

Community Development staff recommends adoption of the resolution

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Budget Amendment for Reed Creek/Broadway Greenway

Summary: The consideration of a budget amendment, in the amount of $130,000, to appropriate grant funds from the State of North Carolina, Department of Environment and Natural Resources in the National Recreational Trails Fund Program to construct a greenway trailhead and ramp segment on the Reed Creek/Broadway Greenway.

The Broadway Greenway represents the next section in the City of Asheville's urban trail corridor linking the UNC-Asheville to the downtown business district. Phase I of the corridor was completed in 1997 with the first section of the Weaver Blvd. Greenway. The next section of Weaver Blvd. will be complete in 1998/1999. The City has been working for some time to develop the Reed Creek/Broadway Greenway along Reed Creek on the west side of Broadway. Eventually the corridor will link downtown neighborhoods to the Weaver Blvd./Glenn's Creek Greenway.

The focus of this grant will be the segment of greenway between Chestnut and Magnolia Streets. The greenway begins at Chestnut Street where a large, five points intersection is located. The grade change from Chestnut to Reed Creek is very steep. A ramp will be needed to provide wheelchair and bicycle accessibility to the greenway. Since it is a large, busy area, the entrance will need a strong visual statement which will accentuate where the greenway begins. The entrance is proposed to include signage, map, and benches.

The Parks and Recreation Department recommends the City of Asheville accept the grant funds on behalf of the Parks and Recreation Department into the Parks capital improvement budget for construction of the trailhead of the Reed Creek/Broadway Greenway.

Budget Amendment re: Speedway Lease Funds

Summary: The consideration of a budget amendment to appropriate $75,000 that was received from HMS, LLC, into a capital project in the Parks and Recreation Department for the lease of the Asheville Speedway for the 1999 season.

In January of 1999, the City of Asheville entered into an agreement with HMS, LLC to allow racing at the Asheville Motor Speedway for one more season. This agreement called for a lease payment of $75,000 to be incorporated into a capital fund in Parks and Recreation that would go to the development of a master plan for the Speedway property. The purpose of this amendment is to appropriate these funds into the budget ordinance.

The Parks and Recreation Department staff recommends City Council approval of the budget ordinance amendment for $75,000.

Authority for Clerk to Advertise an Offer to Purchase Disposal Parcel 59X near the corner of Asheland Avenue and Phifer Street

Summary: The consideration of a resolution directing the City Clerk to advertise an offer to purchase for upset bids regarding Disposal Parcel 59X near the corner of Asheland Avenue and Phifer Street.

The bid of Rex Ballard in the amount of $139,000 for the purchase of Disposal Parcel 59X in the East Riverside Redevelopment Project is not less than the established minimum price of $139,000.

Disposal Parcel 59X is an Office zoned lot near the corner of Asheland Avenue and Phifer Street comprising 0.639 acres. The bid from Rex Ballard for Disposal Parcel 59X includes the proposal to incorporate the lot into the adjacent property currently owned by Rex Ballard. The development proposal consists of landscaping and parking consistent with the Unified Development Ordinance.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

WEST ASHEVILLE RESOURCE CENTER UPDATE

Ms. Debbie Ivester, Superintendent of Administration in the Parks & Recreation Department, said that this is the consideration of City Council's approval to proceed with the development of the upstairs portion of the City-owned building located at 970 Haywood Road for a Community Resource Center.

For several weeks, the Parks and Recreation Department, the Police Department, and several members from City Council have been working towards finding an alternate location for the Community Resource Center which is currently located at 415 Haywood Road. The current lease for this space at 415 Haywood Road will expire at the end of May, 1999. An extensive search has occurred along Haywood Road to find suitable property for the transfer of this site with the most viable location being in the old library portion of the City-owned building at 970 Haywood Road. The West Asheville Library currently has been using the space for programs sponsored by the library system as well as using the area for public meeting space for various groups. The staff's proposal before City Council is to utilize one-half of the upstairs space for the Community Resource Center with the other portion being available for library and public use. In addition, programs currently planned by the library will be incorporated into the schedule of activities at the West Asheville Community Center located in the basement of this building or at other alternate sites. The Parks and Recreation Department and the Police Department feel that this joint use of the facility is a good compromise for the community to serve the needs of not only the library patrons but also the overall citizens of the West Asheville community.

The Parks and Recreation Department and the Police Department are presenting this information to update Council on the plans to move the resource center.

Councilwoman Field, who was not opposed to this plan, advised City Council that this would be a policy change and perhaps setting a precedent because in the past the community has provided the space for the resource centers and the City provided the police officers.

Councilman Sellers spoke in support of this plan and felt that each community that requested a resource center would need to be looked at on a case-by-case basis.

Upon inquiry of Mayor Sitnick, City Manager Westbrook described the difference between a Police Resource Center vs. a Police Sub-Station.

Mayor Sitnick supported a flexible policy that allows Council to apply the best possible solution neighborhood by neighborhood and would look to staff for guidance in the future.

Councilwoman Field noted that the City needed to be aware that there are some building code violations in the resource center.

Mr. Ed Sheary, Library Director for Buncombe County, appreciated the City for their cooperation in this matter in what they believe will be an interim solution for the Library losing its program room. He said that the Library and the County are proceeding under the assumption that this will be a continuing discussion with City staff and City Council regarding the provision of a dedicated program room for the Library in the near future.

City Manager Westbrook said that no further direction would be required by City Council and that City staff will proceed with their plans to move the resource center.

PROPOSED CHANGES TO THE RECRUITMENT AND SELECTION PROCESS

Councilman Tomes asked for City Council's support of amending the recruitment and selection process in the Civil Service Law so that we will not continue to hinder the work force in our community.

Mr. Kevin Wilson, Assistant Human Resources Director, reported to City Council of the status to date and the recommended future action regarding changes in the Civil Service Law relating to recruitment and selection.

City Council directed staff at its January 1999 Council Retreat to form a Task Force to examine elements of Civil Service Law to ensure that it continued to meet the needs of the City of Asheville. The Recruitment & Selection Task Force has met on the following dates: February 12, March 10, and March 24. The first meeting was attended by four of the five members of our legislative delegation. In addition, participation on this task force includes members of City departmental management, City Council (Rev. O.T. Tomes), Civil Service Board, the Firefighter's Association (president), line-level city staff, local NAACP (president), and Police Benevolent Association (president).

Different interests were expressed from the onset of the meetings. The main points that continued to surface were (1) lack of minority employee representation in various departments/ divisions across City government, and (2) review of the Civil Service Law specific to Recruitment and Selection process. There was much attention placed on the language in the law relating to the "Rule of Three", specifically the past history and perception of citizens that elements of the law could create a disparate impact on certain protected groups. The task force was not able to reach consensus on its recommendation with respect to this part of the law. The employee and Civil Service Board representatives support retention of the Board's role in the recruitment and selection process; the department managers wish to have more autonomy in recruitment and selection, and the representatives of the minority community desire such modifications as will help increase minority representation in the workforce.

There was general agreement with respect to deleting the provisions that are squarely inconsistent with State law: Section 8 requiring disclosure of eligibility lists, and Section 21 regarding political activity.

Staff recommends that the City Council seek amendment to the Civil Service Law to remove those provisions regarding Civil Service Board oversight of the recruitment and selection process. This oversight function will essentially be transferred to the City's staff by way of an administrative policy containing modern operational recruitment procedures to insure a systematic, consistent recruitment program, promote equal opportunity, identify and attract the most qualified applicants for all vacancies, and streamline and shorten the hiring process.

This will require a fairly substantial revision of the Civil Service Law. Other changes are included to conform the law with current practice.

It is important to note that the Civil Service Board's role in hearing and reviewing employee disciplinary matters is being retained.

Assuming that these changes become law, staff is prepared to move ahead with appropriate modifications to the City's Personnel Policy and Affirmative Action Plan to insure that professional recruitment and selection processes are immediately implemented.

The proposed changes are as follows:

- Section 1. Amended to reflect that the Civil Service Board is part of the government of the City, rather than a separate municipal corporation. To whatever extent it was legally necessary that the Civil Service Board be constituted as a separate corporation, there is no identifiable reason for that arrangement to continue. This has the effect of bringing the Civil Service Board under the umbrella of the City for legal processes. In this respect, the Board is an independent board, like the Board of Adjustment, with statutory duties only exercisable by it, but part of the City.

  The Section 1 amendment also provides that the Civil Service Board's operational costs be part of the City's budget.

  The Section 1 amendment also deletes the reference to a Director of Civil Service, whose functions are now performed by the Human Resources Director.

- Section 2. This Section has been rewritten to delete the reference to the Director of Civil Service, but to retain the method for selection of the Civil Service Board's membership, essentially continuing the current board in operation, with no interruption in their terms. The City Council appoints the Chair, as it previously appointed the Director of Civil Service. This amendment also addresses such things as eligibility for successive terms, and specifies that members of Council may not also be Civil Service Board members.

- Section 3. Amended to delete outdated referenced to "Clerk of Police Court."

- Section 4. Amended to refer to Section 5 for specification of the Civil Service Board's powers. The reference to employee discipline in this Section was repetitive of language in Section 5.

- Section 5. Amended to delete provisions for Civil Service Board involvement in the recruitment and selection process. These deletions are the primary means of implementing staff's recommendations, pursuant to Council's direction.

  The proposed amendment also clarifies that the Civil Service Board may make regulations for temporary, part-time and probationary employees. The sections dealing with the Civil Service Board's ability to review disciplinary matters have been retained.

- Sections 6, 7, 8, 9, 10, 11 and 12 are recommended for deletion. These sections relate to the recruitment and selection process, which is being transferred to the City's staff. Section 8 contains the provision requiring disclosure of eligibility lists, which is inconsistent with State law.

- Section 13. Amended to delete power to investigate citizen complaints against employees; this function has for a long time been performed by the department directors or City Manager. The Civil Service Board's function as an agency to which such complaints may be referred for investigation is retained. Any reports generated by an investigation are subject to the general laws regarding disclosure of records.

- Section 14. Changes are technical amendments to conform the law to the Civil Service Board's practice.

- Sections 15, 16, 17 and 18 are deleted because those provisions relate to recruitment and selection. Section 15 requires City Council to establish a pay plan, which is required by statute, G.S. 160A-162.

- Sections 19 and 21, prohibiting political activity by employees, are deleted because they conflict directly with G.S. 160-169 which allows it (within limitations).

- Section 20, prohibiting the requirement of a signed resignation letter as a condition of employment, is retained. The part dealing with political activity is deleted.

- Section 22 provides that it is the Civil Service Board's duty to administer the Act. The provision making a violation of the Act a criminal offense is deleted. Most of the deleted provisions related to fraud or cheating on the recruitment and selection process.

- Section 23, which gives citizens the right to maintain civil actions against the City for money paid in violation of the Civil Service Law, is deleted.

- Section 24 is rewritten to continue the classified service designation of affected employees.

- Section 25, which authorized the City to hire outside of the Civil Service process in the event of an emergency, is deleted.

- Sections 26, 27 and 28, dealing with the constitutionality and effective date of the Act, and repealing conflicting provisions, are retained with minor revisions.

Upon inquiry of Councilman Cobb, City Attorney Oast said that a public hearing is not required. It was his understanding, however, that the submittal deadline for the bill to be considered in this session was the following day and language needed to be inserted in that blank bill. If City Council decides to hold a public hearing, the bill would be subject to any amendments resulting from said public hearing. Also, if after the public hearing City Council decides not to proceed with this request, the bill can always be withdrawn from consideration.

Mr. Wilson outlined the employee statistics, noting that out of the 878 full-time employees, only 114 were minorities.

Mr. Wilson said that the Firefighters Association has come up strongly to say that they don't want any changes to the Civil Service Law whatsoever.

Mayor Sitnick reminded Council that one of their goals is to enhance cultural diversity and City government needs to reflect that desire of the Council in the city at large.

City Attorney Oast said that one change to the information City Council has before them is that in Section 14, the language which is lined through which reads "or is denied any promotion or raise in pay which he or she would be entitled to," should not be lined through. That language will remain in the law.

It was the consensus of City Council to (1) instruct the City Attorney to submit the proposed Civil Service Law changes (with the amendment referred to by City Attorney Oast in Section 14) for inclusion in the draft bill; and (2) schedule a public hearing on this matter for April 27, 1999.

REPORT ON SEXUALLY ORIENTED BUSINESS REGULATIONS

City Attorney Oast reviewed some court cases relating to sexually oriented businesses noting that it is very difficult when the courts are making hair-splitting distinctions. He said that the City is doing as much as they can under the zoning ordinance and we also have licensing requirements for entertainers and operators.

He said that the City has exercised it moratorium authority and our current temporary moratorium runs out on May 11. He asked Council to extend the temporary moratorium on new sexually oriented businesses until the end of June so that whatever regulations Council does seek can work their way through the Planning & Zoning Commission. He recommended that (1) we keep our current separation disbursal requirements, and (2) Council adopt something similar to what the City of Raleigh has, which is a combination of separation ordinance and the conditional use permit mechanism to give the City a greater degree of control over these establishments, not necessarily where they can locate, but the kinds of conditions they will have to satisfy if they do locate in certain places. Through the conditional use permit process, Council can impose conditions on that use that mitigate its potential adverse affects on the surrounding area.

He also recommended the following (which do not have to be reviewed by the Planning & Zoning Commission): (1) adoption regulations requiring that booths be open and visible to management; (2) adopt separation requirements between entertainers and patrons; (3) adopt clothing requirements for servers and people who administer massage and massage therapy; and (4) requirement that only one sexually oriented business be located per site.

Although State law allows cities the following authority, he explained why he is not recommending Council take action on : (1) regulation of ABC establishments even to the point of prohibiting alcohol sales at these establishments; and (2) the imposition of clothing restrictions for entertainers.

Upon inquiry of Councilman Sellers, Mr. Oast said that there are two adult businesses (as defined by our ordinance) located in the City of Asheville.

Upon inquiry of Mayor Sitnick, City Attorney Oast said that escort services are not considered sexually oriented businesses as defined in our ordinance.

Mayor Sitnick stated that the two escort services advertised in the Mountain Xpress are located in Buncombe County.

Councilman Sellers stated that he does not have a problem with sexually oriented businesses in the City of Asheville or any other business in the City, provided they go through the proper permitting process.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ORDINANCE REGULATING PRIVATE PARKING LOT SIGNS

City Attorney Oast said that this is the consideration of an ordinance requiring that private parking lots in the downtown area be designated as private.

Council and staff have received complaints about enforcement of parking restrictions on private parking lots, primarily related to the towing of vehicles from those lots. Research indicates that local regulation of "motor private carriers with respect to the transportation of property" is pre-empted by federal law. This preemption has been held to apply to non-consensual towing of vehicles from private lots. The effect of the federal law is that cities may not adopt regulations affecting the manner in which privately initiated towing is carried out. To the extent that the federal government does not prohibit local regulation of towing, it appears that, in order for the City to do so, specific authorization would have to be found in State law.

Some North Carolina counties are subject to a law that requires posting of lots as a pre-condition for towing from those lots. Buncombe is not one of those counties. However, there appears to be general authority by which the City can require that private lots be so designated, and to provide that failure to comply subjects the offender (the owner or operator of the lot) to a civil fine. This does not mean that unauthorized vehicles parking in private lots may not be towed or that vehicles must be towed from lots that have signs. However, it may reduce the level of inadvertent unauthorized parking, and thus reduce the number of non-consensual tows.

This application of this ordinance is limited to the Central Business District ("CBD") zone east of the French Broad River; we have had very few complaints from other areas of town. At Council's meeting in March, some concern was expressed over the "all or nothing" approach that the original proposed ordinance appeared to take. Accordingly, revisions have been made to require the designation of all private parking lots in the CBD, and the hours during which towing is or may be enforced.

At a meeting of the Downtown Commission last week, it was suggested that uniform signs might aid in further reducing unauthorized use of private lots. Language has been included to permit the City to produce and provide such uniform signs, and to require their use, if available.

The ordinance will become effective sixty days after adoption.

Upon inquiry of Mayor Sitnick, City Attorney Oast suggested the sign be displayed in a conspicuous location near each entrance to the lot, no higher than six feet from the ground.

City Attorney Oast also said that one of the suggestions that came out of the Downtown Commission meeting was that if the City is able to produce signs that are of uniform sign and insignia, the City should do that and when those signs are available that we require their use. Incorporated in the ordinance is the City's ability to do that but not the requirement.

Upon inquiry of Councilman Cobb, City Attorney Oast explained the state law that requires each private parking lot to be posted as a pre-condition of towing. He said that the law gives the person performing the towing a lien on the vehicle that they tow. As he understand it, now, if someone tows from a private parking lot in Buncombe County then the tower cannot enforce the collection of his fee from the person whose vehicle is being towed. He can enforce the collection of his fee from the owner of the parking lot who contracted with the tower to perform the towing.

Upon inquiry of Mayor Sitnick, City Attorney Oast said that there is an unfair and deceptive trade practices law and any complaints should be referred to the Attorney General's Office which has a separate division which deals specifically with towing complaints.

Mayor Sitnick also had complaints about people who rent parking spaces in private lots. They said that when they leave work at 6:00 p.m. and come back later in the evening for an event downtown, someone else is parked in their spot. City Attorney Oast said that that would be between the space owner and the lot owner and that there may be some contractual language that governs that.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the May 11 formal City Council agenda.

OTHER BUSINESS:

Educational Access Channel Commission

It was the consensus of City Council to wait for a recommendation from the Boards and Commissions Committee.

Cancellation of July 6, 1999, City Council Worksession

It was the consensus of City Council to cancel the Tuesday, July 6, 1999, City Council meeting (worksession) due to the Fourth of July holiday.

State Building Code

At the request of Councilwoman Field and upon concurrence of City Council, City Attorney Oast was directed to request the legislature, before the bill submittal deadline tomorrow, for a state-wide or at least a local bill to have a moratorium on the enforcement of the State Building Code that requires buildings that do not have a second exit be brought into compliance by the end of 1999 until the state adopts the new International Building Code with North Carolina amendments to that new Code. The new Code should have some options for a second exit.

Miscellaneous

Mayor Sitnick said that (1) the yellow ribbon on the flag pole in front of the Fire Department is to remember the three prisoners taken in Kosovo; (2) the City Manager is working with the Director of Parks & Recreation on the WRATT Program (which recommends energy and waste reduction assessments); (3) she is working with the City Attorney on possibly formulating a policy or message acknowledging that people will drink so how can we get them not to drive; (4) the City Manager is sending a letter to the N.C. Dept. of Transportation requesting them to clean and repair the medians and islands in the City; and (5) Thursday, April 22. 1999, is "Honk Against Litter" and requested volunteers to staff the intersections.

RESOLUTION NO. 99-59 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN ESTOPPEL CERTIFICATE FOR DAVIDSON HOTEL PARTNERS LIMITED PARTNERSHIP

City Attorney Oast said that this is the consideration of authorizing the execution of an estoppel letter.

He said that the City owns certain real property near the Airport on which is situated a Holiday Inn. Davidson Hotel Partners ("DHP") leases the property from the City and operates the motel. DHP proposes to assign the lease, which does not require the City's consent, and in connection with the assignment, has requested that the City execute an estoppel letter indicating that DHP is not in default on the lease. Although the City's approval is not required for the assignment, DHP has submitted information showing that the proposed assignee is Weber River, LLC, which is headquartered in Delaware, and has obtained a Certificate of Authority to operate in North Carolina. DHP has a substantial ownership interest in Weber River.

A similar estoppel letter was issued in 1994 and in 1997. At this time, he has not been able to determine if DHP in current on its lease payments because of the short time available, however he has no reason to think they are not current. This resolution authorizes the Mayor to sign the estoppel letter upon verification that DHP is current, which should occur tomorrow.

Staff recommends adoption of the resolution.

Councilman Tomes moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Field and carried unanimously.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved to adopt Resolution No. 99-59. This motion was seconded by Councilman Tomes and carried unanimously.

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ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 4:50 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - April 27, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Edward C. Hay Jr.

INVOCATION

Councilman Sellers gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION BY ASHEVILLE SISTER CITIES

Ms. Mary Lasher, President of Asheville Sister Cities Inc., presented City Council with the new Asheville Sister Cities thank-you note cards. On behalf of City Council, Mayor Sitnick thanked Ms. Lasher for the cards.

B. PROCLAMATION PROCLAIMING MAY 6, 1999, AS "PARKS AND RECREATION VOLUNTEER RECOGNITION DAY"

Councilman Cloninger read the proclamation proclaiming May 6, 1999, as "Parks and Recreation Volunteer Recognition Day" in the City of Asheville. He presented the proclamation to Ms. Joyce Harrison, recipient of the Bill Fulp Community Service Award, and Director of Parks & Recreation Irby Brinson.

C. PROCLAMATION PROCLAIMING MAY 8, 1999, AS "HIT THE PAVEMENT, NOT YOUR PETS" DAY

Councilman Cobb read the proclamation proclaiming May 8, 1999, as "Hit the Pavement, Not Your Pets" Day in the City of Asheville. He presented the proclamation to Mr. Mark Paulhus, Executive Director of Buncombe County Friends for Animals, and Ms. Marilyn Walker, Chair for the Anti-Cruelty Walk, who urged City Council to participate in the Walk.

II. CONSENT:

At the request of Mr. Mel Thomason, Item E. on the Consent Agenda was removed for further discussion.

A. RESOLUTION NO. 99-60 - RESOLUTION AUTHORIZING CITY STAFF TO CONTINUE THE INVESTIGATION OF ACCEPTANCE OF DONATED PROPERTY LOCATED IN MONTFORD HILLS COMMUNITY FROM THE NEIGHBORHOOD HOUSING SERVICES AND AUTHORIZING THE CITY MANAGER TO ENTER INTO ANY NECESSARY AGREEMENTS

Summary: The Parks and Recreation Advisory Board and staff are recommending that the City proceed with accepting the donation of property located in Montford Hills Community from the Neighborhood Housing Services.

The Parks and Recreation Advisory Board, at its February meeting, unanimously approved accepting the donation of property from the Neighborhood Housing Services. Several months ago, Neighborhood Housing Services approached the City of Asheville in regard to accepting eight parcels of property located near Westover Drive and Tacoma Lane in the Montford section. Staff has reviewed the potential use of this property and has determined that it could serve as a possible greenway connection in the future or as protection of open space land. Staff will continue working with the Legal Division in regard to the acceptance of this property contingent on securing a proper boundary survey, conducting a Phase I environmental assessment, and review of any deed restrictions. If, after this review, it still seems in the City's best interest to continue toward acceptance of this property, staff will proceed with securing the title.

The Parks and Recreation Advisory Board and staff are seeking City Council approval to continue the investigation of acceptance of donated property and to authorize the City Manager to enter into any agreements necessary for this transaction.

RESOLUTION BOOK NO. 25 - PAGE 190

B. RESOLUTION NO. 99-61 - RESOLUTION REJECTING ON BIDS ON TWO VACANT LOS ON SARA STREET AND REMOVING SAID LOTS FROM THE SURPLUS PROPERTY LIST

Summary: The consideration of a resolution rejecting bids on two vacant lots on Sara Street and removing said lots from the surplus properties list.

On March 9, 1999, the City Council directed the City Clerk to advertise for upset bids on two vacant lots on Sara Street. The offer to purchase was from MGS, LLC, in the amount of $10,700. The advertisement ran in the Asheville Citizen-Times on March 12, 1999, as provided in N. C. Gen. Stat. sec. 160A-269. Upset bids were received and the property was re-advertised.

Subsequent to the advertisement for upset bids, the Parks and Recreation Department staff identified a need to retain the property as a part of Riverside Cemetery for greenway access. The Parks and Recreation Department staff have requested that all bids be rejected and the properties be removed from the surplus properties list.

Community Development staff recommends adoption of the resolution

RESOLUTION BOOK NO. 25 - PAGE 191

C. RESOLUTION NO. 99-62 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY LAND ON PARK AVENUE TO DAVID J. HEETDERKS

Summary: The consideration of a resolution authorizing the Mayor to convey a vacant lot on Park Avenue to David J. Heetderks in the amount of $10,800.

On February 9, 1999, the City Council directed the City Clerk to advertise for upset bids on certain property located on Park Avenue (PIN 9638.08-97-8805) in the West End Community. The advertisement ran in the Asheville Citizen-Times in

February 12, 1999, as provided in N. C. Gen. Stat. sec. 160A-269. An upset bid was received by MGS, LLC, in the amount of $9,185 and the sale again was advertised on February 26, 1999. An upset bid was received from David J. Heetderks in the amount of $9,700 and an additional advertisement ran in the Asheville Citizen-Times on March 12, 1999. An upset bid was received by MGS, LLC, in the amount of $10,235 and the sale again was advertised on March 26, 1999. An upset bid was received from David J. Heetderks in the amount of $10,800 and the sale was again advertised on April 9, 1999. There being no upset bid received from the offer to purchase from David J. Heetderks in the amount of $10,800, the sale to David J. Heetderks should be approved.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 192

D. ORDINANCE NO. 2562 - BUDGET AMENDMENT TO APPROPRIATE GRANT FUNDS FOR THE CONSTRUCTION OF A GREENWAY TRAILHEAD AND RAMP SEGMENT ON THE REED CREEK/BROADWAY GREENWAY

Summary: The consideration of a budget amendment, in the amount of $130,000, to appropriate grant funds from the State of North Carolina, Department of Environment and Natural Resources in the National Recreational Trails Fund Program to construct a greenway trailhead and ramp segment on the Reed Creek/Broadway Greenway.

The Broadway Greenway represents the next section in the City of Asheville's urban trail corridor linking the UNC-Asheville to the downtown business district. Phase I of the corridor was completed in 1997 with the first section of the Weaver Blvd. Greenway. The next section of Weaver Blvd. will be complete in 1998/1999. The City has been working for some time to develop the Reed Creek/Broadway Greenway along Reed Creek on the west side of Broadway. Eventually the corridor will link downtown neighborhoods to the Weaver Blvd./Glenn's Creek Greenway.

The focus of this grant will be the segment of greenway between Chestnut and Magnolia Streets. The greenway begins at Chestnut Street where a large, five points intersection is located. The grade change from Chestnut to Reed Creek is very steep. A ramp will be needed to provide wheelchair and bicycle accessibility to the greenway. Since it is a large, busy area, the entrance will need a strong visual statement which will accentuate where the greenway begins. The entrance is proposed to include signage, map, and benches.

The Parks and Recreation Department recommends the City of Asheville accept the grant funds on behalf of the Parks and Recreation Department into the Parks capital improvement budget for construction of the trailhead of the Reed Creek/Broadway Greenway.

ORDINANCE BOOK NO. 17 - PAGE 301

E. RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE DISPOSAL PARCEL 59X LOCATED NEAR THE CORNER OF ASHELAND AVENUE AND PHIFER STREET

This item was pulled from the Consent Agenda for discussion.

F. **ORDINANCE NO. 2563 - BUDGET AMENDMENT TO APPROPRIATE $75,000 THAT WAS RECEIVED FROM HMS, LLC, INTO A CAPITAL PROJECT IN THE PARKS & RECREATION DEPARTMENT FOR THE LEASE OF THE ASHEVILLE SPEEDWAY FOR THE 1999 SEASON**

Summary: The consideration of a budget amendment to appropriate $75,000 that was received from HMS, LLC, into a capital project in the Parks and Recreation Department for the lease of the Asheville Speedway for the 1999 season.

In January of 1999, the City of Asheville entered into an agreement with HMS, LLC to allow racing at the Asheville Motor Speedway for one more season. This agreement called for a lease payment of $75,000 to be incorporated into a capital fund in Parks and Recreation that would go to the development of a master plan for the Speedway property. The purpose of this amendment is to appropriate these funds into the budget ordinance.

The Parks and Recreation Department staff recommends City Council approval of the budget ordinance amendment for $75,000.

ORDINANCE BOOK NO. 17 - PAGE 303

G. **RESOLUTION NO. 99-63 - RESOLUTION MODIFYING THE SCHEDULE OF CITY COUNCIL MEETINGS TO CANCEL THE TUESDAY, JULY 6, 1999, CITY COUNCIL WORKSESSION**

RESOLUTION BOOK NO. 25 - PAGE 193

H. **MOTION SETTING A PUBLIC HEARING ON MAY 11, 1999, TO CONSIDER THE REZONING OF THREE LOTS LOCATED ON MONTFORD AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE DISTRICT**

I. **MOTION SETTING A PUBLIC HEARING ON MAY 11, 1999, TO CONSIDER THE SUBMISSION OF THE CONSOLIDATED PLAN TO THE U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT ENTITLEMENT AND HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS FOR 1999-2000**

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Sellers moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE DISPOSAL PARCEL 59X LOCATED NEAR THE CORNER OF ASHELAND AVENUE AND PHIFER STREET

Summary: The consideration of a resolution directing the City Clerk to advertise an offer to purchase for upset bids regarding Disposal Parcel 59X near the corner of Asheland Avenue and Phifer Street.

The bid of Rex Ballard in the amount of $139,000 for the purchase of Disposal Parcel 59X in the East Riverside Redevelopment Project is not less than the established minimum price of $139,000.

Disposal Parcel 59X is an Office zoned lot near the corner of Asheland Avenue and Phifer Street comprising 0.639 acres. The bid from Rex Ballard for Disposal Parcel 59X includes the proposal to incorporate the lot into the adjacent property currently owned by Rex Ballard. The development proposal consists of landscaping and parking consistent with the Unified Development Ordinance, which will require a buffer adjoining the residential property.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

Mr. Mel Thomason urged the City Council to reject the bid submitted and retain the property for a greenway corridor. He noted that the property is zoned business which would permit a structure of 30,000 square feet to be built in an area of single-family homes.

City Manager Westbrook said that it was his understanding that the property has utilities under it and you really can't construct anything on it. He also noted that this is redevelopment property and that money will go back into the redevelopment fund.

Upon inquiry of Councilwoman Field about retaining an easement for a greenway, Mr. Ed Vess, Field Services Coordinator, said that the right-of-way in that area is 100 feet.

Councilman Tomes spoke in support of keeping the area as it is, especially since our Parks & Recreation Master Plan consultant said we should conserve all our land.

Upon inquiry of Councilman Cobb, Parks & Recreation Director Irby Brinson said that the actual greenway connection would be in the 100 foot right-of-way. If the area is not sold, it would be just maintained as an open space area.

Councilman Tomes moved to continue this matter until May 11, 1999, in order to give City Council an opportunity to visit the property in question. This motion was seconded by Councilman Cobb and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING ALL OF EIGHT LOTS LOCATED ON ASHELAND AVENUE AND SOUTH GROVE STREET FROM OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT, EXCEPT FOR A PORTION OF ONE LOT BEING REZONED FROM REGIONAL BUSINESS DISTRICT TO OFFICE II DISTRICT AND A ONE FOOT STRIP ALONG FOUR LOTS ON SOUTH GROVE STREET BEING REZONED FROM OFFICE BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

See discussion under Item B.

B. PUBLIC HEARING RELATIVE TO REZONING A PORTION OF ONE LOT LOCATED ON ASHELAND AVENUE FROM OFFICE BUSINESS DISTRICT TO REGIONAL BUSINESS DISTRICT, EXCEPT FOR A ONE FOOT STRIP ALONG THE LOT BOUNDARY ON SOUTH GROVE STREET BEING REZONED FROM OFFICE BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

Mayor Sitnick said that on April 26, 1999, City Clerk Burleson received a letter from Attorney Scott Carter on behalf of his client, Oak Valley Partners, property owner in this area. Said letter requested City Council postpone this public hearing at least one session to allow them the necessary time to research the matter thoroughly in order to make a more concise and erudite presentation to City Council. They believe that the proposed rezoning is neither legal nor desirable and they need a little time to make the quality case to Council.

After discussion about the need for a policy regarding a deadline within which to request a continuance of a matter previously scheduled on the City Council agenda, City Council directed the City Attorney to draft such a policy and bring it back for City Council review at a worksession. With this policy, the City can notify the affected people in a timely manner to avoid the inconvenience of coming to a City Council meeting and then having the matter continued without being given the opportunity to be heard.

Councilman Cloninger moved to continue the two public hearings to rezone properties on Asheland Avenue until May 11, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

C. PUBLIC HEARING RELATIVE TO AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES (UNIFIED DEVELOPMENT ORDINANCE) TO CHANGE THE METHOD FOR DETERMINING WHEN SIGNIFICANT CHANGES HAVE BEEN MADE TO PRELIMINARY PLATS SO THAT FURTHER REVIEW BY THE TECHNICAL REVIEW COMMITTEE AND/OR THE PLANNING AND ZONING COMMISSION IS REQUIRED

ORDINANCE NO. 2564 - ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES (UNIFIED DEVELOPMENT ORDINANCE) TO CHANGE THE METHOD FOR DETERMINING WHEN SIGNIFICANT CHANGES HAVE BEEN MADE TO PRELIMINARY PLATS SO THAT FURTHER REVIEW BY THE TECHNICAL REVIEW COMMITTEE AND/OR THE PLANNING AND ZONING COMMISSION IS REQUIRED

Mayor Sitnick opened the public hearing at 5:45 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, said that this is the consideration of a wording amendment pertaining to "substantial changes" for final subdivision plats.

At their meeting on April 7, 1999, the Planning & Zoning Commission voted 7-0 in support of an ordinance amendment pertaining to "substantial changes to final subdivision plats". Section 7-5-8 (a) (4) d. includes requirements for final plats as a part of subdivision plat approvals. The specific exert which staff proposes to revise currently reads as follows:

> *Substantial changes from the preliminary plat shall require an additional review by the Technical Review Committee and the Planning & Zoning Commission to ensure compliance with the existing regulations. Substantial improvements shall include, but not be limited to, redesign of streets, increasing the number of lots, altering the size and/or design of more than 20 percent of the lots, and/or reducing the number of lots by more than 20 percent.*

It is the recommendation of staff that the items listed as "substantial changes" be deleted. The basis for this recommendation is that professional staff can review the plan and determine the significance of the revisions by looking at such items as the impact on adjacent properties, impact on traffic volumes, or significance of the revisions from the original plan. It should be incumbent on City staff to make this determination and if the changes are significant to ensure the necessary level(s) of review. The plans are being prepared and reviewed by professionals and this portion of the Unified Development Ordinance ("UDO") appears to be overly restrictive in detailing the process of review by Technical Review Committee and Planning & Zoning Commission. Therefore, staff would propose to revise this section to read as follows:

> *Substantial changes from the preliminary plat as determined by the Planning and Development Director shall require an additional review by the Technical Review Committee and/or the Planning & Zoning Commission to ensure compliance with the existing regulations. ~~Substantial improvements shall include, but not be limited to, redesign of streets, increasing the number of lots, altering the size and/or design of more than 20 percent of the lots, and/or reducing the number of lots by more than 20 percent.~~*

Staff recommends that City Council review the proposed wording amendment of the UDO to remove specificity of "significant changes" and to allow staff latitude to make this determination without all cases requiring review by the Technical Review Committee and/or the Planning & Zoning Commission.

When Mayor Sitnick expressed concern about changes being made and no notification being given to the public, Mr. Green said that even though there will not be notification to the neighborhood, staff will take into consideration the comments made by the public when the plat was brought before the Technical Review Committee and the Planning & Zoning Commission. Mr. Green said that Planning staff will do their best to take into account the comments made by the public and keeping them informed of what is going on, even when there are changes not determined to be substantial.

Mayor Sitnick suggested there be an amendment to this ordinance for some kind of public notice to anyone who participated at the Technical Review Committee review. Mr. Green said that notification could be given, but they would not have an opportunity for input. City Manager Westbrook also pointed out that the Technical Review Committee deals with the technical issues and in most cases, there is not a lot of debate about the facts.

Mayor Sitnick closed the public hearing at 5:55 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2564. This motion was seconded by Councilman Cobb and carried unanimously.

D. PUBLIC HEARING RELATIVE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES (UNIFIED DEVELOPMENT ORDINANCE) TO PROVIDE REGULATIONS FOR SIGNS FOR SECOND TIER DEVELOPMENT

ORDINANCE NO. 2565 - ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO PROVIDE REGULATIONS FOR SIGNS FOR SECOND TIER DEVELOPMENT

Mayor Sitnick opened the public hearing at 5:56 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, said that the Planning and Zoning Commission, at their April 7, 1999, meeting, reviewed and recommended approval of an amendment to the Unified Development Ordinance ("UDO") which would define second tier development, identify permitted signage for such development, and establish standards for the signage. Second tier development, briefly described as that development which occurs behind the lots fronting major thoroughfares, is viewed as a critical link in the effort to reduce the strip development along Asheville's thoroughfares. The signage needs for these developments are anticipated to be different than most other developments in the City, as the second tier developments typically will not have street frontage. The proposed ordinance would permit one off-premise development identification sign per second tier development, as well as on-site tenant identification signs. The off-premise sign may be a maximum of 90 square and may be located up to 1000 feet from the second tier development. The size, height, and location of all signs would be established by the proposed ordinance. If a development qualifies as a second tier development and takes advantage of the signage package for second tier developments, it may not apply for the standard signage permitted under the sign ordinance. This restriction is designed to prevent sign clutter within the second tier development.

The Planning and Zoning Commission voted 6 to 1 to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the amendment.

Mr. Green said that he received one comment to amend Section 7-13-5 (c) (2) (b) to read "the off-premises development identification sign must be located (1) within 1000 feet of the closest point of the second tier development it identifies; or (2) at the closest point of the second tier development it identifies, whichever is the least." Their concern was that the location along a major thoroughfare may be more than 1,000 from the second tier development. He felt this amendment would be reasonable and recommended it be incorporated into the proposed ordinance.

City Attorney Oast suggested a different amendment to the ordinance to address the comment. Since Mr. Green was not aware of any proposed or potential locations where the second tier development would be more than 1000 feet away from the traveled thoroughfare, City Attorney Oast suggested incorporating that amendment as something for which the Board of Adjustment may grant a variance.

Councilman Cobb hoped that in the future the City of Asheville would post logo signs that direct people in the City. Mr. Green said that Planning staff is working on an ordinance amendment for signage in the right-of-way and they will try to incorporate this request into that amendment.

City Attorney Oast suggested Council amend Section 7-13-5 (c) (5) be amended to read "Variances from the standards set forth herein shall be limited to the following: (a) a 10% increase in the dimensional standards (size, height, and setback); and (b) to allow placement of a sign at a distance greater than 1000 feet from the closest point of the second tier development, if the closest point of the second tier development is more than 1000 feet away from the thoroughfare."

Mayor Sitnick closed the public hearing at 6:09 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2565 with the amendment suggested by City Attorney Oast to Section 7-13-5 (c) (5). This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 307

E. PUBLIC HEARING TO AMEND THE CIVIL SERVICE RELATING TO THE RECRUITMENT AND SELECTION PROCESS

Mayor Sitnick opened the public hearing at 6:12 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Councilman Tomes asked for City Council's support of amending the recruitment and selection process in the Civil Service Law so that we will not continue to hinder the work force in our community.

Mr. Kevin Wilson, Assistant Human Resources Director, reported to City Council of the status to date and the recommended future action regarding changes in the Civil Service Law relating to recruitment and selection. He said that 46 years after the Civil Service Law was enacted, out of 100 counties in North Carolina, all of them have moved away from this kind of process. Out of 512 cities in North Carolina, Asheville is the only one with this kind of process. There are staggering statistics which show that there is an apparent disparate impact.

City Council directed staff at its January 1999 Council Retreat to form a Task Force to examine elements of Civil Service Law to ensure that it continued to meet the needs of the City of Asheville. The Recruitment & Selection Task Force included members of City departmental management, City Council (Rev. O.T. Tomes), Civil Service Board, the Firefighter's Association (president), line-level city staff, local NAACP (president), and Police Benevolent Association (president).

Different interests were expressed from the onset of the meetings. The main points that continued to surface were (1) lack of minority employee representation in various departments/ divisions across City government, and (2) review of the Civil Service Law specific to Recruitment and Selection process. There was much attention placed on the language in the law relating to the "Rule of Three", specifically the past history and perception of citizens that elements of the law could create a disparate impact on certain protected groups. The task force was not able to reach consensus on its recommendation with respect to this part of the law. The employee and Civil Service Board representatives support retention of the Board's role in the recruitment and selection process; the department managers wish to have more autonomy in recruitment and selection, and the representatives of the minority community desire such modifications as will help increase minority representation in the workforce.

There was general agreement with respect to deleting the provisions that are squarely inconsistent with State law: Section 8 requiring disclosure of eligibility lists, and Section 21 regarding political activity.

Staff recommends that the City Council seek amendment to the Civil Service Law to remove those provisions regarding Civil Service Board oversight of the recruitment and selection process. This oversight function will essentially be transferred to the City's staff by way of an administrative policy containing modern operational recruitment procedures to insure a systematic, consistent recruitment program, promote equal opportunity, identify and attract the most qualified applicants for all vacancies, and streamline and shorten the hiring process.

This will require a fairly substantial revision of the Civil Service Law. Other changes are included to conform the law with current practice.

It is important to note that the Civil Service Board's role in hearing and reviewing employee disciplinary matters is being retained.

Assuming that these changes become law, staff is prepared to move ahead with appropriate modifications to the City's Personnel Policy and Affirmative Action Plan to insure that professional recruitment and selection processes are immediately implemented.

The proposed changes are as follows:

- Section 1. Amended to reflect that the Civil Service Board is part of the government of the City, rather than a separate municipal corporation. To whatever extent it was legally necessary that the Civil Service Board be constituted as a separate corporation, there is no identifiable reason for that arrangement to continue. This has the effect of bringing the Civil Service Board under the umbrella of the City for legal processes. In this respect, the Board is an independent board, like the Board of Adjustment, with statutory duties only exercisable by it, but part of the City.

  The Section 1 amendment also provides that the Civil Service Board's operational costs be part of the City's budget.

  The Section 1 amendment also deletes the reference to a Director of Civil Service, whose functions are now performed by the Human Resources Director.

- Section 2. This Section has been rewritten to delete the reference to the Director of Civil Service, but to retain the method for selection of the Civil Service Board's membership, essentially continuing the current board in operation, with no interruption in their terms. The City Council appoints the Chair, as it previously appointed the Director of Civil Service. This amendment also addresses such things as eligibility for successive terms, and specifies that members of Council may not also be Civil Service Board members.

- Section 3. Amended to delete outdated referenced to "Clerk of Police Court."

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- Section 4. Amended to refer to Section 5 for specification of the Civil Service Board's powers. The reference to employee discipline in this Section was repetitive of language in Section 5.

- Section 5. Amended to delete provisions for Civil Service Board involvement in the recruitment and selection process. These deletions are the primary means of implementing staff's recommendations, pursuant to Council's direction.

  The proposed amendment also clarifies that the Civil Service Board may make regulations for temporary, part-time and probationary employees. The sections dealing with the Civil Service Board's ability to review disciplinary matters have been retained.

- Sections 6, 7, 8, 9, 10, 11 and 12 are recommended for deletion. These sections relate to the recruitment and selection process, which is being transferred to the City's staff. Section 8 contains the provision requiring disclosure of eligibility lists, which is inconsistent with State law.

- Section 13. Amended to delete power to investigate citizen complaints against employees; this function has for a long time been performed by the department directors or City Manager. The Civil Service Board's function as an agency to which such complaints may be referred for investigation is retained. Any reports generated by an investigation are subject to the general laws regarding disclosure of records.

- Section 14. This is the section requiring the Civil Service Board's hearings on employee appeals from disciplinary actions. This provision is retained in its current form as to substance. Some technical changes are recommended to conform the law to the Civil Service Board's practice.

- Sections 15, 16, 17 and 18 are deleted because those provisions relate to recruitment and selection. Section 15 requires City Council to establish a pay plan, which is required by statute, G.S. 160A-162.

- Sections 19 and 21, prohibiting political activity by employees, are deleted because they conflict directly with G.S. 160-169 which allows it (within limitations).

- Section 20, prohibiting the requirement of a signed resignation letter as a condition of employment, is retained. The part dealing with political activity is deleted.

- Section 22 provides that it is the Civil Service Board's duty to administer the Act. The provision making a violation of the Act a criminal offense is deleted. Most of the deleted provisions related to fraud or cheating on the recruitment and selection process.

- Section 23, which gives citizens the right to maintain civil actions against the City for money paid in violation of the Civil Service Law, is deleted.

- Section 24 is rewritten to continue the classified service designation of affected employees.

- Section 25, which authorized the City to hire outside of the Civil Service process in the event of an emergency, is deleted.

- Sections 26, 27 and 28, dealing with the constitutionality and effective date of the Act, and repealing conflicting provisions, are retained with minor revisions.

Mayor Sitnick said that one of our goals in our first retreat was to encourage and support the cultural diversity that exists in our community.

City Attorney Oast said that in Section 2 the terms for the Civil Service Board members was inadvertently left out. Therefore, he asked that that a sentence in Section 2 of the Civil Service Law that City Council has before them be amended to read "All members of the Board shall serve two year terms and shall be eligible for successive terms, by whatever means selected, and may serve beyond the end of their respective terms until their successor takes office."

City Attorney Oast also clarified in Section 24 where it speaks to the employees who are members of the classified service. It is the intention of that provision to include everyone who is currently a member of the classified service and anyone who is subsequently hired by the City of Asheville.

Mr. Mike Knisely, President of the Asheville Firefighters Association ("AFA"), said that Council was told that the AFA was not interested in any changes in our Civil Service Law regarding the Rule of 3. He said that Council was misinformed. The AFA came up with constructive changes to the law which would accommodate the request, goals and desires of the new millennium of inclusion and diversity. In fact, some changes they propose do change that Civil Service Law, but not to the sweeping changes espoused by staff. They believe the Civil Service Law has served the employees well. He didn't disagree that the Civil Service Law should have been amended over the years. He also said the Civil Service Law is always given the blame for bad hiring and bad promotion decisions, illegal hiring and promotion decisions and lengthy hiring processes. He said that it is not the law that does the hiring or the testing, it's human beings. The Civil Service Board was established in 1953 as oversight on a process that prior to that had been cronyism. It was an oversight board of non-compensated, independent citizens, not employees of the City, who sat down and reviewed the process. The Board that we have today is one of the most diverse boards that we have in the City. It is composed of five individuals - two females, two African Americans and one white male. The Civil Service Board as it exists today does not concur with the changes being espoused by staff to Council for consideration today. The AFA agree that the law needs changing and they have advocated for change. The days of the strict reading of the Rule of 3 are long gone. In 1995 he advanced the idea of targeted recruiting - looking at individuals, talking to churches, civic groups, national guard groups and people coming out of the military. He restricted his argument quite often to the Fire Department and police issues but for the most part it was looking for individuals that are qualified that would be a benefit to our City and to our system. The AFA doesn't agree with the process now. It's throwing the baby out with the bath water philosophy. It's too wide spread of a change in the Law. The recruiting and hiring process ties directly into the grievance process. Seeking diversity should be a number one goal of the City and putting together a staff, either line level, management, etc., should be the primary goal of the City. His personal and professional position is that we're here to serve the citizens of the City of Asheville and we should reflect the make-up and diversity of the City, without question. They do agree with the goals expressed by Councilman Tomes, Mr. Richardson and Mr. Wilson without reservation. We know that cities outside North Carolina meet and have met those goals within the framework of civil service laws, opposed to the argument by Mr. Wilson that we are the only city with a Civil Service Law. They don't agree with gutting this Law as a means to those goals. However, they do say that if it is indeed the feeling of the Council that the protections and the oversight of our Civil Service Law need to be changed in such a large sweeping matter to accommodate the goals of diversity, and those sentiments are echoed and advanced to our legislative contingent in Raleigh, the firefighters will be there in support as they have always been. We wish it were different. We've placed before you today a position paper with a general commentary and a point by point analysis with specific reference to how it would affect the minority community in the positions. We express and say again, we share the concern for diversity, but we don't want the rule taken away. We want the rule modified. We would like to see those two positions put together and come up with a third position. We would like to see language advanced to the legislature that indeed becomes a Civil Service Law for the new millennium. He was proud of the progressive Civil Service Law that Asheville has. He thinks that there is room for improvement, but until the time comes that they can put together language that will be satisfactory, not only to members of the community, to Council, to the current employees, and future and potential employees of the City of Asheville, we have to look and see just exactly how this is going to work and how this is going to put together a position that is going to be fair to all concerned and meet the goals, directions and desires of everyone.

Councilman Tomes asked if the Civil Service Law has served the City well since 1953, then why is the Fire Department 98% white male. Mr. Knisely responded that the Civil Service Board and City management in the past has side-stepped the spirit and fundamental attitude that is personified in the law. He stressed, however, that we have never been precluded in the past from targeted recruiting or from advancing qualified candidates from the minority community. He said a lot of times we don't get qualified applicants and we could use more. He felt that if we were to enforce the law with the righteous attitude from the Civil Service Board, coupled with a righteous attitude on the part of staff, he felt the numbers would be different.

Councilman Tomes stated that the City of Asheville needs to be intentional about being fair.

Mr. Knisely said that the Rule of 3 is necessary, not to say that modifications shouldn't be considered with an emphasis on minority hiring, retention and promotion.

Councilman Cobb questioned what the benefit is for the Civil Service Board to be involved in the recruitment and selection process. Mr. Knisely felt that the Board is an independent oversight organization which has a different attitude than staff has in terms of judging and analyzing people.

Mr. John Hayes, President of the NAACP, spoke in support of the proposed changes in the Civil Service Law relating to recruitment and selection.

Mr. Samuel Camp supported the proposed change to the Civil Service Law noting the under-representation of minorities in City departments.

Mr. Glenn Holbert, Secretary Treasure of the Asheville Firefighters Association, read the following excerpts from a letter from Attorney Travis Payne sent to Mr. Knisely: "If there is a real concern for under-representation of minorities in the work force of the City of Asheville, rescinding the Rule of 3 is exactly the wrong thing to do." If the Rule of 3 actually operates to exclude qualified and competent minorities from hiring and promotions, that would be because of the selection process itself, consisting of testing and other procedures used to score the applicants for jobs is actually biased against minorities." He said that changing the Civil Service Law is not the problem. He said that if minorities are recruited and tested properly they will be employees of the City. Changing this will only hurt them because if they are lucky enough to make it through this process, Council will have destroyed part of the things that will protect them as City employees.

City Manager Westbrook said that Council has given instruction to change the work force to reflect the community and staff has accepted that accountability. However, Council has not passed along the responsibility for that because that rests with the Civil Service Board and that is why we are asking for the Law change. When you manage something it's essential that you have both accountability and responsibility. Again, this is a staff driven effort based on Council's original direction and all department directors support this Law change.

Mayor Sitnick closed the public hearing at 7:01 p.m.

Councilman Cobb felt that we have adequate laws in place to protect our citizens in reference to fair hiring practices. He felt was have qualified staff to carry out this mission and the responsibility that goes along with it. He felt the recruitment and selection process is no longer needed. He supports the Civil Service Board's role in reviewing disciplinary matters and that will not change.

Councilwoman Field said that the last time a change to the Civil Service Law was discussed by City Council there was a room full of employees (and many, many phone calls from employees) who were opposed to Council making any changes to the Law. However, this change has not brought about that kind of response from our employees, and she feels that there may have been some changes in our employee community that indicate to her that they are not opposed to Council making these changes.

Mayor Sitnick said that she is a long time supporter of labor, the rights of workers and the protection of workers. Despite the fact that the Civil Service Board seems to be a government unto itself and does a worthy job, she believes that the composition of this City, as mandated by this City Council to reflect the look of the community, should rest with City Council. Everyone on City Council is interested in having the best qualified candidates perform the best service for the citizens of Asheville. Our mandate to staff is that we want some real equal opportunity employment in this City of Asheville. If this administration should change in the future, she will lead the charge to remedy the situation. We have had a law in place for many years that does not seem to be producing the results that everyone says they want to see. If we have something that is not working, let's get it out and try something else and keep trying until we find out what does work. She supported this change with great respect to the firefighters and their efforts and input.

At the request of Mayor Sitnick, Human Resources Director Jeff Richardson said that he would amend Section 1 of the draft Administrative Policy regarding recruitment and selection which he presented to City Council, to include language consistent with the nondiscrimination policy that City Council adopted.

Councilman Tomes moved to seek amendment to the Civil Service Law as outlined above, with the amendment to Section 2 as recommended by the City Attorney. This motion was seconded by Councilwoman Field and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 2566 - ORDINANCE EXTENDING A TEMPORARY MORATORIUM ON SEXUALLY ORIENTED BUSINESSES IN THE CITY OF ASHEVILLE

City Attorney Oast said that this is the consideration of an ordinance extending the temporary moratorium on sexually-oriented businesses through June 30, 1999.

In August of 1998, pursuant to then recently-enacted legislation, Council adopted a temporary moratorium for the location of new sexually-oriented businesses, or the expansion of existing ones, within the City's zoning jurisdiction. This moratorium is effective until May 11,

1999. The purposes of the moratorium are to allow for the investigation of measures that the new law allows for the control of sexually-oriented businesses, and formulation of appropriate recommendations.

As reported to Council last week, the primary recommendation is that sexually-oriented businesses be allowed as conditional uses. Currently, they are allowed as uses by right, subject to special requirements. Until recently, the constitutional validity of the conditional use permit as a mechanism for regulating sexually-oriented businesses in North Carolina was unsettled. A recent Fourth Circuit Court of Appeals opinion upheld such a scheme in Raleigh's ordinance against a constitutional challenge.

Because this would be a change to the Unified Development Ordinance (UDO), consideration and recommendation of the Planning & Zoning Commission is required, which could take into the month of June. The moratorium ordinance contemplates that it may be extended by Council. Staff is seeking an extension through the month of June to allow for the proposed UDO amendment to be processed in the usual way.

Adoption of the proposed ordinance is recommended.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2566. This motion was seconded by Councilman Cobb and carried unanimously.

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VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 13, 1999, AND THE WORKSESSION HELD ON APRIL 20 1999

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on April 13, 1999, and the worksession held on April 20, 1999. This motion was seconded by Councilwoman Field and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the week of April 9-15, 1999: Betty M. Duck (Water), Glenn M. Carniol (Civic Center), Steve Brooks (Streets) and Beaverdam Condo Association (Sanitation).

The following claims were received during the week of April 16-22, 1999: Suzy Laibson (Streets), Urban Trail (Parks & Recreation) and Geraldine Danch (Civic Center).

These claims have been referred to Asheville Claims Corporation for investigation.

C. LAWSUITS

On April 12, 1999, the City of Asheville was served with the following lawsuit: Trinity Baptist Church Inc. v. City of Asheville and Carrier Heights Neighborhood Association. The complaint alleges that Section 7-2-5 of the Unified Development Ordinance which prohibits the

Plaintiff from completion of its construction and the development of its property, be declared invalid, void and/or unconstitutional. This matter will be handled in-house.

On April 12, 1999, the City of Asheville was served with the following lawsuit: Michael T. Dixon and wife, Rose M. Dixon v. the City of Asheville. The complaint alleges denial of building and zoning permits for quadraplex at Morningside Park pursuant to approved site plan prior to property rezoning from R-3 to R1-A. This matter will be handled in-house.

On January 25 , 1999, the City of Asheville was served with the following lawsuit: Yiannis Diamadopoulos, Owner of Washboard Launderette of Black Mountain v. Water Commission and City of Asheville. The complaint is a small claims action for damages to customers' property and loss of business sustained when dirty, rusty water entered the premises on August 12, 1998. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Use of Cannabis - Referendum Petition

Mr. Dave Mitler, representative of Community of Compassion, presented City Council with a blank referendum petition which they submitted to the Board of Election which requests that "an ordinance to direct City Manager and Police that laws criminalizing the possession, cultivation, and use of cannabis be given lowest priority status of enforcement" be placed on the ballot of a special or general election for fair consideration by the citizens of Asheville, North Carolina.

Mr. Steve Rasmussen said that they are still willing to work with City Council but failing to hear from Council, they will proceed forward with the referendum petition.

Mr. Mickey MaHaffey felt that there is unrest on the streets of downtown and he has committed his time and efforts to keep peace in the streets downtown. He said there is a growing number of people who are attempting to focus on that and try to defuse some of the energy downtown.

Mayor Sitnick and Councilwoman Field updated Mr. MaHaffey on the efforts that are taking place in downtown and also on the public restroom issue in downtown.

Mayor Sitnick also commended Mr. MaHaffey on the award he received by the Asheville Police Department which recognized his qualities and productiveness in our community.

Sign at Pack Place

Councilwoman Field stated that she has nothing to do with the sign being placed in front of the Pack Place Education, Arts and Science Center. However, Pack Place has hired her office to help install the sign since they know where all the mechanical, electrical and plumbing is under that plaza.

Escort Services

Mayor Sitnick announced that an anonymous fax was received about escort services which were advertised in the Mountain Xpress. The fax accused the Mayor and Council not caring about our children. She said that both establishments are in Buncombe County and are not located within the City of Asheville.

Mayor Sitnick said that often times there are good ideas lost because City Council cannot contact the people sending anonymous information. She said that if the public wants to communicate with Council to please let them know who you are so they can communicate back.

Citizens/Police Advisory Committee

Councilman Sellers said that the Citizens/Police Advisory Committee will be requesting to be placed on an upcoming worksession to update City Council on their efforts being made in the downtown area.

Closed Session

At 7:38 p.m., Councilman Cloninger moved to go into closed session to consider the qualifications, competence, performance, character, fitness, conditions of appointment or conditions of initial employment of an individual public officer or employee or prospective public officer or employee - G.S. 143-318.11 (a) (6). This motion was seconded by Councilman Sellers and carried unanimously.

At 8:00 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:00 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - May 4, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Councilman Earl Cobb; Councilman M. Charles Cloninger; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Edward C. Hay Jr.

CONSENT:

Provisions for Possession & Consumption of Malt Beverages and/or Unfortified Wine at the 1999 Bele Chere Festival

Summary: The consideration of approving the resolution to allow alcohol during the Bele Chere Festival which is based on the recommendations of the Bele Chere Alcohol Task Force.

The Bele Chere Strategic Plan which was presented to City Council at the annual retreat in 1997 established a Bele Chere Alcohol Task Force to address the alcohol issues surrounding the Bele Chere Festival. This Task Force continues to meet and address issues related to alcohol possession and consumption.

In May, 1996, Asheville City Council approved an ordinance prohibiting consumption and/or possession of open containers of malt beverages and unfortified wine on public streets and other property owned or occupied by the City of Asheville. In order to allow for the control of the sale and consumption of alcohol at Bele Chere, it is necessary for City Council to approve the resolution. Over the past several months, the Bele Chere Alcohol Task Force has been meeting to address concerns from downtown merchants, festival participants and Bele Chere Board members concerning alcohol at Bele Chere. The Task Force is made up of representatives from downtown merchants, City Council, Parks and Recreation staff, Legal Division, Asheville Police Department, the Alcohol Law Enforcement Board and Bele Chere Board. The resolution contains recommended actions by the task force, Bele Chere Board and various City Departments. This Task Force feels that the cooperative arrangement between all parties has been successful in trying to address the major issues relating to alcohol possession and consumption based upon past history of the festival.

The Parks and Recreation Advisory Board, Bele Chere Board, Bele Chere Alcohol Task Force, and the Parks and Recreation staff recommend approval of the resolution to allow alcohol during the Bele Chere Festival.

Annual Audit Contract

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Crisp Hughes Evans LLP, Certified Public Accountants, for auditing services for Fiscal Year 1998-99.

N.C. Gen. Stat. sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In 1998 the City solicited proposals from 36 accounting firms to perform the City's annual audit for the Fiscal Years 1997-98, 1998-99 and 1999-2000. City Council selected Crisp Hughes Evans LLP to conduct the Fiscal Year 1997-98 audit with the option to be re-engaged annually for two more years. They completed the Fiscal Year 1997-98 audit and have now submitted an engagement letter for the Fiscal Year 1998-99 audit. The fee has been estimated at $53,600, which is $3,700 higher than the amount quoted in their proposal. The increase is due to the new HUD audit program ($2,700) and implementing changes to the Comprehensive Annual Financial Report suggested by the Local Government Commission in their review of last year's report ($1,000). Sufficient funds are appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends City Council adopt the resolution.

Budget Amendment re: Grant for Harvest House and Senior Opportunity Center

Summary: The consideration of a budget amendment, in the amount of $26,490, received from the N.C. General Assembly for improvements and equipment at Harvest House and Senior Opportunity Center.

The 1998 Senior Center Appropriation has been approved by the North Carolina General Assembly.

The Senior Center Appropriation is designed to provide funds to senior centers throughout North Carolina for a variety of services including capital improvement, supplies, equipment, and staff. The funds will be used at Harvest House to renovate the woodwork shop and purchase new weaving equipment and the Senior Opportunity Center will complete Phase Two of the kitchen renovation and remodel the craft room.

The Parks and Recreation Department recommends the City of Asheville to accept the 1998 Senior Center Appropriation on behalf of the Parks and Recreation Department for improvements at Harvest House and Senior Opportunity Center.

Endorsement of Broadway Corridor Plan Advisory Committee Members

Summary: The Planning and Development staff is requesting City Council endorsement of the proposed membership of the advisory committee for the Broadway Corridor planning process.

The Planning and Development department staff is undertaking the preparation of a corridor plan for the Broadway corridor between the I-240 Interchange and the US 19/23 Interchange. As with past corridor planning efforts, we are proposing the creation of an advisory committee to provide input into the process and to serve as liaisons between the staff and business owners, property owners, adjacent neighborhoods, and interested organizations and groups. The proposed advisory committee would be composed of owners of properties and businesses located along Broadway, representatives of the abutting neighborhoods, a representative of UNC-Asheville, and a representative of an organization involved in the beautification of the corridor. It is proposed that a member of the Planning and Zoning Commission, the Asheville-Buncombe Historic Resources Commission, and the City Council serve as liaisons between the committee and their respective board. Mr. Will Williams will be the liaison from the Planning and Zoning Commission and the Asheville-Buncombe Historic Resources Commission will designate their liaison. The committee would meet approximately 6 times during the planning process to provide input and direction to the staff team responsible for the preparation of the plan.

The Planning and Development Department staff is requesting City Council endorsement of the proposed membership of the Advisory Committee for the Broadway Corridor planning process and designation of a City Council liaison.

Lease of Additional Equipment for Telephone System

Summary: The consideration of a resolution authorizing the execution of documents to include additional equipment under the existing Master Municipal Rental Agreement for the City's telephone system.

Last year, City Council approved the execution of a Master Municipal Rental Agreement, dated February 25, 1998, between the City of Asheville and NEC America, Inc. (The lease was subsequently assigned by NEC to Sutro & Co., which in turn assigned its right to receive rental payments to Fifth Third Bank, NA) The lease provided a fully-integrated telephone system that met the City's then-current needs and provided expansion capabilities to incorporate future expansion. The lease was for a term of 84 months at a cost of $6,457.50 per month. During the past year it has been necessary to add additional equipment to the system to meet the City's evolving telephone requirements (6 additional digital display phones, 17 headsets, analog card for voice response system, etc.) The proposed resolution authorizes the City Manager, Finance Director and City Clerk to execute all necessary documents to include the above mentioned equipment as Delivery Order Number Two to the Master Municipal Rental Agreement. The terms of the added leased equipment is $378.68 per month for a period of 36 months beginning in May 1999.

Staff recommends the City Council adopt the resolution.

Councilman Cloninger said that he has a conflict of interest in this matter and asked that it not be placed on the Consent Agenda for the next formal meeting.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

VISION BENCHMARK REPORT

Ms. Pat Smith, Chair of the Asheville-Buncombe County VISION Board of Directors, and Ms. Pam Wall, Executive Director of Asheville-Buncombe VISION, Inc., presented City Council with the VISION benchmark report.

Ms. Wall responded to various questions and comments from Council with regard to the report, some being, but are not limited to: minority achievement, women and minorities on government appointed boards, and the City Council Code of Ethics.

MINIMUM HOUSING CODE AMENDMENTS AND FEES

Director of Building Safety Terry Summey said that this is the consideration of setting a public hearing to amend the Minimum Housing Code and associated fees.

During the past six months, staff and some industry and nonprofit agency representatives have been meeting and discussing changes needed for the enforcement of the Minimum Housing Code. In addition, during the last four months the changes have been discussed at the Council's Housing & Community Development Committee.

The changes being recommended include the following:

- Technical changes to the Code (supported by the representatives);
- Changes to the schedule for inspecting rental properties (no consensus agreement reached);
- Increase staffing support for administering the code;

- Additional and/or changes to the administrative and permits fees (to pay for the additional staff being requested);
- Implement on July 1, 1999, no water turn-ons until rental units have met the Housing Code; and
- Increase promotion of the Code and any approved changes

The following summarizes the issues recommended by staff at a special called Housing and Community Development Committee meeting on April 27, 1999:

Possible schedule additions:

Rental units (includes single family, duplexes, triplexes and larger complexes owned by the same property owner or company at different locations) then the following ratio will apply-

Units < 15 years old........15% of the units every 5 years
Units ≥ 15 years old........50% of the units every 5 years

To use the above schedule the property owner or agent must present a list of all properties owned and a schedule for completion of inspections to the City; the City will determine the units to be inspected.

The following schedule will apply where the owner can produce current documentation of a regular annual inspection and maintenance schedule of each unit using a form approved by the City, adequate to maintain the units up to the standards of this code:

Units < 15 years old.......10% of the units every 5 years
Units ≥ 15 years old.......20% of the units every 5 years

(Note: the current schedules is based upon a percentage of units in each building; the proposed schedule samples a percentage of all units owned by a property owner; the units to be inspected will be determined by the City)

2. Implement new administrative fees in addition to the current permit fees for units receiving Housing Certificates after the 5 year deadline. Proposed new fees:

Units receiving certificates after the required 5 year schedule in the Housing Code: Certificate fee of $100 per unit inspected; after 5 ½ years an additional $20 per month housing certificate fee will be required.
Example: unit inspected 12 months after the 5 yr. schedule = $220 fee ($100 plus 6 months X $20) plus any related permit repair fees.

Units inspected during the 5 year schedule will have the current $20 Housing Certificate Fee waived if the unit passes the initial inspection.

Permit Fees will be reduced from $45 to $25 per trade (building, electrical, mechanical, and plumbing) at each building where housing code corrections are made.

Impact: (if the over 5,000 units still needing inspections are completed after the deadline, over $500,000 ($100 X 5,000 units) would be available in new revenue to support current and any additional proposed staffing. With the above schedule fewer units would be required to be inspected.

3. No water turn-ons will be approved after July 1, 1999 unless the rental unit has all Housing Inspection work completed and the Housing fees paid.

4. Currently proposed new staff has been reduced to 3 positions:
    1) Research Assistant (for hearings, title searches, mapping, assistant to Building Safety and Legal Office; to be part of the Legal Office's budget and work under the supervision of an Assistant City Attorney)
    2) Housing Code Enforcement Inspector (increase City Inspectors from current 3 to 4 positions. Initial inspectors to be continued to be done by the 3rd Party Inspectors; City Inspectors to do re-inspections and initial inspections on those units requiring search warrants.
    3) Secretary (provide support to Inspectors, and assist Customers and Landlords with understanding Housing Code inspection requirements; position is to work in the Finance Department's Customer Service Division)
        (A part-time secretary from a temp agency has been hired by Building Safety to work 4 hours a days in the Customer Service Division to help with Housing Code issues through the end of June)

The additional new costs of $ 132,000.00 includes funds for temporary secretarial assistance and outside legal assistance.

5. Continue promotion of Housing Code, changes and fees; promotion to include the following:
    1) Insert in water bills (draft being finalized)
    2) Multiple CityWorks articles
    3) Letter mailed to all known landlords
    4) Presentation to Board of Realtors; also use their newsletter
    5) Presentation to Carolina Real Estate Investors Association (CREIA)
    6) Promotion by Building Safety's faxing system
    7) All units needing an inspection will be posted after 7/1/99
    8) Promote on Government Channel

A separate committee (with industry and nonprofit agency representatives) will have two list of proposals that will be shared with Council as soon as they are available.

City staff recommends City Council schedule a public hearing for May 25, 1999, in order to hear citizens input on the proposed amendments to the Minimum Housing Code and fees.

Mr. Summey responded to various questions and comments from Council.

Councilwoman Field, Chair of the Housing & Community Development Committee, spoke in support of the proposed changes noting that their concern is to balance a need to protect our housing stock and be fair and reasonable to everyone.

At the request of City Manager Westbrook, it was the consensus of City Council to include the proposed fees in the upcoming budget draft, noting that the budget can be amended prior to final adoption.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

DISCUSSION OF A POLICY REGARDING CONTINUANCE OF ZONING PUBLIC HEARINGS PREVIOUSLY SCHEDULED ON THE CITY COUNCIL AGENDA

City Attorney Oast said that Council is frequently faced with last minute requests to continue public hearings. He felt that it was important for Council to be consistent, however, Council needs to retain discretion in these matters. He suggested (1) submit two business days in advance of hearing the continuance request in writing (by 5:00 p.m. the Thursday preceding the public hearing date); (2) state reason; notify interested parties (where applicable); (3) second or subsequent continuances are discouraged (in some cases, City Code may require Council to proceed with hearing); (4) Continuance requests submitted less than 48 hours in advance: (a) must provide compelling reason (incapacity to proceed, death in family, etc.) and show notification of neighbors (where applicable); and (b) if there is any objection, Council may hear comment on question of continuance; (5) not applicable to staff/city requests; and (6) Council reserves for itself right to continue matters in its discretion. He said that it would be appropriate for Council to take comment on the continuance issue. He also said that this information could be included in the application package.

Councilwoman Field suggested the continuance request be noted on the agenda that is distributed on Fridays.

Councilman Cloninger suggested a form letter be sent to the party requesting the public hearing continuance outlining what steps need to be taken to notify interested parties of the continuance request. He also suggested that Council try the policy outlined by the City Attorney.

City Manager Westbrook said that since continuances are at the discretion of City Council, they might want to consider each request on a case by case basis based on the merits heard at the scheduled Council meeting.

Mayor Sitnick said that perhaps the request for continuance be submitted three business days in advance and requiring that all interested parties (which list would be available in the Planning & Development Department) be notified in writing. Her biggest concern is the time, expense and inconvenience of having people come to the Council meeting, just to find out that it has been continued.

It was the consensus of Council that it be clearly stated that continuances are discouraged, however, if a continuance is sought, the following steps outlined by the City Attorney should apply.

City Attorney Oast said that he would assimilate a short policy for Council to consider, along with some implementation strategies.

Trinity Baptist Church

The second reading of the conditional use permit for Trinity Baptist Church located at 216 Shelburne Road scheduled for Tuesday, May 11, 1999, will be held in the Council Chamber, located on the Second Floor of the City Hall Building, Asheville, North Carolina. It was noted that the public hearing on this issue was held and closed on April 13, 1999.

Closed Session

At 4:28 p.m., Councilman Cloninger moved to go into closed session to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange or lease - authorized by G.S. 143-318.11 (a) (5). This motion was seconded by Councilman Sellers and carried unanimously.

At 4:50 p.m., Councilwoman Field moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 4:50 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - May 11,1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman M. Charles Cloninger (participated by speaker phone)

INVOCATION

Councilman Tomes gave the invocation.

CHANGES TO THE AGENDA

Vice-Mayor Hay asked to add a brief report from the Boards and Commissions Committee under Other Business.

Mayor Sitnick asked to add under Other Business a reaffirmation of Resolution No. 98-176 adopted on November 24, 1998, which supports North Carolina adopting permitting procedures for air quality in the southeast.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE WEEK OF MAY 17-22, 1999, AS "NATIONAL PUBLIC WORKS WEEK"

Councilman Cobb read the proclamation proclaiming May 17-22, 1999, as "National Public Works Week" in the City of Asheville. He presented the proclamation to Ms. Beth Howland, Public Works Department, Mr. Ernie Hewett, Engineering Department, Mr. Ben Gay, Parks & Recreation Department, Mr. Woody Ledford, Water Resources Department, and Mr. Sam Ballew, Metropolitan Sewerage District.

B. PROCLAMATION PROCLAIMING THE WEEK OF MAY 16-22, 1999, AS "PUBLIC TRANSIT APPRECIATION WEEK"

Councilman Sellers read the proclamation proclaiming May 16-22, 1999, as "Public Transit Appreciation Week" in the City of Asheville. He presented the proclamation to Mr. Tom Tomlin, Chair of the Asheville Transit Authority, who briefed City Council on some activities taking place during the week.

C. PROCLAMATION PROCLAIMING MAY 21, 1999, AS "STRIVE-NOT-TO-DRIVE DAY"

Vice-Mayor Hay read the proclamation proclaiming Friday, May 21, 1999, as "Strive-Not-to-Drive-Day" in the City of Asheville. He presented the proclamation to Mr. Gerry Hardesty, who briefed City Council on some activities taking place during the day.

II. CONSENT:

A. RESOLUTION NO. 99-64 - RESOLUTION PROVIDING FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1999 BELE CHERE FESTIVAL

Summary: The consideration of approving the resolution to allow alcohol during the Bele Chere Festival which is based on the recommendations of the Bele Chere Alcohol Task Force.

The Bele Chere Strategic Plan which was presented to City Council at the annual retreat in 1997 established a Bele Chere Alcohol Task Force to address the alcohol issues surrounding the Bele Chere Festival. This Task Force continues to meet and address issues related to alcohol possession and consumption.

In May, 1996, Asheville City Council approved an ordinance prohibiting consumption and/or possession of open containers of malt beverages and unfortified wine on public streets and other property owned or occupied by the City of Asheville. In order to allow for the control of the sale and consumption of alcohol at Bele Chere, it is necessary for City Council to approve the resolution. Over the past several months, the Bele Chere Alcohol Task Force has been meeting to address concerns from downtown merchants, festival participants and Bele Chere Board members concerning alcohol at Bele Chere. The Task Force is made up of representatives from downtown merchants, City Council, Parks and Recreation staff, Legal Division, Asheville Police Department, the Alcohol Law Enforcement Board and Bele Chere Board. The resolution contains recommended actions by the task force, Bele Chere Board and various City Departments. This Task Force feels that the cooperative arrangement between all parties has been successful in trying to address the major issues relating to alcohol possession and consumption based upon past history of the festival.

The Parks and Recreation Advisory Board, Bele Chere Board, Bele Chere Alcohol Task Force, and the Parks and Recreation staff recommend approval of the resolution to allow alcohol during the Bele Chere Festival.

RESOLUTION BOOK NO. 25 - PAGE 194

B. MOTION SETTING A PUBLIC HEARING ON MAY 25, 1999, RELATIVE TO MINIMUM HOUSING CODE AMENDMENTS AND FEES

C. RESOLUTION NO. 99-65 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CRISP HUGHES EVANS LLP, CERTIFIED PUBLIC ACCOUNTANTS, FOR AUDITING SERVICES FOR FISCAL YEAR 1998-99

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Crisp Hughes Evans LLP, Certified Public Accountants, for auditing services for Fiscal Year 1998-99.

N.C. Gen. Stat. sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In 1998 the City solicited proposals from 36 accounting firms to perform the City's annual audit for the Fiscal Years 1997-98, 1998-99 and 1999-2000. City Council selected Crisp Hughes Evans LLP to conduct the Fiscal Year 1997-98 audit with the option to be re-engaged annually for two more years. They completed the Fiscal Year 1997-98 audit and have now submitted an engagement letter for the Fiscal Year 1998-99 audit. The fee has been estimated at $53,600, which is $3,700 higher than the amount quoted in their proposal. The increase is due to the new HUD audit program ($2,700) and implementing changes to the Comprehensive Annual Financial Report suggested by the Local Government Commission in their review of last year's report

($1,000). Sufficient funds are appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 25 - PAGE 198

D. ORDINANCE NO. 2567 - BUDGET AMENDMENT RELATIVE TO A GRANT FOR THE HARVEST HOUSE AND SENIOR OPPORTUNITY CENTER

Summary: The consideration of a budget amendment, in the amount of $26,490, received from the N.C. General Assembly for improvements and equipment at Harvest House and Senior Opportunity Center.

The 1998 Senior Center Appropriation has been approved by the North Carolina General Assembly.

The Senior Center Appropriation is designed to provide funds to senior centers throughout North Carolina for a variety of services including capital improvement, supplies, equipment, and staff. The funds will be used at Harvest House to renovate the woodwork shop and purchase new weaving equipment and the Senior Opportunity Center will complete Phase Two of the kitchen renovation and remodel the craft room.

The Parks and Recreation Department recommends the City of Asheville to accept the 1998 Senior Center Appropriation on behalf of the Parks and Recreation Department for improvements at Harvest House and Senior Opportunity Center.

ORDINANCE BOOK NO. 17 - PAGE 311

E. MOTION TO ENDORSE BROADWAY CORRIDOR PLAN ADVISORY COMMITTEE MEMBERS

Summary: The Planning and Development staff is requesting City Council endorsement of the proposed membership of the advisory committee for the Broadway Corridor planning process.

The Planning and Development Department staff is undertaking the preparation of a corridor plan for the Broadway corridor between the I-240 Interchange and the US 19/23 Interchange. As with past corridor planning efforts, we are proposing the creation of an advisory committee to provide input into the process and to serve as liaisons between the staff and business owners, property owners, adjacent neighborhoods, and interested organizations and groups. The proposed advisory committee would be composed of owners of properties and businesses located along Broadway, representatives of the abutting neighborhoods, a representative of UNC-Asheville, and a representative of an organization involved in the beautification of the corridor. It is proposed that a member of the Planning and Zoning Commission, the Asheville-Buncombe Historic Resources Commission, and the City Council serve as liaisons between the committee and their respective board. Mr. Will Williams will be the liaison from the Planning and Zoning Commission and the Asheville-Buncombe Historic Resources Commission will designate their liaison. The committee would meet approximately 6 times during the planning process to provide input and direction to the staff team responsible for the preparation of the plan.

The Planning and Development Department staff is requesting City Council endorsement of the proposed membership of the Advisory Committee for the Broadway Corridor planning process and designation of a liaison as the City Council liaison.

F. **RESOLUTION NO. 99-66 - RESOLUTION FIXING DATE OF PUBLIC HEARING ON MAY 25, 1999, ON THE QUESTION OF ANNEXATION OF PROPERTY LOCATED AT BILTMORE PARK PURSUANT TO N.C. GEN. STAT. SEC. 160A-31 (BILTMORE PARK, ANNEXATION 13)**

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G. **MOTION SETTING A PUBLIC HEARING ON MARY 25, 1999, TO CONSIDER ADOPTION OF A SMALL AREA PLAN KNOWN AS THE HAYWOOD ROAD CORRIDOR PLAN AS AN ADDENDUM TO THE COMPREHENSIVE PLAN FOR THE CITY OF ASHEVILLE**

H. **MOTION SETTING A PUBLIC HEARING ON MARY 25, 1999, TO CONSIDER THE REZONING OF A ONE FOOT STRIP OF PROPERTIES ABUTTING THE NORTH END OF SOUTH GROVE STREET FROM CENTRAL BUSINESS DISTRICT AND REGIONAL BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Sellers moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Cobb and carried unanimously.

III. PUBLIC HEARINGS:

A. **PUBLIC HEARING RELATIVE TO REZONING ALL OF EIGHT LOTS LOCATED ON ASHELAND AVENUE AND SOUTH GROVE STREET FROM OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT, EXCEPT FOR A PORTION OF ONE LOT BEING REZONED FROM REGIONAL BUSINESS DISTRICT TO OFFICE II DISTRICT AND A ONE FOOT STRIP ALONG FIVE LOTS ON SOUTH GROVE STREET BEING REZONED FROM OFFICE BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT**

ORDINANCE NO. 2568 - ORDINANCE TO REZONE A ONE FOOT STRIP ALONG FIVE LOTS LOCATED ON SOUTH GROVE STREET BEING REZONED FROM OFFICE BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2569 - ORDINANCE TO REZONE A PORTION OF ONE LOT LOCATED ASHELAND AVENUE FROM REGIONAL BUSINESS DISTRICT TO OFFICE BUSINESS DISTRICT

Mayor Sitnick opened the public hearing at 5:17 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Mike Matteson, Urban Planner, said that this is the consideration of an ordinance to rezone eight properties on Asheland Avenue and South Grove Street from Office Business District to Office II District, except for a portion of one lot being rezoned from Regional Business District to Office II District and a one-foot strip along five lots on South Grove Street being rezoned from Office Business District to RS-8 Residential Single Family High Density District.

The Planning and Development Department staff initiated this rezoning request in an effort to apply a zoning district which is more compatible with the size and character of the area while assuring that the existing buildings continue to be conforming in size.

The rezoning of a portion of one property would remove the "split zoning" which currently exists as a result of property reconfiguration.

The rezoning of a one foot strip along Grove Street from Office Business to RS-8 is designed to prevent additional commercial access from using this relatively narrow residential street and channel that traffic onto Asheland Avenue which has the capacity to handle that traffic. He understands that the traffic issue in the area deals primarily with cut-through traffic and not necessarily traffic related to the properties being discussed today. City Traffic Engineer Michael Moule has developed some potential strategies for dealing with some of the traffic issues in the area and he plans on meeting with representatives of the neighborhood to review those. He presented Council with some information Mr. Moule prepared regarding the traffic volume and speed data for the area near the intersection of S. Grove Street and Morgan Avenue.

Mr. Matteson said that there is at least one office use existing on Grove Street which does have access onto Grove Street currently. If the one-foot strip of RS-8 is adopted, that existing access point would be considered a grandfathered non-conforming situation and would be allowed to continue indefinitely. The intensity of that use, however, could not be expanded.

Mr. Matteson said that the 2010 Plan considers this area to fall within the urban center; however, the 2010 Plan does recommend that residential uses occur across the street, on the other side of Grove Street.

Planning & Development staff is recommending approval of the rezoning request. At their April 7, 1999, meeting, the Planning and Zoning Commission voted 5-2 to recommend approval of the rezoning.

Mr. Matteson said that on May 6, 1999, a protest petition was submitted by Attorney Craig Justus on behalf of the Asheville Women's Medical Center.

City Attorney Oast said that because the protest petition was not filed two working days prior to the date of the established public hearing date which was April 27, 1999, in his opinion the protest petition was not timely, thus making the protest petition invalid.

Mr. Craig Justus stated that according to the section in the Unified Development Ordinance ("UDO") dealing with the validity of protest petitions, he feels that it is the responsibility of City Council to interpret what that section means, not the City Attorney. He said it is basically a policy decision to decide when the cut-off date is for people to register their protest in the official form of the protest petition. He pointed out to City Council that they had always stood on trying to protect the interests of people who either oppose or support an issue. Whenever Council has erred on due process principles, Council has always erred on giving people time. He said that the ordinance language reads that a protest petition must be filed two days before the date established for the public hearing on the proposed amendment. His contention was that the date established is the date when the public hearing is conducted - which is today, when the public hearing was opened.

City Attorney Oast said that whether a protest petition is valid or not, is a matter of law, and not up to the discretion of City Council. He also pointed out that even though the provision is in our ordinance, it is a provision that is in the State law as well.

Vice-Mayor Hay felt that the date established for the public hearing was the date City Council established when they made a motion to set the public hearing in the first place.

Upon inquiry of Mr. Justus, Mr. Matteson indicated that the protest petition filed did meet the area requirements of the ordinance.

At the request of Vice-Mayor Hay, Mr. Matteson said that the property owners do object to their property being rezoned from Office Business to Office II District, and the one-foot strip being rezoned RS-8.

Upon inquiry of Vice-Mayor Hay, Mr. Matteson said that the zoning of the subject properties prior to adoption of the UDO was commercial service, which was a pretty wide open commercial district with a lot of variety of some even large scale commercial uses. He also pointed out that much of this neighborhood was zoned commercial service prior to the adoption of the UDO. Mr. Matteson said that when the land was being mapped in conjunction with the UDO, he suspected that staff identified the existing land uses in the area, what classifications those would fit under, size of those uses, etc., and then decided Office Business would be the best classification.

Upon inquiry of Councilwoman Field, Mr. Matteson said the area was zoned commercial service since perhaps the late 1970's.

At the request of Vice-Mayor Hay, Mr. Matteson explained why staff is requesting that the property be rezoned to Office II District. After Council established the Office II District (after adoption of the UDO) staff was given direction to identify areas that the Office II District should be applied to. This area was one of about four areas staff identified to meet the Office II criteria.

Councilwoman Field questioned why this rezoning is being pursued since the property owners and the neighborhoods do not want the change. Mr. Matteson responded that Planning staff was given direction to identify areas that meet the Office II criteria and this is one of those areas.

Councilman Tomes said that Dr. Gray (member of Oak Valley Partners, LLC) could not give any assurances that in the future the property he owns in the area will remain residential. He said the possibility always exists that Dr. Gray may petition to rezone his residential property to a business designation, thus further encroaching into the neighborhood.

When Councilman Cobb asked what would happen if we left the property zoned as it currently is, Mr. Matteson said that the potential impact would be that the lot could be considered as one through lot that has access both on Asheland Avenue and Grove Street. He said that potentially it could be developed in a way that increases the amount of commercial traffic on the narrow section of Grove Street, which has a pavement width of approximately 15 feet.

Upon inquiry of Councilwoman Field, Senior Planner Gerald Green reviewed with Council the one-foot strip of RS-8 zoning classification recommendation.

Mr. Michael Moule, Traffic Engineer, said that on the average weekday, about 750 cars travel on Dailey Drive at the intersection of Dailey Drive and S. Grove Street. He said there is some amount of cut-through traffic, however, without a manual count, he could not say how much of that traffic is generated by the current access off of Grove Street from the office area. He said the neighborhood itself (depending on how many houses you consider in the area) would generate approximately 100-200 trips per day. He said that he will work with the neighborhood to develop some traffic management solutions. He did contact them to work on some solutions, however, they wanted to wait until after Council made their decision on this rezoning request. He did say there are things that they can do to either discourage or actually prevent the cut-through traffic through physical devices.

Upon inquiry of Councilwoman Field, Mr. Moule said that even though South French Broad is the same width as the southern part of S. Grove Street, this is not an issue of capacity but of what is comfortable and acceptable on a residential street.

Mr. Craig Justus, attorney representing the Asheville Women's Medical Center, said that every single property owners that is subject to this rezoning is against the downzoning from Office Business to Office II District and of the one-foot strip of residential, in particular. He said that even though the protest petition is not in effect, the result is the same - the property owners are against the rezoning. He questioned why this piece of property is being treated differently than the property around it. His clients bought their property with the commercial service designation and did not oppose the downzoning during the UDO process to Office Business District because that met with their expectations for now and in the future. He said that the downzoning from Office Business to Office II does affect their expectations of use of this property. He said that while the existing buildings are still within the Office II limitations, this rezoning will not allow them to plan for the future. The stressed that the 2010 Plan states the area is part of the urban center and the Office Business District fits for this property. He said that Office Business is a transition zone. He opposed the Office II designation for the reason that it is singling them out again for downzoning.

Mr. Justus said that it was his understanding that the one-foot strip rezoning to residential, was generated out of the neighbors concern for cut-through traffic. He said this one-foot strip does not deal with the cut-through traffic issue. He felt that his clients are being blamed for a traffic situation that they did not generate and it's their contention that a transitional zone (which is Office Business) will not create the impact that the neighbors are concerned about. He said that they would like to talk with Mr. Moule and the neighborhood to come up with a solution - but the solution is not zoning a one-foot strip to residential. He said that as an alternative to prohibiting their access, they would be willing to offer as a solution for the City to put up a traffic sign that limits them to going just down Dailey Drive to S. French Broad Avenue. He said that just because the lots are zoned all as one piece that they can cut-off access on S. Grove Street and have all their traffic going off and onto Asheland Avenue. However, they cannot do that because of the topography, the way the building is now designed, and the extreme cost it would be to try to send traffic directly onto Asheland Avenue from the back lots. He passed out eight photographs of the area.

Mr. Ben Jones, Asheville architect, said that the Oak Valley Partners' properties were purchased prior to any knowledge of the UDO and while they were zoned commercial service, commercial prices were paid for these lots based on the owner's vision of future health care needs and the potential use in the Asheland/Grove Street access. By use of an existing site plan, he showed Council how Office II zoning would have a definite impact on any future building on the property. After finding out what the building potential was in the Office II designation, the property owner said that it was impossible to work with. He said that under the current Office Business District the owner maintains the flexibility to add to the building one room, should the room be necessary; however, under the Office II District an entirely separate building would have to be built. Retaining walls, due to the topography, would cost in excess of $75,000, just by not having access onto S. Grove Street.

Upon inquiry of Councilman Seller, Dr. Craigan Gray, Asheville Women's Medical Center, said that they were approached by residents of that property to purchase that property through a broker that they engaged. He said they paid commercial rates for the property in 1992.

Mr. Bob Grasso, Land Planner for Dr. Gray, said that after studying this project, the Office Business District is the best use for the property and works best with the residential neighborhood. He said the topography and the parking is what is driving the lay-out of what can happen on that site. By use of maps, he explained that if the property remains Office Business allowing an addition to the existing building, it actually improved the relationship to the neighborhood.

Upon inquiry of Councilwoman Field about how many entrances Asheville Women's Medical Center would have onto S. Grove Street, Mr. Grasso said that what they propose, and this is just a scheme that they have worked through that allows the greatest amount of square footage to be built on this property under Office Business, and by adding an addition to the building, which is not allowed under Office II but under Office Business, we could have more square footage on the building, they propose that it would be one way out of the lower parking lot up to the upper parking lot so that when the patients arrive, they cannot go down to the lower S. Grove Street. He said the lower parking lot could be marked and would be for approximately 43 staff (including doctors) which they would enter and exit onto S. Grove Street. He said that the approximate 150 patients they see a day would not be using S. Grove Street but Asheland Avenue.

Upon inquiry of Councilman Sellers, audience members from the neighborhood said that they have not seen the two options of future expansion on the property under the present Office Business and under the proposed Office II District.

City Attorney Oast reminded City Council that their decisions cannot be based on the conceptual designs presented.

The following persons spoke in support of rezoning the property from Office Business to Office II District with the one-foot strip being rezoned RS-8, for various reasons, some being, but are not limited to: the one-foot strip of residential will help maintain the integrity, dignitary and the legacy the neighborhood; if Dr. Anderson can make his parking and building access onto Asheland Avenue then why can't the Asheville Women's Medical Center do the same; there should be no more encroachment into this neighborhood; the neighborhood is opposed to any additional traffic in the area; concern for children in the area with the additional traffic; possibility that the neighborhood would prefer the 8-foot retaining wall rather than the introduction of additional traffic into the neighborhood; and the need to protect the affordable housing in the community:

Mr. Joe Craig, resident of 155 S. Grove Street
Ms. Brenda Craig, resident of 155 S. Grove Street
Ms. Mary Warren, resident of 136 S. Grove Street
Mr. Mel Thomason, property owner on Blanton Street
Mr. Clyde Waters, resident of 26 Morgan Street
Mr. Gary Sanford, resident of 139 S. Grove Street

The following persons spoke in support of retaining the current Office Business zoning with no one-foot strip being rezoned residential, for various reasons, some being, but are not limited to: the area is convenient to their patients; doctors are close to hospitals which enables them to get to the hospital very quickly when needed; patients expect accessibility, availability and growth to meet medical needs and this proposal will restrain the future growth of the Medical Center and to restrict the potential future medical services to women is unthinkable; S. Grove Street is used only for limited, unintrusive parking of employee vehicles; prospect of adverse zoning initiated by the City is worrisome; medical clinics are good neighbors; the area is well-kept with no after-hour noise; minimal traffic and not intrusive; no consideration of downzoning the industrial site located next to 99 S. Grove Street; the downzoning will restrain potential growth of the Medical Center; and businesses should be able to purchase, plan and develop within the City limits and relying faithfully on the integrity of leadership to ensure that it will be possible within the context of stable zoning:

Ms. Doris Warren, Personnel Manager of Asheville Women's Medical Center
Ms. Judith Gray, Owner and Manager of Foxfire Properties, which owns and manages the homes at 99, 101 and 124 S. Grove Street
Ms. Sheila Jones, Front Office Manager at Asheville Women's Medical Center
Dr. Craigan Gray, member of Oak Valley Partners, LLC

Upon inquiry of Councilman Tomes, Mr. Thomason said that of the neighborhood residents present at this meeting (being confronted with the suggestion that the neighbors might object to an 8-foot high wall which would be necessitated by the one-foot residential strip), they would prefer the one foot restriction and the 8-foot wall to any solution that had the possibility of introducing additional traffic in that area.

Mayor Sitnick closed the public hearing at 7:05 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Upon inquiry of Councilwoman Field, Mr. Green said that a portion of the property on S. Grove Street does have a parking area now which is used primarily by staff.

Mayor Sitnick said that the biggest problem for the neighborhood is the increase of traffic which might occur. She also has sensitivity for the property owners who would like to expand their office complex in the future. She suggested allowing the Office Business District to remain with the one-foot strip being rezoned RS-8.

Councilwoman Field said that this is a traffic problem and not a zoning problem. She said this is congruent with the Central Business District and this is the area that mixed use should happen. She felt these are very gentle uses against a residential neighborhood. She had a real concern that Council is using the wrong methods to deal with a problem that needs to be solved.

Councilman Sellers moved to keep the properties zoned Office Business with no one-foot strip being rezoned RS-8. This motion was seconded by Councilwoman Field.

Councilman Tomes said that he could not support the motion because City Council had referred this issue back to staff to find a solution. Staff has now presented Council with that solution.

Vice-Mayor Hay said that regardless of what Council does with this rezoning, something needs to be done about the traffic management problems on S. Grove Street and they can be dealt with in the appropriate way. He believed that had the new Office II District been in place when the UDO was adopted, this area would have been zoned that because in every way this area fits the Office II District.

Councilman Cobb expressed concern in rezoning the properties from Office Business to Office II District and the traffic problem will be addressed by our Traffic Engineer.

Councilman Cloninger said that he would not be able to support the motion.

Mayor Sitnick said that if Council doesn't rezone the property to Office II to act as a transition zone, then the one-foot strip is the least we can do to offer a buffer and protection to the neighborhood.

Mr. Justus said that right now there is limited use of the property for employee and doctor parking. He said that they would be willing to meet with the neighborhood and restrict their property so that they could only use this back portion the way it is currently being used, in terms of only allowing the employees and the doctors to park back there and not have a patient through-way. He also said that they would be willing for the City to install a sign that limits their access and egress only on Dailey Drive. Again, they would be willing to restrict their property to be used the way it is currently being used as long as they can keep their Office Business zoning.

City Attorney Oast said that Mr. Justus is proposing to deed restrict the properties that front on S. Grove Street, which is a way of accomplishing outside the zoning context, a way of resolving one of the dilemmas Council has.

When Councilman Sellers asked if a neighborhood representative was present, Mr. Craig said that he could not represent the neighborhood on this issue, however, after prior negotiations on this issue, the one-foot residential strip was what was arrived at.

The motion made by Councilman Sellers and seconded by Councilwoman Field failed on a 2-5 vote, with Mayor Sitnick, Vice-Mayor Hay, and Councilmen Cloninger, Cobb and Sellers voting "no".

Vice-Mayor Hay moved to rezone the properties to Office II District without the one-foot residential strip. This motion was seconded by Councilman Cloninger and failed on a 2-5 vote, with Mayor Sitnick, Councilwoman Field, and Councilmen Cobb, Sellers and Tomes voting "no".

Mayor Sitnick moved to keep the Office Business zoning with a one-foot strip along five lots located on S. Grove Street being rezoned RS-8. This motion was seconded by Councilman Cobb and carried on a 4-3 vote, with Councilwoman Field and Councilmen Cloninger and Sellers voting "no".

City Attorney Oast said that because the vote on the first motion which passed was 4-3, there is a statutory requirement that it comes back to City Council for a second vote on May 25, 1999.

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For clarification, Vice-Mayor Hay moved to rezone a portion of PIN No. 9648-26-28-5698 abutting on Asheland Avenue from Regional Business District to Office Business District. This motion was seconded by Councilman Sellers and carried on a 6-1 vote, with Councilwoman Field voting "no".

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City Attorney responded to a question from Councilwoman Field about deed restrictions.

At 7:41 p.m., Mayor Sitnick announced a short break.

B. PUBLIC HEARING RELATIVE TO REZONING A PORTION OF ONE LOT LOCATED ON ASHELAND AVENUE FROM OFFICE BUSINESS DISTRICT TO REGIONAL BUSINESS DISTRICT, EXCEPT FOR A ONE FOOT STRIP ALONG THE LOT BOUNDARY ON SOUTH GROVE STREET BEING REZONED FROM OFFICE BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2570 - ORDINANCE TO REZONE A PORTION OF ONE LOT LOCATED ON ASHELAND AVENUE FROM OFFICE BUSINESS DISTRICT TO REGIONAL BUSINESS DISTRICT, EXCEPT FOR A ONE FOOT STRIP ALONG THE LOT BOUNDARY ON SOUTH GROVE STREET BEING REZONED FROM OFFICE BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 8:08 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Mike Matteson, Urban Planner, said that this is the consideration of an ordinance to rezone a portion of one lot located on Asheland Avenue from Office Business District to Regional Business District, except for a one-foot strip along the lot boundary on South Grove Street being rezoned from Office Business District to RS-8 Residential Single Family High Density District.

The Planning and Development Department staff initiated this rezoning request in an effort to remove the “split zoning” which currently exists as a result of property reconfiguration.

The rezoning of a one foot strip along Grove Street from Office Business to RS-8 is designed to prevent additional commercial access from this relatively narrow residential street.

Planning & Development staff is recommending approval of the rezoning request. At their April 7, 1999, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning.

Mr. Mel Thomason spoke in favor of the rezoning request.

Mayor Sitnick closed the public hearing at 8:12 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2570. This motion was seconded by Councilman Cobb and carried on a 5-2 vote, with Councilwoman Field and Councilman Sellers voting "no".

Councilwoman Field stated that she didn't think that placing a one-foot residential strip on a Regional Business piece of problem is the way to solve a traffic problem.

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C. PUBLIC HEARING RELATIVE TO REZONING THREE LOTS ON MONTFORD AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE DISTRICT

ORDINANCE NO. 2571 - ORDINANCE TO REZONE THREE LOTS ON MONTFORD AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE DISTRICT

Mayor Sitnick opened the public hearing at 8:14 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Mike Matteson, Urban Planner, said that this is the consideration of an ordinance to rezone 3 properties located on Montford Avenue rezoned from RM-8 Residential Multi-Family Medium Density District to Office District.

The three properties are located at 372, 382, and 406 Montford Avenue and total approximately 2.7 acres. The lots were rezoned from Office Institutional to RM-8 with the adoption of the Unified Development Ordinance in May of 1997. Prior to the zoning change, two of the three properties were permitted for office uses. These uses are considered "grandfathered" non-conforming uses and may continue indefinitely but cannot be expanded. The third property is used as a group home. Each of these lots abuts Montford Avenue in the front and Watauga Place (a very narrow residential street) in the rear.

City staff is recommending denial of the rezoning request for the following reasons:

1) an expansion of the office uses which exist in this area may be detrimental to the surrounding residential neighborhood;
2) the existing office uses are "grandfathered" non-conforming uses and may continue indefinitely;
3) the properties abut Watauga Place which has an average pavement width of just 14 feet; and
4) the rezoning would potentially be considered illegal spot zoning.

At their April 7, 1999, meeting, the Planning and Zoning Commission voted 4-3 to recommend denial of the rezoning request.

Mr. Matteson said that on May 6,1999, a valid protest petition was filed, thus invoking the 3/4's vote requirement.

Upon inquiry of Councilwoman Field about the potential illegal spot zoning, City Attorney Oast said that only a judge can determine whether something is an illegal spot zoning or not. Some aspects that might indicate a spot zoning would be if it is a relatively small piece of property, under single ownership and the potential that it might be viewed as being singled out for special treatment.

Ms. Cissy Majebe, speaking on behalf of all three petitioners, passed out a folder containing pictures of the properties, a map and a petition of support containing 130 signatures for the rezoning. She said that when she purchased her property it was zoned Office Institutional, and when the Unified Development Ordinance ("UDO") was adopted they rezoned it to RM-8 Residential Multi-Family Medium Density District. With the use of pictures, she pointed out that her property is surrounded by office and institutional uses. With regard to access onto

Watauga Place, she said that two of the three properties have access onto Montford Avenue and one property has access onto Watauga Place. She said that they will compromise by putting a restrictive covenant on the group home property and on 382 Montford Avenue stating that they will not access onto Watauga Place. She urged City Council to rezone her property back to its original use of Office District.

Ms. Sharon Fahrer, property owner of 333 Montford Avenue, said that Montford is becoming a residential traditional neighborhood and urged City Council would not rezone the property to Office because anything allowed in the Office District would be allowed to be built on the property.

Mr. Allen Roderick, resident of 265 Pearson Drive, said that Ms. Majebe asked if he would join in their rezoning petition, however, he did not want to because he wanted to keep their property zoned RM-8 so at some point in time they could build some multi-family housing on their property. He said that he and Ms. Majebe had worked out an agreement saying that he would withdraw his protest petition, if lot 5607 withdrew from the rezoning petition and deed restrictions were put on the other two properties not to access onto Watauga Place. The problem he has with rezoning lot 5607 is that it's only access is onto Watauga Place and it has no access onto Montford Avenue because of the steep incline. He is concerned about future traffic on Watauga Place. At the community club meeting in Montford last night, he found out that the property owner of lot 5607 did not want to withdraw from the rezoning petition. He said that he has not had much time to talk with his neighbors about this rezoning request but realizes they don't really know what is going on. He passed the Mayor a letter dated May 11, 1999, from Mr. Wayne Yordy, 276 Montford Avenue, which the Mayor read. In summary the letter states that Mr. Yordy did sign the petition in support of the rezoning, however, he "now has received additional information that she is going to expand the building and if rezoned to Office, once she sold the property it could be changed into several undesirable business for the area."

Ms. Susan Roderick said that if this property is rezoned to Office, it might start a change to the residential character of the neighborhood.

Mr. Jay Fine, petitioner and owner of 372 Montford Avenue, spoke in support of the rezoning noting that even though his office use is grandfathered in, he has no desire to expand his practice.

A Montford resident said that the clinic has been well maintained and looks like a residence. She felt that low impact businesses should be allowed for the health of the neighborhood.

Ms. Allison Burnette, former Montford property owner, spoke in support of the rezoning noting that Ms. Majebe will keep the flavor of the neighborhood.

Mayor Sitnick reminded the audience that City Council cannot base their decision on what is currently on the property, but has to consider all the potential uses in the Office Business District.

Ms. Jacquelyn Donnelly spoke in support of the rezoning in that low impact offices in the area serve an important role for the neighborhood.

Ms. Jacquelyn Grant, attorney representing Ms. Majebe, urged City Council to rezone the property back to office as it was prior to adoption of the UDO.

Mayor Sitnick closed the public hearing at 9:01 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Upon inquiry of Councilman Cobb, Ms. Majebe said that the group home, which is a petitioner in the rezoning request, signed the petition in order to help Ms. Majebe get her property rezoned.

Councilwoman Field moved for the adoption of Ordinance No. 2571. This motion was seconded by Councilman Sellers and carried on a 6-1 vote, with Councilman Cloninger voting "no".

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FAILURE OF THE PARKS, RECREATION AND GREENWAYS BOND REFERENDUM

Mayor Sitnick announced the results of the Parks, Recreation and Greenways Bond Referendum. Information from the Buncombe County Board of Elections showed that 2,643 voted in favor of the bond referendum and 3,020 voted against it, thus making the bond referendum fail. She said that the City will not be able to upgrade our parks, repair our community centers for our children and teenagers or acquire any of the limited and quickly being developed open spaces and green spaces in the City. She said we probably won't have another chance to capture any of that for future park use, even though Asheville state-wide is considered to have some of the lowest numbers of acreage set aside for parks, for recreation, for greenspace - all things that help create Asheville's uniqueness. That opportunity is not gone from a City that has not raised taxes in ten years.

D. PUBLIC HEARING RELATIVE TO CLOSING AN UNOPENED PORTION OF POND AVENUE OFF LEE STREET

RESOLUTION NO. 99-67 - RESOLUTION TO CLOSE AN UNOPENED PORTION OF POND AVENUE OFF LEE STREET

Mayor Sitnick opened the public hearing at 9:06 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Suzanne Molloy, Assistant Director of Public Works, said that this is the consideration of a resolution to permanently close a portion of Pond Avenue off Lee Street.

A petition has been received from Lucie Mae Ratliff requesting that Pond Avenue from Lee Street to the intersection with the Southern Railway Company right-of-way be permanently closed to public use.

The petition received includes the affidavit of Lucie Mae Ratliff, owner of parcels 9654.05-19-4691 and 4882. Ms. Ratliff owns all of the property with frontage on the unopened street between Lee Street and the Southern Railway right-of-way that has been petitioned to be closed.

This portion of Pond Avenue is a paper street and has never been used as a street. The City has no plans to utilize this street. All utility companies will be contacted, the resolution of intent to close a portion of Pond Avenue off Lee Street was advertised in a local paper, and the location was posted with the resolution of intent to close.

The Public Works Department staff recommends the resolution to permanently close Pond Avenue from Lee Street in a easterly direction to the intersection with the Southern Railway right-of-way be adopted.

Mayor Sitnick closed the public hearing at 9:09 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Cobb moved for the adoption of Resolution No. 99-67. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 201

E. PUBLIC HEARING RELATIVE TO THE SUBMISSION OF THE CONSOLIDATED PLAN TO THE U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT ENTITLEMENT AND HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS FOR 1999-2000

RESOLUTION NO. 99-68 - RESOLUTION TO SUBMIT THE CONSOLIDATED PLAN TO THE U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT ENTITLEMENT AND HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS FOR 1999-2000

Mayor Sitnick opened the public hearing at 9:11 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of a resolution authorizing the Mayor to submit a Consolidated Action Plan to the U.S. Dept. of Housing & Urban Development (HUD) for CDBG and HOME programs for FY 1999-2000.

The City will be applying to HUD for $1,547,000 in CDBG and $1,140,000 in HOME funds for the coming year. Anticipated program income and re-programming of prior years funds will increase available revenue for CDBG activities by $514,000, for a total of $3,201,000 in programmable funds.

The Consolidated Plan serves as the City's annual planning document for the CDBG and HOME grant programs as well as the application for funding. Council action will authorize submittal of the Consolidated Plan to HUD and implementation of the activities listed in the plan. The Consolidated Plan must be submitted to HUD on or before May 14, 1999.

In preparing the plan, the City's Housing and Community Development Committee reviewed 23 CDBG grant applications from 15 agencies and has recommended funding for 20 of these projects in addition to five City-operated projects (not including program administration). The Asheville Regional Housing Consortium reviewed 15 applications from agencies and local governments for HOME funds and has recommended HOME funding for 10 affordable housing projects.

A summary of the proposed Consolidated Plan was published in the Asheville Citizen-Times on April 2, 1999 requesting public comment by May 3, 1999. Three community public hearings have been conducted by staff, in Asheville and Hendersonville. One written comment on the Plan has been received to date.

Community Development staff recommends adoption of the Plan and Resolution.

Ms. Caplan then briefly reviewed the funding for the projects.

Mayor Sitnick closed the public hearing at 9:17 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 99-68. This motion was seconded by Vice-Mayor Hay and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 202

IV. UNFINISHED BUSINESS:

A. SECOND READING OF CONDITIONAL USE PERMIT FOR TRINITY BAPTIST CHURCH LOCATED AT 216 SHELBURNE ROAD IN WEST ASHEVILLE

ORDINANCE NO. 2572 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT TO TRINITY BAPTIST CHURCH LOCATED AT 216 SHELBURNE ROAD IN WEST ASHEVILLE

City Attorney Oast said that following a public hearing at its meeting on April 13, 1999, the City Council voted to grant a conditional use permit ("CUP") to permit Trinity Baptist Church ("TBC") to expand its existing facilities at 216 Shelburne Road in West Asheville. The vote was made subject to a second vote on the findings to be contained in the ordinance granting the CUP. Since the vote was less than a two-thirds majority, a second vote is statutorily required.

The ordinance adopts findings and conclusions, and directs the issuance of a CUP. The findings, conclusions and conditions are proposals only and City Council should feel free to make other findings, and to impose additional or alternative conditions.

Council should consider the findings, and conditions set forth in the proposed ordinance, making changes as necessary. Provided no one who voted to issue the CUP last month now wishes to change their vote, the process of adoption can occur in two ways:

1. Single motion: To adopt findings and conclusions as contained in the proposed ordinance and issue the CUP.

2. Bifurcated process:

    a. to adopt findings and conclusions as contained in the proposed order (individual findings or conditions may be voted on separately); and

    b. to issue the CUP.

Unless there is some substantial disagreement about the findings or conditions, the "single motion" method is recommended.

Conditional use permits may be issued by resolution or ordinance. He suggested using the ordinance format, since the action will have the same legal effect as a zoning ordinance.

Included in the Order is a conclusion to address Carrier Heights Neighborhood Association's assertion that Level III churches are not permitted in the RM-6 zoning classification.

Mayor Sitnick announced that the public hearing on this issue was closed and City Council will not take additional comments.

City Attorney Oast said that City Council needs to come to some consensus on the findings and the conditions that they want to put on the property. Once that is done and the Order is how City Council wishes it to read, then Council can vote on the order. He said that would constitute the second vote which is necessary.

City Attorney Oast presented City Council with a revised Order which contains some revisions. He discussed what he felt were the substantive changes: (1) he defined what a minor thoroughfare in Finding No. 5; (2) in Finding No. 11 he tried to elaborate and clarify some of the testimony about the proposed height of the sanctuary; and (3) he added a new Condition No. 9, which reads "The exterior roof height of the proposed new sanctuary shall not exceed 50 feet, measured at grade on the front or Shelburne Road elevation. The applicable building height limitation, measured as prescribed by the UDO, shall be observed throughout the structure. The sanctuary building may have one roof-mounted steeple, not exceeding 35 feet in height." He said that the findings basically cover the properties of the area that surround the subject property, e.g., size of the homes, and the institutional and residential uses that surround the property. He said the Conclusions track what the ordinance specifies, however, because of the procedural point that Mr. Goldsmith raised at the hearing, the first Conclusion addresses that point. He said that the second part of the Conclusions are the conditional use standards as they are outlined in the ordinance.

Councilwoman Field suggested a revised additional Condition No. 9 to what City Attorney Oast read: "That the design of the proposed structure shall be subject to review by a design review team, consisting of City staff and design professionals from the community. The design review team shall work with the architect for the church to ensure that the design of the structure is compatible with the surrounding neighborhood. The design review team shall present the design of the proposed structure and its recommendations to the City Council for approval. The design team shall review the plans, particularly the elevation, paying close attention to the following design elements: height, bulk, scale, massing, articulation, materials, color, location of entrance, relation of the structure to the site, and compatibility with the site and the surrounding neighborhood. The design review team shall ensure that the building elevation fronting on Shelburne Road is designed in a manner which is sensitive to the residential character of the surrounding neighborhood. Review of the landscaping plan shall be included in this review process to ensure that landscaping is appropriately designed and located to soften the impact of the building and parking on surrounding residential uses."

City Attorney Oast said that it was important for City Council to retain final approval authority on this so any consideration by this design review team would have to come back to City Council in the form of a recommendation which Council would then adopt as conditions. He said Councilwoman Field's condition is establishing a set of design guidelines to ensure that the project is compatible with the surrounding neighborhood as much as possible because the design is not complete yet. He did talk with Senior Planner Gerald Green and they feel that this can be brought back to City Council within a short timeframe.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast said the design guidelines would come from the design team. Essentially what Councilwoman Field's suggestion is, is to hold one condition of this conditional use permit open for further consideration by City Council.

Councilwoman Field said that in trying to write a condition it became more and more complicated as she tried to come up with some design guides. She said her guides are fairly standard and she felt these would give a little more control for the neighborhood on this particular project.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast said that to a large extent, as with all conditional use permits, the conditions are self-policing and the City will respond to and investigate complaints.

Councilwoman Field asked if there was a consensus to add a condition for some kind of design review which would include the City staff and design professionals, rather than ad hoc members of the community. The intent of her condition was that whoever designed the church would have to comply with this condition and there would be no guidelines written, but merely it would be reviewed at the time it was presented and if the review team didn't recommend that it be accepted, it would go back to the drawing-board. However, after hearing the discussion, she felt it might be better to have some design guidelines ahead of time and for City Council to approve those guidelines.

When City Attorney Oast asked if any member of Council would change their vote if Councilwoman Field's new Condition No. 9 replaced the additional Condition No. 9 he read earlier, all of Council indicated the replacement would not change their vote.

City Attorney Oast said that it was his understanding that City Council will not be reviewing the final design, but they will approve certain conditions that the final design must meet, and whether it meets it or not will be a staff determination.

Councilwoman Field moved to grant the conditional use permit to Trinity Baptist Church with the additional condition for some type of design guidelines as she read earlier. This motion was seconded by Councilman Sellers.

Mayor Sitnick asked if this order passes with all the conditions, will there be any other opportunities to impose additional conditions. City Attorney Oast said no, not unless the church comes back to City Council for modification of the conditional use permit. When she asked about modifications to the site plan, he said it might be possible to impose conditions at the site plan review level.

Mayor Sitnick was concerned with Condition No. 2 in that the neighbors deserve as much as a screen as possible. City Attorney Oast said that what is intended, if not clear, is that at the end of two years, whatever is planted will be sufficient to screen the parking lot. Mayor Sitnick asked that the condition be clarified so that the plants form a solid hedge that is evergreen. Her concern is that it says it has to form a screen that is five feet high, but she thinks that can be interpreted as street trees and not necessarily a screen. City Attorney Oast suggested the condition be amended to read " Shrubs and trees shall be installed ... which will grow to a height of at least five feet within two years, and be sufficient then and at maturity to provide an opaque evergreen screen sufficient to screen the parking lots from the view of the surrounding residential properties."

From the audience, Senior Planner Gerald Green responded to Councilwoman Field's question if about if there was some definition within the landscape ordinance that can be referred to.

After discussion, City Manager Westbrook suggested that Council state what their intent is and let the professionals work it out because they may even come up with some better alternatives given a little time. Councilwoman Field said that she would be amenable to that because the intent is to screen the parking lot. City Attorney Oast said that Councilwoman's change to condition no. 9 encompasses landscaping, that that gives some latitude to the design review team to make appropriate suggestions.

Councilman Sellers called the question.

Mayor Sitnick said that she has seen a lot of professionals completely deforest property. She said that she wants to screen the parking lots from the view of the surrounding residential properties. She said that if somebody can find a better way to do that, than using conifers, in whatever natural configuration, that is fine. However, if it's not screened year-round then it's not providing the condition of No. 2.

Councilman Cobb said that this is a difficult decision for him. He said businesses, churches and neighborhoods all have rights in the community. As a public official, they have to look at the rights for all the people. He is a strong supporter of neighborhoods, businesses and churches. We are in a no-win situation. The Planning staff and the Technical Review Committee ("TRC") have stated that this project meets all the technical standards for development in the RM-6 zoning designation. The TRC has placed certain conditions on the project, and the church has met or has agreed to meet all of the conditions. He said that one argument on this issue was the traffic, however, the traffic studies show that the roads are designed to carry 10,000 cars a day and even with the 2400 seat auditorium, traffic still would not reach the 10,000 capacity. Regarding property values being reduced, he had a survey done in the area and the results show that from the 1994 valuation, property values in West Asheville have gone up, not declined.

Councilman Tomes stated that a proposed layout of this facility was shared some time ago and they ready to proceed with their long range plan. He felt it was unfair to have prior stages approved and now tell them they can't proceed with their long range plans. He said that this has been a difficult decision for him, however, he is looking at the stewardship and accountability of a faith community that has met all of the criteria that has been established by staff.

Councilwoman Field said that the Grove Park Inn expansion in a residential neighborhood was the only project she could think of that might be comparable in this community where there was an institutional use expanding greatly to do a conferencing kind of facility. She said she didn't find any substantiation for the property value reason for excluding voting for this permit.

Councilman Cloninger stated that he is opposed to granting the conditional use permit in that he didn't think the use proposed is appropriate in this case.

Mayor Sitnick said that looking at the several conditional use standards, which by law Council is supposed to base their granting the permit for this conditional use of this property, knowing that if even one of them fails, City Council must not grant the permit. Conditional Use Standard (d) in the Order which reads "the use of the Subject Property by TBC, if developed as proposed and built in accordance with the approved site plan, and subject to the conditions set forth herein, will be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood in which it is located" clearly reflects that the permit should not be granted.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

The motion made by Councilwoman Field and seconded by Councilman Sellers carried on a 4-3 vote, with Mayor Sitnick, Vice-Mayor Hay and Councilman Cloninger voting "no".

ORDINANCE BOOK NO. 17- PAGE 321

B. RESOLUTION NO. 99-69 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE DISPOSAL PARCEL 59X LOCATED NEAR THE CORNER OF ASHELAND AVENUE AND PHIFER STREET

Mr. Ed Vess, Field Services Coordinator, said that this is the consideration of a resolution directing the City Clerk to advertise an offer to purchase for upset bids regarding Disposal Parcel 59X near the corner of Asheland Avenue and Phifer Street. At the April 27, 1999, City Council meeting, this matter was continued until this date in order to give City Council time to visit the property in question.

The bid of Rex Ballard in the amount of $139,000 for the purchase of Disposal Parcel 59X in the East Riverside Redevelopment Project is not less than the established minimum price of $139,000.

Disposal Parcel 59X is an Office zoned lot near the corner of Asheland Avenue and Phifer Street comprising 0.639 acres. The bid from Rex Ballard for Disposal Parcel 59X includes the proposal to incorporate the lot into the adjacent property currently owned by Rex Ballard. The development proposal consists of landscaping and parking consistent with the Unified Development Ordinance. The proceeds from the sale of this property would be available for the City to purchase another parcel of land that is currently available that is about eight acres in size and would allow us to develop approximately 20-25 units of affordable housing.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

Mr. Mel Thomason urged City Council to retain this parcel of land for open space and also to decrease the potential impact of additional development on Blanton Street.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 99-69. This motion was seconded by Councilman Sellers and carried on a 6-1 vote, with Councilman Tomes voting "no".

RESOLUTION BOOK NO. 25 - PAGE 203

V. NEW BUSINESS:

A. RESOLUTION NO. 99-70 - RESOLUTION AUTHORIZING THE EXECUTION OF DOCUMENTS TO INCLUDE ADDITIONAL EQUIPMENT UNDER THE EXISTING MASTER MUNICIPAL RENTAL AGREEMENT FOR THE CITY'S TELEPHONE SYSTEM

t the request of Councilman Cloninger, Councilman Sellers moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Vice-Mayor Hay and carried unanimously.

Finance Director Bill Schaefer said that this is the consideration of a resolution authorizing the execution of documents to include additional equipment under the existing Master Municipal Rental Agreement for the City's telephone system.

Last year, City Council approved the execution of a Master Municipal Rental Agreement, dated February 25, 1998, between the City of Asheville and NEC America, Inc. (The lease was subsequently assigned by NEC to Sutro & Co., which in turn assigned its right to receive rental payments to Fifth Third Bank, NA) The lease provided a fully-integrated telephone system that met the City's then-current needs and provided expansion capabilities to incorporate future expansion. The lease was for a term of 84 months at a cost of $6,457.50 per month. During the past year it has been necessary to add additional equipment to the system to meet the City's evolving telephone requirements (6 additional digital display phones, 17 headsets, analog card for voice response system, etc.) The proposed resolution authorizes the City Manager, Finance Director and City Clerk to execute all necessary documents to include the above mentioned equipment as Delivery Order Number Two to the Master Municipal Rental Agreement. The terms of the added leased equipment is $378.68 per month for a period of 36 months beginning in May 1999.

Staff recommends the City Council adopt the resolution.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 99-70. This motion was seconded by Vice-Mayor Hay and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 204

B. ORDINANCE REQUIRING THE POSTING OF PRIVATE PARKING LOTS IN DOWNTOWN ASHEVILLE

City Attorney Oast said that this is the consideration of an ordinance requiring that private parking lots in the downtown area be designated as private.

Council and staff have received complaints about enforcement of parking restrictions on private parking lots, primarily related to the towing of vehicles from those lots. Research indicates that local regulation of "motor private carriers with respect to the transportation of property" is pre-empted by federal law. This preemption has been held to apply to non-consensual towing of vehicles from private lots. The effect of the federal law is that cities may not adopt regulations affecting the manner in which privately initiated towing is carried out. To the extent that the federal government does not prohibit local regulation of towing, it appears that, in order for the City to do so, specific authorization would have to be found in State law.

Some North Carolina counties are subject to a law that requires posting of lots as a pre-condition for towing from those lots. Buncombe is not one of those counties. However, there appears to be general authority by which the City can require that private lots be so designated, and to provide that failure to comply subjects the offender (the owner or operator of the lot) to a civil fine. This does not mean that unauthorized vehicles parking in private lots may not be towed or that vehicles must be towed from lots that have signs. However, it may reduce the level of inadvertent unauthorized parking, and thus reduce the number of non-consensual tows.

This application of this ordinance is limited to the Central Business District ("CBD") zone east of the French Broad River; we have had very few complaints from other areas of town. At your meeting in March, some concern was expressed over the "all or nothing" approach that the original proposed ordinance appeared to take. Accordingly, revisions have been made to require the designation of all private parking lots in the CBD, and the hours during which towing is or may be enforced.

At a meeting of the Downtown Commission, it was suggested that uniform signs might aid in further reducing unauthorized use of private lots. Language has been included to permit the City to produce and provide such uniform signs, and to require their use, if available. The ordinance does not require the use of those signs unless the City makes them available. The ordinance just requires the lots be signed and if the signs are available we can require that our signs be used.

The ordinance will become effective sixty days after adoption.

To the extent that this ordinance may help reduce the number of situations where non-consensual tows can occur, its adoption is recommended.

Councilman Cloninger felt that property owners use their signs to not only to warn about towing, but also to advise the public that this is their parking lot. Therefore he suggested that rather than require the property owner to use the City's sign designed by the City, require the property owners to incorporate the City's specified language into their sign. He suggested deleting the language "The City may undertake to produce and provide uniform signs with appropriate designations. If such uniform signs are available, the City may require the use of such signs in implementing this section."

City Attorney Oast said that this suggestion came out of a meeting with the Asheville Downtown Commission and that the City doesn't have to require that their signs be used. He said they can still obtain the signs and make them available to property owners if they want one.

Vice-Mayor Hay was concerned that this ordinance will require every private parking lot owner in the Central Business District to put up a sign stating that it is a private parking lot, even if they don't tow and they don't want to tow. He suggested that if the private parking lot owner is going to use towing to enforce their private rights, then they need to put a sign up, or something to that effect, but not to require all private parking lot owners to put up a sign.

City Attorney Oast said the difficulty we have before us is that the only thing we can do is to require the posting of signs. We can't require the posting of signs as a condition to towing.

Vice-Mayor Hay suggested the ordinance be revised to only read: "If the lot is one from which unauthorized vehicles may be removed without the consent of the vehicle owner, the sign shall specify the days and hours during which such non-consensual removal is enforced."

Mayor Sitnick suggested the ordinance read "If the lot is one from which unauthorized vehicles may be removed without the consent of the vehicle owner, then those lots that are privately owned, privately leased, or privately operated parking lots located east of the French Broad River and located on property zoned to a CBD ... shall display a sign ..." So, in other words, we are really stating only the lots from which unauthorized vehicles may be removed without consent.

Vice-Mayor Hay also suggested the City Attorney look at the words "may be removed" because unauthorized vehicles may be removed without consent in any lot anywhere.

Mayor Sitnick's only desire is to make sure people can see and understand the signs so that if they park in that lot, they will get towed.

It was the consensus of City Council to have the City Attorney review the suggestions made at this meeting and bring a revised ordinance back to Council at their next formal meeting.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 27, 1999, AND THE WORKSESSION HELD ON MAY 4, 1999

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on April 27, 1999, and the worksession held on May 4, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

B. MOTION REAFFIRMING CITY COUNCIL'S SUPPORT OF NORTH CAROLINA ADOPTING PERMITTING PROCEDURES FOR AIR QUALITY IN THE SOUTHEAST

Mayor Sitnick moved to reaffirmed Resolution No. 98-176 adopted on November 24, 1998, which supports North Carolina adopting permitting procedures for air quality in the southeast. This motion was seconded by Councilman Cobb and carried unanimously.

C. REPORT FROM BOARDS/COMMISSIONS COMMITTEE

It was the consensus of City Council to interview candidates for the Educational Access Channel Commission at 4:00 p.m. on Tuesday, May 25, 1999, in Room 209 of the City Hall Building. Vice-Mayor Hay suggested that City Council then vote on those appointments at that formal meeting held later that evening.

D. LAWSUITS

The following lawsuit was received by the City of Asheville on May 5, 1999: Wade Lee Messer v. City of Asheville and Cooper Construction Company Inc. The complaint alleges bodily injury and expenses incurred as a result of a 6" water line improvement project for the West Asheville annexation. This matter will be handled by an outside attorney.

The following lawsuit was received by the City of Asheville on January 25, 1999: Jim A. Robbins v. City of Asheville. The complaint seeks a declaratory judgment that the citation issued against the Plaintiff for an on-premise sign is illegal and invalid. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:35 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

CITY OF ASHEVILLE

CITY COUNCIL

BOARD MINUTES

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Tuesday - May 18, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Budget Amendment re: Improvements to Joint City/Library Facilities

Summary: The consideration of a budget amendment, in the amount of $6,497, to appropriate funds received from the Asheville-Buncombe Library System back into the capital account for improvements to joint City/Library facilities.

The Parks and Recreation Department has made improvements at the North Asheville Community Center/Library. The Asheville-Buncombe Library has agreed to pay for 1/3 of the cost for these improvements. In addition, the Parks and Recreation staff will be making modifications to the Murphy-Oakley Community Center/Library to include a wheelchair ramp and handrail. The library has agreed to pay for 1/3 of these improvements as well. A budget amendment totaling $6,497 is requested to appropriate these funds into the proper account so that staff can proceed with this work.

The Parks and Recreation Department is requesting City Council's approval for the appropriation of $6,497 received from the Asheville-Buncombe Library System into the capital account for improvements to joint City/Library facilities.

Budget Amendment regarding City Hall Fire Bell Automation Project

Summary: The consideration of a budget amendment, in the amount of $15,000, for the Fire Bell Project.

The Friends of the Fire Bell/Chimes Committee has instituted a project to automate the Fire Bell atop the Asheville City Building. Once electrified the bell will strike the hour and the half-hour. Total cost of the project is estimated to be $15,000 with funding to be provided entirely from private donations/grants. This budget amendment will establish a Grant Project Budget totaling $15,000 to allow for the undertaking of the project.

City staff recommends that the budget for the Fire Bell Project in the amount of $15,000 be approved.

Budget Amendment relative to Improvements to Magnolia Park

Summary: The consideration of a budget amendment, in the amount of $15,000, for improvements to Magnolia Park.

The Asheville-Buncombe Historic Resources Commission has received a grant from the Janirve Foundation in the amount of $15,000 which is planned for improvements to Magnolia Park. These improvements consist of (1) constructing and installing 250 feet of classic-styled handmade metal fencing around the front periphery of the park; and (2) constructing a concrete

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stair and corner entrance to the park at the southeast corner of the park on Magnolia Street. This budget amendment establishes a project budget in the amount of $15,000 for the improvements.

City staff recommends that the budget amendment for the Magnolia Park Project in the amount of $15,000 be approved.

Waiving right-of-way Permit Fees for Adopt-A-Spot Program sponsored by Quality Forward

Summary: The consideration of waiving the right-of-way Permit Fee for "Adopt-A-Spot" Program sponsored by Quality Forward.

Quality Forward is in the process of working with other agencies to beautify Asheville by planting landscaping in various locations in the City on City right-of-way. Quality Forward has completed two projects and has plans to complete two additional locations at the intersections of Market and Walnut Streets and O.Henry and Haywood Streets during this year. According to our policy, the approximate cost of the permit for each of the locations would be $150. Based on the total number of projects projected, the estimated revenue reduction would be $600. Quality Forward has requested that the fee for these permits be waived. Due to the wording of the ordinance this fee can only be waived by City Council.

and disturbing activity within the right-of-way requires a right-of-way cut permit from the Engineering Department per City Ordinance Section 16-36. The fee for this permit is based upon the amount of area disturbed in the right-of-way.

t is important for Quality Forward to obtain a permit so that the Engineering Department staff can inspect the site to insure that no harm will be done to the infrastructure. Additionally, it is important to obtain records about work that has been performed in the right-of-way in the event problems occur in the future.

Staff recommends waiving the fee but still requiring that Quality Forward obtain a right-of-way permit so that the sites may be inspected by City staff.

Staff recommends that the City Council waive the right-of-way Permit Fee for "Adopt-A-Spot" Program sponsored by Quality Forward, to include the two projects that have been completed, the two projects planned and any future projects that are included in this program.

Possession & Consumption of Malt Beverages and/or Unfortified Wine at Asheville Downtown Association's 1999 Events

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Downtown Association's 1999 events co-sponsored by the City of Asheville.

The Parks and Recreation Department recommends that the possession of open containers of malt beverages and/or unfortified wine and the consumption of malt beverages and/or unfortified wine be allowed for the 1999 events of the Asheville Downtown Association at the locations and times specified in the resolution.

For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville events to bring both the public and visitors to the Downtown area. These events include: Moonlight Over Downtown, Honda Hoot Public Rally, and four Downtown After Five activities. The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends City Council approve the resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

ASHEVILLE SCHOOL BOARD

Ms. Susan Fisher, Chair of the Asheville School Board, reviewed with City Council the following goals and objectives from their Strategic Plan for Excellent Schools for 1998-99: (1) increase student achievement in Asheville City Schools; (2) provide orderly, safe, clean, drug-free schools; (3) recruit, develop, and retain a highly skilled workforce; and (4) enforce strong partnerships through effective communication. She reviewed with Council achievements made at the schools along with the various programs the schools are undertaking.

Councilwoman Field suggested and Mayor Sitnick agreed that City Council should recognize good kids in the community and the teachers who help them along.

Ms. Fisher answered various questions and comments from Council, some being, but are not limited to: magnet schools, computers for students, internet use in the schools, and the cultural academy.

Councilman Tomes applauded the energy of the school toward working with African American males to graduate, however, of the 120 African American males that started high school in 1995, only maybe 30 will graduate this year. He felt passionate that any student can achieve their goals if they have the kind of support system around them.

Mayor Sitnick thanked the School Board members for their service. She personally asked the School Board to not tear down Claxton School. She said that in September she will be scheduling a youth roundtable so City Council can hear from the children in our community what their concerns are, what is working and what is not working, etc. She encouraged the more time than two days set aside for parent/teacher conferences. She also suggested that the School Board obtain a copy of the video of the Citizen-Times meeting held on school violence. They will be hosting four follow-up meetings that she urged the members to attend. She strongly encouraged the Board to look for ways to reduce the class size.

PEDESTRIAN THOROUGHFARE PLAN

Ms. Suzanne Molloy, Assistant Director of Public Works, said that this is the consideration of adoption of the *Pedestrian Thoroughfare Plan.*

Over the past several months, the Public Works Department in conjunction with the Metropolitan Planning Organization has hosted a series of public comment sessions, spoken to various civic organizations, and presented the draft *Pedestrian Thoroughfare Plan* to a varying audience. The primary goal of the comment period was to solicit input on financing strategies and final "action step" recommendations to City Council. The secondary goal was to assure that all critical pedestrian needs were identified.

General public comment (written and verbal) on the plan was overwhelmingly positive. The majority of respondents recognized the importance of good pedestrian planning and facilities for the community. As with most plans, controversial public comment was received about suggested funding strategies.

After careful review and compilation of public comment by staff (including Public Works, Planning and Development, Parks and Recreation, and Engineering Departments), final recommendations for implementation and "action steps" were developed by consensus. Based on comments, many financing strategies are no longer being recommended.

The final plan identifies approximately $38.5 million of pedestrian facilities and improvements needed in the City of Asheville. As with any comprehensive plan, a long-term approach to implementation must be realized. Following is a synopsis of the recommended action steps:

- Revise the *Asheville Standard Specifications and Details Manual* and the *Unified Development Ordinance* to expand the requirements for sidewalk installation to include: all new subdivisions (with more than 2 homes), all new multi-family dwellings, all new commercial developments, and all non-residential improvements where the costs of improvements exceeds 50% of the existing structure value;
- Amend the *Fees and Charges Manual* to include a 'fee in lieu of construction' option for developers;
- Revise the *Asheville Standard Specifications and Details Manual* to incorporate updated criteria for the design of pedestrian facilities;
- Promote the usage of the special assessment process and encourage the development of local districts for pedestrian and streetscape improvements; and
- Aggressively pursue funding from the NCDOT, and other federal, state, and private sources.

Making Asheville a more pedestrian friendly environment will require the support of local citizens, businesses, and public and private organizations. While some negative criticism has been received about the recommended action steps, staff believes that the chosen action steps will provide the most equitable tools for the City to fully realize this plan and develop a holistic transportation system.

Councilman Cloninger said that he would like to see the 'fee in lieu of construction' option for developers put on a fast track.

Upon inquiry of Vice-Mayor Hay, Ms. Molloy said that criteria will be developed for projects regarding the "fee in lieu of construction", stressing that that "fee" will be the exception to the requirement. Staff will develop the criteria which will in turn be reviewed by the Planning & Zoning Commission. The Planning & Zoning Commission will then make their recommendation to City Council, which will have final approval. After City Council approves the criteria, City staff will be the ones who make the determination of whether to approve the request or not. The petitioner will continue to have the opportunity to requesting City Council to waive the requirement, however. All fees collected will go into a designated fund for pedestrian facilities.

Mayor Sitnick encouraged Ms. Molloy to look into the Better America Bonds.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RESOLUTION NO. 99-71 - RESOLUTION SETTING A PUBLIC HEARING TO CONSIDER THE PURCHASE OF REAL PROPERTY KNOWN AS ROYAL PINES POOL AND PARK PROPERTIES

Mr. Irby Brinson, Director of Parks & Recreation, said that the Trust for Public Land, a national non-profit land conservation organization which works with communities to acquire parks for people, is working with Jake Rusher, owner of approximately 5.5 acres of property located on Sweeten Creek Road and Peach Tree Street known as the Royal Pines Pool and Park Properties, to make Royal Pines a public park for the children of south Asheville.

Mr. Rusher said he has received numerous offers to sell Royal Pines for commercial development but he has always wanted the property to become a public park. With the help of The Trust for Public Land, Mr. Rusher will donate Royal Pines to two charitable remainder trusts. The Trust for Public Land intends to purchase the land from the charitable remainder trusts and then sell the property to the City over three to five years. The proceeds of the sale of the land to The Trust for Public Land will be kept in charitable remainder trusts and will provide income to Mr. Rusher (who is 79 years old) for the rest of his life.

Upon Mr. Rusher's death, he intends to leave a portion of his estate to the City of Asheville to help the City pay for and manage the new park. Mr. Rusher stated his intention to make The Trust for Public Land the beneficiary of the charitable remainder trusts. Upon his death, The Trust for Public Land will receive the money left in the trusts. The Trust for Public Land has stated that it will share its gift from Mr. Rusher with the City of Asheville to ensure that the City receives a total gift in an amount equal to the purchase price of the property.

Mr. Brinson said that the Parks and Recreation Department is interested in the purchase of properties known as the Royal Pines Pool and Park Properties. This property is valuable as protection of open space land and has been identified in the Parks and Recreation Master Plan as an area needing future park development. The purchase of the property is expressly contingent on The Trust for Public Land entering into a contract for the purchase of the property from a trustee.

An appraisal has been completed by the City of Asheville and the purchase price is estimated to be between $920,000 and $970,000. The Parks and Recreation staff is recommending that the purchase of the property be made by installment payments under an installment contract authorized by N. C. Gen. Stat. sec. 160A-20. A public hearing must be held and is scheduled for May 25 in order to discuss the terms and conditions of the installment contract and to receive input from the public regarding this decision.

After the public hearing on this matter, the Parks and Recreation Department is requesting City Council's approval to authorize the Mayor to execute an installment contract and a memorandum of installment contract for the purchase of real property located on Sweeten Creek Road and Peach Tree Street, known as the Royal Pines Pool and Park properties, to be used for Parks and Recreation programs, contingent upon The Trust for Public Land entering into a contract for the purchase of the properties from a trustee.

Mr. Russ Martin, Vice-President of Merrill Lynch, discussed with Council Mr. Rusher's generous proposal and urged City Council to take advantage of this generous offer to the citizens of Asheville and to The Trust for Public Land.

With the aid of a flow-chart, Assistant City Attorney Patsy Meldrum explained the financial aspects of this transaction. She said that The Trust for Public Land normally charges 10% of the purchase price for their service fee, however, because of their on-going relationship with the City, they would only charge the City $50,000.

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Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved to adopt Resolution No. 99-71 setting a public hearing to consider the purchase of Royal Pines Pool and Park properties on May 25, 1999. This motion was seconded by Vice-Mayor Hay and carried unanimously.

Upon inquiry of Vice-Mayor Hay, Mr. Brinson said that the first thing his department will do if the property is purchased will be to assess and evaluate the property.

When Councilwoman Field noted that the Parks and Recreation Master Plan noted a need for a park facility in the south, Mr. Brinson said that this area was identified as begin a good location early in the process.

Mayor Sitnick thanked Mr. Rusher for his generosity to the citizens of Asheville for his foresight in creating a permanent place for children to play and a beautiful green park to be enjoyed forever.

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STATUS OF BILTMORE VILLAGE TRANSPORTATION STUDY

Ms. Cathy Ball, Engineering Director, said that representatives from Day/Wilburn Associates, Inc. will be making a presentation on the recommendations from the Transportation Study for Biltmore Village.

As an addendum to the Comprehensive Parking Study for the Downtown, Biltmore Village, and West Asheville areas, the traffic engineering firm of Day/Wilburn Associates, Inc. was asked to study the Biltmore Village area and make specific recommendations for transportation improvements. These improvements were to include vehicular, pedestrian, bicyclist and rail transportation improvements.

A meeting is scheduled for May 27 in Biltmore Village to allow for public comment.

Mr. Rick Day, Consultant, reviewed with Council the project goal which is to provide a phased transportation plan for Biltmore Village that (1) meets the mobility needs of the Biltmore Village; (2) services both short and long trip lengths; (3) incorporates a variety of travel modes (automobile, pedestrian, rail and transit); and (4) enhances the historic nature of the area.

Project objectives are to (1) support recommendations in the Biltmore Village Development Plan; (2) enhance way-finding and signage; (3) encourage increased pedestrian movement; (4) address seasonal parking needs; (5) improve safety at high accident locations; (6) accommodate north/south traffic movement; (7) separate through traffic from local traffic internal to the Biltmore Village; and (8) incorporate planned passenger rail facility.

The Biltmore Village Development Plan Goals include (1) economic development goals - (a) phased program for immediate public improvements; and (b) development program geared toward pedestrians/historic plan; (2) land use planning goals - (a) re-establish and strengthen image of original historic character; (b) recognize and restore the historic examples of Olmstead's plan; (c) develop a transportation plan; and (d) mitigate the negative impact of vehicular traffic on the historic plan and the pedestrian; and (3) historic preservation goals - (a) protect and maintain existing historic resources; and (b) reclaim lost elements of the Hunt/Olmstead plan.

The Biltmore Village Development Plan Recommendations include (1) redirect traffic flow on Village side streets to facilitate access to shops; (2) examine the need for three vs. four lanes on Biltmore Avenue and All Souls Crescent; (3) synchronize traffic signals to facilitate commuter traffic; (4) redirect through traffic around the Village on Lula Street by-pass and extension to Swannanoa River Road; (5) discourage through traffic along pedestrian oriented streets; (6) recapture original right-of-way along Brook Street; and (7) repair and upgrade local streets.

By use of maps, Mr. Day reviewed with Council the recommended improvements.

Recommended short-term improvements (1999-2004) include: (1) provide sidewalk improvements and ADA compatibility; (2) provide pedestrian crossings at several locations along Lodge Street/Brook Street; (3) consider the use of zebra striping to clearly indicate crosswalks; (4) provide way-finding signs to tourist destinations; (5) perform signal warrant study for Biltmore Avenue at Thompson Street intersection; (6) provide shuttle/trolley connection to downtown Asheville; (7) implement parking improvements recommended in Comprehensive Parking Study (consider surface parking lot along Brook Street in place of surface lot along All Souls Crescent); and (8) modify signal operations to favor Biltmore Avenue/McDowell Street concurrent movements.

Recommended mid-term improvements (2005-2010) include: (1) provide pedestrian connections across railroad tracks to north; (2) install raised pedestrian crossings of Lodge Street/Brook Street; (3) provide directional signage from I-40 to Asheville and Biltmore Village; (4) create a "gateway" entrance to Village area on Biltmore Avenue to All Souls Crescent and Lodge Street; (5) reduce number of travel lanes on Biltmore Avenue to two lanes with a pedestrian refuse area at intersections; (6) provide parking structure north of Brook Street at All Souls Crescent as recommended in the Comprehensive Parking Study; (7) provide access to parking structure from Sweeten Creek Road; (8) install I-40 at Sweeten Creek interchange; (9) improve Sweeten Creek Road from I-40 to Biltmore Village; (10) install connection from Sweeten Creek Road to Swannanoa River Road; and (11) provide connection of Sweeten Creek Road to Brook Street for local access only.

Recommended long-term improvements (2010-2020) include: (1) replace concrete sidewalks with brick or paver sidewalks; (2) provide passenger rail terminal with parking in the structure planned for the east side of the Village; (3) facilitate pedestrian connections to passenger rail terminal and commercial areas to the north; (4) provide a parking structure on the west side of the Village as recommended in the Comprehensive Parking Study; and (5) provide express transit service between Biltmore Village and downtown Asheville during peak travel periods.

Mr. Ray said that he would look into the question raised by Councilwoman Field about whether the new signalization for the new bridge on McDowell Street will make it more difficult to drive on McDowell Street.

It was the consensus of City Council to direct staff to proceed with gathering input from the public.

AMENDMENT TO SIDEWALK VENDOR REGULATIONS

Ms. Terry Clevenger, City Development Manager, said that this is the consideration of approving revised changes to the ordinance regulating pushcarts and outdoor dining areas and adding regulations for outdoor merchandise.

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The City of Asheville has an ordinance permitting outdoor dining, pushcarts, and outdoor entertainment in the Central Business District and Biltmore Village. A Sidewalk Usage Team was established to recommend updates to this ordinance and private uses of public sidewalk space in the Central Business District. Since Biltmore Village has different guidelines for its historic district, staff will meet with HRC and the businesses as part of the public process to ensure the recommended changes to this ordinance comply with Biltmore Village's guidelines.

The Sidewalk Usage Team includes representatives from Planning and Development, Police, Public Works, the Downtown Commission's Streetscape Committee and the Asheville Downtown Association. Input from permit holders, downtown businesses, residents and users was gathered through surveys (direct mail and interception), a public input session and comments from the public documented during the past year. The Sidewalk Usage Team has been meeting during the past several months to make recommendations to update the ordinance and propose fees that closer reflect administrative costs.

The Team recommendations pertaining to sidewalk usage include:

- requirement that merchants/vendors apply for and obtain an encroachment agreement authorizing the structure or merchandise on the sidewalk or public space;
- requirement for permits for pushcarts, sidewalk entertainment, and outdoor merchandise areas;
- all signage for such uses must comply with the Sign Ordinance (Article XIII of Chapter 7); and
- implementation of fees associated with permits for use of such right-of-way and other public spaces.

As downtown continues to thrive, pedestrian traffic and the demand on public space has increased. Given these dynamics, the City should clearly define pedestrian passageway and establish boundaries of private use of public space. In addition to the changes in the ordinance, the team also studied the use of A-frame (sandwich board) signs, which are currently prohibited by the current sign ordinance, and is recommending they continue not to be permitted by the sign ordinance.

Following presentation of these recommendations to City Council, staff proposes to conduct a public input session to solicit input on the recommendations. This item is proposed to then be presented to City Council on June 22, 1999, for adoption, with an effective date of July 1, 1999.

The Sidewalk Usage Team and Planning and Development staff responsible for implementing the program recommends a public process to gather input from the stakeholders regarding the proposed changes to the ordinance. Any comments or proposed changes can then be brought back to City Council for consideration of approval on June 22, 1999.

Discussion surrounded the fees associated with permits for use of such right-of-way and other public spaces and also the responsibility of the merchants who have outdoor dining areas.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the June 22, 1999, City Council agenda.

CABLE RATE REVIEW

Ms. Patsy Meldrum, Assistant City Attorney, said that this is the consideration of a resolution issuing a written decision in response to the filing of an FCC Form 1240 by Brenmor

Cable Partners, L.P. (d/b/a InterMedia) for monthly rates for the basic service tier on its cable system for the time period of June 1, 1999, to May 31, 2000.

Pursuant to federal law and the regulations of the Federal Communications Commission ("FCC"), the City of Asheville ("City") is certified to regulate basic service rates and charges of Brenmor Cable Partners, L.P. ("InterMedia") in the franchised area of InterMedia within the corporate limits of the City. By letter dated February 26, 1999, received by the City on March 1, 1999, InterMedia filed FCC Forms 1205 and 1240, both dated February 25, 1999, for the purpose of justifying its monthly rates and hourly service charges for cable services on the basic service tier on its cable system for the time period of June 1, 1999, to May 31, 2000.

The new maximum permitted rate calculated for the monthly rate on the basic service tier by InterMedia on the FCC Form 1240 is $10.3579. InterMedia proposes to continue charging the current monthly rate of $11.91 for the time period of June 1, 1999, to May 31, 2000, which amount exceeds the maximum permitted rate, by relying upon the filing of an FCC Form 1235 ("abbreviated cost of service" filing) submitted to the City on May 16, 1997. The FCC Form 1235 determined that an increase in the basic service tier rate of $1.96 per month would be permitted as of the time of filing, based upon an upgrade or rebuild of the cable system. The maximum permitted rate of $10.3579 and the increase in the rate of $1.96 per month based upon the filing of the FCC Form 1235 would combine to be a monthly rate of $12.32, which is in excess of the current basic service tier rate charged in the amount of $11.91 per month.

The filing of the FCC Form 1235 by InterMedia with the City on May 16, 1997, predated the completion of the upgrade or rebuild of the cable system and was filed for "pre-approval" purposes. FCC requirements for the FCC Form 1235 are that, if the pre-approval option is exercised, the cable system operator must file the FCC Form 1235 again following the end of the month in which the upgraded cable services become available and are providing benefits to all customers of regulated services in the filing entity, using actual costs where applicable. The upgrade or rebuild of the cable system was completed some time during the summer of 1998, but InterMedia has not yet filed with the City another FCC Form 1235 after the completion of the upgrade or rebuild of the cable system.

After the filing of the FCC Form 1235 by InterMedia on May 16, 1997, the City Council adopted Resolution No. 97-213, which directed InterMedia to keep an accurate account of all amounts received by reason of the rate increase requested pursuant to its FCC Form 1235 filing, in order that the City may, at its option, subsequently issue a written decision regarding the rate request and determining whether or not refunds should be provided to subscribers after completion of the upgrade or rebuild of the cable system. This resolution would order InterMedia to file another FCC Form 1235 in order for the City to complete its review of the monthly rate attributed to the rebuild of the system.

City staff recommends City Council adopt the resolution which would order InterMedia to file another FCC Form 1235 in order for the City to complete its review of the monthly rate attributed to the rebuild of the system.

Ms. Sabrina Jackson, Customer Service Representative of InterMedia, said that even though the rebuild was completed in August of 1998 with the channels being activated, they continued to incur the expenses of the rebuild up until last month.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CONVERSION OF WALNUT STREET TO ONE-WAY TRAFFIC

Councilwoman Field voiced strong opposition to the conversion of Walnut Street to one-way traffic, especially without any input from the Downtown Commission, downtown merchants, or the Merchants Action Coalition. She said that two particular problems include (1) trucks not being able to make the turn into a driveway for dumpster pickups, and (2) people coming out of the Walnut Street side of the Civic Center Parking Garage have a difficult time in reaching the front of the Civic Center. She also expressed concern over one-way signs being placed in the middle of the sidewalks. She felt that Walnut Street has had two-way traffic on it for 50 years and was concerned that there was no process followed prior to making this change.

City Engineer Cathy Ball said that the City has been looking at this for some time and felt that from a public safety standpoint, changing Walnut Street to one way was the appropriate action to take.

Traffic Engineer Mike Moule said that they had planned to go through a full public input process, however, because a sidewalk barrier was installed, they had an immediate concern for site visibility at that intersection. He said that he would proceed with the public input process on whether to make the change permanent or not.

REPORTS ON BOARDS/COMMISSIONS

Vice-Mayor Hay, Chair of the Board & Commission Committee, said that the Committee met and recommends the following:

Reappointment of Sally Rhoades, Susan Dodson and Michael Hyatt to the Carriage Permit Advisory Board, subject to their meeting the attendance requirements and their interest in being reappointed.

Reappointment of John Ingersoll and Jimmy Hungerford to the Citizens/Police Advisory Committee, subject to their meeting the attendance requirements and their interest in being reappointed. Lonnie Blair and Janice Van Dine have both served two full successive terms and are not eligible for reappointment. Their positions will be filled through the interview process.

Reappointment of Robert Swan and Richard Bowman to the Civic Center Commission, subject to their meeting the attendance requirements and their interest in being reappointed. Tom Muncy has served two full successive terms and is not eligible for reappointment. His position will be filled through the interview process.

Reappointment of Nancy Kauffman to the Civil Service Board, subject to her meeting the attendance requirements and her interest in being reappointed.

Reappointment of Tommy Sellers to the Crime-Stoppers Board of Directors, subject to his meeting the attendance requirements and his interest in being reappointed. Steve Curtis and Grant Osborne have both served two full successive terms and are not eligible for reappointment. Their positions will be filled through the interview process.

It was the consensus of City Council instruct the City Clerk to prepare the proper paperwork to appoint Carol King as Chair to the Asheville Downtown Commission until her successor has been appointed.

Reappointment of John Hayes to the Buncombe County Drug Commission, subject to his meeting the attendance requirements and his interest in being reappointed.

With regard to the two vacancies on the Film Board, Councilman Cloninger (member on the Film Board) was instructed to check with the Film Board at their next meeting to see if they want to reduce their membership to 13 or for City Council to interview for the two vacancies.

Reappointment of Jody Kuhne and Fred Eggerton to the Historic Resources Commission, subject to their meeting the attendance requirements and their interest in being reappointed.

With regard to the Housing Authority, these are the Mayor's appointment and she noted that there are three positions to be filed, with one reappointment possible.

Reappointment of Charles Bullman to the Recreation Board, subject to his meeting the attendance requirements and his interest in being reappointed. William Estes and Lewis Isaac have both served two full successive terms and are not eligible for reappointment. Their positions will be filled through the interview process.

Reappointment of Margaret Tinkler, Ann Babcock and Jerry Bailey, subject to their meeting the attendance requirements and their interest in being reappointed. Peter Loewer has served two full successive terms and is not eligible for reappointment. His position will be filled through the interview process.

With regard to the vacancy on the Regional Water Authority of Asheville, Buncombe and Henderson, it was the consensus of City Council to appoint a City Council member to this Authority, noting that both the Buncombe County Commissioners and the Henderson County Commissioners each have a Commission member appointed to the Authority. Since Councilmen Cobb and Sellers were both interested in serving on this Authority, they would talk with the City Manager (who is Secretary to the Authority) and others to find out the detailed responsibilities of the Authority. Mayor Sitnick said that she supported a City Council member being appointed to the Authority, however, now is also a good time for an appointment of someone who has scientific knowledge about water quality, etc., and thought that Dr. Rick Maas, even though he is a County resident, would be a good appointment.

Councilman Cloninger agreed to serve as the City Council liaison to the Broadway Corridor Plan Advisory Committee.

GROVE ARCADE PARKING

Mr. Aaron Zaresky expressed concern over the newspaper article that said the Grove Arcade Parking was an unfunded request in the 1999-2000 budget. He asked City Council to reaffirm that there is a commitment to build a parking deck adjacent to the Grove Arcade.

City Manager Westbrook said that City Council has an obligation with the Grove Arcade and has not yet considered how to fund the parking. This issue will be discussed as part of the budget worksession. Staff will report back to City Council with a final recommendation on the funding recommendations before September 30, 1999.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:40 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

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Tuesday - May 25, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; and Councilman Thomas G. Sellers; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman O.T. Tomes

INVOCATION

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF WINNING PLAYERS AND COACHES FROM THE INVITATIONAL INTERNATIONAL BASKETBALL TOURNAMENT IN ASHEVILLE'S SISTER CITY SAUMUR, FRANCE

Mayor Sitnick recognized Dr. Robert Merrill, the players and coaches who won three trophies - the Division Trophy, the Coach's Trophy and the Third Place Trophy while attending the first Invitational International Basketball Tournament in Asheville's Sister City Saumur, France.

B. RESOLUTION NO. 99-72 - RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE FLOYD WORLEY

City Manager Westbrook read a resolution of appreciation to Floyd Worley who has been employed by the City of Asheville for 30 years. Mr. Worley has requested retirement from his position as Meter Technician in the Water Resources Department.

Resolution No. 99-72 was adopted by acclamation.

RESOLUTION BOOK NO. 25 - PAGE 206

C. PROCLAMATION PROCLAIMING "ASHEVILLE AN INTERNATIONAL PEACE ZONE AT THE YEAR 2000"

Mayor Sitnick read the proclamation proclaiming "Asheville an International Peace Zone at the Year 2000." She presented the proclamation to Ms. Lexie Ross, Ms. Linda McClain and Mrs. James McClure Clarke, who briefed City Council on the significance of the proclamation.

D. PROCLAMATION PROCLAIMING MAY 22-28, 1999, AS "NATIONAL SAFE BOATING WEEK"

Vice-Mayor Hay read the proclamation proclaiming the week of May 22-28, 1999, as "National Safe Boating Week" in the City of Asheville. He presented the proclamation to Mr. Kim Latta, who briefed City Council on the some activities taking place during the week.

E. PROCLAMATION PROCLAIMING MAY 27, 1999, AS "OLDER AMERICANS DAY"

Councilman Cobb read the proclamation proclaiming Thursday, May 27, 1999, as "Older Americans Day" in the City of Asheville. He presented the proclamation to Mr. Dick Patzfahl, Executive Director of the Buncombe County Council on Aging, who briefed City Council on the some activities taking place during the day.

F. PROCLAMATION PROCLAIMING JUNE 6-12, 1999, AS "NATIONAL HOMEOWNERSHIP WEEK"

Councilwoman Field read the proclamation proclaiming the week of June 6-12, 1999, as "National Homeownership Week" in the City of Asheville. She presented the proclamation to Ms. Geraldine Melendez, President of the West End/Clingman Avenue Neighborhood Association, who briefed City Council on the some activities taking place during the week.

II. CONSENT:

A. MOTION SETTING A PUBLIC HEARING ON JUNE 8, 1999, RELATIVE TO THE 1999-2000 ANNUAL OPERATING BUDGET

B. RESOLUTION NO. 99-73 - RESOLUTION AUTHORIZING THE SALE OF DISPOSAL PARCEL 59X LOCATED NEAR THE CORNER OF ASHELAND AVENUE AND PHIFER STREET TO R. BALLARD INVESTMENTS IN THE AMOUNT OF $139,000

Summary: The consideration of a resolution authorizing the Mayor to execute necessary documents for the conveyance of Disposal Parcel 59X located near the corner of Asheland Avenue and Phifer Street to Rex Ballard in the amount of $149,000.

On May 11, 1999, the City Council directed the City Clerk to advertise for upset bids on Disposal Parcel 59X. The advertisement ran in the Asheville Citizen-Times on May 14, 1999, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Rex Ballard in the amount of $139,000.00 was not upset and the sale to Rex Ballard should be approved.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 207

C. ORDINANCE NO. 2573 - BUDGET AMENDMENT TO APPROPRIATE FUNDS RECEIVED FROM THE ASHEVILLE-BUNCOMBE LIBRARY SYSTEM FOR IMPROVEMENTS TO JOINT CITY/LIBRARY FACILITIES

Summary: The consideration of a budget amendment, in the amount of $6,497, to appropriate funds received from the Asheville-Buncombe Library System back into the capital account for improvements to joint City/Library facilities.

The Parks and Recreation Department has made improvements at the North Asheville Community Center/Library. The Asheville-Buncombe Library has agreed to pay for 1/3 of the cost for these improvements. In addition, the Parks and Recreation staff will be making modifications to the Murphy-Oakley Community Center/Library to include a wheelchair ramp and handrail. The library has agreed to pay for 1/3 of these improvements as well. A budget amendment totaling $6,497 is requested to appropriate these funds into the proper account so that staff can proceed with this work.

The Parks and Recreation Department is requesting City Council's approval for the appropriation of $6,497 received from the Asheville-Buncombe Library System into the capital account for improvements to joint City/Library facilities.

ORDINANCE BOOK NO. 17 - PAGE 328

D. ORDINANCE NO. 2574 - BUDGET AMENDMENT FOR THE FIRE BELL PROJECT ATOP THE CITY HALL BUILDING

Summary: The consideration of a budget amendment, in the amount of $15,000, for the Fire Bell Project.

The Friends of the Fire Bell/Chimes Committee has instituted a project to automate the Fire Bell atop the Asheville City Building. Once electrified the bell will strike the hour and the half-hour. Total cost of the project is estimated to be $15,000 with funding to be provided entirely from private donations/grants. This budget amendment will establish a Grant Project Budget totaling $15,000 to allow for the undertaking of the project.

City staff recommends that the budget for the Fire Bell Project in the amount of $15,000 be approved.

ORDINANCE BOOK NO. 17 - PAGE 330

E. ORDINANCE NO. 2575 - BUDGET AMENDMENT FOR IMPROVEMENTS FOR MAGNOLIA PARK

Summary: The consideration of a budget amendment, in the amount of $15,000, for improvements to Magnolia Park.

The Asheville-Buncombe Historic Resources Commission has received a grant from the Janirve Foundation in the amount of $15,000 which is planned for improvements to Magnolia Park. These improvements consist of (1) constructing and installing 250 feet of classic-styled handmade metal fencing around the front periphery of the park; and (2) constructing a concrete stair and corner entrance to the park at the southeast corner of the park on Magnolia Street. This budget amendment establishes a project budget in the amount of $15,000 for the improvements.

City staff recommends that the budget amendment for the Magnolia Park Project in the amount of $15,000 be approved.

ORDINANCE BOOK NO. 17 - PAGE 332

F. RESOLUTION NO. 99-74 - RESOLUTION WAIVING RIGHT-OF-WAY CUT FEES FOR ADOPT-A-SPOT PROGRAM FOR QUALITY FORWARD

Summary: The consideration of waiving the right-of-way Permit Fee for "Adopt-A-Spot" Program sponsored by Quality Forward.

Quality Forward is in the process of working with other agencies to beautify Asheville by planting landscaping in various locations in the City on City right-of-way. Quality Forward has

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completed two projects and has plans to complete two additional locations at the intersections of Market and Walnut Streets and O.Henry and Haywood Streets during this year. According to our policy, the approximate cost of the permit for each of the locations would be $150. Based on the total number of projects projected, the estimated revenue reduction would be $600. Quality Forward has requested that the fee for these permits be waived. Due to the wording of the ordinance this fee can only be waived by City Council.

and disturbing activity within the right-of-way requires a right-of-way cut permit from the Engineering Department per City Ordinance Section 16-36. The fee for this permit is based upon the amount of area disturbed in the right-of-way.

t is important for Quality Forward to obtain a permit so that the Engineering Department staff can inspect the site to insure that no harm will be done to the infrastructure. Additionally, it is important to obtain records about work that has been performed in the right-of-way in the event problems occur in the future.

Staff recommends waiving the fee but still requiring that Quality Forward obtain a right-of-way permit so that the sites may be inspected by City staff.

Staff recommends that the City Council waive the right-of-way Permit Fee for "Adopt-A-Spot" Program sponsored by Quality Forward, to include the two projects that have been completed, the two projects planned and any future projects that are included in this program.

RESOLUTION BOOK NO. 25 - PAGE 208

G. RESOLUTION NO. 99-75 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WIN AT THE ASHEVILLE DOWNTOWN ASSOCIATION'S 1999 EVENTS CO-SPONSORED BY THE CITY OF ASHEVILLE

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Downtown Association's 1999 events co-sponsored by the City of Asheville.

The Parks and Recreation Department recommends that the possession of open containers of malt beverages and/or unfortified wine and the consumption of malt beverages and/or unfortified wine be allowed for the 1999 events of the Asheville Downtown Association at the locations and times specified in the resolution.

For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville events to bring both the public and visitors to the Downtown area. These events include: Moonlight Over Downtown, Honda Hoot Public Rally, and four Downtown After Five activities. The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends City Council approve the resolution.

RESOLUTION BOOK NO. 25 - PAGE 209

H. RESOLUTION NO. 99-76 - RESOLUTION RELATIVE TO THE PARKS, RECREATION AND GREENWAYS BOND REFERENDUM

Summary: The consideration of a resolution certifying and declaring the results of the special bond referendum on the Bond Order Authorizing the Issuance of $18,000,000 General Obligation Parks, Recreation and Greenway Bonds held for the City of Asheville on May 11, 1999.

At the request of the City Council of the City of Asheville, the Buncombe County Board of Elections conducted a Special Bond Election on May 11, 1999, regarding the Bond Order Authorizing the Issuance of $18,000,000 General Obligation Parks, Recreation and Greenway Bonds. The Board of Elections' report of results indicating there were 41,411 registered voters; 5,681 of whom turned out to vote; 2,656 cast "yes" votes and 3,022 voted "no". The proposed resolution certifies and declares the results of the referendum and directs the City Clerk to publish the certified results in accordance with the law.

Staff recommends the City Council adopt the resolution.

RESOLUTION BOOK NO. 25 - PAGE 211

I. RESOLUTION NO. 99-77 - RESOLUTION APPOINTING CAROL KING AS CHAIR OF THE ASHEVILLE DOWNTOWN COMMISSION

Summary: Scott Jarvis has resigned as a member and Chair of the Asheville Downtown Commission. This resolution will appoint Ms. Carol King as Chair until her term expires, or until her successor has been duly appointed and qualified.

RESOLUTION BOOK NO. 25 - PAGE 212

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO THE MINIMUM HOUSING CODE AMENDMENTS AND ASSOCIATED FEES

ORDINANCE NO. 2576 - ORDINANCE AMENDING THE MINIMUM HOUSING CODE OF THE CITY OF ASHEVILLE

RESOLUTION NO. 99-78 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL

Mayor Sitnick opened the public hearing at 5:42 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Terry Summey, Director of Building Safety, said that during the past six months, staff and some industry and nonprofit agency representatives have been meeting and discussing changes needed for the enforcement of the Minimum Housing Code. In addition, during the last four months the changes have been discussed at the Council's Housing & Community Development Committee.

The changes being recommended include the following:

- Technical changes to the Code (supported by the representatives);
- Changes to the schedule for inspecting rental properties (no consensus agreement reached);
- Increase staffing support for administering the code;
- Additional and/or changes to the administrative and permits fees (to pay for the additional staff being requested);
- Implement on July 1, 1999, no water turn-ons until rental units have met the Housing Code; and
- Increase promotion of the Code and any approved changes

He reviewed the following summary of Code changes: (1) New definition: Deflection; (2) Replaced definition: Dilapidated; (3) Clarification on: Bathroom Exhaust Fans; (4) New section: Dryer Vents (effective 7/1/04); (5) New section: Range Hoods; (6) Reduced: Number of receptacles for small kitchens; (7) Changed: Increased layers of roofing to 3; (8) Clarified: That attics are to be adequately ventilated; (9) New section: Security bars on windows (means of egress from bedrooms; (10) Revised: Landings to comply with N.C. State Building Code; (11) Editorial changes: On protective railings for stairs and porches; (12) New section: Security bars on windows; (13) Corrected spelling: Includes no "delamination" or splitting of wood doors; (14) Clarified: When screens are required on windows; (15) New exception: Added exemption to ceiling heights for units built prior to 1936; (16) Clarified: What size window is required for means of egress from occupancies below grade; (17) Corrected: That Vol. 1 Section 19 should be changed to Vol. 1 or Vol. 1 Chapter 4 as N.C. State Building Code specifies; (18) Added two alternate schedules: (a) The revised schedules recommend sampling a percentage of all units owned by a property owner; the units to be inspected will be determined by the City; this benefits the landlord who invests mainly in single family rental units; (b) If the owner can produce current documentation of a regular annual inspection and maintenance schedule of each unit, using a form approved by the City and adequate to maintain the units up to the standards of the Housing Code: the units inspected would be reduced from (i) 15% to 10% - for units less than 15 years old; and (ii) 50% to 20% - for units 15 or more years old; (19) Added: Correction order; findings of fact and order; and (20) Addition: After January 1, 2000, an owner who has not obtained a housing certificate within the 5 year rental schedule shall be assessed a penalty of $20 for each month that a housing certificate has not been obtained.

He reviewed the following proposed Fees & Charges Manual changes: (1) units inspected during the five year schedule will have the current $20 Housing Certificate fee waived if the unit passes the initial inspection; (2) units inspected after the five year schedule will have a Certificate fee of $100; and (3) permit fees will be reduced from $45 to $25 per trade (building, electrical, mechanical, and plumbing) at each building where housing code corrections are made.

Current staffing to enforce the Housing Code includes: 3 housing inspectors, 1 housing code coordinator, 1 secretary, 1 part-time secretary (in City Hall Customer Services Division), and 15 third party companies (21 inspectors). The proposed additional staffing will include: 1 housing inspector, one secretary and one research assistant.

Key enforcement tools include (1) no water turn-ons will be approved after July 1, 1999, unless the rental unit has all housing inspection work completed and the housing fees paid; and (2) GIS mapping of the City's residential units (identification of all rental properties).

Key benefits of the changes include: (1) clean up of the text to the Code; (2) adopts an inspection schedule that benefits landlords with multiple units at different locations; (3) reduces the number of units to be inspected if property owners utilize and document an approved annual inspection program on all units which indicates training of their property managers; (4) adopts

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reduced fees for permits and properties that are maintained up to Code; and (5) adopts a new civil penalty for rental units receiving certificates after five years (effective January 1, 2000).

Both ordinance and amendment to the fees and charges manual would be effective July 1, 1999.

Mr. Summey answered various questions and comments from Council, some being, but are not limited to: how were out of town landlords notified, what types of notice was used in the past five years to let landlords know about the inspection schedule; what tools does the City use to identify the worst units; what are the consequences of the $100 per unit fee was waived for 90 days and how much revenue would be lost; and are there additional inspectors that can be certified to help get the inspections completed by July 1, 1999.

The following individuals spoke in support of the enforcement of the Minimum Housing Code amendments and the new administrative fee schedule:

Mr. David Nash
Mr. Bruce Armstrong
Mr. Jim Barrett, representing the Affordable Housing Coalition (supports Code amendments, however, supports 100% inspections to single family rental units, not sampling a percentage of units to be inspected)
Mr. Joseph Smith
Ms. Geraldine Melendez
Mr. Al Mojonnier (supports Affordable Housing Coalition position)
Mr. Richard Nantelle
Ms. Amy Ray
Ms. Beth Maczka, Executive Director of the Affordable Housing Coalition (supports Affordable Housing Coalition position)
Mr. John Hayes
Ms. Barbara Wallace

The following individuals spoke in support of the enforcement of the Minimum Housing Code amendments generally, however, most requested the $100 per unit fee be waived for 90 days if the inspection was performed prior to July 1, 1999:

Mr. Jody Kuhne
Mr. J. T. Black (felt Code violates Article IV of the Constitution)
Ms. Bonnie Bailey, representing Greater Asheville Area Apartment Association (feels that City should develop a plan to reward property owners who inspect their units on a regular basis so that the property owner doesn't have to pay for passing inspections).
Mr. Phillip Price
Mr. Tom Leslie
Ms. Judy Carter
Ms. Molly Sandridge
Ms. Betty Crawford
Mr. Ron Filka
Mr. Mike Summey (opposed to the way the Code is administered)

There was discussion relative to the change of no water turn-ons being approved after July 1, 1999, unless the rental unit has obtained all housing inspection work completed and the housing fees paid.

Mr. Dan Pearson, third party inspector, said that due to the procrastination of the landlords, they have put the inspectors in a time bind. He said they will do as many of the inspections as possible, however, they will not be able to complete all the inspections prior to the July 1, 1999, deadline.

Mr. Ron Filka suggested that due to the shortage of manpower, instead of the all the units being inspected by July 1, 1999, that the City use a system similar to the driver's license system in that portions of the community be inspected by July 1, 1999, and then another portion of the community be inspected a little later, and so forth. That way, the current manpower would be available to concentrate their efforts in certain parts of the community at one time.

Mayor Sitnick closed the public hearing at 7:45 p.m.

Councilwoman Field, Chair of the Housing & Community Development Committee, stated that she strongly supports affordable and safe housing and she wants to get all of the units in the City inspected and bring as many units up to Code as possible. She also realizes the need to have the fees support the cost of increased staff. However, she doesn't think that we've solved the enforcement problem and would like the chance to talk with staff a little more or remand it back to the Housing & Community Development Committee to see if they can come up with a solution.

Vice-Mayor Hay felt that the City has worked to raise the awareness level of the July 1, 1999, deadline for at least 2-3 years. He doesn't hear that the landlords saying that they can't get their units inspected by July 1, only that they can't get the work done by July 1 and they don't want to be penalized for that. He would support the $100 per unit fee be waived for 90 days if the inspection was performed prior to July 1, 1999. Our goal is not to penalize anyone or to generate money, but to identify the units and have them inspected.

Councilman Cobb supported keeping the July 1, 1999, deadline and looking at a 90 day grace period for the landlords to get their work done.

Mr. Summey said that he didn't think the delay would affect that revenue estimate this first year but definitely next budget year they will need to look at the fees.

City Manager Westbrook said that Council's guidance to staff is to use fees so that the property taxes don't go to support activities which should be supported by fees. He said we will be watching this all through the year to make sure that the fees are covering the service and if they are not, we will report it back to Council.

At the request of Councilwoman Field, Mr. Summey explained the recommendation of the Housing & Community Development Committee regarding the sampling a percentage of all units owned by a property owner, stressing that the units to be inspected will be determined by the City and that this will benefit the landlord who invests mainly in single family rental units. If the owner can produce current documentation of a regular annual inspection and maintenance schedule of each unit (using a form approved by the City and adequate to maintain the units up to the standards of the Housing Code), the units inspected would be reduced from 15% to 10% for units less than 15 years old and 50% to 20% for units 15 or more years old

Mayor Sitnick supported 100% of single family rental units be inspected, and not a sampling of a percentage of units.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and the resolution and they would not be read.

Vice-Mayor Hay moved for the adoption of Ordinance No. 2576. This motion was seconded by Councilwoman Field and carried unanimously.

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Vice-Mayor Hay moved for the adoption of Resolution No. 99-78, with the following amendment: "For each rental unit receiving housing certificates after the required 5 year inspection schedule in the Housing Code, a certificate fee of $100 per unit inspected will be charged; however, for those units for which an inspection was conducted prior to July 1, 1999, but the certificate is not issued until prior to October 1, 1999, the $100 per unit fee will be waived. After 5-1/2 years, an additional fee of $20 per month per unit will be required." This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 213

B. PUBLIC HEARING TO CONSIDER REZONING A ONE FOOT STRIP OF PROPERTIES ABUTTING THE NORTH END OF SOUTH GROVE STREET FROM CENTRAL BUSINESS DISTRICT AND REGIONAL BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

City Attorney Oast said that when it became apparent that Councilman Tomes would not be at this meeting, a concern arose as to this public hearing to consider the rezoning of a one-foot strip of properties abutting the north end of South Grove Street from Central Business District and Regional Business District to RS-8 Residential Single Family High Density District. A valid protest petition has been submitted, thus invoking the 3/4's vote of Council, which would require a unanimous vote (6-0) of City Council to adopt this ordinance.

He also said that under Unfinished Business, there is a vote on the second reading of an ordinance to rezone a one-foot strip along five lots on South Grove Street from Office Business District to RS-8 Residential Single Family High Density District.

City Attorney Oast said that in recognition of some of the concerns that City Council raised at the public hearing held on May 11, 1999, staff is willing to undertake a reconsideration of some of the recommendations for dealing with some of the issues that City Council identified and were identified at the public hearing. He said the process by which City Council got to the point of considering this rezoning was one that was driven by concerns expressed by the neighborhood and the solutions that were possible to work, but perhaps not the best solution. In talking with the Planning staff and his office staff, he felt they could develop some solutions that will work possibly better in these kinds of situations and may enable Council to avoid setting a precedent where these kind of one-foot zoning strips become the norm.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast said that in tabling the matter, it preserves Council's option to proceed with the rezoning as proposed or to consider whatever alternatives staff might come up with.

Mr. Craig Justus, attorney representing the Asheville Women's Medical Center, said that he didn't see any point to table this issue because the one-foot concept strip is wrong and they think that Council will hopefully recognize that it is a bad concept from a planning standpoint and it's not fair to the property owners. He felt City Council could deal with the issue of the one-foot strip tonight and if Council rejects it, it still could come back again before City Council at some later point in time. To leave it open indefinitely leaves them somewhat in a lurch. However, if there is enough concern that City Council has not seen that the one-foot strip is not a good technique, then he would be willing to table the matters.

Councilman Cloninger also that a message should be sent to the Planning & Zoning Commission that the one-foot zoning strip is not a good tool to use.

Councilman Cloninger moved to table this public hearing the rezoning of a one-foot strip of properties abutting the north end of South Grove Street from Central Business District and Regional Business District to RS-8 Residential Single Family High Density District. This motion was seconded by Councilman Cobb and carried unanimously.

At 8:26 p.m., Mayor Sitnick announced a short break.

C. PUBLIC HEARING RELATIVE TO ADOPTION OF A SMALL AREA PLAN KNOWN AS THE HAYWOOD ROAD CORRIDOR PLAN AS AN ADDENDUM TO THE COMPREHENSIVE PLAN FOR THE CITY OF ASHEVILLE (ASHEVILLE CITY 2010 PLAN)

RESOLUTION NO. 99-79 - RESOLUTION ADOPTING A SMALL AREA PLAN KNOWN AS THE HAYWOOD ROAD CORRIDOR PLAN AS AN ADDENDUM TO THE COMPREHENSIVE PLAN FOR THE CITY OF ASHEVILLE (ASHEVILLE CITY 2010 PLAN)

Mayor Sitnick opened the public hearing at 8:47 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of adoption of the Haywood Road Corridor Plan, a small area plan developed by the Planning and Development Department for Haywood Road from Patton Avenue to the French Broad River.

In July of 1998, the Asheville City Council directed the Planning and Development Department to develop a small area plan for the Haywood Road Corridor. Staff has completed a draft plan for the corridor which is largely based upon input and participation from various stakeholders of the community. This input and participation included several advisory committee meetings, a couple of community meetings, and meetings with various groups and individuals from the business community and neighborhood associations.

The Haywood Road Corridor Plan addresses five issues which were identified by the community and advisory committee as being the most important issues. These five issues are:

- land use;
- vehicle and pedestrian circulation;
- landscape and streetscape;
- building facade; and
- economic and community development.

For each of these issues, the plan establishes goals and recommendations. The goals are broad statements of purpose and describe the desired end result of the plan. The recommendations outline ways in which the goals can be accomplished. The plan emphasizes cooperation among the stakeholders as a key to implementation of the plan.

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Upon adoption by the City Council, the Haywood Road Corridor Plan will become part of the Asheville City Plan: 2010 and will serve as a guide for future development and improvements along the corridor.

Copies of the draft plan were distributed to the Engineering Department, Public Works Department, and Community Development Division for review and comment prior to the adoption of the plan by the Planning and Zoning Commission. Copies of the (revised) draft plan were provided to City Council to allow for review of the plan prior to the public hearing.

At their May 5, 1999, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of this small area plan. The Planning and Development Department also recommends approval of this small area plan.

Mr. Richard Nantelle spoke in support of this Plan which will help re-create and revive Haywood Road.

Mayor Sitnick closed the public hearing at 8:56 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Cobb and Councilwoman Field both spoke in favor of the Plan.

Councilman Cobb moved for the adoption of Resolution No. 99-79. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 214

D. PUBLIC HEARING RELATIVE TO THE PEDESTRIAN THOROUGHFARE PLAN

RESOLUTION NO. 99-80 - RESOLUTION ADOPTING THE PEDESTRIAN THOROUGHFARE PLAN

Mayor Sitnick opened the public hearing at 8:58 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Suzanne Molloy, Assistant Director of Public Works, said that this is the consideration of adoption of the *Pedestrian Thoroughfare Plan.*

Over the past several months, the Public Works Department in conjunction with the Metropolitan Planning Organization has hosted a series of public comment sessions, spoken to various civic organizations, and presented the draft *Pedestrian Thoroughfare Plan* to a varying audience. The primary goal of the comment period was to solicit input on financing strategies and final "action step" recommendations to City Council. The secondary goal was to assure that all critical pedestrian needs were identified.

General public comment (written and verbal) on the plan was overwhelmingly positive. The majority of respondents recognized the importance of good pedestrian planning and facilities for the community. As with most plans, controversial public comment was received about suggested funding strategies.

After careful review and compilation of public comment by staff (including Public Works, Planning and Development, Parks and Recreation, and Engineering Departments), final recommendations for implementation and "action steps" were developed by consensus. Based on comments, many financing strategies are no longer being recommended.

The final plan identifies approximately $38.5 million of pedestrian facilities and improvements needed in the City of Asheville. As with any comprehensive plan, a long-term approach to implementation must be realized. Following is a synopsis of the recommended action steps:

- Establish a full-time position to implement this Plan;
- Revise the *Asheville Standard Specifications and Details Manual* and the *Unified Development Ordinance ("UDO")* to expand the requirements for sidewalk installation to include: all new subdivisions (with more than 2 homes), all new multi-family dwellings, all new commercial developments, and all non-residential improvements where the costs of improvements exceeds 50% of the existing structure value;
- Amend the *Fees and Charges Manual* to include a 'fee in lieu of construction' option for developers;
- Adopt the Cityscape Plan;
- Revise the *Asheville Standard Specifications and Details Manual* to incorporate updated criteria for the design of pedestrian facilities;
- Promote the usage of the special assessment process and encourage the development of local districts for pedestrian and streetscape improvements;
- Aggressively pursue funding from the NCDOT, and other federal, state, and private sources;
- Direct staff to evaluate long-term transportation planning issues in the review of Level 1, 2 and 3 projects;
- Promote the enforcement of existing standards, ordinances, and other related programs that enhance and protect the pedestrian environment;
- Consider development of a bond referendum for pedestrian facilities to include needs outlined in the Master Greenway and Pedestrian Thoroughfare Plan;
- Develop a comprehensive Capital Improvement Program that reflects the adopted funding strategies;
- Negotiate with utility companies to relocate sidewalk obstacles located within the right-of-way;
- Endorse and support the Pedestrian and Bicycle Thoroughfare Master Plan;
- Encourage and improve public transportation and develop inter- and intra-modal connections;
- Encourage multi-use development which includes residential and business facilities;
- Support neighborhood traffic calming initiatives; and
- Strengthen and support the Bicycle Task Force/Pedestrian Task Force.

Making Asheville a more pedestrian friendly environment will require the support of local citizens, businesses, and public and private organizations. While some negative criticism has been received about the recommended action steps, staff believes that the chosen action steps will provide the most equitable tools for the City to fully realize this plan and develop a holistic transportation system.

Staff recommends that City Council adopt the *Pedestrian Thoroughfare Plan* and direct staff to begin implementation of the plan.

Ms. Molloy reviewed some additions and deletions made to the Plan as a result of comments arising from the public meetings. One deletion made, in particular which concern was raised by the Homebuilders Association, was to remove the requirement that developers would be responsible for the replacement of existing dilapidated sidewalks. She said that overall public comment has been fairly supportive of the Plan and the controversy has been mainly around the methods for funding the plan. The Homebuilders Association did state to her that they wish they could comment on the Plan after revisions were made and she did invite them to attend this public hearing to address any additional concerns.

Upon inquiry of Councilman Cloninger, Ms. Molloy explained that what was originally proposed was that if someone was coming in to develop or re-develop a site, that if there was an existing dilapidated sidewalk there, the developer had to replace it. Since there was negative comment about that, staff removed it from the Plan and now the Plan reads that if the existing sidewalk is damaged during construction or if they have to change it significantly, they would be responsible for it then. They would not have to pay the "fee in lieu of construction" and they would be exempt from any sidewalk requirement. The general feeling was that the City already has the sidewalk and the City should maintain and take care of it.

Vice-Mayor Hay asked if Council adopts the Plan, are they committing themselves to each of the action steps. City Attorney Oast said that City Council is only bound to consider the action steps, but not bound to take them, particularly to the extent that they involve ordinance changes or budgetary matters. Adoption of the Plan only establishes direction of the Council.

Ms. Elizabeth Teague, Planner with the Land-of-Sky Regional Council, felt that this Plan is a very good plan and urged City Council to adopt it and aggressively search for grant funding.

Mr. Gerry Hardesty, member of the Pedestrian Task Force, also spoke in support of adoption of the Plan, noting that sidewalks are an important part of the Plan, but it includes much more than just sidewalks. He also urged City Council to implement the Plan in a timely fashion.

Mayor Sitnick closed the public hearing at 9:23 p.m.

Councilman Cloninger felt that if we are going to require people to build new sidewalks, it seems like it is reasonable to ask them to rehab existing ones. He noted that we don't have too many resources available to improve infrastructure. He felt that since it's fair for the City to require developers who are developing an area that does not have sidewalks at all to pay a fee or to put in new sidewalks, it seems to him that it would be fair to ask a developer who is developing where there is already an existing sidewalk to pay to have it upgraded or pay a fee. He felt that in the vast majority of cases, the additional expense to the developer would be minimal compared to the overall cost of the project.

Upon inquiry of Mayor Sitnick, Public Works Director Mark Combs said that the Public Works Department has a policy that deals with vaults in sidewalks. City Attorney Oast briefly explained the policy and the issues involved about who is responsible for the sidewalk surface and who is responsible for the air space under the sidewalk.

When Mayor Sitnick asked Ms. Molloy what type of comments she received about a bond referendum on streets and sidewalks, Ms. Molloy said that the Homebuilders Association felt the bond referendum was an appropriate financing tool.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Field moved to adopt the Pedestrian Thoroughfare Plan and direct staff to bring the issue relative to developers repairing existing dilapidated sidewalks or a "fee in lieu of" issue back to City Council for further discussion when the UDO issues are discussed. This motion was seconded by Councilman Cobb.

Councilman Cloninger made a substitute motion to adopt the Pedestrian Thoroughfare Plan with the addition of language reflecting that in certain situations developers would be required to rehabilitate existing dilapidated sidewalks. This motion was seconded by Councilman Sellers and carried on a 4-2 vote, with Councilwoman Field and Councilman Cobb voting "no".

Councilman Field felt that sidewalk issue should be dealt with in the UDO, not in the Pedestrian Thoroughfare Plan.

RESOLUTION BOOK NO. 25 - PAGE 215

E. PUBLIC HEARING RELATIVE TO THE PURCHASE OF PROPERTY LOCATED ON SWEETEN CREEK ROAD AND PEACHTREE STREET AND KNOWN AS THE "ROYAL PINES POOL AND PARK PROPERTIES"

RESOLUTION NO. 99-81 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN INSTALLMENT CONTRACT PURSUANT TO N.C. GEN. STAT. SEC. 160A-20 FOR THE PURCHASE OF PROPERTY LOCATED ON SWEETEN CREEK ROAD AND PEACHTREE STREET AND KNOWN AS THE "ROYAL PINES POOL AND PARK PROPERTIES"

Mayor Sitnick opened the public hearing at 9:27 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Irby Brinson, Director of Parks & Recreation, said that this is the consideration of a resolution to purchase approximately 5.5 acres of property located on Sweeten Creek Road and Peach Tree Street known as the Royal Pines Pool and Park Properties, to be used for Parks and Recreation programs.

The Parks and Recreation Department is interested in the purchase of properties known as the Royal Pines Pool and Park Properties. This property is valuable as protection of open space land and has been identified in the Parks and Recreation Master Plan as an area needing future park development. The purchase of the property is expressly contingent on The Trust for Public Land entering into a contract for the purchase of the property from a trustee.

An appraisal has been completed by the City of Asheville and the purchase price is estimated to be between $920,000 and $970,000. The Parks and Recreation staff is recommending that the purchase of the property be made by installment payments under an installment contract authorized by N. C. Gen. Stat. sec. 160A-20. This public hearing is being held in order to discuss the terms and conditions of the installment contract and to receive input from the public regarding this decision.

The Parks and Recreation Department is requesting City Council's approval to authorize the Mayor to execute an installment contract and a memorandum of installment contract for the purchase of real property located on Sweeten Creek Road and Peach Tree Street, known as the

Royal Pines Pool and Park properties, to be used for Parks and Recreation programs, contingent upon The Trust for Public Land entering into a contract for the purchase of the properties from a trustee.

Ms. Patsy Meldrum, Assistant City Attorney, reviewed the following key elements of the installment purchase contract:

- The Trust for Public Land purchases the property from trustees of two charitable remainder unitrusts.

- The purchase price of the properties is estimated to be between $920,000.00 and $970,000.00. When the transactional costs and fees of The Trust for Public Land and the City of Asheville are added to the estimated purchase price, the total of the purchase price and transactional costs and fees (excluding interest on financing) are estimated not to exceed $1,000,000.00.

- The City of Asheville desires to purchase the properties by installment contract pursuant to N. C. Gen. Stat. sec. 160A-20. The Trust for Public Land has agreed to provide financing for the purchase of the properties by installment contract pursuant to N. C. Gen. Stat. sec. 160A-20.

- The term of the installment contract will not exceed four years and eleven months.

- The interest rate for the installment payment on the installment contract will not exceed 7.5 % per year (simple interest)

- If the purchase price is $930,000.00, installment payments for a term of three years and eleven months would be as follows:

September 1, 1999	First installment payment	$216,947.00
September 1, 2000	Second installment payment	$216,947.00
September 1, 2001	Third installment payment	$216,946.00
September 1, 2002	Fourth installment payment	$216,946.00
May 1, 2003	Fifth and final installment payment	$216,946.00
Total of payments of principal and interest		$1,084,732.00
Payment to The Trust for Public Land to cover project costs, fees and expenses (Payment to be made with first installment payment on September 1, 1999)		$50,000.00

If the purchase price is $930,000.00, installment payments for a term of four years and eleven months would be approximately $190,000 per year, again, depending upon the actual purchase price.

- Expected closing date for the purchase of the properties is during the first week in June of 1999.

- Title to the properties will remain in The Trust for Public Land until all installment payments are made, but the City of Asheville will be responsible for possession, maintenance and operation of the properties after the closing date.

- Proceeds from the sale of the properties by the trustees to The Trust for Public Land will be invested as assets of the trusts. At the expiration of the terms of the trusts, the remainder of the trusts will be shared by The Trust for Public Land and the City of Asheville, with any share that comes to the City of Asheville being available to the City of Asheville to reimburse its costs for the purchase of the properties from The Trust for Public Land.

Ms. Chrisanne Mitchell, Senior Project Manager with The Trust for Public Land, described how the remainder of the trust will be shared.

Councilman Cloninger said that this is a great opportunity for the City. He expressed Council's appreciation to Mr. Rusher and The Trust of Public Land.

Mayor Sitnick closed the public hearing at 9:36 p.m.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 99-81. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 216

F. PUBLIC HEARING RELATIVE TO ANNEXING A CONTIGUOUS AREA KNOWN AS SECTION 13 OF BILTMORE PARK

ORDINANCE NO. 2577 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE, N.C., BY ANNEXING A CONTIGUOUS AREA KNOWN AS SECTION 13 OF BILTMORE PARK

Mayor Sitnick opened the public hearing at 9:37 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that this is the consideration of an ordinance to annexation property located southeast of Columbine Road (Section 13 of Biltmore Park).

Biltmore Farms, Inc. has submitted an annexation petition for a 4.821 acre area identified as Biltmore Park, Section 13. This is the thirteenth annexation petitioned by Biltmore Farms, Inc. for property located west of Overlook Road. This area is contiguous to the existing corporate limits, specifically to Biltmore Park, Section 9. This annexation will be effective on November 25, 1999.

Staff recommends that City Council adopt the ordinance annexing property located southeast of Columbine Road (Section 13 of Biltmore Park).

Mayor Sitnick closed the public hearing at 9:38 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2577. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 342

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2568 - SECOND READING TO REZONE A ONE FOOT STRIP ALONG FIVE LOTS ON SOUTH GROVE STREET FROM OFFICE BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

See discussion above on Item B. under Public Hearings.

Councilman Cloninger moved to table the second reading of Ordinance No. 2568, an ordinance to rezone a one-foot strip along five lots on South Grove Street from Office Business District to RS-8 Residential Single Family High Density District. This motion was seconded by Councilman Sellers and carried unanimously.

B. ORDINANCE REQUIRING THE POSTING OF PRIVATE PARKING LOTS IN DOWNTOWN ASHEVILLE

City Attorney Oast asked that this item be continued until the June 8, 1999, City Council meeting in order to give him time to meet with Vice-Mayor Hay and Councilman Cloninger to address their concerns.

Councilman Cloninger moved to continue this matter until June 8, 1999. This motion was seconded by Vice-Mayor Hay and carried unanimously.

V. NEW BUSINESS:

A. RESOLUTION NO. 99-82 - RESOLUTION ISSUING A WRITTEN DECISION IN RESPONSE TO THE FILING OF AN FCC FORM BY BRENMOR CABLE PARTNERS, L.P. (d/b/a InterMedia) FOR MONTHLY RATES FOR THE BASIC SERVICE TIER ON ITS CABLE FOR THE TIME PERIOD OF JUNE 1, 1999, TO MAY 31, 2000

Ms. Patsy Meldrum, Assistant City Attorney, said that this is the consideration of a resolution issuing a written decision in response to the filing of an FCC Form 1240 by Brenmor Cable Partners, L.P. (d/b/a InterMedia) for monthly rates for the basic service tier on its cable system for the time period of June 1, 1999, to May 31, 2000.

Pursuant to federal law and the regulations of the Federal Communications Commission ("FCC"), the City of Asheville ("City") is certified to regulate basic service rates and charges of Brenmor Cable Partners, L.P. ("InterMedia") in the franchised area of InterMedia within the corporate limits of the City. By letter dated February 26, 1999, received by the City on March 1, 1999, InterMedia filed FCC Forms 1205 and 1240, both dated February 25, 1999, for the purpose of justifying its monthly rates and hourly service charges for cable services on the basic service tier on its cable system for the time period of June 1, 1999, to May 31, 2000.

The new maximum permitted rate calculated for the monthly rate on the basic service tier by InterMedia on the FCC Form 1240 is $10.3579. InterMedia proposes to continue charging the current monthly rate of $11.91 for the time period of June 1, 1999, to May 31, 2000, which amount exceeds the maximum permitted rate, by relying upon the filing of an FCC Form 1235 ("abbreviated cost of service" filing) submitted to the City on May 16, 1997. The FCC Form 1235 determined that an increase in the basic service tier rate of $1.96 per month would be permitted as of the time of filing, based upon an upgrade or rebuild of the cable system. The maximum permitted rate of $10.3579 and the increase in the rate of $1.96 per month based upon the filing of the FCC Form 1235 would combine to be a monthly rate of $12.32, which is in excess of the current basic service tier rate charged in the amount of $11.91 per month.

The filing of the FCC Form 1235 by InterMedia with the City on May 16, 1997, predated the completion of the upgrade or rebuild of the cable system and was filed for "pre-approval" purposes. FCC requirements for the FCC Form 1235 are that, if the pre-approval option is exercised, the cable system operator must file the FCC Form 1235 again following the end of the month in which the upgraded cable services become available and are providing benefits to all customers of regulated services in the filing entity, using actual costs where applicable. The upgrade or rebuild of the cable system was completed some time during the summer of 1998, but InterMedia has not yet filed with the City another FCC Form 1235 after the completion of the upgrade or rebuild of the cable system.

After the filing of the FCC Form 1235 by InterMedia on May 16, 1997, the City Council adopted Resolution No. 97-213, which directed InterMedia to keep an accurate account of all amounts received by reason of the rate increase requested pursuant to its FCC Form 1235 filing, in order that the City may, at its option, subsequently issue a written decision regarding the rate request and determining whether or not refunds should be provided to subscribers after completion of the upgrade or rebuild of the cable system. This resolution would order InterMedia to file another FCC Form 1235 in order for the City to complete its review of the monthly rate attributed to the rebuild of the system.

City staff recommends City Council adopt the resolution which would order InterMedia to file another FCC Form 1235 in order for the City to complete its review of the monthly rate attributed to the rebuild of the system.

Ms. Meldrum passed out a revised resolution and explained the revisions to Council.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 99-82. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 218

B. CONSIDERATION OF WAIVING THE ASHEVILLE STANDARD SPECIFICATIONS AND DETAILS MANUAL SIDEWALK REQUIREMENT FOR E-Z STORAGE FACILITY EXPANSION ON HIGHLAND BOULEVARD

When Mayor Sitnick asked if she would have a conflict of interest since Mr. John Powell is her attorney, City Attorney Oast felt that the Mayor did not have a conflict of interest.

Ms. Cathy Ball, City Engineer, said that HP Properties, the developer for the E-Z Storage Facility expansion located on Highland Boulevard, has requested City Council waive the Unified Development Ordinance (UDO) and the Asheville Standard Specifications and Details Manual (Standards Manual) requirement for a sidewalk along Highland Boulevard.

Section 7-8-16 (f) (10) of the UDO requires that new construction on property place sidewalks as specified in the Standards Manual along street rights-of-way. The E-Z Storage Facility expansion proposes to build a self-storage facility on Highland Boulevard. This roadway is located in an industrially developed area bounded on the north end by I-40 and on the west end by Smokey Park Highway. The property has approximately 540 linear feet of road frontage.

The Standards Manual requires a five foot sidewalk along the rights-of-way for all newly developed projects. The Standards Manual stipulates that for any requirements for sidewalks to be waived the City Council must take action to grant the waiver.

Staff is in the process of requesting a modification to the UDO to allow developers to pay a fee in lieu of constructing a sidewalk. The recommended revisions will go to the Planning and Zoning Commission on July 7, 1999, and subsequently to City Council for action. The developer of the E-Z Storage Facility expansion has requested the waiver prior to the revision of the UDO. The developer does not wish to pay the fee in lieu of constructing the sidewalk.

Staff does not recommend that City Council waive the requirement that a sidewalk be placed along Highland Boulevard for the E-Z Storage Facility expansion. If the project has not received a Certificate of Compliance prior to the change to the UDO allowing a fee in lieu of constructing a sidewalk, staff recommends that the developer be allowed to pay the fee.

Staff requests that City Council not waive the requirement that a sidewalk be placed along Highland Boulevard as required by the UDO Section 7-8-16 (f) (10) for the E-Z Storage Facility expansion.

Ms. Ball said that in the past City Council has had two waivers come before them. The storage facility off of Sardis Road was a situation where there was no street there, just an open right-of-way, and staff recommended, and City Council approved, waiving the sidewalk requirement. The second request was for the Sweeten Creek Mini-Storage and that request was continued until the "fee in lieu of construction" criteria was developed and brought back to City Council for review through a UDO amendment.

Mr. John Powell, attorney, said that he felt it would be equitable for City Council to waive this requirement because the land is not appropriate to have a sidewalk on it. It is a dead-end street with no pedestrian-generating activities. He felt that they are paying taxes and those taxes should pay for those type of facilities. He urged City Council to waive the sidewalk requirement.

Upon inquiry of Councilman Sellers, Ms. Ball said that staff is in the process of working on what the fee in lieu of would be - one is to set a standard rate and make everyone pay the same dollar figure per linear feet, and the other option is to get an estimate on how much it would cost to build the sidewalk and either have them pay the full amount or a percentage of that. That is one of the things they are looking at to recommend to Council with the modification to the UDO.

Mayor Sitnick wondered the common sense of a sidewalk being required in an area where there is no opportunity for pedestrian traffic anywhere. Ms. Ball agreed but said that staff is looking at several different factors in the ordinance amendment Staff wants to make sure that fees in lieu of construction is not the rule, but the exception.

City Manager Westbrook said that this is a way to help growth pay for itself. The impact on the City on sidewalks is not just replacing old sidewalks, but is building additional sidewalks that is caused in general by the growth in and around the City that pedestrians are now using. And, in all cases we can't go back in put those sidewalks in, but as development happens, if they can put the sidewalks in as part of that development, then it will help growth pay for itself.

Councilwoman Field said that when the fee in lieu of construction is before City Council, she requested staff come back to City Council with a recommendation about what we do about areas like this where it absolutely makes no sense to put a sidewalk in and if it's fair to require a fee in lieu of in that situation.

Councilman Cloninger moved to continue this request until City Council considers a modification to the UDO to allow developers to pay a fee in lieu of constructing a sidewalk. This motion was seconded by Councilman Sellers and carried unanimously.

C. RESOLUTION NO. 99-83 - RESOLUTION APPOINTING THE FOLLOWING PEOPLE TO THE EDUCATIONAL ACCESS CHANNEL COMMISSION: MR. TIM AMOS AND MS. CAROLYN MOORE AS REPRESENTATIVES OF THE ASHEVILLE CITY SCHOOLS; DR. ALAN HANTZ AND MR. GREG DILLINGHAM AS REPRESENTATIVES OF UNC-ASHEVILLE; DR. BOBBIE SHORT AND MS. GERRY KOVACH AS REPRESENTATIVES OF THE BUNCOMBE COUNTY SCHOOLS; DR. OLIN WOOD AND MS. SHIRLEY McLAUGHLIN AS REPRESENTATIVES OF A-B TECHNICAL COLLEGE; AND THREE AT-LARGE REPRESENTATIVES

Vice-Mayor Hay said that this resolution will appoint the following people to the Educational Access Channel Commission: Mr. Tim Amos (4 year term) and Ms. Carolyn Moore (2 year term) as representatives of the Asheville City Schools; Dr. Alan Hantz (4 year term) and Mr. Greg Dillingham (2 year term) as representatives of UNC-Asheville; Dr. Bobbie Short (4 year term) and Ms. Gerry Kovach (2 year term) as representatives of the Buncombe County Schools; and Ms. Shirley McLaughlin (4 year term) and Dr. Olin Wood (2 year term) as representatives of Asheville-Buncombe Technical College.

On May 25, 1999, City Council interviewed Mr. Robert Brummond, Ms. Marion E. Mathews, Ms. Ashly Maag, Mr. Wally Bowen and Michelle Price.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, each Council member voted for three candidates: Marion Mathews and Ashly Maag each received 5 votes and Robert Brummond and Michelle Price each received three votes. After a second vote was taken, Robert Brummond received 2 votes and Michelle Price received 4 votes.

Vice-Mayor Hay moved to appoint Marion Mathews and Ashly Maag to each serve a four year term and Michelle Price to serve a two year term as members on the Educational Access Channel Commission in addition to the representatives outlined above. This motion was seconded by Councilman Cloninger and carried on a 5-1 vote, with Mayor Sitnick voting "no".

RESOLUTION BOOK NO. 25 - PAGE 220

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 11, 1999, AND THE WORKSESSION HELD ON MAY 18, 1999

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Councilman Cloninger moved for the adoption of the minutes of the regular meeting held on May 11, 1999, and the worksession held on May 18, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the week of April 23 - May 13, 1999: Lynn Burns (Water) and City Engineering.

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Mickey MaHaffey urged City Council to investigate the whimsical enforcement of certain laws and the overzealous enforcement of the begging laws by the Asheville Police Department.

Mayor Sitnick asked Mr. MaHaffey to meet with the City Attorney about these allegations.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:25 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - June 1, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

East Oakview Sanitary Sewer Improvements

Summary: The consideration of a resolution awarding the contract for the Brevard Road Annexation Area East Oakview Road Sanitary Sewer Improvements to the lowest responsible bidder, Hobson Construction Company Inc. in the amount of $67,075.

This project is part of the proposed Brevard Road Annexation Area Sanitary Sewer Improvements. The project consists of installing approximately 1200 linear feet of eight inch sanitary sewer line to serve existing residences on East Oak View Road.

On Friday, May 7, 1999, at 5:00 p.m., the Engineering Department received three bids for the project as follows:

Hobson Construction Co., Arden, N.C.	$67,075
Tennoca Construction Co., Candler, N.C.	$85,119
Steppe Construction Co., Mills Spring, N.C.	$95,472

The lowest responsible bidder for this project was Hobson Construction Company Inc. with a bid of $67,075.

Hobson Construction Company has performed several projects of this nature for the City of Asheville in the past without any major problems.

The construction time for this project is 30 calendar days listed in the contract documents. The contract documents stipulate liquidated damages in the amount of $250 per calendar day if the contractor shall neglect, fail or refuse to complete the work within the time herein specified.

Staff recommends that City Council adopt the resolution awarding the bid for Brevard Road Annexation Area East Oakview Road Sanitary Sewer Improvements to Hobson Construction Company Inc., the responsible low bidder, and authorize the City Manager to execute all necessary agreements and contracts.

Grant for Phase II of Master Street Tree Plan

Summary: The consideration of a resolution to apply for grant funds available with the N.C. Dept. of Environment and Natural Resources to develop the second phase of the Master Street Tree Plan.

Funds are available through the State of N.C. Dept. of Environment and Natural Resources, Division of Forest Resources in the Urban and Community Forestry Grants Program, to improve urban forest resources.

The Parks and Recreation Department is responsible for developing a Master Street Tree Plan (MSTP) for street trees on City right-of-ways located within the city limits of Asheville. The existing inventory is almost fifteen years old and no longer accurately reflects the trees of the City. Phase II of the process will specifically identify the location, size, condition, and site conditions of trees located in the south district of Asheville. The MSTP will help serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community organizations.

The Parks and Recreation Department is requesting $10,000 in grant funds which requires a 100% match. The in-kind match is located in the Parks Division budget and will include supplies, transportation, volunteer hours, and project management.

The Parks and Recreation Department recommends City Council authorize the City Manager to apply for and enter into this agreement if the City receives the grant award.

Budget Amendment re: Purchase of Equipment for Stephens-Lee Alumni Room

Summary: The consideration of a budget amendment, in the amount of $5,000, to purchase equipment to be used in the Alumni Room at Stephens-Lee Center.

The Stephens-Lee Alumni Association has raised $5,000 through donations to be used specifically in the construction of the Alumni Room at Stephens-Lee Center. This Alumni Room will serve as a meeting room for the association and a display area for the archives from the old Stephens-Lee High School. Through numerous donations the Stephens-Lee Alumni has collected funds for this purpose. The $5,000 will be added to the current project fund and equipment will be purchased through the City of Asheville purchasing procedures. The equipment to be purchased consists of office furniture including desk, chairs, credenza, computer stand, conference table and chairs, display cabinets and computer hardware and software consistent with equipment approved by the City's Division of Information Services.

The Parks and Recreation staff recommends Council approval of the budget amendment to appropriate $5,000 to the Stephens-Lee Renovation Project to be used to purchase equipment for the Alumni Room.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

AMENDMENT TO FEES & CHARGES MANUAL AND AMENDMENT TO PARKING METER ORDINANCE FOR HONDA HOOT PARKING FEES

Mr. Bill Schaefer, Finance Director, said that this is the consideration of: (1) a resolution amending the Fees and Charges Manual for Parking Garages and Parking Meters; (2) an ordinance amending the Code of Ordinances regarding parking meter fees for limited events for motor vehicles; and (3) a resolution setting the specific limited event fees for Honda Hoot 1999.

The Honda Rider's Club of America has sponsored the Honda Hoot Rally in Asheville, North Carolina, for the past five years, and desires to bring the rally to Asheville again in 1999. In prior years, the rally organizers have worked with City Finance Department staff to utilize the Civic Center parking garage and on-street metered spaces for rally registrants. Honda pays the

City for an agreed upon number of spaces and offers those spaces free of charge to rally registrants as part of their registration package. Because the rally has grown so much in the past few years, Honda and City Finance Department staff desire a more manageable method of parking motorcycles while offering the same convenience to rally registrants as in years past.

Currently, the City's Fees and Charges Manual has no provisions for non-standard parking fees in the garages or on-street and the Code of Ordinances does not allow parking at meters during hours of enforcement without depositing a coin. As a result , in order to provide a non-standard fee during Honda Hoot, it is necessary to amend the Fees and Charges Manual and the Code of Ordinances. These amendments will enable the future use of "Limited Event" fees not only for Honda Hoot; but also, any other limited events involving motor vehicle parking in garages and at meters. A resolution of City Council will be required to set the specific cost of the fee for each "Limited Event".

The following are the specific "limited event" fee arrangements proposed by Honda Riders of America, previously endorsed by the Fees and Charges Committee of City Council for Honda Hoot 1999 and included in the proposed resolution:

- Honda will produce and provide a sticker, suitable for affixing to motorcycle headlamp, indicating payment of a parking fee.
- For each advance registration (estimated to be 3,000), the fee will be $0.50.
- Honda will produce and provide additional stickers to be sold by City of Asheville staff to on site registrants (estimated to be 1,000) for a fee of $3.00 each, all of which will be revenue to the City.
- Motorcycles bearing headlamp stickers will be allowed to park in a designated area of the Civic Center parking garage, and at metered spaces throughout the downtown area for the duration of the rally.

City staff recommends City Council adopt the enabling resolutions and ordinance.

Upon inquiry of Councilman Sellers, Mr. Schaefer said that this will not infringe on the skateboard park on the top of the Civic Center deck.

When Vice-Mayor Hay asked about what incentives the Chamber of Commerce (for example) were providing to the Honda Hoot, City Manager Westbrook said that he had not heard anything from the groups who urged City Council to do what they could to retain the rally coming to Asheville.

Councilman Cloninger suggested comparing what the total parking revenue would be with and then without the Honda Hoot to see if the amount charged is appropriate.

Mayor Sitnick was very concerned about setting a precedent of allowing more than one motorcycle to park in one space. Mr. Schaefer responded that the motorcycles will be ticketed if they are parked outside the designated parking lines and felt that it is a more efficient use of parking to allow the maybe 3-4 motorcycles per space.

Mr. Schaefer responded to a concern from Mayor Sitnick relative to the licensing of vendors and to the extent of the City's ability, they will attempt to enforce not only the individuals selling parts, but the major companies as well. He did note that the Honda Hoot is working cooperatively with the City in identifying the vendors that they are aware of.

Mayor Sitnick felt that the price per sticker ($0.50 for the five day event if pre-registered and $3.00 for others) was too low, in that how can the City justify raising the parking meter fees from $0.25 per hour to $0.75 per hour for our community and then charge this low price to visitors. She stressed that this proposal would be that pre-registered participants could park on the street all day for a dime a day.

Councilman Cloninger agreed with Mayor Sitnick and suggested that $5.00 be charged for pre-registration and $10.00 for others be charged.

When discussion concerning the parking sticker amount started, Mr. Schaefer explained that the Honda Hoot has already started their mailings with the $0.50/$3.00 proposal figure, which is the amount traditionally paid in other cities.

When Council was distressed in finding out that the Honda Hoot has already printed their material without waiting for approval by City Council, Mr. Schaefer explained that this item was originally scheduled for City Council consideration in January of 1999, however, it was pulled from the agenda pending ordinance revisions and drafting of resolutions.

All of Council agreed that the Honda Hoot makes a tremendous impact on the community.

After figuring about how much revenue the City would be losing during that five day period if all the 700 parking metered spaces in downtown were full, Councilman Cobb suggested $3.00 for pre-registration and $5.00 for others.

Vice-Mayor Hay stressed that even though the mailings have gone out for the Rally, the City will be billing Honda Hoot and it will be up to them to determine who will make up the difference between the $0.50 and the figure City Council approves.

Mayor Sitnick said that she would be willing to support $3.00 for pre-registration and $5.00 for others and that next year, there will be a policy in place about these type events.

It was the consensus of the City Council to instruct Mr. Schaefer to meet with Honda Hoot representatives before the next formal meeting to inform them on the Council's discussion of charging $3.00 for pre-registration and $5.00 for others.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PRITCHARD PARK DOWNTOWN TRAFFIC EVALUATION

Mr. Alan Glines, Assistant Landscape Architect, said that this is the consideration of a resolution authorizing the City Manager to enter into an amendment to a contract with Genesis Group for a Downtown Traffic Evaluation as a result of the Conceptual Plan for Pritchard Park.

Since the February 1999 review to City Council and the subsequent meeting with the Council appointed committee, staff has revised and developed the proposed Scope of Work for the Downtown Traffic Evaluation and developed a Phasing Proposal for Pritchard Park. In association with the Engineering Department and the Parks and Recreation Department, Genesis has developed a Scope of Work for the Downtown Traffic Evaluation.

The Downtown Traffic Evaluation Proposal will include conducting traffic counts for the central corridor from College Street at Charlotte Street, westbound to Patton Avenue at South French Broad Avenue. In addition to traffic counts the study will review turning movements, traffic flow capacity and fire response timing as it evaluates the proposal of returning the downtown east-west traffic to a two-way system. The study will include a report that will outline design recommendations to implement changes at specified intersections, opportunities for on-street parking and loading zones and opinion of costs. The cost for the proposal is $37,149.

The proposal is subject to the review and approval by the Transportation Advisory Committee (TAC) which would amend the MPO Transportation Planning Work Program Budget for Fiscal Year 1999-2000. The City's share will be 20% and if approved by the TAC, the TAC will reimburse the City 80% of the cost of the Downtown Traffic Evaluation. The City currently has budgeted their 20% share and when they are reimbursed by the TAC for the 80%, an appropriate budget amendment will be presented to Council.

City staff recommends that Council give the City Manager authorization to enter into an amendment to a contract with Genesis Group for the Downtown Traffic Evaluation.

Upon inquiry of Councilman Cobb, City Manager Westbrook said that if the TAC did not approve the project, the City would either not do the project or come back to City Council for an additional appropriation. Councilwoman Field said that in her experience with the TAC, they have some money set aside for these type of projects and felt, more than likely, they would approve the project.

At the request of Councilman Cloninger, Mr. Glines said that he would provide City Council with a detailed breakdown of the cost of the proposal.

When Mayor Sitnick asked if the Engineering Department could perform this work, City Engineer Cathy Ball said that she felt that they would not be able to meet the necessary timelines.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REPORT ON COMPREHENSIVE SUSTAINABLE ECONOMIC DEVELOPMENT STRATEGIC PLAN IMPLEMENTATION PROCESS

Mr. Mac Williams, Economic Development Director, said that City Council is being asked to 1) approve appointment of a specialized task force to oversee implementation of the Economic Development Strategic Plan, and 2) authorize staff to develop a list of candidates for the task force and to present that list to City Council for approval.

Dr. David Kolzow, Consultant with Lockwood Greene Consulting, and an associate have met with numerous individuals throughout the community, as well as with a number of boards and commissions. The next step in the strategic plan is the worksession to be held on June 11, 1999. The purpose of the worksession is to review the results of the leadership survey, the citizen survey and the Lockwood Greene Consulting assessment of the local strengths and weaknesses. From this discussion, we will develop a list of issues that need to be resolved and the groups will set priorities. This group of issues then needs to be evaluated by a citizens' group who would recommend how to achieve the results noted in the issues, where the funding if needed will come from, and who would be responsible in the final priorities.

Dr. Kolzow suggests there is a need for a specialized economic development strategy group of no more than ten (i.e. principal owners/executives within the business community) to work with him and staff over a period of months. The results of their work would be brought to City Council for review and approval.

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Staff and Dr. Kolzow recommend that City Council authorize staff to develop a list of candidates to work with Dr. Kolzow on the last step of the Economic Development Strategic Plan and to present that list back to City Council for approval.

Councilman Tomes felt that there should be an effort to include someone outside the principal owners/executives within the business community that would bring sensitivity to the table.

Mr. Williams responded to various questions/comments from Council about the make-up of the task force.

Mayor Sitnick wondered if City Council would be interested in interviewing the list of candidates who will work with Dr. Kolzow.

Mayor Sitnick said that during the retreat, it was the consensus of Council to address the strategic plan as the "comprehensive sustainable strategic plan" and asked that those words be included in all official documents.

Mr. Williams invited City Council members to submit names of individuals they felt would be good candidates for the task force.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

SEXUALLY ORIENTED BUSINESS REGULATIONS

City Attorney Oast said that this is the consideration of an ordinance establishing additional restrictions on adult establishments.

Senate Bill 452 (1997), ratified in 1998 and now codified at G.S. 160A-181.1, and elsewhere, permits municipalities to exercise a greater degree of control over sexually-oriented businesses within their jurisdictions. These regulations fall into two categories: zoning and general police power regulations.

Under the Unified Development Ordinance ("UDO") as originally adopted, adult establishments were uses by right, subject to special requirements. When it became apparent that Senate Bill 452 might become law, City Council took steps to preserve the status quo of the City with respect to adult establishments. In April of 1998, adult establishments were moved from uses by right subject to special requirements, to uses for which Conditional Use Permits were required. When Senate Bill 452 became law in August of 1998, Council adopted a temporary moratorium prohibiting new adult establishments or the expansion of existing ones, as the law allowed, to consider additional regulations.

Zoning: Asheville already has an effective dispersal ordinance in the UDO. This ordinance contains certain locational and separation requirements for adult establishments. These ordinances have been upheld on many occasions. In 1995, the City performed the study that the courts have held is necessary to provide a foundation for a dispersal ordinance, and the ordinance was adopted and incorporated into the UDO in 1997.

While dispersal ordinances have been upheld by the U. S. Supreme Court, there was less certainty about whether conditional use permits could be used to regulate adult establishments; the courts were divided. Earlier this year, in the case of Steakhouse v. Raleigh, the 4th Circuit Court of Appeals upheld a regulatory scheme in Raleigh that involved a dispersal

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ordinance implemented through a conditional use permit process. This is the same regulatory scheme currently reflected in the UDO. It is recommended that this regulatory scheme be made permanent with respect to adult establishments.

General Police Power: These are regulations that affect the operational characteristics of adult establishments. They are not zoning regulations and, as long as they are reasonable, can be made to apply to existing establishments.

The City already had some regulations on the operation of adult establishments, such as minimum age for patrons and performers, licensing, touching or fondling, etc. The new law provides clear enabling authority for these existing regulations, and permits other regulations as well.

The proposed ordinance establishes additional regulations for the following:

- Open booths for establishments that have booths.
- Requirement that genital areas of performers remain covered.
- Requirement that buttocks, privates and genitals of non-performers be covered.
- Requirement that clarifies that adult entertainers may not touch patrons (existing ordinance prohibiting touching of specified anatomic areas).
- Prohibition on peripheral activities on the same premises. This is intended to prohibit such activities as car washes, unless enclosed within the same building as the adult establishment.

The law permits regulation of other aspects of the business such as hours of operation, additional clothing restrictions, and possibly even alcohol sales. These regulations must be consistent with constitutional limitations, which essentially means that there must be an identified "secondary impact" that the regulation is intended to address, beyond morality-based objections.

The proposed regulations do not go as far as the law appears to allow. However, the constitutionally-required justification for such regulations does not clearly exist. To the extent that the current situation deteriorates, the law specifically permits additional regulations to apply to existing businesses (an "anti-grandfather" provision). It may be possible, therefore, to impose stricter regulations as the need arises.

Adoption of the proposed ordinance is recommended.

City Attorney Oast explained that due to an error in the codification of the City Code, if Council wishes to consider the possibility of allowing sexually oriented businesses by conditional use permit, which will require an amendment to the Unified Development Ordinance, it will be necessary to extend the moratorium on sexually oriented businesses for a short period of time. It was the consensus of Council to have the City Attorney draft the temporary moratorium ordinance.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

NEXT COMMUNITY MEETING (JUNE 29)

It was the consensus of City Council to hold the next community meeting on Tuesday, June 29, 1999, at the North Asheville Community Center located at 27 Larchmont Road, beginning at 6:00 p.m. for staff to be present and answer any questions and the community meeting beginning at 7:00 p.m.

BOARDS & COMMISSIONS

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Sally Rhoades, Susan Dodson and Michael Hyatt to the Carriage Permit Advisory Board.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork regarding the Citizens/Police Advisory Committee (1) to reappoint John Ingersoll (north) and Jimmy Hungerford (west); (2) to reappoint Lonnie Blair (east) due to Mr. Blair's request that the rules be waived and that he be appointed to serve another term and because there was no other applicant from the east interested in being appointed; (3) to appoint Betty Budd (south).

It was the consensus of City Council to have the City Clerk prepare the proper paperwork regarding the Civic Center Commission to (1) reappoint Robert Swan and Richard Bowman and (2) arrange interviews for Denise Goodson, Clay Dover, Peter Crosa and John Leander.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Gene Bell to the Civil Service Board. Vice-Mayor Hay said that Dr. Nancy Kauffman was eligible for reappointment, however, Dr. Kauffman has confirmed that she will be leaving the Asheville area in one year and City Council felt it would be in their best interest to fill the position with someone who would be eligible to serve the full two year term.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork regarding the Crime-Stoppers Board of Directors to (1) reappoint Tommy Sellers; and (2) appoint Josefine Matty and Leslie Hennessee.

Because under the new structure from the Buncombe County Drug Commission to the Mountain Center for Substance Abuse Prevention ("MCSAP"), the appointments are made by the MCSAP Board of Directors rather than by any local government, therefore, there is no need for the City to consider any appointment to this Board.

It was the consensus of City Council to have the City Clerk arrange interviews with Anne Watkins, Cindy Pomeroy, Yvette Logan and Celeste Fletcher for vacancies on the Film Board.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Jody Kuhne and Fred Eggerton to the Historic Resources Commission.

Mayor Sitnick instructed the City Clerk to arrange for interviews with T. Bentley Leonard, Mary Robertson, Minnie Jones, Helen P. Branson, LaShawn Horton and Adam Fetterman for vacancies on the Housing Authority Board of Directors.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork regarding the Recreation Board (1) to reappoint Charles Bullman; and (2) to arrange interviews with Susan Sparboe and Derek Weekley. Vice-Mayor Hay said that Ann Babcock (who is on the Tree/Greenway Commission) is interested in serving on the Recreation Board.

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It was the consensus of City Council to have the City Clerk prepare the proper paperwork regarding the Tree/Greenway Commission (1) to reappoint Margaret Tinkler, Ann Babcock (subject to her not being appointed to the Recreation Board) and Jerry Bailey; and (2) to arrange interviews with Ginger Mahler, Leonard Pardue and Sofia Mannos.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Councilman Tommy Sellers to the Regional Water Authority of Asheville, Buncombe and Henderson. Mayor Sitnick noted for the record that she has received a letter from Ms. Hazel Fobes asking that City Council "weigh carefully the Council's interest in keeping informed about Authority business against the desirability of the Authority having members with expertise in water or related scientific and engineering matters."

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:30 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - June 8, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Cobb gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

A. MOTION SETTING A PUBLIC HEARING ON JUNE 22, 1999, TO CONSIDER THE INITIAL ZONING OF CITY-OWNED PROPERTY LOCATED OFF OF FERRY ROAD (BENT CREEK AREA) TO RS-2 RESIDENTIAL SINGLE FAMILY LOW DENSITY DISTRICT

B. MOTION SETTING A PUBLIC HEARING ON JUNE 22, 1999, TO CONSIDER A MODIFICATION FROM THE SUBDIVISION STANDARDS FOR PROPERTY LOCATED OFF OF SAND HILL SCHOOL ROAD

C. MOTION SETTING A PUBLIC HEARING ON JUNE 22, 1999, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ELIMINATE ACCESSORY STRUCTURES AS A PERMITTED USE IN ALL RESIDENTIAL DISTRICTS

D. RESOLUTION NO. 99-84 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH HOBSON CONSTRUCTION CO. FOR THE BREVARD ROAD ANNEXATION AREA EAST OAKVIEW ROAD SANITARY SEWER IMPROVEMENTS

Summary: The consideration of a resolution awarding the contract for the Brevard Road Annexation Area East Oakview Road Sanitary Sewer Improvements to the lowest responsible bidder, Hobson Construction Company Inc. in the amount of $67,075.

This project is part of the proposed Brevard Road Annexation Area Sanitary Sewer Improvements. The project consists of installing approximately 1200 linear feet of eight inch sanitary sewer line to serve existing residences on East Oak View Road.

On Friday, May 7, 1999, at 5:00 p.m., the Engineering Department received three bids for the project as follows:

Hobson Construction Co., Arden, N.C.	$67,075
Tennoca Construction Co., Candler, N.C.	$85,119
Steppe Construction Co., Mills Spring, N.C.	$95,472

The lowest responsible bidder for this project was Hobson Construction Company Inc. with a bid of $67,075.

Hobson Construction Company has performed several projects of this nature for the City of Asheville in the past without any major problems.

The construction time for this project is 30 calendar days listed in the contract documents. The contract documents stipulate liquidated damages in the amount of $250 per calendar day if the contractor shall neglect, fail or refuse to complete the work within the time herein specified.

Staff recommends that City Council adopt the resolution awarding the bid for Brevard Road Annexation Area East Oakview Road Sanitary Sewer Improvements to Hobson Construction Company Inc., the responsible low bidder, and authorize the City Manager to execute all necessary agreements and contracts.

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E. MOTION APPROVING THE COMPREHENSIVE SUSTAINABLE ECONOMIC DEVELOPMENT STRATEGIC PLAN IMPLEMENTATION PROCESS

Summary: The consideration of (1) approving appointment of a specialized task force to oversee implementation of the Comprehensive Sustainable Economic Development Strategic Plan, and (2) authorize staff to develop a list of candidates for the task force and to present that list to City Council for approval.

Dr. David Kolzow, Consultant with Lockwood Greene Consulting, and an associate have met with numerous individuals throughout the community, as well as with a number of boards and commissions. The next step in the strategic plan is the worksession to be held on June 11, 1999. The purpose of the worksession is to review the results of the leadership survey, the citizen survey and the Lockwood Greene Consulting assessment of the local strengths and weaknesses. From this discussion, we will develop a list of issues that need to be resolved and the groups will set priorities. This group of issues then needs to be evaluated by a citizens' group who would recommend how to achieve the results noted in the issues, where the funding if needed will come from, and who would be responsible in the final priorities.

Dr. Kolzow suggests there is a need for a specialized economic development strategy group of no more than ten (i.e. principal owners/executives within the business community) to work with him and staff over a period of months. The results of their work would be brought to City Council for review and approval.

Staff and Dr. Kolzow recommend that City Council authorize staff to develop a list of candidates to work with Dr. Kolzow on the last step of the Comprehensive Sustainable Economic Development Strategic Plan and to present that list back to City Council for approval.

F. RESOLUTION NO. 99-85 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR A GRANT TO DEVELOP PHASE II OF THE MASTER STREET TREE PLAN

Summary: The consideration of a resolution to apply for grant funds available with the N.C. Dept. of Environment and Natural Resources to develop the second phase of the Master Street Tree Plan.

Funds are available through the State of N.C. Dept. of Environment and Natural Resources, Division of Forest Resources in the Urban and Community Forestry Grants Program, to improve urban forest resources.

The Parks and Recreation Department is responsible for developing a Master Street Tree Plan (MSTP) for street trees on City right-of-ways located within the city limits of Asheville. The existing inventory is almost fifteen years old and no longer accurately reflects the trees of the City. Phase II of the process will specifically identify the location, size, condition, and site conditions of trees located in the south district of Asheville. The MSTP will help serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community organizations.

The Parks and Recreation Department is requesting $10,000 in grant funds which requires a 100% match. The in-kind match is located in the Parks Division budget and will include supplies, transportation, volunteer hours, and project management.

The Parks and Recreation Department recommends City Council authorize the City Manager to apply for and enter into this agreement if the City receives the grant award.

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G. ORDINANCE NO. 2578 - BUDGET AMENDMENT TO PURCHASE EQUIPMENT TO BE USED IN THE ALUMNI ROOM AT STEPHENS-LEE CENTER

Summary: The consideration of a budget amendment, in the amount of $5,000, to purchase equipment to be used in the Alumni Room at Stephens-Lee Center.

The Stephens-Lee Alumni Association has raised $5,000 through donations to be used specifically in the construction of the Alumni Room at Stephens-Lee Center. This Alumni Room will serve as a meeting room for the association and a display area for the archives from the old Stephens-Lee High School. Through numerous donations the Stephens-Lee Alumni has collected funds for this purpose. The $5,000 will be added to the current project fund and equipment will be purchased through the City of Asheville purchasing procedures. The equipment to be purchased consists of office furniture including desk, chairs, credenza, computer stand, conference table and chairs, display cabinets and computer hardware and software consistent with equipment approved by the City's Division of Information Services.

The Parks and Recreation staff recommends Council approval of the budget amendment to appropriate $5,000 to the Stephens-Lee Renovation Project to be used to purchase equipment for the Alumni Room.

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Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Sellers moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO THE 1999-2000 ANNUAL OPERATING BUDGET

Mayor Sitnick opened the public hearing at 5:12 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Budget Director Ben Durant said that this is the public hearing that City Council holds each year to receive public input on budget issues before the Annual Operating Budget is adopted.

The Fiscal Year 1999/2000 Annual Operating Budget was presented to City Council on May 13, 1999. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of this Public Hearing was published on May 28 and June 4, 1999. The adoption of the Budget ordinance is scheduled on June 22, 1999, at the City Council meeting.

The Fiscal Year 1999/2000 Annual Operating Budget was balanced with an ad valorem tax rate of $.52 per $100 of assessed value; however, several important priorities, including funding for new parking decks, are not included in this budget. It is recommended that Council consider strategies presented during Council worksessions to increase revenues to fund additional priorities.

A copy of the budget is available for public inspection in the City Clerk's Office. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption with the only exception being the ad valorem tax rate, which cannot be changed once adopted.

Mr. Brian Peterson, Vice-President of the Coalition of Asheville Neighborhoods, hoped that City Council would increase the traffic calming budget. To that end, he suggested (1) not hiring a City Center Director; (2) investigate duplication of services in the economic development office and the Chamber of Commerce; and (3) not hire a Public Information Officer. He was pleased with the raise of starting salaries for Police Officers and not raising property taxes. He suggested City Council consider a modest bond proposal for streets and sidewalks.

Mr. Peter Levnick, friend of the West Asheville Library, was concerned about the loss of the library meeting room. He urged City Council consider appropriating money to join the funds that have been offered by Buncombe County and the Library Trust Fund to help them build a new meeting room on the site of the library. He also hoped that City Council would consider deeding the property that the new facility would be built on to the library. He said that it was his understanding that Buncombe County has offered $100,000, the Trust Fund has offered $50,000 and he hoped the City would consider $50,000 as well, in addition to deeding the property to the library.

City Manager Westbrook said that a meeting was held within the last six weeks on this issue. The City did not agree at that time to do any funding but they would at least consider deeding the land over at the appropriate time. He also said a point was also brought up about rezoning. He said that the City could not make any commitments, but that it would have to be treated like any other land use issue and brought to Council at the appropriate time.

When Councilman Cobb asked that the Library issue be on the next worksession agenda, Councilwoman Field said that at that meeting, she felt the City was very clear that this was something that City Council would not consider in this year's budget because it was too far along and this would be a major impact on the budget. She agreed that Council needs to discuss this issue, but the City needed to see how much money they would need to put into the existing building to deal with Building Code and ADA issues. She noted that it is much more complicated that just deeding the land over. She suggested City Council deal with this in the next budget. City Manager Westbrook said that staff will gather the information requested and schedule it on a worksession agenda.

Mr. Tony Gilbert, Deputy Chief of the Asheville Area Rescue Squad, asked City Council to reconsider funding the Rescue Squad. He passed out to Council a list of things that the Rescue Squad does for the City of Asheville. He said they are all volunteers and do not get paid for their services, for their training or for their equipment. The funding will help maintain the vehicles they have and to pay for gas for the vehicles to get to the calls to help the citizens of Asheville. He said that they provide services at Bele Chere, the Martin Luther King March and Prayer Breakfast, Walk America and Hay Day at the Nature Center. If the City takes over just the services they provide at Bele Chere, it will cost approximately $10,000. Also, the City will have to replace a Herst Tool at a cost of $14,500 which is on loan from the Rescue Squad.

Ms. Carol King, Chair of the Asheville Downtown Commission, asked City Council support the funding of the line items in the proposed budget to pay for the technical assistance for the Asheville Center City Plan and for the new position of the new Center City Director to be involved in the planning initiative and to assist with implementation strategies. The Plan is proposed to be a joint venture of the public and private sector and several local community leaders have committed to be a member of this public/private initiative.

Ms. June Lamb, resident on Carrier Street, recommended (1) no money for annexation be considered, (2) no money for a Center City Director; (3) no money for a Public Information Officer; and (4) no budget for marketing of the City. She felt the City should not hire out of state consultants, unless none exist in Asheville or Buncombe County. She suggested the Mayor appoint a Study Commission with representatives from all parts of the Asheville area and report back to Council in terms of a better method of preparing and reviewing the budget. She felt that many people are feeling that we do have taxation with representation and that a new mission statement for the City needs to be developed.

Mr. Don Yelton said that regarding the water rate increase, 2-1/2 percent of what the water bills collect go to the County and is used to pay on the Airport Authority Bond. The Airport Authority has a $12 million surplus as they did not build the garage. At the County Commissioners meeting, he suggested that the County possibly take that 2-1/2 percent and let the Airport pay their own bond indebtedness out of their $12 million Airport surplus (around $500,000). This would reduce the water bills by 2-1/2 percent. The County Commissioners said that if the City would do the same thing, the County would consider it.

Mayor Sitnick closed the public hearing at 5:45 p.m.

Mr. Durant said that the following are some additional issues regarding the budget that need further deliberation: (1) parking fees; (2) outside agency recommendations; (3) funding for renovation of the Institute of Government; (4) funding for the West Asheville Library; and (5) funding of the Council Chamber video equipment.

Using slides, Finance Director Bill Schaefer explained the past performance of the parking decks, debt service for existing decks, and past rate adjustments. He then reviewed the proposed parking fees and charges:

Fees & Charges Manual:

- On Street Parking	$0.75/hour
- Parking in Decks	$0.50/hour
- Monthly	$50.00/month
- Vanderbilt Apt Residents	$20.00/month
- Surface Parking Lots	$30.00/month
- "Bag" Meter	$10.00/day

Changes in the Code of Ordinances:

- Overtime Parking	$10.00
- Subsequent within 24 Hours	$20.00

Mr. Schaefer then answered various questions from Council, some being, but are not limited to: how much revenue would be realized if we raised on-street parking to $0.50 instead of $0.75; when estimating parking revenues, was growth estimated; how much revenue was received last year from on-street parking; how will the increase of revenue be used; what is the Local Government Commission's position on breaking even for an enterprise fund; how much money specifically goes into maintenance of the parking decks; has anyone looked into raising the $0.50/hour in the parking decks and how much money does that generate; and what is the condition of our existing decks.

Vice-Mayor Hay noted that City Council is not talking about the Grove Arcade Parking Deck at all and that Council is talking about increasing the fees so that the existing parking decks come closer to breaking even.

Councilman Cloninger agreed with Vice-Mayor Hay and noted that this is not only an effort to get the revenues closer to what the debt service is, but also we are trying to get employees who work downtown and who feed the meters all day to park in the parking decks.

Mr. Schaefer said that when the parking study was brought to Council, some of the downtown merchants came to City Council with a proposal of increasing the parking meters, at least in the Central Business District (which make up better than 50% of our parking meters) to $1.00 an hour.

Vice-Mayor Hay said that it is his understanding that the increase in the on-street parking comes out of the parking study, but it also has the support of the Merchants Action Coalition, the Downtown Commission, and the Asheville Downtown Association in order to get the employees off the street and into the parking garages.

Councilwoman Field said that since there is a waiting list for the Wall Street and Rankin Street decks, where do all the employees park? Mr. Schaefer said that there is several hundred spaces in the Civic Center deck.

Councilwoman Field said that she can understand why people don't want to park in the Civic Center deck because every time there is a special event, they cannot park in there. Mr. Schaefer said that when that occurs, which happens probably less than five times a year, they have provided them other parking or compensation.

Councilman Cloninger said that when you look at the impact of parking decks downtown, you can't simply look at what the revenues of them are versus what the debt service on them is. The decks have had a tremendous role in economic development for downtown and that of course has resulted in tax revenues that have come to the City in other ways in the form of appreciated property values, in sales taxes, etc. They have been major tools in the revitalization of downtown.

City Manager Westbrook said that either tonight or at a subsequent worksession, prior to June 22, 1999, staff will need guidance from Council about the additional issues outlined earlier by Mr. Durant.

Mayor Sitnick said that the City is not building a deck for the Grove Arcade Public Market. She explained just as we've named decks according to the area of downtown that they exist in, the deck was named the Grove Arcade deck. She said that it was interesting to note that the City has not raised the parking meter fees in nine years given the fact that downtown Asheville has been revitalized. She said that when we compare ourselves to other cities, we are not out of line in raising our rates to $0.75/hour.

Councilwoman Field said that when the monthly rates in the decks where increased about four years ago, she thought the direction to staff was that we have more regular rate increases so that we wouldn't have to be in the same position that we are in right now - hurting the smaller businesses that just barely afford to work downtown and park in the decks. Mr. Schaefer responded that this was put off for two years in order to wait for the results of the parking study to see what their recommendations would be and then go out to the public.

Upon inquiry of Councilman Cloninger about the possibility of having some policy that for those employers who buy major blocks of spaces for their employees, whether we can give them some sort of group rate, Mr. Schaefer said that the City is precluded from doing that on the Wall Street and Rankin Street decks, as long as they are funded by tax exempt monies. The only place we have that discretion is the Civic Center deck.

Councilman Tomes felt it might be more appropriate to increase the rates on a year by year basis rather than waiting for years and then increasing them.

Mayor Sitnick said that she has received comments about the need of additional parking on Biltmore Avenue, the Grove Arcade area, and surface lots. Her concern is leaving the kind of legacy that was left to this Council whit it inherited the water system, the sewer system, and streets and sidewalks. The money wasn't put aside each year for maintenance, up-keep, expansion or replacement. Her concern is being timid now in spite of the fact that it will be somewhat of a hardship on some folks and not having enough for future needs.

Councilman Cobb was concerned about the adverse impact of the economy of downtown to raise the rates from $0.25 to $0.75. He felt we should increase the rates in stages, like $0.50 this year and then in $0.10 increments.

City Attorney Oast said that the law specifically provides that ordinance procedures are not applicable to budget so the procedures for giving staff direction on budgetary matters are much more lax. He said Council can take those kinds of votes at the next worksession if those votes are the kinds of things that give staff direction on certain items.

Councilman Cloninger updated City Council briefly on the results of the Outside Agency Committee meeting. He said that after looking at the additional information requested, the Committee's recommendations are basically the same in that they unanimously agreed to support it's original funding recommendations that were presented to City Council at the May 18, 1999, budget worksession.

Upon inquiry of Councilwoman Field, Fire Chief John Rukavina stated that the Rescue Squad has done a very good job in the past. He said that the Asheville Fire Department has developed a contingency plan and they believe that they can deliver the same level of service without any additional costs to the City. With regard to the Herst tool the Rescue Squad has graciously loaned to Fire Station 8, over the years the Fire Department has developed a rescue capability and they now have three Herst tools.

When Councilman Sellers asked if the City was required to fund the Rescue Squad as part of the Water Agreement, City Manager Westbrook said it was his recollection that it did not require the City to fund that each year in the budget. He recalled that it basically said that it was an annual budget decision.

Mr. Durant reviewed with City Council the two phases of the Council Chamber video equipment renovation project. Approximately $50,000 for Phase I will provide improved audio quality in the Council Chamber as well as the transmission and support equipment necessary to establish a connection between the City's system and the InterMedia system. When the transmission is complete, staff can begin airing live telecasts of Council meetings. The $50,000 in Phase I will not be sufficient, however, to allow for the purchase and installation of the camera, recording and support equipment necessary for City staff to record Council meetings or begin developing in-house production capabilities. Approximately $58,000 for Phase II will allow the City to complete the video equipment installation project and bring the full system on-line. The necessary cameras, recording and playback equipment will be provided during Phase II to provide staff with in-house recording and programming capabilities.

City Manager Westbrook said that other meetings will be able to use the Council Chamber, however, Council must consider the wear and tear on the equipment, the extra cost of producing additional meetings, the expense of staff who have the knowledge of the equipment or the expense of hiring InterMedia on a case by case basis.

City Manager Westbrook and Mr. Durant responded to various questions and comments from City Council, some being, but are not limited to: what did the garage signage line item in the Capital Improvement Project consist of'; the need to add to the streets and sidewalks improvements list; when will the Grove Arcade be in operation; what additional information will be provided for the $50,000 for the annexation study; and how far along is the City in hiring a Public Information Officer and what are the legal ramifications if the City decides not to fund that position.

Councilman Cloninger felt that the City should still come in with a budget that only takes $100,000 from Fund Balance.

Mr. Durant said that he needs direction from City Council on the request for the renovations of the Institute of Government. The request is that the City pledge an amount equal to its one year membership to the Institute of Government which could be paid over a three year period. That amounts to $6,709 per year for three years, or $20,127 in total.

At 7:16 p.m., Mayor Sitnick announced a short break.

Vice-Mayor Hay questioned the timing of the Center City Director and the Center City Plan. He said that he would like to discuss this further at the worksession of whether it had to be done this year or next year and how that all fits together, and whether they both needed to be done at the same time. He also wanted to discuss further the hiring of the Public Information Officer.

Mayor Sitnick wanted to find more money for traffic calming. She was concerned that if the N.C. Dept. of Transportation doesn't agree to the non-betterment costs, whether or not we need to find money elsewhere to pay for those enormous amounts. She wanted to discuss (1) hiring more people in Code enforcement, (2) hiring a full-time grants officer for the City, (3) and the Chamber of Commerce outside agency funding (not cutting it out entirely, but to phase it back a little bit).

Councilman Cobb said that what he's hearing from the community is that if there is extra money, we should put it into streets and sidewalks and take care of the basic services first.

Councilwoman Field moved to continue the Council's consideration of the budget at the June 15, 1999, worksession. This motion was seconded by Councilman Sellers and carried unanimously.

At the direction of City Council, City Manager Westbrook said that he would prepare a short report on each of the addition items reviewed by City Council today and have it available for City Council at their June 15 worksession.

IV. UNFINISHED BUSINESS:

A. ORDINANCE REQUIRING THE POSTING OF PRIVATE PARKING LOTS IN DOWNTOWN ASHEVILLE

City Attorney Oast said that this is the consideration of an ordinance requiring that private parking lots in the downtown area be designated as private. This proposal has been before Council on several previous occasions.

Council and staff have received complaints about enforcement of parking restrictions on private parking lots, primarily related to the towing of vehicles from those lots. Research indicates that local regulation of "motor private carriers with respect to the transportation of property" is pre-empted by federal law. This preemption has been held to apply to non-consensual towing of vehicles from private lots. The effect of the federal law is that cities may not adopt regulations affecting the manner in which privately initiated towing is carried out. To the extent that the federal government does not prohibit local regulation of towing, it appears that, in order for the City to do so, specific authorization would have to be found in State law.

Some North Carolina counties are subject to a law that requires posting of lots as a pre-condition for towing from those lots. Buncombe is not one of those counties. However, there appears to be general authority by which the City can require that private lots be so designated, and to provide that failure to comply subjects the offender (the owner or operator of the lot) to a civil fine. This does not mean that unauthorized vehicles parking in private lots may not be towed or that vehicles must be towed from lots that have signs. However, it may reduce the level of inadvertent unauthorized parking, and thus reduce the number of non-consensual tows.

This application of this ordinance is limited to the Central Business District zone east of the French Broad River; we have had very few complaints from other areas of town. At your meeting in March, some concern was expressed over the "all or nothing" approach that the original proposed ordinance appeared to take. Accordingly, revisions have been made to require the designation of all private parking lots in the CBD, and the hours during which towing is or may be enforced.

At a meeting of the Downtown Commission, it was suggested that uniform signs might aid in further reducing unauthorized use of private lots. Language has been included to permit the City to produce and provide such uniform signs.

At Council's meeting on May 11, 1999, concern was expressed about requiring the posting of private lots when the owners do not routinely tow unauthorized vehicles and do not wish to post signs. Concern was also expressed about specifying the size and content of such signs. In response to those concerns, the ordinance has been revised to require only that private parking lots be posted. The limitation to six square feet is consistent with the sign ordinance. If a private lot is not so posted, and the owner or operator wishes to remove a vehicle, the ordinance provides that the procedures specified in Article II of Chapter 10 of the City Code (Abandoned and Junked Motor Vehicles) must be followed. The amount of the civil penalty for non-compliance is reduced from $50.00 to $10.00 and is not subject to criminal penalties or injunctive remedies.

The ordinance will become effective sixty days after adoption.

To the extent that this ordinance may help reduce the number of situations where non-consensual tows can occur, its adoption is recommended.

Considerable discussion surrounded this issue.

At the suggestion of Councilwoman Field, City Attorney Oast said that he would investigate the possibility of drafting special legislation that will allow the City to do what they want to do with regard to requiring the posting of towing signs in private parking lots.

With regard to complaints of towing rates, etc., City Manager Oast said that those complaints should be sent onto the Attorney General's Office.

Mayor Sitnick wanted to make sure that Sonny's Towing is not on the rotation list of towing companies that the City uses.

City Attorney Oast said that he has heard that the Attorney General's Office had filed a complaint against an organization somewhere else in the State that was towing in situations very similar to what we have in Asheville. He will follow-up with them and report back to Council.

City Attorney Oast also said that the would write a letter for the Mayor's signature to the Asheville Merchants Coalition, the Asheville Downtown Association, and property owners in downtown, that the City would appreciate their posting their lots in a consistent manner.

V. NEW BUSINESS:

A. RESOLUTION NO. 99-86 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL FOR PARKING GARAGES AND PARKING METERS

B. ORDINANCE NO. 2579 - ORDINANCE AMENDMENT REGARDING PARKING METER FEES FOR LIMITED EVENTS FOR MOTOR VEHICLES

C. RESOLUTION NO. 99-87 - RESOLUTION SETTING THE SPECIFIC LIMITED EVENT FEES FOR HONDA HOOT 1999

Finance Director Bill Schaefer said that this is the consideration of: (1) a resolution amending the Fees and Charges Manual for Parking Garages and Parking Meters; (2) an ordinance amending the Code of Ordinances regarding parking meter fees for limited events for motor vehicles; and (3) a resolution setting the specific limited event fees for Honda Hoot 1999.

The Honda Rider's Club of America has sponsored the Honda Hoot Rally in Asheville, North Carolina, for the past five years, and desires to bring the rally to Asheville again in 1999. In prior years, the rally organizers have worked with City Finance Department staff to utilize the Civic Center parking garage and on-street metered spaces for rally registrants. Honda pays the City for an agreed upon number of spaces and offers those spaces free of charge to rally registrants as part of their registration package. Because the rally has grown so much in the past few years, Honda and City Finance Department staff desire a more manageable method of parking motorcycles while offering the same convenience to rally registrants as in years past.

The following are the specific "limited event" fee arrangements proposed by Honda Riders of America, previously endorsed by the Fees and Charges Committee of City Council for Honda Hoot 1999 and included in the proposed resolution:

- Honda will produce and provide a sticker, suitable for affixing to motorcycle headlamp, indicating payment of a parking fee.
- For each advance registration (estimated to be 3,000), the fee will be $0.50.
- Honda will produce and provide additional stickers to be sold by City of Asheville staff to on site registrants (estimated to be 1,000) for a fee of $3.00 each, all of which will be revenue to the City.
- Motorcycles bearing headlamp stickers will be allowed to park in a designated area of the Civic Center parking garage, and at metered spaces throughout the downtown area for the duration of the rally.

City staff recommends City Council adopt the enabling resolutions and ordinance.

Mr. Schaefer said that the proposal under consideration from the Honda Hoot is that the City arrange the special limited event fee for them for this year for the period of June 22-26, 1999, of 50 cents remitted to the City for advance sales and $3.00 for on-site sales. Last week City Council instructed him to talk to Honda Hoot in an attempt to increase the mutually agreed parking payments to $3.00 for advance and $5.00 on site. He was unable to obtain Honda Hoot's consent to that and dialog continued throughout the week on various alternatives.

He reviewed the following:

	Actual 1998	Individuals Feed Meters Plus Deck	'Bag' Meters Plus Deck	Honda Riders' Proposal	
				4,750 Participants	6,000 Participants
On-Street Meters	$1,300	$1,150	$2,300		
Deck Rental	$1,800	$3,375	$3,375		
Advance Sales @ $.050				$1,875	$2,000
On-Site Sales @ $3.00				$3,000	$6,000
Total Revenues	$3,100	$4,525	$5,675	$4,875	$8,000

Since the time this chart was prepared, Honda Hoot has already arranged to have some of the streets in the vicinity of the Civic Center barricaded and closed to traffic, so they already have those streets available for parking. Therefore, the estimated figures for on-street meters is grossly highly of what the maximum revenue from that area could be generated. Again, if everyone fed their own meters, with no advanced sales, and with renting the deck for full special event prices for the entire event time, the maximum revenue would be $4,525. Their proposal actually brings in more money than we would get from charging the full fees. He, therefore, recommended City Council adopt the resolution setting the specific limited event fees for Honda Hoot 1999 at $0.50 for advance sales and $3.00 for on-site sales.

Upon inquiry of Councilman Cloninger, Mr. Schaefer said that Items A & B do not specifically talk about the amount that will be charged for the Honda Hoot parking. Currently, the City's Fees and Charges Manual has no provisions for non-standard parking fees in the garages or on-street and the Code of Ordinances does not allow parking at meters during hours of enforcement without depositing a coin. As a result , in order to provide a non-standard fee during Honda Hoot, it is necessary to amend the Fees and Charges Manual and the Code of Ordinances. These amendments will enable the future use of "limited event" fees not only for Honda Hoot; but also, any other limited events involving motor vehicle parking in garages and at meters. A resolution of City Council will be required to set the specific cost of the fee for each "limited event".

Councilman Tomes said that last week he had said that since the mailing had already gone out to the participants, the City should let the Rally proceed this year with the proposal by Honda Hoot. After seeing the chart presented by Mr. Schaefer, he is more inclined to proceed with the Rally proceeding with their $0.50/$3.00 proposal.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 99-86. This motion was seconded by Councilman Tomes and carried unanimously.

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Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2579. This motion was seconded by Councilman Sellers and carried unanimously.

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Mr. Charles Keller, with the American Honda Motor Company representing the Honda Hoot, "thanked those of you who I was able to get in touch with and try to clear up what our proposal was for trying to remunerate the City for the parking spaces that were utilized. We enjoy coming here a lot but we also enjoy having some parking places there. The outline that Mr. Schaefer put out was very accurate and I went ahead and put together some documents to reinforce those also. The point that I would wind up making is that in early September following last year's Honda Hoot, we made contact with the City because we were concerned that perhaps we hadn't done our diligence in keeping communication going freely between us. At that time, met with the Mayor and City Manager and wound up pointing out some areas that we felt needed to be worked on and an agreement was arrived at. On the 29th of September a document was sent to the City which outlined our proposal and that is the proposal that said $.050 per pre-registrant and $3.00 for on-site registrant. Honda would absorb the cost of printing decals - these would be ones that couldn't be peeled off the motorcycle without damaging them, so they couldn't be transferred. On the second page of that document, we actually go through our figures which show our rationale in offering this up and we had all intents of meeting or exceeding what the maximum occupancy would have been if all of the places were filled in the Civic Center as well as three floors on the Civic Center parking lot. If you take a look at the numbers, we propose to bring $500 more, at least, into the City coffers. So what I'm saying here is we were trying to due diligence and hopefully it's not misunderstood that we were trying to get something for nothing from the City."

Mayor Sitnick said that she had "a problem with the Honda Hoot proposal recognizing that you have done due diligence, recognizing that the numbers compute as has been presented by staff and by our proposal. Earlier this evening we had a lengthy discussion about parking meter rates and deck rates and what we're going to be charging the employers, the employees, and the taxpayers in this City to park and I just think that $0.10 a day creates too much of a gap between what we are going to be asking our local citizens to pay, or tourists to pay, our downtown store owners and merchants and employees. And when we are asking them to put $0.75 an hour into a parking meter and $0.50 an hour into a deck space, I can't feel comfortable with charging $0.10 a day to someone coming in with the Honda Hoot. Now I welcome the Honda Hoot and I think the City makes great effort to accommodate all of the folks who participate in it. We look forward to it, but I don't know how I would ever explain to a local taxpayer why they are being asked to pay $0.75 an hour and a visitor to the City being asked to pay $0.10 a day. I would like to propose something that I think is accommodating to the Honda Hoot and yet a little more fair for our local citizenry, our local taxpayers. And I believe last week we talked about the possibility of asking if you would agree to" $3.00 for advance registration and $5.00 on-site registration for the entire period, not a daily fee.

Councilman Cloninger said that Councilman Cobb proposed the $3.00/$5.00 fees and he agreed with the Mayor's comments. He felt it would send a terrible message to agree to this and have people park for $0.10 a day at a time that we are otherwise going up on our rates. He said that "$3.00 for a five day period - if any of us could go to any city in the country and be told that we could stay for five days and only spend $3.00 to park there for the entire time, we'd jump on it. I think Earl had a good idea last week and I think it's still a good idea."

Mayor Sitnick said that "just for those of you who weren't here at the worksession, we talked about $3.00 for pre-registrants and $5.00 to the latecomers. We also talked about $5.00 to the pre-registrants and $10.00 to the latecomers. I don't want to make the Honda Hoot folks uncomfortable, like I said we want you to feel comfortable here. But, again, I don't think this is an unreasonable request on our part. I feel badly that you have already sent our literature stating that it would be $0.50 for the five day period, but I believe that it was clear from the beginning that this required Council's approval and we had not approved it yet."

Mr. Keller said "a couple of items that I would like to bring up and reiterate. In September when we were here for our preliminary meeting with the City and we met with you, at that time you told me that I needed to deal with the City Manager - that he would be making the decision on what the rates would be. Within a week of that meeting, the letter was sent to him and the proposal of which I have included a copy for you in which the City Manager says to work this agreement out with Bill Schaefer who's the Finance Director - as we have done for the past five years that we have been coming to this area, So we had no idea that this goes before Council. We asked, no fewer than five times, if we had to bring this to Council - we were told 'no' this was an internal affair and that it did not have to go before Council."

Councilman Cloninger asked "who on behalf of the City told you each of those five times?"

Mr. Keller said "we have two letters from the City Manager. I have twice that we've talked with Bill Schaefer and once that we've talked with Deborah Crowder."

Mayor Sitnick said "in none of those letters are there any numbers."

Councilman Cloninger said "you said five different times you were told by the City that it didn't require Council approval. Who did you talk to?"

Mr. Keller said "as I said, Bill Schaefer, talked with Deborah Crowder and as the letter points out, we were told that the point person would be Bill Schaefer as he has been for the past five years. So we had no idea there had been a change."

Mayor Sitnick said "let me stop you right there, Charlie. I took the liberty of getting the verbatim minutes from that meeting and I'd like to quote Councilman Cloninger whose wisdom early on in this is reflected in what we're trying to do tonight. 'Councilman Cloninger said that it sounds like, rather than considering at this point what we would be willing to do for Honda, if anything, we need to develop an overall policy that is fair, consistent, also has enough flexibility to take into consideration what the economic impact of a particular convention might bring. He said he would like to explore the idea of what some of the other communities are doing and also what City staff may be able to think of that might help the City develop a policy that looks at some of the larger conventions that come to the area.' Now, one of the main jobs city councils are mandated to do is to develop policy. There's only one way to do that. We have to vote on it and anything that gets four or more votes becomes policy. So, it was clear during that meeting that we were really interested in looking at developing a policy and that's what we did. We went further and then put it before staff. But staff doesn't make policy - City Council does."

Mr. Keller said "as I said, we went ahead and made this proposal early last year. One of the things that comes up, I think, that brings this to a head, is that you're having to deal with a very tough task right now and that's to raise the rates for the local residents. I did the math on raising those rates and you know, next year I have no trouble in paying those rates. The problem that I have this year is that prior to our sending our publication out saying what parking would be, we felt we had an agreement with the City. Just as you had some disdain for the towing company, Sonny's, I kinda feel I'm getting a Sonny's tow job here tonight."

Councilman Cloninger asked Mr. Schaefer "if at any point did you tell anyone with the Honda Hoot that this would not require City Council approval?"

Mr. Schaefer said "no sir. It's been obvious from the entire time that it requires Council action. What I told Mr. Keller was that he, nor Honda Rider's Club representatives, need to be here for the presentation to Council, but, as shall we say some sort of a documentation of that, it should go all the way back to we first attempted to put this on your agenda as a resolution only, back in I believe was February or March. It was pulled in that it needed to go to the Fees and Charges. Right out of the Fees and Charges we had it back on your agenda at the beginning of May and it was pulled because we needed the ordinance change and such. So it was never any understanding on my part that there would be anything other than your approval. And I think if you go back to your draft agendas, you'll see those sitting on there - all the way back then. But I must say Council, that when the instructions were provided that Mr. Keller was to deal with me and we worked out an agreement, a tentative agreement, based on their proposal that has the potential to pay the City more than if they walked in the door and paid full existing rates, I have a problem with understanding where you're coming from on this one. I very much understand the temporal situation of the increasing rates for the residents in the long-term. I fail to understand the direction that I have received."

Councilman Cobb said last week when he made the proposal, he was not aware that they were only talking about 93-95 parking meters, not the 750 meters in the entire City, and 225 spaces in the parking deck. The formula they have worked out will generate more money than we would get at full prices.

Mr. Schaefer said that "the numbers I had there last year of the meter rates ($1,300 that I said were extremely generous) - that's the entire City's meters and the difference between the average for the three week period and the Honda Hoot period. So I have a difficult time understanding how we can go back and charge these people more than the full-paying published rate."

Councilman Cloninger said that he respected that position and he "thinks that's one of the considerations that we should think about when deciding what to do. But I respectfully disagree that as long as you just slightly get us over what our normal projections are, we ought to jump on that. Because I think there are other considerations. I think you have to consider this in the overall context of what we are doing with parking in general, what we're doing with rates. We can't consider this in a vacuum, Bill and with all due respect, I think that's what you are asking us to do. We need to consider it in a broader context. And I personally am sorry if you represented to the Honda Hoot people that you had reached an agreement with them. I don't recall us asking you to go and reach an agreement with them. What I recall asking you to do is to come back with a proposal to us. I do want to emphasis that if it was represented to Honda Hoot in anyway that we had an agreement, I'll vote for it - because we ought to stand by our word."

Mr. Schaefer said "no sir, we had no agreement - we had a proposal. And we had a proposal that I, as the staff representative, found to be a good proposal based on past history. So if that be the case, that was my mistake absolutely. However, this has also gone to Fees and Charges and Fees and Charges had the opportunity to review it and provided no additional guidance to staff."

Upon inquiry of Mayor Sitnick, Mr. Schaefer said that we have 735 meters in the entire City.

Vice-Mayor Hay said that he disagreed. "I think we're missing a big point here and that is the Honda Hoot brings in $7 million to this community and we need to take - we're not operating in a vacuum, and that is maybe the primary reason why we give them special consideration in this case. They came back to us last year and I know that the Honda Hoot can be difficult to deal with, because I've tried to talk to them myself. But, the truth of the matter is that this is the biggest convention that we have in town and it's unique because it brings the motor vehicles to town. Ten thousand Amway conventioneers wouldn't have the same problem that the Honda Hoot does. But for us to be willing to accommodate an event like the Honda Hoot in order to get those people into town to spend money and to make this a healthier economy, I think is something that this City Council ought to be willing to do. And you know there's more to it than just bringing in the money. The Civic Center gets revenue from being filled up with people buying Coca-Colas and all that kind of thing, and spending money at the Civic Center. We have the parking revenues and we've demonstrated here that this is not an issue of costing the City money in parking revenues. We have all the taxes that come back to us whether it be sales taxes, or the other benefits that we get from people coming to town and spending money. Hotels are healthier and restaurants are healthier from all the folks that benefit from the Honda Hoot being here. Also it shows off the City to 10,000 people who come here and have a good time. I think that we're missing the point if we don't take that as being one of the primary reasons why we ought to give this serious consideration. Now whether the deal is a good one or not for the City at this point, it looks like it doesn't cost us money. What I would say to our $0.75 folks is, we think this is good for the City, we think this keeps your taxes low, this is one thing we're doing trying to make this a better place for you to live and it's not really going to cost you anything in terms of parking. We're trying to accommodate these people because we want them here and we want them to come back."

Councilwoman Field agreed with Vice-Mayor Hay's comments.

Mayor Sitnick said that "nobody said that we don't want to accommodate the Honda Hoot. I think that's been clear from the beginning, but I think that $0.10 a day to park a vehicle in a parking space is not commensurate with the 1990's. You can't step on a scale to weigh yourself for $0.10 anymore. I would like to ask you - you say that $7 million is brought into the economy. I haven't seen those numbers."

Vice-Mayor Hay said that the Honda Hoot is a $7 million event, according to the Convention & Visitors Bureau - in terms of dollars that are spent.

Mayor Sitnick questioned "in Asheville? Not travelling around anywhere?"

Vice-Mayor Hay said "some of it's spent like in Chimney Rock Park."

Mayor Sitnick said "out on the parkway? Let me tell you some of the feedback I've gotten from folks since this came up. And again, we're not saying we don't want to accommodate the Honda Hoot, but not everybody feels that it benefits them. I've had calls from folks who asked about the fact that all these motorcycles are coming into town, they've asked about the noise, they've asked about streets being barricaded and the inconvenience to folks who live here, they've asked about air pollution which is a big issue in our newspaper lately. I have downtown merchants who have called me - many of them who say that the folks who attend the Honda Hoot never come into their store, the spaces are all taken up by the Honda Hoot folks and they lose business during the Honda Hoot. So all I'm saying is, as representatives of all the people, we have to consider those concerns that have been raised by citizens in this community as well. In addition to that, we appreciate the Honda Hoot wanting to come here and advertising Asheville with beautiful ads and enjoying this region and all of that. My brother has a Honda. I ride the Honda with him. I rode in the Toys for Tots on his Honda. I have nothing against Hondas or the Honda Hoot or the Ride for Kids. It's all wonderful. It's fun, it's exciting. That's not the point. But we have to represent all of the people and we can't set precedence. I mean tomorrow, every convention that comes in here is going to want the same deal. And so, in considering all of those issues, I hope Charlie that you can understand my position in this. It's not that we don't appreciate you. It's just that we have to look at the big picture and decide whether or not this is fair across the board, fair to others and whether or not we want to extend this same policy to other conventions that come in."

Councilman Sellers asked what has the Honda Hoot brought in the last four years. Mr. Schaefer said that he didn't have that information.

Councilman Sellers said that he agreed with Vice-Mayor Hay's comments. He said he's "heard it mentioned a couple of times comparing $0.10 to $0.75. We haven't gotten the $0.75 yet. It hadn't been voted in. We need to be looking at $0.10 to $0.25."

Ms. Angie Briggs, with the Convention & Visitors Bureau at the Chamber of Commerce, pointed out that you can park four motorcycles per parking space. Also, the motorcycles are not downtown the entire time they are here - it's just during the time they have events downtown or they are registering at the Civic Center or shopping or spending money downtown.

Mr. Don Yelton suggested that Council consider, if this is a $7 million event for this area, that you develop a policy that has a package on the number of spaces based upon the revenue that the event brings in. This then helps explain why you're reducing the rate to the citizen.

Upon inquiry of Ms. Hazel Fobes, Vice-Mayor Hay explained that there will not be specific spaces reserved for the Honda Hoot.

Mr. Keller said that "the City Manager asked specifically that we not bag meters because that would preclude you from going down there to park."

Councilman Cloninger said that even though the literature has been sent out, the Honda Hoot "should have known that it had to come to City Council ultimately, but the other thing they can do is as a result of what they did, they can still give us the money that would be the equivalent of the $3.00 for five days or the $5.00 - regardless of what they charge the people who attend the Honda Hoot."

Mayor Sitnick said that "how wrong is to charge $3.00 for an entire week of parking? In addition to that, we can talk about $7 million into the economy. I wish Ben Durant was still here. When you consider that there is six cents sales tax, help me out here Jim. Four cents goes back to the State. Of the two cents that's left - one penny goes into a pool. Of the other penny that's left, half a cent goes to the County and the other half is distributed according to point of purchase - and that's all that comes back to the City government. Now, I love the fact that $7 million goes into the economy for our merchants, for our restaurateurs, for our hotel and motel owners - that's wonderful. I want them to make all the money in the world they can. But when we're talking about what goes into the economy, as it pertains to the City, and the City is already giving the Honda Hoot much money in in-kind services, then we have to consider the fact that of those sale tax monies, not a whole lot comes back to the City government."

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 99-87, in that the limited event fee for parking during the entire time of Honda Hoot 1999 (from June 22-26, 1999) is $0.50 for purchase of a limited event fee sticker prior to June 22, 1999, and $3.00 for purchase of a limited event fee sticker during the Honda Hoot 1999 from June 22-26, 1999. This motion was seconded by Councilman Sellers and carried on a 5-2 vote, with Mayor Sitnick and Councilman Cloninger voting "no".

RESOLUTION BOOK NO. 25 - PAGE 229

D. RESOLUTION NO. 99-88 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AMENDMENT TO A CONTRACT WITH GENESIS GROUP FOR A DOWNTOWN TRAFFIC EVALUATION AS A RESULT OF THE CONCEPTUAL PLAN FOR PRITCHARD PARK

Mr. Alan Glines, Assistant Landscape Architect, said that this is the consideration of a resolution authorizing the City Manager to enter into an amendment to a contract with Genesis Group for a Downtown Traffic Evaluation as a result of the Conceptual Plan for Pritchard Park.

Since the February 1999 review to City Council and the subsequent meeting with the Council appointed committee, staff has revised and developed the proposed Scope of Work for the Downtown Traffic Evaluation and developed a Phasing Proposal for Pritchard Park. In association with the Engineering Department and the Parks and Recreation Department, Genesis has developed a Scope of Work for the Downtown Traffic Evaluation.

The Downtown Traffic Evaluation Proposal will include conducting traffic counts for the central corridor from College Street at Charlotte Street, westbound to Patton Avenue at South French Broad Avenue. In addition to traffic counts the study will review turning movements, traffic flow capacity and fire response timing as it evaluates the proposal of returning the downtown east-west traffic to a two-way system. The study will include a report that will outline design recommendations to implement changes at specified intersections, opportunities for on-street parking and loading zones and opinion of costs. The cost for the proposal is $37,149.

The proposal is subject to the review and approval by the Transportation Advisory Committee (TAC) which would amend the MPO Transportation Planning Work Program Budget for Fiscal Year 1999-2000. The City's share will be 20% and if approved by the TAC, the TAC will reimburse the City 80% of the cost of the Downtown Traffic Evaluation. The City currently has budgeted their 20% share and when they are reimbursed by the TAC for the 80%, an appropriate budget amendment will be presented to Council.

City staff recommends that Council give the City Manager authorization to enter into an amendment to a contract with Genesis Group for the Downtown Traffic Evaluation.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 99-88. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 230

E. RESOLUTION NO. 99-89 - RESOLUTION APPOINTING A MEMBER TO THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON

Vice-Mayor Hay said that it was the consensus of City Council at the 6-1-99 worksession that City Council wanted to fill the vacancy left by Kevin Green on the Regional Water Authority of Asheville, Buncombe and Henderson County, with a City Council member. Councilman Sellers expressed an interest in serving on the Authority.

Ms. Hazel Fobes, Chair of the Citizens for Safe Drinking Water and Air (CSDWA), urged City Council to review the list of candidates (some who are fully qualified) who have submitted applications for the vacancy on the Water Authority. She stressed City Council is not obligated to have a member of Council on the Water Authority. She felt that before City Council makes a final decision, they need to interview the qualified candidates. She said she is not speaking against Councilman Sellers, however, she simply wants Council to know the other candidates out there. She said the aging water distribution system should be a major concern to City Council. Therefore, the Water Authority will need the advice of its member who should have expertise in water quality, water systems, in gravity flow, in mapping, in conservation, in water rates, in budgets and in bond issues. Their knowledge would help the Water Authority and the Director of Water Resources come to better conclusions.

Ms. Abby Gage, Environmental Chair of the Buncombe County League of Women Voters and employee of the Western North Carolina Alliance, suggested Councilman Sellers be appointed to the Water Authority in an advisory capacity. She agreed with Ms. Fobes in that the appointment should be someone who is selected for the skills and knowledge of water quality.

Upon inquiry of Ms. June Lamb, Councilman Sellers said that his term on City Council expires on December 7, 1999. Ms. Lamb felt that people with expertise should be appointed to the various boards.

Mayor Sitnick submitted a letter dated June 8, 1999, from Michael N. Lewis (Coalition of Asheville Neighborhoods), in which he does not feel "that a member of City Council (nor the Commissioners) should also be a member of the Water Authority. The ugly spectre of conflict of interest keeps raising its head in our community, and due to the technical aspects of the Water Authority's tasks, it makes sense to appoint people with technical expertise." She also submitted the fax memorandum dated June 8, 1999, from Vera Holland Guise (American Grassroots Unlimited) in that Ms. Guide urged City Council to "fill this and all board and commission positions with individuals selected expressly for their specific knowledge and skills pertinent to the position, and their records of demonstrated civic service."

Vice-Mayor Hay said that it is the usual trend to have a member of City Council on the Water Authority and this is the first time since Mr. Worley came off of City Council where there was an appropriate opening to appoint a member of Council.

Councilwoman Field noted that both Buncombe County and Henderson County have board representation on the Water Authority. She felt that the boards are policy setting bodies and staff are the professionals who have the expertise that City Council depends on. It is good to have a balanced representation on our boards. She spoke highly of Councilman Sellers and felt he would do a good job in representing City Council.

Councilman Cobb and Cloninger both agreed that the City Council needed to have representation on the Water Authority.

Mayor Sitnick said that when this vacancy came to the attention of City Council, they did review the list of candidates as thoroughly and as sensitively as they examine all applications for all boards and commissions. She felt that at this time City Council had equally two important considerations for the Water Authority vacancy: (1) someone who could represent the science and academic aspect of what is going on with water issues today (like Dr. Rick Maas); and (2) for the community to understand that the Water Authority is the body of government separate from City Council that sets the policy regarding the water system. We do not have a representative from City Council on the Water Authority. City Council can't set the policy, however, Council gets 95% of the complaint calls about the water system, water rates and water leaks. Having a member of City Council on the board will be of great benefit to City Council as those policies within the Authority are developed.

Vice-Mayor Hay moved to appoint Councilman Tommy Sellers to serve the unexpired term of Mr. Green, term to expire September 30, 2001, or until his successor has been appointed. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 231

F. ORDINANCE NO. 2580 - ORDINANCE REGULATING SEXUALLY ORIENTED BUSINESSES

G. ORDINANCE NO. 2581 - ORDINANCE EXTENDING TEMPORARY MORATORIUM ON SEXUALLY ORIENTED BUSINESSES

City Attorney Oast said that this is the consideration of ordinances establishing additional restrictions on adult establishments, and extending the temporary moratorium by two weeks.

Senate Bill 452 (1997), ratified in 1998 and now codified at G.S. 160A-181.1, and elsewhere, permits municipalities to exercise a greater degree of control over sexually-oriented businesses within their jurisdictions. These regulations fall into two categories: zoning and general police power regulations.

Under the Unified Development Ordinance ("UDO") as originally adopted, adult establishments were uses by right, subject to special requirements. When it became apparent that Senate Bill 452 might become law, City Council took steps to preserve the status quo of the City with respect to adult establishments. In April of 1998, adult establishments were moved from uses by right subject to special requirements, to uses for which Conditional Use Permits were required. When Senate Bill 452 became law in August of 1998, Council adopted a temporary moratorium prohibiting new adult establishments or the expansion of existing ones, as the law allowed, to consider additional regulations.

Zoning: Asheville already has an effective dispersal ordinance in the UDO. This ordinance contains certain locational and separation requirements for adult establishments. These ordinances have been upheld on many occasions. In 1995, the City performed the study that the courts have held is necessary to provide a foundation for a dispersal ordinance, and the ordinance was adopted and incorporated into the UDO in 1997.

While dispersal ordinances have been upheld by the U. S. Supreme Court, there was less certainty about whether conditional use permits could be used to regulate adult establishments; the courts were divided. Earlier this year, in the case of Steakhouse v. Raleigh, the 4th Circuit Court of Appeals upheld a regulatory scheme in Raleigh that involved a dispersal ordinance implemented through a conditional use permit process. This is the same regulatory scheme currently reflected in the UDO. It is recommended that this regulatory scheme be made permanent with respect to adult establishments.

General Police Power: These are regulations that affect the operational characteristics of adult establishments. They are not zoning regulations and, as long as they are reasonable, can be made to apply to existing establishments.

The City already had some regulations on the operation of adult establishments, such as minimum age for patrons and performers, licensing, touching or fondling, etc. The new law provides clear enabling authority for these existing regulations, and permits other regulations as well.

The proposed ordinance establishes additional regulations for the following:

- Open booths for establishments that have booths.
- Requirement that genital areas of performers remain covered.
- Requirement that buttocks, privates and genitals of non-performers be covered.
- Requirement that clarifies that adult entertainers may not touch patrons (existing ordinance prohibiting touching of specified anatomic areas).
- Prohibition on peripheral activities on the same premises. This is intended to prohibit such activities as car washes, unless enclosed within the same building as the adult establishment.

The law permits regulation of other aspects of the business such as hours of operation, additional clothing restrictions, and possibly even alcohol sales. These regulations must be consistent with constitutional limitations, which essentially means that there must be an identified "secondary impact" that the regulation is intended to address, beyond morality-based objections.

The proposed regulations do not go as far as the law appears to allow. However, the constitutionally-required justification for such regulations does not clearly exist. To the extent that the current situation deteriorates, the law specifically permits additional regulations to apply to existing businesses (an "anti-grandfather" provision). It may be possible, therefore, to impose stricter regulations as the need arises.

Extension of Moratorium: As explained at last week's work session, due to a misunderstanding about the duration of City Council's action last year requiring Conditional Use Permits for adult establishments, it is recommended that the moratorium be extended by an additional two weeks. The City's ability to regulate by Conditional Use Permit was clarified in a recent Fourth Circuit Court of Appeals opinion involving the City of Raleigh's adult business ordinance, and part of the recommendation is that the City of Asheville implement a similar process. Because that part of the recommended change is a zoning ordinance, consideration of the proposed amendment by the Planning and Zoning Commission is necessary. This cannot occur until June 24, 1999, and the Council could not consider it until July 13. As proposed, the extension of moratoria would be until July 14. It is currently set to expire on June 30, 1999.

Adoption of the proposed regulatory ordinance is recommended. Adoption of the proposed ordinance extending the moratorium is also recommended.

Councilman Cobb favored more regulation of additional clothing restrictions. City Attorney Oast noted that the regulations must be consistent with constitutional limitations, and that we would have to be able to demonstrate that there are sufficient secondary adverse effects from the existence of the establishments to require those kinds of additional restrictions.

When Mayor Sitnick asked how is it that we can require that buttocks of non-performers be covered within an adult establishment, but we can't require someone walking around the streets to cover their buttocks, City Attorney Oast said that this is a regulation of an adult establishment and not a regulation of conduct that is controlled by criminal statutes. He said that we can regulate adult establishments in ways that we can't regulate other types of conduct because of the kind of establishment that it is.

Ms. Gail Harding urged City Council to give thought to the kind of influence that is being made by adult establishments and encouraged Council to regulate and restrict to the limit of the law adult businesses in our area.

Ms. Sylvia Hitchcock, representing a major Christian women's organization in the Asheville area, spoke out against the City of Asheville allowing sexually oriented businesses to exist. They appealed to City Council to hold to family values and keep Asheville from becoming a City noted for such establishments. They encouraged City Council to continue the moratorium and to restrict as much as possible those businesses that already exist in the Asheville area.

Ms. Mary Ray felt that adult establishments are not conducive with happy, productive families. She felt that if City Council shut down all adult establishments, the crime rate would be reduced dramatically.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2580. This motion was seconded by Councilman Cobb and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 348

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2581. This motion was seconded by Councilman Tomes and carried unanimously.

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Mayor Sitnick asked what can City Council can do to address the situation of a man who is walking around Asheville in a thong and whether or not we can appeal to the District Attorney to help us in regard to whatever laws apply to what he is doing. City Attorney Oast said that he has already requested the District Attorney's advice on this because the indecent exposure statute is a criminal statute and it would be up to the District Attorney's Office to prosecute that if charges were brought. The District Attorney agrees with his opinion that because of an opinion that the Supreme Court issued last year, there is little that can be done in the way of enforcing the indecent exposure statute, with respect to the exposure of a person's buttocks. The Supreme Court has construed the law to say that buttocks are not private parts for the purpose of indecent exposure statutes. That is something that will have to be addressed by the legislature. There are some regulations that he may be able to suggest to City Council regarding conduct on City-owned property, such as City parks and in City buildings. He is investigating that and will report back to City Council as soon as possible.

Mayor Sitnick felt that City Council needed to appeal to our legislators.

Councilman Cobb wanted to see an ordinance adopted outlawing topless or bottomless men or women on our City streets.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 25, 1999, AND THE WORKSESSION HELD ON JUNE 1, 1999

Councilman Cloninger moved for the adoption of the minutes of the regular meeting held on May 25, 1999, and the worksession held on June 1, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the weeks of May 4-27, 1999: Frank White (Sanitation), Theodore Crump (Sanitation), Mary Daniels (Streets), Jackie Scott (Water), Seth Allcorn (Water), Jeanne Sheller (Sanitation) and Chris Parsons (Parks & Recreation).

The following claims were received by the City during the week of May 28-June 3, 1999: BellSouth (Water), BellSouth (Water), BellSouth (Water), Debbie Yanik (Water), Barbara King (Parks & Recreation), Ron Dula (Water), Sean Divine (Water), Keith Jackson (Water) and Lona Taylor (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:32 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - June 15, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and Deputy City Clerk Phyllis Corns

Absent: None

CONSENT:

Budget Amendment re: Fair Housing Assistance Program

Summary: The consideration of a budget amendment, in the amount of $25,000, to appropriate new federal funds received for the Fair Housing Assistance Program for FY 1998/99.

The City has been carrying out its fair housing program under contract with the Asheville-Buncombe Community Relations Council and Fair Housing Commission since January 1988, using HUD Fair Housing Assistance Program (FHAP) funds. The City's Community Development Division serves as Lead Entity and monitors the program. On November 24, 1998, City Council approved a 1998/99 budget of $18,400, equal to the HUD FHAP grant for the twelfth year of this program.

The City has now received a revised grant agreement from HUD, increasing the FHAP grant amount by $25,000, for a total grant of $43,400. A budget ordinance is needed to appropriate the new funds.

Community Development staff recommends City Council adopt the budget amendment.

Budget Amendment re: Summer Teen Program Grant Funds

Summary: The consideration of a budget amendment, in the amount of $1,950, to appropriate grant funds from the Community Foundation of Western North Carolina to fund outdoor adventure activities in the Summer Teen Program.

The Summer Teen Program is designed to provide recreation activities for teens ages 13-16 for eight weeks during the summer. The program is located at six locations throughout the City in community centers. The Teen Program will offer a wide variety of recreation activities and hands-on job training. Grant funds will be used to implement the outdoor enrichment activities including a challenge ropes course, rock climbing, rollerblading, and mountain biking. The Parks and Recreation Department's in-kind match of $26,708 will be in labor, administration, transportation, supplies, and training for the overall Summer Teen Program. The funds are budgeted in the Recreation Division.

The Parks and Recreation Department recommends the City of Asheville to accept the grant funds on behalf of the Parks and Recreation Department into the Recreation Division operating budget for outdoor enrichment activities in the Summer Teen Program.

Intent to Close Unnamed Alleyway off Henrietta Street

Summary: The consideration of a resolution of intent to permanently close an unnamed alley off Henrietta Street.

A petition has been received from Merrimon Avenue Baptist Church requesting that an unnamed alley off Henrietta Street be permanently closed to public use. The petition received includes the affidavit of Bill Bigham, President of Merrimon Avenue Baptist Church, owner of PIN No. 9649.10-35-9416. Merrimon Avenue Baptist Church owns all of the adjoining land on both sides of this unnamed alleyway.

This unnamed ally is a paper street and has never been opened and used as a street. The City has no plans to utilize this street. All utility companies will be contacted. The resolution of intent to close the unnamed alley off Henrietta Street will be advertised in a local paper and the location will be posted with the resolution of intent to close.

The Public Works Department staff recommends the resolution of intent to permanently close the an unnamed alley off of Henrietta Street be adopted and that the public hearing be held on July 27, 1999.

Citizen Participation Plan for Community Development Programs

Summary: The consideration of a resolution approving the Citizen Participation Plan for the City's community development programs.

The N.C. Dept. of Housing & Urban Development's (HUD) regulations require the City to develop and follow a Citizen Participation Plan, detailing how it will involve residents, particularly those in low-income groups and organizations representing them, in the planning and implementation of its housing and community development programs, including the allocation of Community Development Block Grant and HOME funds.

The existing Citizen Participation Plan dates from 1995, with minor revisions in 1997. It does not satisfy quite all of HUD's requirements and no longer describes all the steps that are being taken to involve and consult residents. The revised plan provides a fuller description, and, in particular, sets out a new framework for developing the Five-Year Strategic Plan which the City must revise and update in 2000.

The plan proposes that a Steering Committee be set up to oversee and guide the Strategic Planning process, with membership open to anyone who is prepared to participate consistently and constructively as well as invited representatives of key agencies and community groups. Subcommittees will act as focus groups to examine in detail the four main areas of the Plan: Housing, Homelessness, Public Housing, and Non-Housing Community Development. The process will draw and build upon other relevant planning processes such as the Asheville-Buncombe VISION.

Staff recommends that Council approve the revised Citizen Participation Plan.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

YOUTH CRISIS PREVENTION

Dr. Gene Rainey, Chairman of the Juvenile Crime Prevention Council, presented City Council with a list of teenage statistics and urged City Council to participate in a Youth Center designed to serve young people and their families. He reviewed how the Youth Center will offer opportunities for prevention, education, training and reward. Their proposal is to build a $2.5 Million Youth Center which will hopefully be located on the A-B Technical Community College campus or the UNC-Asheville campus and will serve 13-29 year olds. The operating budget for this Center will be $475,000 and the annual administrative cost of serving students will be $10 per student. The Center will be self-supporting. He then outlined the goals, one of which will be to establish 20 youth centers in the next 12 years. Dr. Rainey then asked the City to commit $25,000 seed money (which can be spread over two years) to the Next Generation Inc. and they will raise the balance on the $2.5 Million Center. They would like to have a representative of the City's Parks & Recreation Department on their Board, along with suggestions from City Council of possible trustees. Dr. Rainey also asked for a resolution of support in order to go to granting institutions.

Dr. Rainey responded to various questions and comments from Council on the Youth Center, some being, but are not limited to, locations in schools districts, transportation for latch-key children, what are other cities around the country doing, how will the centers be self-supporting, are there any model Youth Centers, who will counsel the youth, who will be supervising the child care facility, and how much of program will be volunteers.

Mayor Sitnick thanked Dr. Rainey for his hard work. She felt there was nothing better to invest in with a better return than investing in our youth. She said that City Council will give serious consideration to the $25,000 request.

Councilman Cloninger felt that in next year's budget, this is the kind of thing that would be appropriate to come out of the contingency fund.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place a resolution of support on the next formal City Council agenda.

REQUEST OF OFFICE SPACE FOR ASHEVILLE-BUNCOMBE VISION

Assistant City Manager Doug Spell presented City Council with a letter from Pat Smith, Asheville-Buncombe VISION Board Chair, which requests that the space for VISION in the City Development Office be renewed for another year. The letter states that they have looked for other possibilities, but find that the organization can't afford space that is comparable size and exposure. The donated office space sends a strong message to the community that the City supports the VISION and its efforts to set measurable standards for community improvement.

Ms. Pam Wall, Executive Director of Asheville-Buncombe VISION, responded to various questions from Council.

Vice-Mayor Hay felt that this is a good location for VISION in terms of accessibility and having a high profile. He said this is a critical time with VISION and now is the time when the City wouldn't want to say they didn't support the VISION in a comprehensive way.

Mayor Sitnick supported the VISION process and their work. She said that there are some ways that can be explored for the VISION process to become self-supporting, like the possibility of volunteers helping run a souvenir booth (when more space is available) and sharing some of those revenues.

It was the consensus of City Council to allow the VISION Office to remain in the City Development Office until June 30, 2000.

REPORTS ON BOARDS/COMMISSIONS

Councilman Cloninger said that due to meeting conflicts he has been unable to attend the meetings of the WNC Regional Air Pollution Control Board as the City Council liaison to that Board. Therefore, Mayor Sitnick appointed Councilman Cobb to be the liaison to the WNC

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Regional Air Pollution Control Board and instructed the City Clerk to notify the Board of the liaison change.

BUDGET DISCUSSION

City Council discussed and gave direction to the City Manager and Budget Director on the following outstanding budget issues: parking fees, cable television connection, outside agency recommendations (in particular the Chamber of Commerce's $100,000 request), Institute of Government, Center City Director/Plan, annexation plan, Public Information Officer, water rate increase, garage signage and Pedestrian Coordinator.

CLOSED SESSION

At 6:44 p.m., Councilman Cloninger moved to go into closed session to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuit about which the Council expects to receive advice are: Trinity Baptist Church Inc., City of Asheville, Carrier Heights Neighborhood Association, CC&J Enterprises Inc., and Jackson Park/Woolsey Neighborhood Association - statutory authority is G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Cobb and carried unanimously.

At 7:25 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilman Cloninger and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:25 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - June 22,1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Vice-Mayor Hay gave the invocation.

At the request of Mayor Sitnick, Vice-Mayor Hay moved to add the consideration of an ordinance establishing public transit as a public enterprise to the agenda. This motion was seconded by Councilman Cobb and carried unanimously.

I. PROCLAMATIONS:

A. WELCOME TO THE SPECIAL OLYMPICS ATHLETICS

Councilman Cloninger read a proclamation proclaiming June 21-25, 1999, as "1999 Special Olympics Host Town Week" in the City of Asheville. He presented the proclamation to Mr. Bill Cook, who outlined some activities that would be taking place during the week. Mr. Cook then introduced the South African Special Olympics delegation.

B. PRESENTATION OF CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING AWARD

Mayor Sitnick presented Finance Director Bill Schaefer with the Certificate of Achievement for Excellence in Financial Reporting Award. The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management. The City of Asheville is proud to have received this award for the 19th year.

She also presented Joseph D. Elkins, Account Senior, with the Award of Financial Reporting Achievement. Mr. Elkins was designated the individual primarily responsible for preparing the award-winning comprehensive annual financial report.

Ms. Pat Leckey, Ms. Wynelle Hornsby, and Ms. Barbara Smith were also recognized for their work in achieving the awards.

C. PROCLAMATION PROCLAIMING SATURDAY, JUNE 26, 1999, AS "RIDE FOR KIDS DAY"

Vice-Mayor Hay read the proclamation proclaiming Saturday, June 26, 1999, as "Ride for Kids Day" in the City of Asheville. He presented the proclamation to Allen Hughes who briefed City Council on some activities taking place during the day.

D. RESOLUTION NO. 99-90 - RESOLUTION SUPPORTING OUR NEXT GENERATION INC. YOUTH CENTER IN BUNCOMBE COUNTY

Mayor Sitnick read the resolution supporting Our Next Generation Inc. Youth Center in Buncombe County. She said that our young people need a drug free, alcohol free, and smoke free place to assemble for entertainment on the weekends. "Latch Key Students" need a safe place to reside after school between 3:00 p.m. - 6:00 p.m. daily. A Youth Center will provide citizens the opportunity to counsel and mentor young people who need assistance with school assignments and personal problems. She stated that Our Next Generation Inc. believes that youth centers can provide opportunities for young people with entrepreneurial skills to operate entertainment rooms, game rooms, cafes, and other business activities of their choosing under the guidance of mentors. Our Next Generation Inc. is dedicated to opening youth centers that will offer recreational and entertainment opportunities for young people who tend to be neglected in our society such as the developmentally disabled and minorities.

Resolution No. 99-90 was adopted by acclamation.

RESOLUTION BOOK NO. 25 - PAGE 232

II. CONSENT:

A. RESOLUTION NO. 99-91 - RESOLUTION ADOPTING THE CITIZEN PARTICIPATION PLAN FOR COMMUNITY DEVELOPMENT PROGRAMS

Summary: The consideration of a resolution approving the Citizen Participation Plan for the City's community development programs.

The N.C. Dept. of Housing & Urban Development's (HUD) regulations require the City to develop and follow a Citizen Participation Plan, detailing how it will involve residents, particularly those in low-income groups and organizations representing them, in the planning and implementation of its housing and community development programs, including the allocation of Community Development Block Grant and HOME funds.

The existing Citizen Participation Plan dates from 1995, with minor revisions in 1997. It does not satisfy quite all of HUD's requirements and no longer describes all the steps that are being taken to involve and consult residents. The revised plan provides a fuller description, and, in particular, sets out a new framework for developing the Five-Year Strategic Plan which the City must revise and update in 2000.

The plan proposes that a Steering Committee be set up to oversee and guide the Strategic Planning process, with membership open to anyone who is prepared to participate consistently and constructively as well as invited representatives of key agencies and community groups. Subcommittees will act as focus groups to examine in detail the four main areas of the Plan: Housing, Homelessness, Public Housing, and Non-Housing Community Development. The process will draw and build upon other relevant planning processes such as the Asheville-Buncombe VISION.

Staff recommends that Council approve the revised Citizen Participation Plan.

RESOLUTION BOOK NO. 25 - PAGE 233

B. ORDINANCE NO. 2582 - BUDGET AMENDMENT TO APPROPRIATE NEW FEDERAL FUNDS RECEIVED FOR THE FAIR HOUSING ASSISTANCE PROGRAM

Summary: The consideration of a budget amendment, in the amount of $25,000, to appropriate new federal funds received for the Fair Housing Assistance Program for FY 1998/99.

The City has been carrying out its fair housing program under contract with the Asheville-Buncombe Community Relations Council and Fair Housing Commission since January 1988, using HUD Fair Housing Assistance Program (FHAP) funds. The City's Community Development Division serves as Lead Entity and monitors the program. On November 24, 1998, City Council approved a 1998/99 budget of $18,400, equal to the HUD FHAP grant for the twelfth year of this program.

The City has now received a revised grant agreement from HUD, increasing the FHAP grant amount by $25,000, for a total grant of $43,400. A budget ordinance is needed to appropriate the new funds.

Community Development staff recommends City Council adopt the budget amendment.

ORDINANCE BOOK NO. 17 - PAGE 351

C. ORDINANCE NO. 2583 - BUDGET AMENDMENT TO APPROPRIATE GRANT FUNDS FROM THE COMMUNITY FOUNDATION OF WESTERN NORTH CAROLINA TO FUND OUTDOOR ADVENTURE ACTIVITIES IN THE SUMMER TEEN PROGRAM

Summary: The consideration of a budget amendment, in the amount of $1,950, to appropriate grant funds from the Community Foundation of Western North Carolina to fund outdoor adventure activities in the Summer Teen Program.

The Summer Teen Program is designed to provide recreation activities for teens ages 13-16 for eight weeks during the summer. The program is located at six locations throughout the City in community centers. The Teen Program will offer a wide variety of recreation activities and hands-on job training. Grant funds will be used to implement the outdoor enrichment activities including a challenge ropes course, rock climbing, rollerblading, and mountain biking. The Parks and Recreation Department's in-kind match of $26,708 will be in labor, administration, transportation, supplies, and training for the overall Summer Teen Program. The funds are budgeted in the Recreation Division.

The Parks and Recreation Department recommends the City of Asheville to accept the grant funds on behalf of the Parks and Recreation Department into the Recreation Division operating budget for outdoor enrichment activities in the Summer Teen Program.

ORDINANCE BOOK NO. 17 - PAGE 353

D. RESOLUTION NO. 99-92 - RESOLUTION SETTING A PUBLIC HEARING ON JULY 27, 1999, TO CLOSE AN UNNAMED ALLEYWAY OFF HENRIETTA STREET

RESOLUTION BOOK NO. 25 - PAGE 234

E. MOTION SETTING A PUBLIC HEARING ON JULY 13, 1999, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REQUIRE A CONDITIONAL USE PERMIT FOR ADULT ESTABLISHMENTS

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Sellers moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO CONSIDERING THE INITIAL ZONING OF CITY-OWNED PROPERTY LOCATED OFF FERRY ROAD (BENT CREEK AREA) TO RS-2 RESIDENTIAL SINGLE FAMILY LOW DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 5:30 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of an ordinance to initially zone recently annexed City-owned property in the Bent Creek area to RS-2 Residential Single Family Low Density District.

The City of Asheville annexed 139 acres of vacant, city-owned property earlier this year (PIN Nos. 9635.01-07-6456 and 9636.03-10-3854). Requirements dictate that all property within the City limits of Asheville be zoned. Since this property lies along the French Broad River in a rural residential setting, the most appropriate zoning classification would be RS-2 Residential Single Family Low Density District.

The Planning staff reviewed the rezoning request and recommended approval. At their June 2, 1999, meeting, the Planning & Zoning Commission voted unanimously to recommend approval of the initial zoning of 139 acres of vacant land located off Ferry Road to RS-2 Residential Single Family Low Density District.

Councilman Cloninger said that the City has a good faith obligation to transfer ownership of this property to Henderson County with a zoning classification that will allow them to do what the Water Agreement restricts them to do. He felt it would not be appropriate to transfer property to Henderson County telling them they can only use this for a wastewater treatment facility, but at the same time transfer it with a zoning designation that forbids that.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast explained that as with any rezoning, considerations of a proposed use should have no bearing on the appropriate zoning; the zoning issue should be considered on the basis of appropriate planning and land use concerns. The Council is not, nor could it be, contractually bound to zone the property to one classification or another. Similarly, the zoning adopted now cannot be binding on future Councils.

Councilwoman Field questioned why the property was not zoned River District which would allow a MSD treatment facility and seems like a more gentle classification than an industrial classification. Mr. Ownbey responded that staff looked at the surrounding neighborhood and zoned it the best classification they felt matched the surrounding land uses.

Mayor Sitnick asked what procedures would have to be followed if City Council did not zone the property to RS-2. City Attorney Oast said that if the recommendation is to zone it something other than residential classification, he would suggest that City Council continue the matter for readvertisement of a public hearing to a different classification. He felt that the advertising could include language that the proposed transfer to Henderson County would limit the use to a wastewater treatment facility only.

Upon inquiry of Councilman Sellers, Mr. Ownbey said that zoning classifications that would allow a wastewater treatment facility include the River District, the Commercial Industrial District or the Industrial District.

Vice-Mayor Hay was concerned that that if the property were zoned to RS-2 with the idea that City Council would rezone it if Henderson County asked them to, the property owners in the area would rely on RS-2 as being the zoning in that part of the county. He would hate to build that reliance on an RS-2 that we didn't mean to keep in effect.

City Attorney Oast said that pursuant to the Water Agreement, City Council authorizing the conveyance of this property to Henderson County. The Water Agreement provides that Henderson County shall convey the property to MSD for construction of a wastewater treatment facility, or to another water authority of which Henderson County and the City are a part. If Henderson County fails to do either within 10 years, the property is to be reconveyed to Asheville.

Councilman Cloninger emphasized that although he supports giving the property a zoning classification that will be consistent with the Water Agreement, the deed that transfers the property to Henderson County will limit Henderson County to make only one use on that property and if they don't make that use within 10 years, the property reverts back to Asheville.

Upon inquiry of Councilwoman Field, City Attorney Oast said that the City Attorney's Office is preparing a deed for the property that will impose restrictions on the use of the property consistent with the Water Agreement. He said that they are aiming to have the deed ready to convey the property on July 1, 1999.

City Attorney Oast said that since the zoning process has been initiated, he thought it was possible to transfer the property with the deed restrictions and proceed with the zoning.

Councilman Cloninger moved to continue this matter until the next formal meeting, July 13, 1999, and if legally permissible, to include in the advertisement language that the proposed transaction will restrict the land use for a wastewater treatment facility only. This motion was seconded by Councilman Tomes and carried unanimously.

B. PUBLIC HEARING RELATIVE TO CONSIDERING A MODIFICATION FROM THE SUBDIVISION STANDARDS FOR PROPERTY LOCATED OFF OF SAND HILL SCHOOL ROAD

Mayor Sitnick opened the public hearing at 5:55 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of a request for modification from the subdivision standards to permit the subdivision of a 2 acre tract of land not abutting a public street to be subdivided into 2 lots for property located off of Sand Hill School Road.

The area was annexed in 1994 and the lot configuration has not changed since that time. The property owner (David Buckner) resides on the 2 acre parcel and, until just recently, his son lived in a manufactured home on the lot. The son has moved and now the owner wishes to sell half of the lot to allow for another buildable tax lot. The owner installed a private water service line along the existing unopened road to serve this property. The private road has a 30 foot right-of-way.

The Technical Review Committee (TRC) reviewed the request for a subdivision modification at their May 17, 1999, meeting. After presentation by staff, the TRC voted not to recommend the request for modification of the subdivision requirements for this lot. However, after the staff presentation and public comment at their June 2, 1999, meeting, the Planning and Zoning Commission voted 4-3 to recommend approval of the subdivision modification based on the information received that a physical hardship did exist based upon a concern that a neighboring home had expanded into the 30 foot right-of-way and construction of a street to publicly access the lots would be difficult.

Upon inquiry of Mayor Sitnick, Mr. Ownbey said that the TRC was not aware at the time they made their recommendation that a neighboring home had expanded into the 30 foot right-of-way and construction of a street to publicly access the lots would be difficult.

Mr. David Buckner urged City Council to allow this modification.

Mayor Sitnick closed the public hearing at 6:06 p.m.

Councilman Tomes moved to waive the subdivision standards for property located off of Sand Hill School Board. This motion was seconded by Councilwoman Field and carried unanimously.

C. PUBLIC HEARING RELATIVE TO CONSIDERING AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ELIMINATE ACCESSORY STRUCTURES AS A PERMITTED USE IN ALL RESIDENTIAL DISTRICTS

ORDINANCE NO. 2584 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ELIMINATE ACCESSORY STRUCTURES AS A PERMITTED USE IN ALL RESIDENTIAL DISTRICTS

Mayor Sitnick opened the public hearing at 6:06 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of an amendment to the Unified Development Ordinance to eliminate accessory structures as a permitted use in all residential districts.

On August 11, 1998, Ordinance No. 2506 was adopted which changed accessory structures from being permitted uses in all residential districts to being a use by right, subject to special requirements. This ordinance change failed to remove accessory structures from the list of permitted uses in all residential districts. The Planning and Development staff discovered this error during staff reviews of the Unified Development Ordinance.

The Planning and Development staff recommended the proposed wording amendment to the Planning and Zoning Commission at their June 2, 1999, meeting. After staff presentation, the Commission voted unanimously to recommend to City Council the adoption of this wording amendment.

Mayor Sitnick closed the public hearing at 6:10 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2584. This motion was seconded by Councilman Cobb and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 355

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 2585 - ORDINANCE AMENDING THE REGULATIONS FOR PUSHCARTS AND OUTDOOR DINING AREAS AND ADOPTING REGULATIONS FOR OUTDOOR MERCHANDISE AREAS

RESOLUTION NO. 99-93 - RESOLUTION AMENDING THE FEES ASSOCIATED WITH PERMITS FOR USE OF SUCH RIGHT-OF-WAY AND OTHER PUBLIC SPACES

Ms. Terry Clevenger, Downtown Development Manager, said that this is the consideration of approving revised changes to the ordinance regulating pushcarts and outdoor dining areas and adding regulations for outdoor merchandise.

At the May 18, 199, worksession, the Sidewalk Usage Team recommended changes to the ordinance permitting outdoor dining, pushcarts, and outdoor entertainment in the Central Business District and Biltmore Village. At City Council's direction, the team gathered community input regarding the recommendations. She then summarizing the community's comments and the changes the team recommended to address concerns.

As downtown continues to thrive, pedestrian traffic and the demand on public space has increased. Given these dynamics, the City should clearly define pedestrian passageways and establish boundaries of private use of public space. In addition to the changes in the ordinance, the team also studied the use of A-frame (sandwich board) signs, currently prohibited by the current sign ordinance, and recommends the City continue not to permit this type of sign.

Upon adoption, with an effective date of July 1, 1999, staff will communicate and begin enforcing the following changes:

Encroachment agreements vs. permits:

- Requirement that merchants/vendors apply for and obtain an encroachment agreement authorizing structures, large dining areas or merchandise on the sidewalk or public space.
- Requirement for permits for pushcarts, sidewalk entertainment, and small dining or merchandise areas.
- Recommend issuing one encroachment agreement for one fee to a facility wanting to take responsibility for managing the vendors occupying the sidewalks adjacent to their building. (Grove Arcade and the Asheville Art Museum are interested in pursuing this).

Fees:

- Implementation of fees associated with permits for use of such right-of-way and other public spaces.
- Based on community input, we are recommending new fees

Biltmore Village:

- A certificate of appropriateness must be required for pushcarts, merchandise and outdoor dining requests in the Biltmore Village Historic District.

Pushcarts

- Recommended measurements to be no greater than 4'6"H x 4' W x 6'L , having an overall footprint no larger than 24 square feet, excluding any trailer hitch.
- Recommended approved locations for pushcarts: 1) Pritchard Park; 2) Pack Square; 3) next to Asheville Community Theater; 4) College Street sidewalk, near BB&T garage; 5) in front of City Hall; 6) Triangle Park at Eagle and Market Streets; 7) City County Plaza; 8) Vance Monument; 9) Circular area in front of Pack Place; 10) sidewalk in front of Thomas Wolfe House; 11) corner of Battery Park and Wall Street; 12) in front of the Courthouse.

Outdoor dining:

- Change the recommended definition of small dining area from 2 tables or less to less than 30 square feet.
- Change the definition of a large dining area from more than 2 tables to greater than 30 square feet.

Outdoor merchandise:

- Recommend allowing merchandise to be permitted on the sidewalk. Currently merchandise is not permitted.
- Defined a small merchandise area as a space less than 30 square feet and a large merchandise area as a space greater than 30 square feet.

Staff received public comment regarding a category being created for "art/display." The Team will pursue this if given direction by City Council.

Outdoor entertainment:

- No changes at this time. A task force is being created to review.

Space requirements:

- Require a 6 foot pedestrian passageway for pushcarts, outdoor dining and merchandise areas.

Design procedures:

- Recommend a design procedure for pushcarts and outdoor dining areas.

Enforcement procedures:

- Recommend that police enforce issues requiring immediate response (safety issues) and Zoning Administration enforce all other issues.

Misc. items:

- All signage for such uses must comply with the Sign Ordinance (Article XIII of Chapter 7).
- Structures and merchandise can not be place on the roadways.

A-frame

- Although not addressed by this ordinance, the team was asked to make a recommendation about A-frame/sidewalk/sandwich board signs. They are not allowed by the sign ordinance. The team recommends no changes be made.
- Begin communicating and enforcing July 1.

Ms. Clevenger then explained the resolution which would amend the Fees and Charges Manual regarding fees associated with permits for use of such right-of-way and other public spaces. She said the current fees for pushcarts, outdoor dining and outdoor entertainment are all $25. There is not a current fee for outdoor merchandise because it is not permitted at this time.

The proposed fees are based on a conservative estimate of staff time necessary to administer the program. After receiving community input, we are proposing changing the fees as outlined below:

	Application	Renewal
Pushcarts	$ 125	$125
Outdoor Dining/Merchandise Permit, <30 sq. ft	$ 175	$ 25
Outdoor Dining/Merchandise Encroachment		
31-50 sq. ft.	$ 250	$ 50
51-100 sq. ft.	$ 350	$ 75
101-200 sq. ft.	$ 500	$100
201-500 sq. ft.	$1,000	$200
501 + sq. ft.	$2,000	$400

Most of the staff time is involved in the initial application process. This explains why the fee for the application is higher than the renewal fee.

We received community comments asking for fees for merchandise to be more consistent with outdoor dining. In response, they defined a small merchandise area, requiring only a permit be issued, and a large merchandise area requiring a encroachment agreement. An encroachment agreement takes more time to process, therefore the fees are higher.

Comments were also received from non-profit facilities asking if they could apply for one encroachment and pay one fee to manage the vendor space adjacent to their building. They would be responsible for the vendors complying with the ordinance. The proposed fees are based on size because staff feels the larger the area, the more staff will need to spend during the application process ensuring adequate space and safety measures for pedestrian access.

Upon inquiry of Councilwoman Field, Ms. Clevenger said that the people who have permits will still have to pay for the first time application fee because of the many new changes and because they have not been reviewed in the past 4-5 years.

Councilman Tomes felt that if the City is trying to continue to support entrepreneurs in business, the City needs to be flexible and perhaps raise the fees incrementally.

Ms. Suzanne Molloy, Assistant Director of Public Works, said that in the past the City has never charged for an encroachment agreement and the current fees have been $25 for probably 10 years. She stressed that the proposed fees are based on a conservative estimate of staff time necessary to administer the program.

When Mayor Sitnick suggested subtracting $25 for current application owners from the initial fee application, Councilman Cloninger felt that could be a possibility, however, he didn't think the original owners are the same for any of the businesses on Pack Square.

Councilwoman Field recommended that City Council review this matter in six months or a year.

Councilwoman Field wondered if it might be possible to have some scholarship for people who may have a good idea but cannot afford the initial application fee.

City Attorney Oast said that it is important to remember that these are not rental fees, but fees based on the average amount of time that staff spends processing the applications. The fees are intended to reimburse the City for expenses that they incur in processing the applications.

Ms. Martha Fawbush, speaking as a representative of several blind food service operators, read the following statement: "In recent days a problem has arisen that, if it is not dealt with, will cause severe difficulties for two groups of hard-working people - mobile vendors, those who try to make a living by selling fast food items such as hot dogs from pushcarts, and two small business food-service operators who happen to be blind. One of these food service businesses is located in the County Courthouse, the other in City Hall. Poor people have it tough making a decent living any time, let alone a living which will lift them above the poverty line. I know a pushcart vendor is not going to break the bank with his earnings. Neither is a blind food-service operator. Therefore, I see a great disservice done to both when one is in direct competition with the other. The present City recommendation that pushcart operators can set up shop in front of the Courthouse or the City Hall does exactly that. If a pushcart operator sets up his business in front of either of these public buildings, every dollar he makes he has taken from the hands of a blind man. The food-service operator in the County Courthouse says that he loses approximately $100 every day the pushcart operators are in business on his doorstep. I heard that one person has suggested that this is just good competition. But I find it hard to believe that anyone knowing these circumstances could have dismissed the blind food-service operator's losses so easily. I cannot condone a situation proposed by the City which makes it right that one poor man should be able to take business away from another poor man who happens to be blind. Also, consider this: if pushcart vendors wanted to move their operations away from City Hall and the County Courthouse, all they would have to do is close up shop and move. But the blind food-service operator has no mobility. If he is losing half to two-thirds of his daily bread to pushcart vendors on his doorstep, he is unable to move to a more lucrative place. Why should the City of Asheville make a recommendation which pits one worthy group of hard-working people against another group, large or small, which is no less worthy? Why can there not be a recommendation which encourages pushcart vendors to set up their businesses away from the County Courthouse and the City Hall? Such a recommendation would not do any harm to the pushcart vendors who would seem to have a number of other locations where they can operate - locations in which their presence would not threaten the economic survival of a blind food-service operator. I do not wish to appear unfeeling to the situation which pushcart vendors face. I know what it means to have to earn a living by the sweat of my brow. I know they work hard, I know that theirs is an uphill climb. I wish them all the success that their hard work can earn for them. But I do not feel that it must come at the expense of the working blind in our community. Let us ask the City Development Office to do some careful re-thinking on their recommendation on site locations for pushcart vendors. As a legally blind person married to another legally blind person who is a food service operator, and as a working professional woman who has until very recently found it next to impossible to acquire a teaching position because of my lack of vision, I think you all for this opportunity to speak on this matter."

Mr. Jim Hit, on behalf of the blind vendors in the Asheville area, explained that the blind food service vendors have to go through a lot of training and hoped City Council will not let the blind vendors lose their jobs to a sited person who is capable of going down the road to another location.

Mr. Donald Ball, blind vendor in the County Courthouse, urged City Council to not allow pushcarts in front of the City Hall, the County Courthouse or City/County Plaza.

Upon inquiry of Mayor Sitnick, Ms. Cloninger stated that the pushcart locations were based on space and safety, not what they would be near. She said the Team did not feel it was appropriate for the City to make decisions on regulating competition.

Mr. Vic Alonzo, Business Enterprise Counselor for the Services for the Blind, urged City Council not to allow the pushcart locations in front of the City Hall, the County Courthouse or City/County Plaza.

Mr. Anderson Davis, pushcart vendor who operates in front of the County Courthouse, was concerned about the fees and some of the requirements of pushcart vendors.

City Council expressed their sympathy with the plight of the blind food service vendors, however, City Council cannot make their decisions based on competition in the marketplace.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved (1) for the adoption of Ordinance No. 2585; (2) to give City staff direction to investigate an "art/display" category being created; and (3) that the ordinance being reviewed in one year to see if it is working for the vendors and the City. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 359

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cobb moved for the adoption of Resolution No. 99-93. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 235

At 7:14 p.m., Mayor Sitnick announced a break.

C. ORDINANCE NO. 2586 - ORDINANCE ADOPTING THE 1999-2000 ANNUAL OPERATING BUDGET

ORDINANCE NO. 2587 - ORDINANCE ESTABLISHING PUBLIC TRANSIT AS A PUBLIC ENTERPRISE WITHIN THE CITY OF ASHEVILLE

Mayor Sitnick said that the public hearing on this matter was held on June 8, 1999.

Budget Director Ben Durant explained that the Fiscal Year 1999/2000 proposed budget as presented to City Council during the budget work sessions included a recommended appropriation from fund balance of $101,244. During the worksessions, Council agreed to appropriate additional funding in the amount of $250,000 for the first year of an installment purchase for the Royal Pines property. The Royal Pines purchase was supported by an additional appropriation from fund balance which brought the total appropriated fund balance for FY 1999/2000 to $351,244.

At the budget worksession on June 15, 1999, City Council made the following additions and reductions to the proposed Fiscal Year 1999/2000 budget:

Reductions:

Center City Plan and City Center Director	$105,656
Public Information Officer	41,617
Parking Signage	45,000
Comprehensive Plan Update	50,000
Total Deletions:	$242,273

Additions:

Institute of Government	$ 6,800
Cable Equipment	50,000
Pedestrian Coordinator	18,000
Total Additions:	$ 74,800
Net Reductions:	$167,473

Based on net reductions of $167,473 recommended by Council, appropriated fund balance was reduced from $351,244 to $183,771. Further reductions to appropriated fund balance were made due to Parking Fund changes.

Parking Fund Changes

General Fund Transfer

Further reductions were made to appropriated fund balance based on changes to parking fund revenues. Staff initially projected that if Council adopted the full rate increases for parking as proposed by staff, a **$239,180** transfer from the General Fund to the Parking Fund would be required to balanced the Parking Fund operating budget. This amount was thus included as part of the initial proposed budget. Updated revenue estimates, however, showed adoption of full rate increases would produce more revenue than originally anticipated, and thus, the required General Fund transfer to the Parking Fund could be reduced to $113,980.

City Council actually approved smaller rate increases than the full rate increases recommended by staff. Based on the Council approved rate increases, the required General Fund transfer to the Parking Fund rose from $113,980 to $170,980, which is the amount currently budgeted for Fiscal Year 1999-2000.

Effect on Appropriated Fund Balance

As noted above, the initial proposed General Fund Transfer to the Parking Fund was $239,180. Based on updated revenue estimates and Council approved rate increases, the current General Fund transfer to parking is $170,980, which represents a $68,200 reduction from the original transfer amount. This $68,200 reduction in General Fund expenditures allowed for a comparable reduction in appropriated fund balance. The current appropriated fund balance included in the Fiscal Year 1999-2000 Annual Budget Ordinance is $115, 571:

Appropriated Fund Balance (after additions & reductions)	$183,771
Less Reduction in General Fund Transfer to Parking Fund	- 68,200
Current Appropriated Fund Balance	**$115,571**

Councilwoman Field wanted to make sure that the opportunity is there fairly quickly to hire a Center City staff person after the new Planning & Development Director starts. She stressed how important is was for the City to make a commitment to fund this position. She said that downtown is the seat of a lot of activity and a coordinator is essential to help solve the problems of downtown because it is an incredibly important economic generator.

Councilman Cobb was disappointed with the amount of money for streets and sidewalks and stated that our infrastructure has serious needs. He hoped that if additional funds are found that they be spent on streets and sidewalks.

Councilman Tomes felt that if the City is going to have sustainable economic vitality, they will need to deal with some infrastructure deficiencies. He felt that if the City does some long range planning, we may be able to achieve those goals.

Vice-Mayor Hay said that this year the City is making some good new efforts in economic development to take the City forward and we need to make sure that we are doing everything we can to foster that vitality.

Mayor Sitnick was concerned that within the water budget, the non-betterment costs to the City are going to add such a burden to the City ratepayer. She felt it was great that the City has not had to raise taxes in ten years and that we've cut our expenses by such a significant amount. She was grateful to staff for the work they have done to improve the dip into the Fund Balance, however, she felt that what's left in our Fund Balance is woefully inadequate. She said we have not annexed in five-six years, not raised taxes in ten years, and we have mini-governments that are setting policies and rates for many of the services that our citizens benefit from, e.g., Water Authority, MSD, Transit Authority, Housing Authority. While she praises the fact that the City has not raised taxes, we have raised other rates, fees and charges. She thinks that this Council, at some point in the near future, is going to have to take a substantive look at what our expenses are going to be leading us into the next two to three decades. She said we should look to increasing the tax base, continuing to be as efficient as we can be, looking at other sources of revenue, look harder for federal and state funding, look at future bonds, look at more public/private partnerships, look to the private community and increase our efforts to apply for and win grants from foundations and private funds. At some point we will have to look at things like taxes, as hard as that's going to be. We will have to do it in such a way that the Asheville taxpayer is treated as fairly as we possibly can and spread the cost out, e.g., appealing to our state delegates to increase the sales tax to fairly spread out that burden across the board. She said that Council has worked hard on making sure we have a good budget and we were able to continue our services at an appropriate level, but we will need to look a little deeper and a little harder as our costs go up and the needs of this wonderful, yet 200-year old, community continue to mount.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance adopting the 1999-2000 Annual Operating Budget and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2586. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 381

City Attorney Oast said that at the City Council retreat in August, 1998, staff was given direction to explore the possibility of taking transit back in-house. Urban Planner Bruce Black then presented City Council with information showing that there was no significant downside to bringing that function back in-house. City Council then directed staff to proceed in that direction during the budget process.

City Attorney Oast explained that it is necessary to repeal Ordinance No. 586, adopted on November 16, 1967, creating the Asheville Transit Authority. However, in recognizing the value of having the experience and advice of the Authority who has operated the transit operation, the ordinance does reconstitute the Asheville Transit Authority as the Asheville Transit Commission. He said that because the City of Asheville owned all the property used by the Asheville Transit Authority, there is no necessity for a lot of complicated legal transactions transferring the property to the City. The General Statutes provide that if a transit authority is abolished or ceases to exist, that the contracts are automatically assignable to the city. He has directed in the ordinance that the Asheville Transit Authority undertake those steps in deliberate speed.

On behalf of City Council, Mayor Sitnick thanked the Asheville Transit Authority for all their help with this transaction.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Hay moved for the adoption of Ordinance No. 2587. This motion was seconded by Councilman Sellers and carried unanimously.

Vice-Mayor Hay said that one benefit will be that it will give the City more latitude and freedom to be creative. He was pleased to report that Mr. Black is already building on a partnership to bring bus service out to the Asheville Regional Airport.

Mayor Sitnick said that she and the City Manager have talked briefly with the mayors of the other municipalities in Buncombe County and they are interested, at some point in the future, in creating a bus service between the cities.

ORDINANCE BOOK NO. 17 - PAGE 391

C. RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ECONOMIC DEVELOPMENT TASK FORCE

Vice-Mayor Hay said Economic Development Director Mac Williams presented City Council with a list of candidates for consideration as the Economic Development Task Force. However, some of the candidates on the list have not responded and confirmed their willingness to serve, if asked. Therefore, the Boards & Commissions Committee has requested, and it was the consensus of City Council, that City Council postpone consideration of appointing members to this Task Force until their next formal meeting on July 13, 1999.

D. RESOLUTION NO. 99-94 - RESOLUTION REAPPOINTING MEMBERS TO THE CARRIAGE PERMIT ADVISORY BOARD

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Vice-Mayor Hay said that the terms of Sally Rhoades, Susan Dodson and Michael Hyatt expire on June 25, 1999. This resolution will reappoint Ms. Rhoades, Ms. Dodson and Mr. Hyatt to each serve a three year term respectively, terms to expire June 25, 2002, or until their successors have been appointed.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 99-94. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 237

E. RESOLUTION NO. 99-95- RESOLUTION APPOINTING MEMBERS TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Vice-Mayor Hay said that the terms of John Ingersoll, Jimmy Hungerford, Lonnie Blair and Janice Van Dine, as members on the Citizens/Police Advisory Committee, expire on June 30, 1999. This resolution will (1) reappoint Mr. Ingersoll (North representative), Mr. Hungerford (West representative), and Mr. Blair (East representative); and appoint Ms. Betty Budd (South representative) to each serve a three year term respectively. All terms will expire on June 30, 2002, or until their successors have been appointed.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 99-95. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 238

F. RESOLUTION NO. 99-96- RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Vice-Mayor Hay said that the terms of Robert Swan, Richard Bowman and Tom Muncy, as members on the Civic Center Commission, expire on June 30, 1999.

On June 1, 1999, it was the consensus of City Council to reappoint Mr. Swan and Mr. Bowman to each serve an additional three year term. Their terms will expire on June 30, 2002, or until their successors have been appointed.

On June 8, City Council interviewed Denise Goodson. Peter Crosa was interested in the position, however, due to a business trip, he was not able to come in for an interview. John Leander was unable to be contacted by phone or letter for an interview.

Councilman Cobb moved to (1) appoint Denise Goodson to serve a three year term, term to expire June 30, 2002, or until her successor has been appointed, and (2) reappoint Mr. Swan and Mr. Bowman to each serve an additional three year term, terms to expire on June 30, 2002, or until their successors have been appointed. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 239

G. RESOLUTION NO. 99-97 - RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD

Vice-Mayor Hay said that the term of Nancy Kauffman, as a member of the Civil Service Board, expired on May 21, 1999. This resolution will appoint Mr. Gene Bell to serve a two year term, term to expire May 21, 2002, or until his successor has been appointed.

Vice-Mayor Hay also said that City Council will need to appoint a Chair to the Civil Service Board. It was the consensus of City Council to make that appointment at their next formal meeting on July 13, 1999.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Mayor Sitnick moved for the adoption of Resolution No. 99-97. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 240

H. RESOLUTION NO. 99-98 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE CRIME STOPPERS BOARD

Vice-Mayor Hay said that the terms of Councilman Tommy Sellers, Mr. Steve Curtis and Mr. Grant Osborne, as members on the Crime Stoppers Board of Directors, expire on June 30, 1999. This resolution will (1) reappoint Councilman Sellers for an additional three year term, and (2) appoint Josefine Matty and Leslie Hennessee to each serve a three year term. All terms will expire on June 30, 2002, or until their successor has been appointed.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 99-98. This motion was seconded by Councilman Cobb and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 241

I. RESOLUTION NO. 99-99 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE FILM BOARD

Vice-Mayor Hay said that Ashley Siegel and Curtis Gaston have resigned as members on the Asheville Film Board.

On June 8, 1999, City Council interviewed Yvette Logan and Cindy Pomeroy. Anne Watkins is interested, however, was out of town on the date scheduled for interviews. Celeste Fletcher could not be reached by telephone and did not respond to interview letter written.

Councilman Cloninger moved to appoint Anne Watkins and Cindy Pomeroy to the Film Board to each serve an unexpired term, said terms to be determined at the next meeting of the Film Board. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 242

J. RESOLUTION NO. 99-100 - RESOLUTION REAPPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Vice-Mayor Hay said that the terms of Mr. Jody Kuhne and Mr. Fred Eggerton, as members on the Asheville-Buncombe Historic Resources Commission, expire on July 1, 1999. This resolution will reappoint Mr. Kuhne and Mr. Eggerton to each serve an additional three year term, respectively. Their terms will expire July 1, 2002, or until their successors have been appointed.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Tomes moved for the adoption of Resolution No. 99-100. This motion was seconded by Councilman Cobb and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 243

K. RESOLUTION NO. 99-101 - RESOLUTION ENDORSING APPOINTMENTS OF MEMBERS TO THE HOUSING AUTHORITY

Mayor Sitnick said that the terms of Mabel Hoskins and Cleatus Tate, as members on the Housing Authority Board of Directors, expired on June 11, 1999. Peggy Cook has resigned as a member, effective September 1, 1999, thus leaving an unexpired term until June 11, 2000.

On June 17, 1999, Mayor Sitnick interviewed T. Bentley Leonard, Mary Robertson, Minnie Jones, Helen Branson, and Adam Fetterman.

Vice-Mayor Hay moved to endorse the following appointments by Mayor Sitnick: (1) reappointing Cleatus Tate to serve an additional five year term, term to expire June 11, 2004; (2) appointing Minnie Jones to serve a five year term, term to expire June 11, 2004; and (3) appointing Helen P. Branson to serve the unexpired term of Ms. Cook, term to begin on September 1, 1999, and expire on June 11, 2000. All appointments will be until their successors have been appointed. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 244

L. RESOLUTION NO. 99-102 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD

Vice-Mayor Hay said that the terms of William Estes, Lewis Isaac and Charles Bullman, as members on the Recreation Board, expire on June 30, 1999.

On June 1, 1999, it was the consensus of City Council to reappoint Mr. Bullman to serve an additional three year term, term to expire June 30, 2002.

On June 8, 1999, City Council interviewed Susan Sparboe. Derek Weekly could not be reached by telephone and did not respond to interview letter written. Additional candidates not scheduled for interviews include Ann Babcock, Susan Roderick and Barbara Weinkle.

Councilwoman Field nominated Ann Babcock and Barbara Weinkle.

Councilman Cloninger nominated Susan Roderick and Susan Sparboe.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, each Council member voted. Ann Babcock received 4 votes, Barbara Weinkle received 3 votes, Susan Roderick received 6 votes and Susan Sparboe received one vote. Therefore, the resolution will (1) reappoint Charles Bullman to serve an additional three year term, term to expire June 30, 2002; and (2) appoint Ann Babcock and Susan Roderick to each serve a three year term, terms to expire June 30, 2002, or until their successors have been appointed.

RESOLUTION BOOK NO. 25 - PAGE 245

M. RESOLUTION NO. 99-103 - RESOLUTION APPOINTING MEMBERS TO THE TREE/GREENWAY COMMISSION

Vice-Mayor Hay said that the terms of Peter Loewer, Margaret Tinkler, Ann Babcock and Jerry Bailey, as members on the Tree/Greenway Commission, expire on July 1, 1999.

On June 1, 1999, it was the consensus of City Council to reappoint Ms. Tinkler, Ms. Babcock (contingent upon her consideration of appointment to the Recreation Board), and Mr. Bailey to each serve an additional three year term, terms to expire July 1, 2002.

On June 8, 1999, City Council interviewed Sofia Mannos and Ginger Mahler. Leonard Pardue could not be reached by telephone and did not respond to interview letter written.

Ms. Babcock has been appointed to the Recreation Board, thus requiring City Council to fill her term.

Councilman Tomes moved to appoint Sofia Mannos and Ginger Mahler to each serve a three year term, terms to expire June 30, 2002, or until their successors have been appointed. This motion was seconded by Mayor Sitnick and carried unanimously.

Councilman Tomes moved to reappoint Margaret Tinkler and Jerry Bailey to each serve an additional three year term, terms to expire on June 30, 2002, or until their successors have been appointed. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 246

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 8, 1999

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on June 8, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the week of: June 4-10, 1999: April Brown (Water) and Mack Moore (Parks & Recreation).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Waste Reduction and Technology Transfer Program (WRATT)

City Manager Westbrook updated City Council on their request concerning an environmental excellence initiative for internal operations within the City of Asheville. City staff has received a proposal and a scope of work which could begin as early as September, 1999. His only concerns include the amount of staff time that may be involved and any costs to implement recommendations, which are not in the budget.

Sidewalk Waiver Request

A representative of residents on Beaucatcher Road affected by the development of the Road House Grill that will be built on Kenilworth Road and Beaucatcher Road, urged City Council to preserve the buffer of white pine trees on Beaucatcher Road. The developer is required to install a sidewalk, however, because of the required buffer, they are concerned that the roots of the trees will be damaged. The residents do want a sidewalk on their road, however, they also want a solid buffer. She asked City Council waive the sidewalk requirement if they can't guarantee them that the buffer will be protected.

With the use of a map/plan, City Engineer Cathy Ball explained that the cost to the contractor to build the sidewalk on the other side of the street on Beaucatcher Road, which the City could not require him to do, would be very expensive because of drainage problems and he would have to go over three-four driveways. She said that this road is on the Pedestrian Thoroughfare Plan and up further on Beaucatcher Road there is a sidewalk on the side of the road that has the trees. She has talked with the City's Arborist and asked him to look at the site to see if he felt that putting in this sidewalk would jeopardize those trees. He felt that the trees would be fine if it was put in according to this plan. However, he did suggested putting up some type of fence or something to keep them physically off of the 8-9 foot area in the plan.

Ms. Ball recommended City Council not waive the sidewalk requirement. She is prepared to meet with the contractor, along with representatives of the Tree/Greenway Commission, in order to preserve the trees and suggest materials to be used for the sidewalk.

It was the consensus of City Council for Ms. Ball to meet with the contractor and representatives of the neighborhood to see if the sidewalk could be installed with preservation of the trees.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:50 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - June 29, 1999
North Asheville Community Center
47 Larchmont Road

7:00 p.m. - Community Meeting

Present: Vice-Mayor Edward C. Hay Jr., Presiding; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Leni Sitnick

The following topics were raised by residents and addressed by City Council and City staff: appeal from Kenilworth neighborhood for assistance in finding a way to delay the MSD Project (to upgrade a sewer line in their neighborhood from 12" to 24") in order for the neighborhood to find alternatives to help save the lake, trees and property values in the area; growth of the City is being borne at the expense of the current residents; Merrimon Avenue traffic and possible plans for the future; noise from car stereos; litter; need for speed humps on Lakeshore Drive to curb speeding; speeding on Kimberly Avenue; problems with lighting at Weaver Park; need for a park in North Asheville; need to proceed with the Richmond Hill Project; would Council support bringing up the Parks, Recreation and Greenways Bond issue again in November, 1999; concerns regarding the Asheville Mall expansion - traffic, noise, buffer, lighting, etc.; need for equitable enforcement of noise ordinance for residents and businesses; need for cruising law, especially in Flint Street and Starnes Avenue area; need for sidewalk on section between Larchmont Road and Fenner Avenue; need for dilapidated house at 26 Fenner Avenue to be torn down; and consideration of closing White Pine Drive to Tunnel Road and finding another route for White Pine Drive to exit onto Kenilworth Drive.

Vice-Mayor Hay adjourned the meeting at 9:04 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - July 13, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

On behalf of City Council, Vice-Mayor Hay expressed sympathy on the passing of Mr. Jim Crum, who was the Print Shop Manager for the City of Asheville and City of Asheville employee for over 20 years.

Councilman Sellers gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JULY 1999 AS "NATIONAL RECREATION AND PARKS MONTH"

Mayor Sitnick read the proclamation proclaiming July, 1999, as "National Recreation and Parks Month" in the City of Asheville. She presented the proclamation to Mr. Frank Fishburne, Chairman of the Recreation Board, who briefed City Council on some activities taking place during the month.

II. CONSENT:

A. RESOLUTION NO. 99-104 - RESOLUTION FIXING DATE OF PUBLIC HEARING ON JULY 27, 1999, ON THE QUESTION OF ANNEXATION OF PROPERTY LOCATED OFF OF LONG SHOALS ROAD AND KNOWN AS BILTMORE PARK COMMON AREAS (BILTMORE PARK ANNEXATION SECTION 14), SCHENCK PARKWAY AND 100 TECHNOLOGY DRIVE

RESOLUTION BOOK NO. 25 - PAGE 247

B. RESOLUTION NO. 99-105 - RESOLUTION APPOINTING A MEMBER TO THE EDUCATIONAL ACCESS CHANNEL COMMISSION

Summary: Ordinance No. 2554 adopted on March 9, 1999, established an Educational Access Channel Commission. On May 25, 1999, members to the Commission were appointed.

On June 21, 1999, Dr. Bob Bowers, Superintendent of Buncombe County Schools, requested that Ms. Carolyn Crew, Director of Media Services, be appointed as one of the Buncombe County School appointments instead of Dr. Bobbie Short. Ms. Crew will be filling the unexpired term of Dr. Short, term to expire June 1, 2003, or until her successor is appointed.

RESOLUTION BOOK NO. 25 - PAGE 252

C. MOTION SETTING A PUBLIC HEARING ON JULY 27, 1999, TO CONSIDER A CONDITIONAL USE PERMIT FOR THE ASHEVILLE MALL EXPANSION

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D. MOTION SETTING A PUBLIC HEARING ON JULY 27, 1999, TO CONSIDER A CONDITIONAL USE PERMIT FOR DREAMLAND PHASE II

E. MOTION SETTING A PUBLIC HEARING ON JULY 27, 1999, TO ADD THE MANUFACTURED HOME OVERLAY DISTRICT TO 15 LOTS LOCATED ON MOCKINGBIRD CIRCLE CURRENTLY ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

F. RESOLUTION NO. 99-106 - RESOLUTION AUTHORIZING APPLICATION AND ADMINISTRATION OF TRANSIT OPERATING GRANTS

Summary: The consideration of a resolution authorizing the City of Asheville to apply for and administer grants for transit operations

A substantial part of the current operating budget for the City's transit operations has traditionally come in the form of grants from the Federal Transit Authority, for which applications and administration contracts are required every year. The City abolished the Asheville Transit Authority effective July 1, 1999, and established transit operations as a line department of the City.

The adoption of the budget, since it assumes the continuation of this grant funding, is sufficient legal authority for the City to apply for and receive the grants. The resolution is a formality that specifically authorizes the City to take actions that the law and the budget ordinances already authorize generally. It also ratifies any actions taken from July 1 until now.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 25 - PAGE 253

G. MOTION SETTING A PUBLIC HEARING ON AUGUST 10, 1999, TO REZONE A PORTION OF VIRGINIA AVENUE AND HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMERCIAL BUSINESS II DISTRICT

H. MOTION SETTING A PUBLIC HEARING ON AUGUST 10, 1999, TO REZONE SEVEN LOTS ON SAND HILL SCHOOL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

I. MOTION SETTING A PUBLIC HEARING ON AUGUST 10, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE STANDARDS OF WIRELESS TELECOMMUNICATION FACILITIES

J. MOTION SETTING A PUBLIC HEARING ON AUGUST 10, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING THE ENFORCEMENT REMEDIES

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Tomes moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO CONSIDERING THE INITIAL ZONING OF CITY-OWNED PROPERTY LOCATED OFF FERRY ROAD (BENT CREEK AREA) TO INDUSTRIAL DISTRICT

ORDINANCE NO. 2588 - ORDINANCE TO ZONE CITY-OWNED PROPERTY LOCATED OFF FERRY ROAD (BENT CREEK AREA) TO INDUSTRIAL DISTRICT

Mayor Sitnick said that the public hearing which was opened on June 22, 1999, was to consider zoning of City-owned property located off of Ferry Road (Bent Creek area) to RS-2 Residential Single Family Low Density District. However, City Council continued this matter until this date and legally advertised zoning the property to Industrial District.

Mr. Carl Ownbey, Urban Planner, said that the City of Asheville annexed 139 acres of vacant, city-owned property earlier this year (PIN Nos. 9635.01-07-6456 and 9636.03-10-3854). Requirements dictate that all property within the City limits of Asheville be zoned. Since this property lies along the French Broad River in a rural residential setting, Planning staff felt the most appropriate zoning classification would be RS-2 Residential Single Family Low Density District.

The Planning staff reviewed the rezoning request to RS-2 and recommended approval. At their June 2, 1999, meeting, the Planning & Zoning Commission voted unanimously to recommend approval of the initial zoning of 139 acres of vacant land located off Ferry Road to RS-2 Residential Single Family Low Density District.

Councilman Cloninger said that the City has a good faith obligation to transfer ownership of this property to Henderson County with a zoning classification that will allow them to do what the Water Agreement restricts them to do and that is to build a wastewater treatment facility only. The Water Agreement provides that Henderson County shall convey the property to MSD for construction of a wastewater treatment facility, or to another water authority of which Henderson County and the City are a part. If Henderson County fails to do either within 10 years, the property is to be reconveyed to Asheville. He felt it would not be appropriate to transfer property to Henderson County telling them they can only use this for a wastewater treatment facility, but at the same time transfer it with a zoning designation that forbids that. He felt the City should zone the property in such a way that will allow them to put a wastewater treatment plant on the property if they decide to do that. He said we can put specific deed restrictions in the deed itself when we transfer the property to Henderson County that will prevent them from doing anything other than building a wastewater treatment plant on it.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast said that he has prepared the deed to reflect the terms of the Water Agreement. The Agreement does not contain restrictive covenants in the classically understood sense. Rather, it provides that the property will revert to the City if it is not used (for a wastewater treatment plant) as provided for in the Agreement within 10 years. He said that restrictive covenants merely limit the potential use of property, and would depend on the City taking some affirmative step to enforce them. Even if the covenants were violated, ownership would remain with Henderson County. Under the reversion arrangement, however, failure of the condition automatically causes the property to come back to the City. So the reversion is actually a stronger mechanism.

Councilman Cloninger said that to be on the safe side, the restrictive covenants should be included in the deed.

When Mayor Sitnick asked if Henderson County could trade or sell that property if they don't build a treatment plant on it, City Attorney Oast said that with the reverter clause in the deed, the possibility of Henderson County finding a willing buyer would be slim. The way the deed will be drafted, if they attempted to do anything with it other than develop it for a wastewater treatment plant, he felt the City of Asheville would have a basis to claim that the reverter clause be triggered.

Mayor Sitnick asked what would happen if Henderson County does decide to build a treatment plant on the site but MSD finds that they cannot use the property for a treatment plant. Could MSD do something with that property that would not bind Henderson County to the original agreement? City Attorney Oast said that any restrictions in the deed will be binding on any subsequent owner of the property. The deed does not currently contain the restrictions that Councilman Cloninger mentioned, however, it does contain the reversion language. He said that he would revise the deed to add restrictions, suggested by Council Cloninger, that affirmatively limit the use of the property and send it to Henderson County.

Mayor Sitnick noted that the ten year period starts at the time of the transfer of the property, not at the time of the agreement.

It was the consensus of City Council to have the City Attorney include an additional restriction in the deed that Henderson County can only use the property for one use in the next ten years and that is the wastewater treatment facility. City Council does not want Henderson County to be able to put up even a short-term industrial use.

City Attorney Oast said that the restrictions will apply to the entire property.

Upon inquiry of Mayor Sitnick, Mr. Ownbey addressed the concern from the Blue Ridge Parkway that a small portion of this property proposed to be zoned industrial is located in the Blue Ridge Parkway Viewshed Area.

Mayor Sitnick said that, while she was on City Council at the time it was agreed to transfer this property to Henderson County, she wished that there was more prominent discussion about the transfer and that she had been more fully informed about what was happening.

Mr. Frank Rosa, owner of property on Brevard Road, felt that this gateway to Asheville should be a park or office complex, but certainly not have a wastewater treatment facility built on the land.

Mayor Sitnick asked if there was anyway that City Council could place conditions, such as regulating height, creating buffers that would require the planting of trees that grow to such heights that don't allow the plant to be seen from I-26, Brevard Road and the Blue Ridge Parkway, etc., in addition to the deed restrictions, on the property prior to the transfer in hopes to encourage Henderson County to keep the plant as visually low impact as possible. City Attorney Oast said that any wastewater treatment facility that is built on that property will require a conditional use permit and site specific questions can be addressed in that process.

City Attorney Oast said that it is his understanding that it's entirely up in the air as to whether a wastewater treatment plant will be built there at all. He felt it may be difficult, and it may be a problem with the agreement, if we try to attach those kinds of conditions because he felt we may be overstepping what we said we would do in the agreement.

Councilwoman Field noted that even if City Council did place some kind of conditions on the property now, those can be changed by whatever Council is sitting at the time the building process begins.

Councilman Cloninger suggested that, even though it would not be binding, as part of the transfer of the deed to Henderson County, a letter be sent to Henderson County summarizing our concerns that aesthetics be taken into account in any use they attempt to make of the property. He also suggested the letter be filed in some appropriate place with the City that if, and when, Henderson County has to come to the City for the conditional use permit for the plant, the staff will have that letter in the file and it will be consulted as part of that conditional use hearing process. At least that way we will be on record to see that there were these concerns at the time the transfer was made.

City Attorney Oast said that if Henderson County does pursue building the plant, it's possible that only a small portion of the property will be used for the plant and the rest could be zoned to a less intensive classification, but that is something unknown as this time.

Councilman Cobb felt personally that a mistake was made to transfer the property. He wondered if the City could go to Henderson County and ask if we could trade or buy back the property.

Mayor Sitnick was concerned that when the current MSD plant runs out of capacity they might decide to build a large plant to accommodate our region. Councilwoman Field, and member of the MSD Board, said that she recently learned that the MSD plant, as it is now, is only being used at less than 50% of its capacity and she believed they have capacity, based on the rate of growth that this county is in, for another 50-75 years in the present plant. She said she doesn't think there are any intentions of MSD of building a wastewater treatment plant on that piece of property.

Upon inquiry of Mayor Sitnick, City Attorney Oast said that the Water Agreement provides that Henderson County shall convey the property to MSD for construction of a wastewater treatment facility, or to another water authority of which Henderson County and the City are a part.

Mayor Sitnick closed the public hearing at 5:44 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2588 to zone the property Industrial, with the express provision that the deed transferring title to Henderson County contain the restrictive covenant language as discussed today. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 394

B. PUBLIC HEARING RELATIVE TO CONSIDERING AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REQUIRE A CONDITIONAL USE PERMIT FOR ADULT ESTABLISHMENTS

ORDINANCE NO. 2589 - ORDINANCE AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REQUIRE A CONDITIONAL USE PERMIT FOR ADULT ESTABLISHMENTS

Mayor Sitnick opened the public hearing at 5:45 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

City Attorney Oast said that this is the consideration of an ordinance amending the Unified Development Ordinance which would identify adult establishments as conditional uses and establish standards for the adult uses.

The Asheville Planning and Zoning Commission, at their June 24, 1999, meeting, reviewed and recommended approval of an amendment to the Unified Development Ordinance which would identify adult establishments as a conditional use in the Highway Business, Regional Business, and Commercial Industrial districts. Adult uses are not permitted in any of the other zoning districts. The proposed ordinance amendment also sets standards for adult establishments. Among the development standards for adult establishments are:

- No lot containing an adult establishment shall be located within a 1,000 foot radius of any other lot containing an adult establishment;
- No lot containing an adult establishment shall be located within a 1,000 foot radius of any residential zoning district;
- No lot containing an adult establishment shall be located within a 1,000 foot radius of any church, school, library, child care center, or public recreation center, or public park or playground; and
- Standards for signage.

As a conditional use, all requests for adult establishments would be decided by City Council following a public hearing on the request. The proposed ordinance amendment makes permanent an earlier temporary ordinance making adult establishments a conditional use.

The public notice advertising the hearing on this ordinance amendment was legally advertised in the Asheville Citizen-Times July 2, 1999 and July 9, 1999.

The Asheville Planning and Zoning Commission voted unanimously to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the amendment.

Mayor Sitnick closed the public hearing at 5:50 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2589. This motion was seconded by Councilman Cobb and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 99-107 - RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ECONOMIC DEVELOPMENT TASK FORCE

Vice-Mayor Hay said on June 8, 1999, City Council authorized staff to develop a list of candidates to work with Dr. David Kolzow, Consultant with Lockwood Greene Consulting, on the Comprehensive Sustainable Economic Development Strategic Plan.

Economic Development Director Mac Williams prepared a list of candidates who have been contacted and who have confirmed their willingness to serve, if asked. Mr. Williams explained the task of the group. He said that the term of the Task Force will begin with appointment of the members by City Council and would end when the Sustainable Economic Development Strategic Plan, that they will draft, is adopted by City Council. He felt the draft Plan should be ready for City Council review in October or November of this year.

The City Council Boards and Commissions Committee met to review the list and the following are their recommendations: Jack Cecil, Bill Habermeyer, Benson Slosman, Bruce Tompkins, Carol King, Sonny Enloe, Dale Groce, Chuck Tessier, James Geter, Pat Whalen, Bob Turner, Charles Pine, Doug Wilson, Ted Prosser, Harry Pilos, Joyce Harrison, Pam Turner, Jim Mullen, Ed Anderson, Russ Martin, Bob Burgin, Ray Bailey and B.J. Harris.

City Council expressed their appreciation to this talented group of people who have agreed to work on behalf of the City on this very important task.

Councilwoman Field asked if she would have a conflict of interest since one of the candidates is a client of hers. City Attorney Oast said he did not feel she would have a conflict.

Vice-Mayor Hay moved to adopt Resolution No. 99-107 to appoint the 23 candidates recommended by the Boards and Commissions Committee to serve as members on the Sustainable Economic Development Task Force. This motion was seconded by Mayor Sitnick and carried unanimously.

Mr. Williams then explained why he felt Mr. Jack Cecil would make an excellent Chair of the Task Force.

City Council expressed how pleased they would be to appoint Mr. Cecil as Chair due to his effective leadership and his excellent expertise.

Vice-Mayor Hay moved to appoint Jack Cecil as Chair of the Sustainable Economic Development Task Force. This motion was seconded by Mayor Sitnick and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 254

B. RESOLUTION NO. 99-108- RESOLUTION APPOINT A CHAIR TO THE CIVIL SERVICE BOARD

Vice-Mayor Hay said that Gary Moffitt has resigned as a member and Chair of the Civil Service Board. The members currently on the Board include: William Fulp, Gene Bell, George Bancroft, Jesse Warren and Al Thomas.

Vice-Mayor Hay said that the Boards & Commissions Committee recommends appointing Gene Bell as Chair of the Civil Service Board.

Councilman Cloninger moved for the adoption of Resolution No. 99-108, appoint Gene Bell as Chair to the Civil Service Board. This motion was seconded by Councilman Tomes and carried unanimously.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE WORKSESSION HELD ON JUNE 15, 1999, THE REGULAR MEETING HELD ON JUNE 22, 1999, AND THE COMMUNITY MEETING HELD ON JUNE 29, 1999

Councilman Tomes moved for the adoption of the minutes of the worksession held on June 15, 199, the regular meeting held on June 22, 1999, and the community meeting held on June 29, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

B. REPORT ON FATHERHOOD CONFERENCE

Councilman Tomes gave City Council a brief report on his trip to Washington, D.C., when he attended a conference on fatherhood.

C. PACK PLACE SIGN

As a result of numerous complaints being received about the design of the sign located in front of Pack Place, it was the consensus of City Council to review the ordinance that allowed the sign to be placed there at an upcoming worksession.

Vice-Mayor Hay noted that the sign was paid for by a grant, designed by an Atlanta, Georgia, architect sign designer and was selected by a committee, not the Pack Place Board.

D. CLAIMS

The following claims were received by the City of Asheville during the period of June 11-24, 1999: Jerry Payne Construction Co. (Water), Helen Sanders (Water), Bob Beard (Water), David Waldroup (Parks & Recreation) and Mark Brown (Streets).

The following claims were received by the City during the period of June 25 - July 1, 1999: Ben Woolf (Fire), Dee Tobe (Parks & Recreation), Herbert Miller (Water) and Beryl Thompson (Streets).

The following claims were received by the City during the period of July 2-8, 1999: Claudia Garren (Fire) and BellSouth (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

E. LAWSUITS

The following Complaint was received by the City on June 18, 1999: Leanna F. Young, Janet Rebecca Crisp, Paul Evington, Scott Alan Gaddy, and Rock S. Edwards v. William R. Annarino, Leroy Lunsford and the City of Asheville. The nature of the complaint alleges wrongful discharge, deprivation of civil and constitutional rights, breach of contract, negligent supervision, libel and slander, and RICO violations. This matter will be handled by an outside attorney.

The following Complaint was received by the City on June 21, 1999: Carrier Heights Neighborhood Association v. City of Asheville. The nature of the proceeding is a petition seeking reversal of decision to issue a conditional use permit for a Level III church, and an injunction restraining issuance of permits. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Closed Session

At 6:30 p.m., Councilman Cloninger moved to go into closed session to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee - statutory authority is G.S. 143-318.11 (a) (6). This motion was seconded by Councilman Sellers and carried unanimously.

At 6:45 p.m., Vice-Mayor Hay moved to go out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:45 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - July 20, 1999 - 3:00 p.m.

Worksession

Present:	Mayor Leni Sitnick, Presiding; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	Vice-Mayor Edward C. Hay Jr.

CONSENT:

Budget Amendment re: Water Major Capital Improvements Fund

Summary: The consideration of a budget amendment, in the amount of $416,598, to amend Capital Project Ordinance 82-25 (35 Fund - Water Major Capital Improvements Fund) to fund the remainder of the 1998/1999 Water Distribution System Improvements.

By Resolution 82-25 dated October 5, 1982, the Regional Water Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

Funds in the amount of $597,920 were approved in the FY 1998/1999 FY Water Operating Budget (30 Fund) to be transferred to the Water Major Capital Improvements Fund (35 Fund) to fund capital improvement projects. On October 20, 1998, the Authority approved the transfer of $180,962 from the Operating Budget (30 Fund) to the 35 Fund for the following projects: Relocation of Pesticide Mixing Stations ($33,000), Lee Street/Prospect Street Water Main Replacement ($33,000), Monroe Street Water Main Replacement ($25,000), and the first payment of the NCDOT US 70/74 Tunnel Road/Haw Creek Water Line Relocation Project ($89,962).

The remainder of the FY 1998/1999 Water Distribution System Improvements needs to be funded at this time. These projects total $416,598 and include the following:

- An additional $42,000 for Monroe and Maxwell Streets that was under-budgeted.
- $50,000 for Water System Improvements to Reconcile Existing Conflicts with MSD.
- $289,958 for Matching Funds for State $3 Million Grant
- $35,000 for Telemetry Upgrades to South Buncombe and East Asheville Pump Stations

Staff recommends approval of a budget ordinance amending Capital Project Ordinance 82-25 (35 Fund) to reflect the addition of a portion of the Contribution From Other Funds - Fiscal Year 1998/99 in the amount of $416,598.

Budget Amendment re: State Grant for Haw Creek Park

Summary: The consideration of a budget amendment, in the amount of $69,000, from the N.C. Department of Environment and Natural Resources, for the construction of the next phase of Haw Creek Park.

The City recently applied for and received approval for a grant from the N.C. Department of Environment and Natural Resources. The grant is in the amount of $69,000 and is designated for the development of the Haw Creek Park.

The development of Haw Creek Park represents the City of Asheville and the Haw Creek Community Association's long term goal to build a park in the Haw Creek neighborhood. The park is a collaborative effort between the City of Asheville and the Haw Creek Community Association, who has committed to raise $40,000 to assist with construction of the park. Haw Creek Park will be a passive park located on approximately 6.2 acres at Beverly and Avon Roads, and will serve as a major destination along the proposed Haw Creek Greenway. Park features include a trail, picnic shelter, and paved parking. The grant funds will be used to add a toddler playground, a second picnic shelter, rest rooms, interpretive signage, and landscaping.

The Parks and Recreation Department recommends the City of Asheville accept the grant funds on behalf of the Parks and Recreation Department for construction of the next phase of Haw Creek Park.

Budget Amendment re: Community Association Grant for Haw Creek Park

Summary: The consideration of a budget amendment, in the amount of $25,000, to appropriate funds donated from the Haw Creek Community Association for the construction of the next phase of Haw Creek Park.

The development of Haw Creek Park represents the City of Asheville and the Haw Creek Community Association's long term goal to build a park in the Haw Creek neighborhood. The park is a collaborative effort between the City of Asheville and the Haw Creek Community Association, who has committed to raise $40,000 to assist with construction of the park. At this time, the Association is giving a portion of the funds to the City of Asheville in the amount of $25,000. Haw Creek Park will be a passive park located on approximately 6.2 acres at Beverly and Avon Roads, and will serve as a major destination along the proposed Haw Creek Greenway. Park features include a trail, picnic shelter, and paved parking. The donation will be used to assist in the addition of a toddler playground, a second picnic shelter, rest rooms, interpretive signage, and landscaping.

The Parks and Recreation Department recommends the City of Asheville accept the donation on behalf of the Parks and Recreation Department for construction of the next phase of Haw Creek Park.

French Broad River Park Phase IV Planning & Design

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with WK Dickson for the planning and design stage of the development of the French Broad River Park - Phase IV.

This 32 acre tract of land is located along the French Broad River adjacent to Amboy Road. City Council directed staff to develop this donated property for recreational purposes. Consequently, a site plan is the necessary first stage of development. A request for qualifications was sent for this initial stage which entails inventory and analysis, program development, conceptual master plan, public meetings, cost estimates and a final master plan which will include drawings and written documents. The City received responses from eight firms interested in the proposed scope of work.

These products will be comprehensive enough to lead into the second stage, construction drawings and specifications. The review team was comprised of members from the Parks and Recreation Advisory Board, Riverlink, interested citizens and staff. The interview team selected the top firm, WK Dickson, for this stage of the project through the request for qualification procedure. The aforementioned scope of services will be provided by the consultant for $61,500 (master plan $36,500, engineering $10,000, architecture $15,000). The funding for this project will be the $75,000 from this years lease of the Asheville Motor Speedway.

The Parks and Recreation Department recommends that City Council authorize the City Manager to enter into a contract with WK Dickson for the planning and design stage of the development of the French Broad River Park - Phase IV.

Intent to Convey Twin Springs Subdivision to Habitat for Humanity

Summary: The consideration of a resolution authorizing the Mayor to dispose of 12.353 acres of City-owned real property, identified as Twin Springs Subdivision, by private sale to Asheville Area Habitat for Humanity Inc.

On August 19, 1997, the City of Asheville and the Asheville Area Habitat for Humanity, Inc. entered into a Memorandum of Understanding to develop a 12.353-acre tract of unimproved land on Broadview Drive within the City limits. The City agreed to construct infrastructure improvements, including water, sanitary sewer, storm drainage, streets and sidewalks, curb and gutter, electric, telephone, cable, street lighting, and minor landscaping. Upon completion of the infrastructure improvements, the City committed to transfer title of the property to Habitat at no cost. Habitat will construct 34 affordable housing units to be occupied by income-eligible families, and will transfer title of the individual real property to the qualified family when construction is completed. Habitat will provide construction and permanent mortgage financing for all homes within the subdivision.

The infrastructure has now been completed and the property subdivided into 34 lots. The property is ready for conveyance to Habitat.

Community Development staff recommends adoption of the resolution to dispose of the property.

Update on Parking Study Recommendations

Summary: City staff will update City Council on the current status of the Parking Study Implementation Team.

The City's Comprehensive Parking Study was adopted by the City Council in December 1998. The study made approximately 60 recommendations for potential changes that would improve parking issues within the City. In addition, a few other recommendations were made by other groups including the Asheville Downtown Association and the Implementation Team itself. A total of 65 recommendations have been incorporated into a single Status Report Spreadsheet. This spreadsheet is used to track the Implementation Team's progress on evaluating and implementing the recommendations. The Implementation Team will provide updates like this one to the City Council twice each year; once in July and once in December.

Most of the items that were scheduled to be near completion by July 1999 are operational issues to be worked on by the Finance Department. Several items have been evaluated and implemented. These include: raising on-street parking rates downtown, adding lighting to the Civic Center Garage, free parking overnight in garages for downtown residents, and increasing number of monthly parkers in the Wall Street and Civic Center garages. Several other parking operations issues have been evaluated but not implemented at this time due to budget constraints. The spreadsheet outlines the work being done by employees from several departments to implement many of the remaining recommendations.

Staff is presenting this request to update City Council regarding the status of the Parking Study Implementation.

2000 Big South Conference Basketball Tournament

Summary: Tom Hunnicutt, Athletic Director at UNCA, has requested a monetary contribution in support of the 2000 Big South Conference Basketball Tournament. Last year the City donated $10,000 toward the conference. This year's tournament is expected to be even bigger and will once again receive national television coverage. Supporting the Big South Conference Basketball Tournament is an excellent method for the City to showcase Asheville to visitors, as well as to support our local member university of the Southern Conference.

Staff recommends that Council approve a transfer from the General Fund Contingency to provide financial support to the 2000 Big South Conference Basketball Tournament.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place the appropriate items on the next formal City Council agenda.

HILLCREST PEDESTRIAN BRIDGE UPDATE

Mr. Marshall Logan, member on the Housing Authority Board of Directors, briefed City Council on a historical synopsis of the Hillcrest Focus Group, which was formed after the NC Dept. of Transportation, which owns the Hillcrest Pedestrian Bridge, stated that the agency would follow City Council's wishes on whether to open or keep the bridge closed. After several meetings, the Group's list of priorities was (1) develop on-going activities for youth in the community; (2) increase police protection and safety education; (3) establish a focus group of citizens and housing development residents to work together in a cooperative fashion to do problem-solving concerning social, economic, and cultural diversity; (4) improve bus service and address alternative solutions to crossing the highway; and (5) establish clean-up campaigns and other community buy-in projects. The Group is addressing the problems through education and community projects, some of which are (1) bus service; (2) drug prevention carnival; (3) Asheville Residents Government Unified Strategy (ARGUS TEAM); and (4) proposals for summer activities.

Councilman Tomes appreciated the work of the Focus Group and related an experience about how collaborative efforts can make a difference.

Executive Director of the Housing Authority David Jones responded to an inquiry from Councilwoman Field about what the Housing Authority is doing regarding playgrounds and programs for the youth.

Mayor Sitnick suggested Mr. Logan meet with Parks & Recreation Director Irby Brinson and discuss the City's Summer Youth Program and how the City can help support the work of the Focus Group with regard to their first priority of developing on-going activities for youth in the community. She also suggested that perhaps other groups, such as the West Asheville Business Association, the Chamber of Commerce, etc., might be interested in attending a meeting such as this as well.

With regard to the Hillcrest Pedestrian Bridge, Mr. Logan said that the Focus Group felt that even though the opening and/or closing of the Bridge is a concern, they have other priorities that are much greater.

Transportation Planner Ron Fuller said that there is an opportunity for the City to apply for a grant from the State for enhance projects, such as security, lighting, trimming, etc. He did note that there are many projects in the City that this enhancement dollars could be used for, however, a committee in Raleigh will be prioritizing the programs. Mayor Sitnick encouraged Mr. Fuller to apply for these funds.

UPDATE OF WEST ASHEVILLE RESOURCE CENTER AND LIBRARY ANNEX

Mr. Irby Brinson, Director of Parks & Recreation, said that the Parks and Recreation Department and the Police Department are continuing the development of the West Asheville Resource Center located in the upstairs portion of the City-owned building at 970 Haywood Road.

For several months, the Parks and Recreation Department, the Police Department, and several members from City Council have been working towards finding an alternate location for the Community Resource Center which is currently located at 45 Haywood Road. The current lease for this space at 45 Haywood Road has expired. As reported at the April 20 worksession, and approved at the April 27 formal City Council meeting, City staff has been working towards the renovation of a portion of the City-owned complex located at 970 Haywood Road, which will house the West Asheville Resource Center. All permits for this renovation have been secured and work on upfitting the facility began July 12. The total estimate for this renovation is $15,000 which will allow for the facility to meet all necessary building and ADA code requirements. He explained the current building renovation layout. The configuration represents a total of 1,265 sq. ft. with approximately 590 sq. ft. used by the Police Department leaving approximately 675 sq. ft. for open space to be used jointly by the occupants.

He showed Council a plat of property adjacent to the current West Asheville Complex and the new library. The area represents approximately 5,400 sq. ft. and is valued at $5 per sq. ft. based upon information provided by Ed Vess of Community Development Division. The original discussion concerning the City's participation in the proposed expansion of West Asheville Library included donating this property to the County in order to build this addition.

Mr. Brinson noted that the property is currently zoned Institutional District and would require a side setback of 10 feet.

The Parks and Recreation Department and the Police Department are updating City Council on the progress of the development of the upstairs portion of the City-owned building located at 970 Haywood Road for a Community Resource Center.

EAGLE/MARKET STREET UPDATE

Ms. Charlotte Caplan, Community Development Director, said that the City of Asheville and the Eagle/Market Streets Development Corporation ("EMSDC") developed a Strategy for the Block in May and June of 1999 to identify practical steps that are being or can be taken within the next two years to revitalize the area known as the Block, or South Pack Square, or the Eagle/Market Street area. She explained that the Strategy for the Block: sets out recent, current, future initiatives; is not a full-scale plan; does not require formal approval; is achievable within resources available; is dynamic; and is not the whole situation.

Goals in the strategy include: (1) to include the Block in the economic revitalization of downtown Asheville; (2) remove negative influences: drug-dealing, drug use, public drinking, gambling, prostitution, littering; (3) rehabilitate derelict buildings; (4) develop economically and socially beneficial activities: retail businesses, restaurants (not bars); offices; apartments;

service organizations; cultural activities; festivals; recreation programs; and (5) maintain to the greatest possible extent the historically African-American character of the Block.

Issues the Block has to contend with: include (1) location, (2) physical deterioration; (3) perceptions: "unsafe" unsuitable for investment"; (4) opposition to improvement initiatives; (5) lack of effective partnerships; and (6) lack of organizational capacity.

Ms. Caplan then listed the following stakeholders: Eagle/Market Streets Development Corporation; Mt. Zion Missionary Baptist Church; Mt. Zion Community Development Corporation; YMI Cultural Center, New Hope Community Health Center; Merchants Action Coalition; other businesses and property owners; Downtown Ministers Association, and the City of Asheville.

She then outlined the objectives and action steps of each of the following action areas: (1) building partnerships and capacity; (2) restoring the physical fabric; (3) bringing the people back; and (4) providing services.

She said that measurable objectives include: (1) construction permits - number and value per year; (2) buildings in standard condition without code violations - number; (3) building occupancy - percentage of building space in use; (4) housing units created - number; (5) businesses established - number; (6) jobs created - number; (7) police incident reports - number per month; and (8) long term increase in tax values - value.

Ms. Elizabeth Russell, Director of the EMSDC, invited City Council members to the Learning Lunches in the Park on the Block that include topics such as (1) Get Involved, For Your Community; (2) Get A Job/Help Someone Find a Job; (3) Get Organized, Financially; (4) Get Crime-Proof, Personally; and (5) Get Reasonable Doubts.

On behalf of the City Council, Mayor Sitnick thanked all the people who participated in this strategy and that this is a wonderful opportunity for the African-American community to create a significant contribution to the economic development in this community.

REVISIONS TO THE RIGHT-OF-WAY CUT PERMIT ORDINANCE

Ms. Cathy Ball, City Engineer, said that this is the consideration of an ordinance to revise the public right-of-way cut ordinance.

The purpose of revising the right-of-way cuts ordinance is threefold (1) the Public Works Department was responsible for administering this program, however, in 1995 this program was moved to the Engineering Department; (2) to clarify the responsibilities and requirements of the permitee in obtaining a permit when they plan to cut into a City or State right-of-way in the City; and (3) to establish an appeal process for permitee's to appeal fees and fines.

These revisions have been reviewed by the Utility Coordination Committee. They initially had some concerns. The draft ordinance presented to you addresses all of their concerns.

The fee schedule was approved by City Council during the budget process.

City staff requests City Council adopt the revisions to the right-of-way cut permit ordinance.

Ms. Ball responded to questions from Mayor Sitnick about how curb cuts and right-of-way cuts are being addressed with regard to stormwater run-off.

Mayor Sitnick and Councilwoman Field said that they would be happy to share some information they have relative to pervious parking lots.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

POLICY REGARDING THE CONTINUANCE OF ZONING PUBLIC HEARINGS PREVIOUSLY SCHEDULED ON THE CITY COUNCIL AGENDA

City Attorney Oast said that City Council has instructed him to prepare some guidelines on continuation of land use public hearings. He reviewed those draft guidelines as follows, stressing that City Council should reserve for itself the right to exercise its discretion with respect to the continuance of any matter:

Application/Scope:

Any land use matter for which a public hearing before City Council is required by statute or ordinance. This would cover zonings, rezonings, and conditional uses, and possibly certain text amendments requested by citizens.

Applies to requests for continuance by the applicant.

Form of Request/Motion

I. In order to receive favorable consideration:

- Requests should be submitted to the City Clerk and Planning staff in writing at least two full business days in advance of the day scheduled for the public hearing. In most cases, this would require submission by 5:00 p.m. on Thursday. (This is the same as for protest petitions.)
- Must attempt to notify all persons on Planning's notification mailing list, and document efforts. Planning staff can follow up with spot check. At the very least, must notify adjacents and any designated neighborhood organization spokesperson.
- A reason for the request should be provided, but need not be compelling (more time needed, unavailability of information, etc.)
- No previous continuances before other boards (Planning & Zoning, Technical Review Committee, etc.)

Favorable consideration will take the form of a recommendation by staff, based on compliance with the procedures outlined above.

Continuance requests complying with the procedure outlined above may be granted without hearing, except as to the date to which the matter will be continued.

II. Continuance requests not complying with the procedures outlined above will be considered by the Council without a recommendation by staff. Factors to be considered include, but are not limited to:

- Compelling nature of reason (death in family, incapacity to proceed, etc.)
- Actual notification of persons on notification list
- Objections from other parties (or consent, for instance if a compromise is possible)

Council may hear from the applicant as to continuance requests not qualifying for favorable consideration, and if there are objections, will hear public comment on the question of the continuance.

General Guidelines

- Second or subsequent requests for continuance are not favored.
- Requests for continuance by other than applicant will be considered by Council without recommendation.
- Continuance requests or motions will be taken up at the beginning of Council meetings along with additions or amendments to agenda.
- These guidelines are not applicable to matters initiated by City staff, City Council or a board or commission.
- Council reserves for itself the right to exercise its discretion with respect to the continuance of any matter.

Other Points

- Recommendations as to guidelines for continuance of land use matters at other boards and commissions (Historic Resources Commission, Technical Review Committee, Planning & Zoning Commission, Board of Adjustment)
- Delegating some continuance authority to Planning staff (Director). This may require a change in the ordinance and rules.
- Do not adopt as policy or rule; tends to limit discretion.
- The Unified Development Ordinance may require action on some items within a prescribed time. This limitation mainly affects boards other than Council, but could be a consideration.

Councilman Cloninger felt that the purpose of the guidelines is worthwhile, however, even if the request is made, the party making the request and the neighborhood will not know for sure whether the hearing was continued and would still have to come to the City Council meeting. He wondered if we are adding more red tape to the process without actually accomplishing the purpose of having people unnecessarily come to the hearing.

Councilman Tomes agreed with Councilman Cloninger but felt that it was a good idea to consider the continuance requests at the beginning of the meeting.

After discussion about the infrequency of the number of continuance requests received and whether to delegate the authority to City staff to make those continuances, it was the consensus of City Council to consider any continuance requests after the proclamations and only if a continuance request has been made.

Mayor Sitnick suggested City Council possibly reconsider adopting the guidelines after further review.

APPROVAL OF MAYOR'S ROUNDTABLE ON DOWNTOWN

Ms. Terry Clevenger, Marketing Coordinator, said that this is the consideration of approval of the Mayor's Roundtable being held on Thursday, September 23, 1999, at 7:00 p.m. in the Public Works Building.

Mayor Leni Sitnick has requested that the next Mayor's Roundtable be held to discuss downtown issues. On June 10th, Police Chief Will Annarino, Lt. John Kirkpatrick, Robin Westbrook and I met with representatives of several downtown organizations to discuss how best to organize the roundtable to achieve optimal results. Invited to this meeting were representatives of the Downtown Commission, the Downtown Association, the Merchant Action Coalition, the Homeless Coalition, Eagle/Market Street Redevelopment Corporation, and Quality Forward.

These groups unanimously requested a roundtable that was focused on managing the success of downtown and envisioning the future of downtown. They wanted to ask certain key questions of the participants, such as, "What kind of community are we building?," "What do you love about downtown," "What are your concerns about downtown." This will be done in small groups with answers to these questions being used in the future Center City Plan.

It was requested that the roundtable take place in September, following the summer season. It is staff's recommendation that the next Mayor's Roundtable be held Thursday, September 23, 1999 at 7:00 p.m. in the Public Works Building.

City Manager Westbrook advised City Council that their next available community meeting date is August 31, 1999, and according to the schedule should be held in the Central area. He suggested that if the meeting is held on that date that it be held in the Public Works Building at 7:00 p.m. He also said that the Mayor is considering a roundtable on youth in October.

After considering the three upcoming meetings and due to a conflict of Mayor Sitnick on September 23, the City Manager was instructed to bring back some dates in October (preferably a Thursday in October, but not October 14) in which the roundtable on downtown issues could be held .

REPORTS ON BOARDS AND COMMISSIONS

Councilwoman Field briefed City Council on the Kenilworth sewer line project.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:15 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - July 27, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; and Councilman Thomas G. Sellers; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman O.T. Tomes

INVOCATION

Councilman Cobb gave the invocation.

I. PROCLAMATIONS:

A. CERTIFICATE OF APPRECIATION TO DR. PATSY B. REED, CHANCELLOR OF UNC-ASHEVILLE

Mayor Sitnick read and presented Dr. Patsy B. Reed, Chancellor of UNC-Asheville, with a certificate of appreciation. Dr. Reed will be retiring at the end of July. City Council expressed their deep appreciation to Dr. Reed for her distinguished service, and their best wishes for continued success in all her future endeavors.

B. RECOGNITION OF HUD'S BEST PRACTICE AWARD FOR THE AFFORDABLE HOUSING COALITION'S "INTERLACE PROGRAM" FOR ABUSED WOMEN AND CHILDREN

Mayor Sitnick recognized Mr. Gene Bell, representing the Affordable Housing Coalition, and congratulated him for receipt of HUD's Best Practice Award for their "Interlace Program" for abused women and children.

II. CONSENT:

A. RESOLUTION NO. 99-109 - RESOLUTION AUTHORIZING THE MAYOR TO DISPOSE OF REAL PROPERTY KNOWN AS TWIN SPRINGS SUBDIVISION BY PRIVATE SALE TO HABITAT FOR HUMANITY

Summary: The consideration of a resolution authorizing the Mayor to dispose of 12.353 acres of City-owned real property, identified as Twin Springs Subdivision, by private sale to Asheville Area Habitat for Humanity Inc.

On August 19, 1997, the City of Asheville and the Asheville Area Habitat for Humanity, Inc. entered into a Memorandum of Understanding to develop a 12.353-acre tract of unimproved land on Broadview Drive within the City limits. The City agreed to construct infrastructure improvements, including water, sanitary sewer, storm drainage, streets and sidewalks, curb and gutter, electric, telephone, cable, street lighting, and minor landscaping. Upon completion of the infrastructure improvements, the City committed to transfer title of the property to Habitat at no cost. Habitat will construct 34 affordable housing units to be occupied by income-eligible families, and will transfer title of the individual real property to the qualified family when construction is completed. Habitat will provide construction and permanent mortgage financing for all homes within the subdivision.

The infrastructure has now been completed and the property subdivided into 34 lots. The property is ready for conveyance to Habitat.

Community Development staff recommends adoption of the resolution to dispose of the property.

RESOLUTION BOOK NO. 25 - PAGE 257

B. RESOLUTION NO. 99-110 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH W.K. DICKSON FOR THE PLANNING AND DESIGN STAGE OF THE DEVELOPMENT OF THE FRENCH BROAD RIVER PARK - PHASE IV

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with WK Dickson for the planning and design stage of the development of the French Broad River Park - Phase IV.

This 32 acre tract of land is located along the French Broad River adjacent to Amboy Road. City Council directed staff to develop this donated property for recreational purposes. Consequently, a site plan is the necessary first stage of development. A request for qualifications was sent for this initial stage which entails inventory and analysis, program development, conceptual master plan, public meetings, cost estimates and a final master plan which will include drawings and written documents. The City received responses from eight firms interested in the proposed scope of work.

These products will be comprehensive enough to lead into the second stage, construction drawings and specifications. The review team was comprised of members from the Parks and Recreation Advisory Board, Riverlink, interested citizens and staff. The interview team selected the top firm, WK Dickson, for this stage of the project through the request for qualification procedure. The aforementioned scope of services will be provided by the consultant for $61,500 (master plan $36,500, engineering $10,000, architecture $15,000). The funding for this project will be the $75,000 from this years lease of the Asheville Motor Speedway.

The Parks and Recreation Department recommends that City Council authorize the City Manager to enter into a contract with WK Dickson for the planning and design stage of the development of the French Broad River Park - Phase IV.

RESOLUTION BOOK NO. 25 - PAGE 258

C. ORDINANCE NO. 2590 - BUDGET AMENDMENT TO FUND THE REMAINDER OF THE 1998/99 WATER DISTRIBUTION SYSTEM IMPROVEMENTS

Summary: The consideration of a budget amendment, in the amount of $416,958, to amend Capital Project Ordinance 82-25 (35 Fund - Water Major Capital Improvements Fund) to fund the remainder of the 1998/1999 Water Distribution System Improvements.

By Resolution 82-25 dated October 5, 1982, the Regional Water Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

Funds in the amount of $597,920 were approved in the FY 1998/1999 FY Water Operating Budget (30 Fund) to be transferred to the Water Major Capital Improvements Fund (35 Fund) to fund capital improvement projects. On October 20, 1998, the Authority approved the transfer of $180,962 from the Operating Budget (30 Fund) to the 35 Fund for the following projects: Relocation of Pesticide Mixing Stations ($33,000), Lee Street/Prospect Street Water Main Replacement ($33,000), Monroe Street Water Main Replacement ($25,000), and the first payment of the NCDOT US 70/74 Tunnel Road/Haw Creek Water Line Relocation Project ($89,962).

The remainder of the FY 1998/1999 Water Distribution System Improvements needs to be funded at this time. These projects total $416,958 and include the following:

- An additional $42,000 for Monroe and Maxwell Streets that was under-budgeted.
- $50,000 for Water System Improvements to Reconcile Existing Conflicts with MSD.
- $289,958 for Matching Funds for State $3 Million Grant
- $35,000 for Telemetry Upgrades to South Buncombe and East Asheville Pump Stations

Staff recommends approval of a budget ordinance amending Capital Project Ordinance 82-25 (35 Fund) to reflect the addition of a portion of the Contribution From Other Funds - Fiscal Year 1998/99 in the amount of $416,958.

ORDINANCE BOOK NO. 17 - PAGE 400

D. ORDINANCE NO. 2591 - BUDGET AMENDMENT TO APPROPRIATE GRANT FUNDS FROM THE NORTH CAROLINA PARKS AND RECREATION TRUST FUND FOR HAW CREEK PARK

Summary: The consideration of a budget amendment, in the amount of $69,000, from the N.C. Department of Environment and Natural Resources, for the construction of the next phase of Haw Creek Park.

The City recently applied for and received approval for a grant from the N.C. Department of Environment and Natural Resources. The grant is in the amount of $69,000 and is designated for the development of the Haw Creek Park.

The development of Haw Creek Park represents the City of Asheville and the Haw Creek Community Association's long term goal to build a park in the Haw Creek neighborhood. The park is a collaborative effort between the City of Asheville and the Haw Creek Community Association, who has committed to raise $40,000 to assist with construction of the park. Haw Creek Park will be a passive park located on approximately 6.2 acres at Beverly and Avon Roads, and will serve as a major destination along the proposed Haw Creek Greenway. Park features include a trail, picnic shelter, and paved parking. The grant funds will be used to add a toddler playground, a second picnic shelter, rest rooms, interpretive signage, and landscaping.

The Parks and Recreation Department recommends the City of Asheville accept the grant funds on behalf of the Parks and Recreation Department for construction of the next phase of Haw Creek Park.

ORDINANCE BOOK NO. 17 - PAGE 402

E. ORDINANCE NO. 2592 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FROM THE HAW CREEK COMMUNITY ASSOCIATION FOR HAW CREEK PARK

Summary: The consideration of a budget amendment, in the amount of $25,000, to appropriate funds donated from the Haw Creek Community Association for the construction of the next phase of Haw Creek Park.

The development of Haw Creek Park represents the City of Asheville and the Haw Creek Community Association's long term goal to build a park in the Haw Creek neighborhood. The park is a collaborative effort between the City of Asheville and the Haw Creek Community Association, who has committed to raise $40,000 to assist with construction of the park. At this time, the Association is giving a portion of the funds to the City of Asheville in the amount of $25,000. Haw Creek Park will be a passive park located on approximately 6.2 acres at Beverly and Avon Roads, and will serve as a major destination along the proposed Haw Creek Greenway. Park features include a trail, picnic shelter, and paved parking. The donation will be used to assist in the addition of a toddler playground, a second picnic shelter, rest rooms, interpretive signage, and landscaping.

The Parks and Recreation Department recommends the City of Asheville accept the donation on behalf of the Parks and Recreation Department for construction of the next phase of Haw Creek Park.

ORDINANCE BOOK NO. 17 - PAGE 404

F. MOTION APPROVING A TRANSFER OF $10,000 FROM THE GENERAL FUND CONTINGENCY TO PROVIDE FINANCIAL SUPPORT TO THE 2000 BIG SOUTH CONFERENCE BASKETBALL TOURNAMENT

Summary: Tom Hunnicutt, Athletic Director at UNCA, has requested a monetary contribution in support of the 2000 Big South Conference Basketball Tournament. Last year the City donated $10,000 toward the conference. This year's tournament is expected to be even bigger and will once again receive national television coverage. Supporting the Big South Conference Basketball Tournament is an excellent method for the City to showcase Asheville to visitors, as well as to support our local member university of the Southern Conference.

Staff recommends that Council approve a transfer from the General Fund Contingency to provide financial support to the 2000 Big South Conference Basketball Tournament.

City Manager Westbrook responded to questions from Ms. June Lamb relative to the transfer.

G. MOTION SETTING A PUBLIC HEARING ON AUGUST 10, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH THE DEFINITIONS OF COMMUNITY FACILITIES AND COMMUNITY IDENTIFICATIONS SIGNS, TO DETERMINE THE LOCATIONS OF COMMUNITY IDENTIFICATION SIGNS AND TO AMEND REGULATIONS REGARDING SIGNS IN THE RIGHT-OF-WAY

H. RESOLUTION NO. 99-111- RESOLUTION FIXING DATE OF PUBLIC HEARING ON AUGUST 10, 1999, TO ANNEX PROPERTY LOCATED OFF OF LONG SHOALS ROAD, ON SCHENCK PARKWAY, AND KNOWN AS THE VOLVO BUILDING PROPERTY

RESOLUTION BOOK NO. 25 - PAGE 259

I. ORDINANCE NO. 2593 - ORDINANCE REVISIONS TO THE RIGHT-OF-WAY CUT PERMITS

Summary: The purpose of revising the right-of-way cuts ordinance is threefold (1) the Public Works Department was responsible for administering this program, however, in 1995 this program was moved to the Engineering Department; (2) to clarify the responsibilities and requirements of the permitee in obtaining a permit when they plan to cut into a City or State right-of-way in the City; and (3) to establish an appeal process for permitee's to appeal fees and fines.

These revisions have been reviewed by the Utility Coordination Committee. They initially had some concerns. The draft ordinance presented to you addresses all of their concerns.

The fee schedule was approved by City Council during the budget process.

City staff requests City Council adopt the revisions to the right-of-way cut permit ordinance.

ORDINANCE BOOK NO. 17 - PAGE 406

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Sellers moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Cobb and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED OFF OF LONG SHOALS ROAD AND KNOWN AS BILTMORE PARK COMMON AREAS (BILTMORE PARK ANNEXATION SECTION 14), SCHENCK PARKWAY AND 100 TECHNOLOGY DRIVE

At the request of City staff, Councilwoman Field moved to reschedule the public hearing on the voluntary annexation of property located off of Long Shoals Road and known as Biltmore Park Common Areas (Biltmore Park Annexation Section 14), Schenck Parkway and 100 Technology Drive to August 10, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE ASHEVILLE MALL EXPANSION

Mayor Sitnick opened the public hearing at 5:22 p.m.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

Mr. Dan Baechtold, Urban Planner, said that this is the consideration of a Conditional Use Permit as outlined in the Unified Development Ordinance (UDO) for the Asheville Mall Expansion located at 3 South Tunnel Road (City Exhibit 1).

On June 7, 1999, the Planning & Development Department received a site plan for the expansion of the Asheville Mall. The owner of the Asheville Mall, CBL and Associates of Chattanooga, Tennessee, submitted development plans for Level III site plan review. The project is an expansion of the existing mall and consists of a building addition of 154,500 square feet including retail space, a food court, and a second story addition on Belk Department Store; construction of a parking deck of 456,640 square feet; and demolition of the Mall Twin Cinemas. The proposal also includes an additional entrance lane into the Mall from the existing southernmost Mall entrance. The parking decks and the demolition of the Cinemas result in a net increase of 573 parking spaces. (City Exhibits 2, 3, 4, 5 & 6) The Technical Review Committee ("TRC") reviewed the plans on June 21, 1999, and took action to approve with conditions. The public hearing was legally advertised on July 16, 1999, and July 23, 1999.

Mr. Baechtold then gave a brief overview of the Mall's proposal. He said the plans received by City Council are revised plans submitted on July 12, 1999, after the TRC review (City Exhibit 7). He pointed out the areas where the site plan was modified to address the TRC's conditions. City Council has the authority to place additional conditions on any approval that might be granted.

The Planning and Development Staff and the Technical Review Committee find that that the project will meet all the technical standards for development in the Regional Business zoning district if all of the following conditions are addressed:

1. Submit sanitary sewer extension plans for review.

   Mr. Baechtold said that the applicant is working with MSD and that will be handled through the normal permitting process.

2. Coordinate relocation of water line and other water utilities with the Water Resources Department.

   Mr. Baechtold said that this will be handled through the normal permitting process.

3. Clarify open space calculation and verify that specified open space meets open space requirements in the UDO.

   Mr. Baechtold said that this has been done to the City's satisfaction.

4. Plantings in the required Type "D" buffer between the area of the Mall Twin Cinemas and the residential area of White Pine Drive do not provide an adequate visual buffer. Existing trees along the west property line behind the cinemas are not to be removed. Supplement the buffer with other vegetation or construct additional barrier such as a masonry wall or fence. The design will be reviewed by Planning and Development staff and presented to City Council.

   Mr. Baechtold said that the Plan indicates that the existing line of trees behind the cinemas is to remain undisturbed. On the plans, the applicant proposes a 6-foot wooden fence. A question has arose about the distance that this fence would be from the trunks of the existing trees. Whatever type of barrier that is placed there, City staff would like to see a tree survey and a tree protection plan showing the location of the fence in relationship to the tree trunks to demonstrate that the trees will remain undisturbed. If necessary, the edge of the parking should be shifted to achieve the survival of the trees. The cinemas create somewhat of a buffer now because it is a solid concrete structure and that will be lost when the cinemas are demolished. The residents in the neighborhood have concerns about having a visual barrier and some kind of noise barrier. The developer has verbally agreed to raise the height of the wooden fence in this location to 8-feet. From an ordinance standpoint, the buffer that they have proposed meets or exceeds the requirements of the UDO. The UDO does not address materials of a buffer fence. The only provision in the UDO regarding fences is that they should be made of wood, brick or stone. From a performance standpoint, obviously the thicker and higher the barrier, the more noise levels would be reduced. On the visual aspect, a solid wood fence would, of course, perform as well as some other type of material. The other consideration in the type of barrier is what kind of noise and what the level of noise is that needs to be blocked.

The area further south also includes a fence which is a UDO requirement. The developer does not have the full 30-foot buffer width in this location south of the cinemas, so they have proposed a wooden fence of 6-feet which would allow them to reduce the buffer width.

The other screening issue is the wall at the end of the parking deck. There has been some concern raised about what the height of that wall should be and concern about whether or not there may be a privacy issue from the end of that parking deck to the neighborhood. The distance is approximately 260 feet from the closest point of the parking deck to the closest point on the property line. The development plan indicate that it's to be an opaque screen sufficient to block headlights. The developer has verbally indicated that the plan is to have a 4-foot wall at the end of that parking deck.

5. Address the issue of new and existing lighting in the area of the expansion. Provide detail showing the number, height, and design of all existing and new outdoor light fixtures within the area of the expansion. Design new light fixtures to minimize impact on the adjacent neighborhood. The design will be reviewed by Planning and Development Staff and presented to City Council.

Mr. Baechtold said that there are three light poles in the area of the expansion that are 75 to 100 feet tall and there are other light poles along the back side of the Mall that are adjacent to the Kenilworth Forest neighborhood. In the area of the expansion, two of the large light poles will be removed by necessity of the construction and the third, the developer is proposing to remove and to upgrade the lighting standards for the entire area of the parking lot. The developer indicated that the industry standard is a 3-foot candle lighting level to cover the entire area. The poles now provide a lot of light around it, but as you get further away from the light, the coverage level drops off. Their plan is to install a larger number of lower poles of 31 to 40-feet in height in order to spread out the overall lighting level in the parking lot.

That raises the issue of direct glare vs. the ambient light and glow. Staff's recommendation on this, if the project is approved, is that City Council add a condition that the developer prepare and submit a photometric plan that addresses all of the lighting along the entire back side of the Mall and that the plan should demonstrate the elimination of glare and light spill-over into Kenilworth Forest and that the developer will retro-fit existing lighting or otherwise propose alternatives that will achieve that performance. As a part of that, any further lighting upgrades should be a part of an approved photometric plan, at least in the area along the back side of the Mall.

6. Submit stormwater/erosion control plans that meet UDO requirements. Please reference UDO Appendix 7A and Asheville Standards Specifications and Details Manual Section 10, Appendix J.

Mr. Baechtold said that this will be handled through the normal permitting process.

7. Verify compliance with requirements for slope stability. UDO section 7-12-2 (f) (4) and 7-12-2(e)(2).

Mr. Baechtold said that this will be handled through the normal permitting process.

8. Staff does not recommend adding an additional entrance lane into the mall. The maximum width of an access road is 36 feet. (UDO 7-11-1(f)).

Mr. Baechtold said that the developer and the City Engineering have worked together on this condition and reached a compromise. (City Exhibit 8)

9. Staff would like to work with the developer to reduce the 45 foot radii of the access drive to the minimum needed to allow for truck turning.

Mr. Baechtold said that the developer and the City Engineering staff has worked together on this condition and reached a compromise. (City Exhibit 8)

10. Staff recommends that City Council require a five-foot sidewalk with five-foot setback along South Tunnel Road along the entire frontage of the mall property.

Mr. Baechtold said that the sidewalk is included on the revised site plan.

11. Staff is still in the process of reviewing the Traffic Impact Analysis. The City Traffic Engineer will meet with the Traffic Engineering Consultant to discuss additional traffic issues.

Mr. Baechtold said that the City's Engineering staff indicated that they wanted to review the Traffic Impact Analysis (TIA) further. The developer performed a TIA, as required by the UDO, which considered the impact of the expansion and other projected traffic on the transportation system. The TIA concluded that "with modifications in the timing plans for the coordinated signal system through the corridor, the increase in traffic will not have a detrimental impact on the traffic operations on South Tunnel Road." (City Exhibit 8)

There are remaining concerns from the Kenilworth Forest neighborhood about ingress and egress to the neighborhood on White Pine Drive and congestion caused by the entrance at Brackettown Road. City staff has looked into the status of Brackettown Road and it is a private road.

12. Submit plans for relocation of fire service, life safety plan, and phasing schedule to City of Asheville Fire Department.

Mr. Baechtold said that this condition has been addressed.

13. Revise site plan to reflect actual conditions at the intersection of White Pine Drive and Brackettown Road.

Mr. Baechtold said that this condition has been addressed.

Mr. Baechtold then summarized the recommendations that staff has on these issues: (1) In the buffer area, some type of barrier should be constructed, no less than 8-feet in height, with a material to be determined. Whatever type of barrier is placed, staff would like to see a tree survey and tree protection plan showing the location of the barrier in relationship to the tree trunks, to demonstrate that the trees will remain undisturbed. And, if necessary, the edge of the parking should be shifted to achieve survival of the trees; (2) With regard to lighting, staff recommends a condition that the developer prepare and submit a photometric plan that addresses all of the lighting along the entire back side of the Mall. The plan should demonstrate the elimination of direct glare and reduction of light spill-over into Kenilworth Forest. The developer should retro-fit existing lighting or otherwise propose alternatives that will achieve that performance. Also, any future lighting must be a part of an approved photometric plan; (3) A sidewalk be required along the entire frontage of the Mall property (it is showing on the revised plan); (4) With regard to construction hours, they be restricted to the hours of 7 a.m. to 7 p.m. Monday through Friday and 9 a.m. to 6 p.m. on Saturday and Sunday; and (5) Regarding transit, the Transit Services Director has expressed a desire to go into the Mall parking lot in the front to pick up and drop off patrons and we would like to have a condition that the Mall will cooperate in finding a suitable location for that transit stop within the Mall.

Mr. Baechtold then reviewed the staff's responses to the seven findings that City Council must make in order to grant the conditional use permit (City Exhibit 9):

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed development is an expansion of an existing retail facility. The impacts of the expansion will not materially endanger the public health or safety. The project received technical approval from the Water Resources Department, the Fire Department, MSD, Engineering, and other City Departments.

2. That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or the region.

   The Asheville Mall serves as a regional shopping center. The presence of the Mall enhances the successful operation of the surrounding area as a commercial corridor. A healthy and vibrant mall is preferable to the alternative.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   Adequate buffering and screening are necessary so that negative impacts of the Mall on adjoining property will not be increased above pre-expansion conditions. The site plan shows a buffer meeting the technical requirements for landscaping and buffering in the UDO.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The existing mall is located on property zoned Regional Business. The neighboring uses along Tunnel Road include a number of large-scale retail developments. Adequate buffering and screening are necessary to separate this use from neighboring single-family residential development. The site plan shows a buffer meeting the technical requirements for landscaping and buffering in the UDO.

5. That the proposed use or development of the land will generally conform with the comprehensive plan and other official plans adopted by the city.

The Asheville City Plan 2010 indicates commercial development for the Tunnel Road corridor. The proposed expansion of the Asheville Mall is consistent with the intent and the standards of the Regional Business zoning district.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed development is located in an existing developed area. The project received technical approval from the Water Resources Department, the Fire Department, and MSD. The Mall is located on a five-lane major thoroughfare as identified on the Asheville Thoroughfare Map.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The developer prepared a Traffic Impact Analysis (TIA) for the proposed mall expansion as required by the UDO. The TIA considered the impact of this expansion and other projected traffic on the transportation system. The TIA concluded that "with modifications in the timing plans for the coordinated signal system through the corridor, the increase in traffic will not have a detrimental impact on the traffic operations on S. Tunnel Road." The City Engineer and Traffic Engineer reviewed the findings of the TIA for accuracy, and concur with the findings.

Upon inquiry of Councilman Cobb about whether the TRC reviewed the noise concerns, Mr. Baechtold said that there is nothing in the UDO that specifically addresses noise. There are requirements for buffers between incompatible uses ranging from 15-30 feet. This development project is required the maximum buffer of 30 feet. That buffer is intended to address visual impacts, and to some degree noise, although noise is not specifically mentioned in the UDO. There have been no field studies with regard to noise and what the level of noise might be or what the level of noise protection might need to be.

When Councilman Cobb asked about the lighting standards, Mr. Baechtold said that based on information from the applicant, directly underneath the large light poles, they are at 5-foot candles, but when you move to the outer edges of the parking lot away from those poles, it's down in the range of .2. Their plan is in this area is to upgrade the lighting standard for the entire parking area to 3-foot candles.

With regard to a question raised by Councilman Cobb if staff had a recommendation about the 4-foot wall on top of the parking deck, Mr. Baechtold said that staff did not reach a conclusive recommendation about that. Personally, he was unable to determine, based on a 260-foot distance between there and the property line, what kind of site line there would be from the parking deck over to the neighborhood.

Councilman Cobb asked questions relative to Brackettown Road. City Attorney Oast responded that they have investigated the public records and as near as they can determine, if it ever was a public road, it was abandoned a long time ago and it's been a private road (at least not a public road) for a long time. He said that just because it enters a public road does not give the City any more jurisdiction that the City would have over a driveway.

Upon inquiry of Councilwoman Field, Mr. Baechtold said that the developer's drawings do show a configuration of the wooden fence and by use of an overhead transparency he reviewed the profile of that configuration. (City Exhibit 10) Councilwoman Field said that the configuration of the fence would have an effect on whether or not it would absorb sound or if sound would bounce off of it.

When Councilwoman Field asked about the three materials for fences (wood, brick or stone), Mr. Baechtold responded that that section in the UDO applies to allowing a reduction in buffer width. For instance, in this location where the fence is required, they are required to have a 30-foot buffer and they allowed to reduce that by as much as half by proposing a fence. In the other location they are not required a fence at all by the UDO, because they have the full 30-foot buffer width.

Councilwoman Field felt that all three materials mentioned in the UDO for a fence are susceptible to graffiti and it is very difficult to get graffiti off those materials. She has seen some fairly nice looking fences that are made of materials that you can easily get graffiti off of. In this particular case since one fence is not required, they could probably make that fence out of anything they wanted to make it out of. The other issue is not to damage the tree roots. She understands that there are some types of posts that are made specifically so that they do the least amount of damage to tree roots - but they are also not made of wood, they are made out of some configuration of metal or steel.

Upon inquiry of Councilman Cloninger, Mr. Baechtold said that staff's recommendation of the 8-foot height fence was based primarily on the visual effect. With regard to noise, some type of more solid material would do a better job of blocking noise than would a wooden fence.

Councilman Cloninger then asked if the parking lot is shifted over by 10-feet to minimize the impacts to the trees and their roots, would the loss of about nine parking spaces still keep the developer in the requirements of the UDO as to the number of parking spaces they need. Mr. Baechtold said that they are within the range for required parking and he believed that have a couple hundred spaces on both ends, minimum and maximum.

Councilman Cloninger questioned if we have a requirement that both new lights and existing lights along the back of the Mall maintain the same level of glare and ambient light or reduce it, how do we make that determination on how much the lights have to be reduced. Mr. Baechtold said that requiring the developers to submit a photometric plan that addresses all the lights along the back side of the Mall will allow someone who is an expert in that area to make those determinations.

Upon inquiry of Vice-Mayor Hay, Mr. Baechtold said that there will be about 30 parking spaces in the section that will replace the cinemas.

Mr. Baechtold briefly explained that a lighting engineer would develop a photometric plan that can actually show the light pattern, how it spreads, and what the foot candles would be in different locations.

Upon inquiry of Mayor Sitnick about whether a 4-foot parking deck wall was standard, Mr. Baechtold said that in most cases the standard would be to prevent someone from falling over.

Mayor Sitnick asked if the number of existing parking spaces and those that will be built with the expansion are consistent with the requirements in the UDO. Mr. Baechtold said that because this is such a large development, the spaces are based on a multiplication of the number of required spaces times the square footage. He said that what is proposed is somewhere in the middle of that range of several hundred spaces between the minimum and maximum.

With regard to a question from Mayor Sitnick about the real applicability of the materials for the 8-foot wall to diminish the noise, Mr. Baechtold said that after a preliminary investigation, he found that if a masonry wall is erected, it may require a continuous footing. He said there may be other options that my involve some intermittent footing, but would also support something stronger than a wooden fence.

Mayor Sitnick said that regarding the impact of the expansion and the Tunnel Road lanes, she assumed that when staff looked at that, they were considering the holistic aspect of the additional growth with the Lowe's and other spillage of traffic from the other developments in the area. City Traffic Engineer Michael Moule responded that staff did consider traffic from both the old Lowe's redevelopment and the new Lowe's development along with traffic from other developments.

Mayor Sitnick wondered if there was any opportunity to look into potential of shields on some existing lights, especially the 100 foot light near the cinemas.

Vice-Mayor Hay asked if the City could require, as a condition, that the Mall allow direct passenger delivery to the Mall. City Attorney Oast said that he hadn't specifically investigated that, but at this time, he didn't see a reason why the City could not place that as a condition on the permit, to the extent that it would affect pedestrian safety. Mayor Sitnick said that there has been some preliminary discussion with the developers and they are very agreeable to working something out to allow a transit pick-up and drop-off point at the curb.

Mr. Moule reviewed his memorandum to Planning Director Scott Shuford (City Exhibit 8). He said that two of the conditions listed by the TRC are related to the configuration of the proposed reconstruction of the southernmost Mall Entrance (near the Belk department store). Condition No. 8 refers to an additional entrance lane into the Mall at this location. Condition No. 9 refers to the size of the turning radii at this entrance. Both of these concerns were based on the resulting width of the intersection, especially the length of the crosswalk that is created by the extra lane and wide radii. Maintaining a shorter crosswalk length is important, especially since there are existing public transit stops nearby and staff has recommended that sidewalks be required in front of the Mall with this development. In addition, City staff anticipates working with the NC DOT in the near future to have pedestrian signals added at this intersection. He has worked with the consultants for the Mall and agreed on a compromise that accommodates delivery trucks but maintains as short as possible pedestrian crossing distance. The compromise, which should be shown on the developer's current plans, includes two entrance lanes and a 40 foot radius on one corner along with a 25 foot radius on the other corner.

Mr. Moule said that Condition No. 11 from the TRC stated that the Traffic Engineer would further review the Traffic Impact Analysis and meet with the traffic engineering consultant to discuss additional issues. He has spoken with the consultant several times and reviewed the document in detail. Below are the comments that he has on the Traffic Impact Analysis.

- The methodology for calculating background and site generated traffic and the resulting data are reasonable. Clearly, the consultant used conservative estimating methods in order to overestimate the amount of traffic. He identified several areas in the analysis where steps were taken that overestimated the traffic. The Asheville Mall expansion will add less traffic to the system than either the new Lowe's (Dreamland Phase I) or the old Lowe's redevelopment (Dreamland Phase II).

- In order to accommodate the additional traffic generated by these developments at acceptable levels of service, the consultant suggests that the signal cycle length be reduced. The general results of a shorter cycle length will be less overall delay for drivers, less delay for side streets and signalized driveways, less delay at non-peak times, slightly decreased overall capacity, and slightly increased delay for primary movements. His opinion is that a reduced cycle length will provide an acceptable level of service as these developments are added. This change will provide better access to side streets and driveways, which is now the primary purpose of surface highways like South Tunnel Road.

- After reviewing the Analysis, my one concern is with queue lengths, particularly for the intersection of Tunnel Road and South Tunnel Road and for left turns off of South Tunnel Road. The analysis addresses some of the short turn bays and short distances between signals. He will continue to work with their Traffic Consultant to address his concerns.

He said that after reviewing the TIA, he concurs with the consultant in that there will be more traffic, but the whole system in general, for Tunnel Road and South Tunnel Road, should operate at acceptable levels of service if appropriate signal timing change are made.

He recommended that Council remove the conditions concerning changes to the entrance at Belk as staff and the developer have agreed on a configuration. Staff will check any subsequent submittals to ensure that the change was made. He did concur with the consultant that traffic will increase significantly in the vicinity; but signal timing improvements can be implemented that should provide acceptable levels of service throughout the corridor.

Councilman Cloninger asked about how long it would take and how we make sure the signalization changes in the TIA are accomplished, given Tunnel Road is a state road. Mr. Moule said that if these developments are approved by City Council, City staff will make a request to the NC DOT to proceed with making signal timing change including the reduction of the cycle length. A copy of the TIA has been submitted to the NC DOT for them to forward to their Raleigh office.

From a personal standpoint, Councilman Cobb felt that there needed to be an additional turning lane at the southernmost Mall entrance. Mr. Moule explained that based on the levels of service that have been calculated for the build-out year, given all the traffic and given the signal timing changes, an additional lane is not recommended.

Upon inquiry of Vice-Mayor Hay if the TIA addressed traffic on White Pine Drive, Mr. Moule said that the development will increase traffic on White Pine Drive, since there will be a larger volume of cars going into the Mall. The TIA does show that the levels of delay for getting in and out of White Pine Drive will actually be reduced, even at the build-out year, because of the reduced cycle lengths. Again, one of the major benefits of reduced cycle lengths is that side streets and driveways are better served than they are with a longer cycle length. Even with all the traffic added, the TIA is showing better levels of service for the peak hours in the afternoon than the existing levels of service, through the left and right turn outs of White Pine Drive, and left and rights turns into White Pine Drive. He estimated, for example, in the afternoon peak hour, the number of vehicles making a left out of White Pine Drive increased from an estimated existing number of vehicles of 320 to 354 vehicles. Similarly, on the Saturday peak, addressing both left turns and right turns out of White Pine Drive, the TIA shows 54 new trips generated by this new development from the existing 260 trips. This is approximately a 20% increase for Saturday and a less percentage increase for the afternoon. He felt this was, in part, because there is likely more neighborhood traffic for the afternoon peak hour than the Saturday peak hour.

When Vice-Mayor wondered why people come up Tunnel Road from the west, rather than going on I-240. Mr. Moule felt that was more in the afternoon peak hours and he felt typically it has to do with where people are coming from, like downtown. Unlike on Saturdays, they are coming from their homes to the regional Mall. He said there really is no way to make that determination unless an actual survey was conducted.

Vice-Mayor Hay wondered if there was anyway to re-direct some of the Tunnel Road traffic coming from the west. Mr. Moule said that there may be some possible way, through signage, to encourage people to use only one exit to the Asheville Mall.

Mayor Sitnick felt that a new exit off of I-240 should have been built at the back end of all of those developments on Tunnel Road which could have avoided so much backup, peak or not peak, at the one intersection that has been re-configured and enlarged and saved of the adjoining neighborhoods along Tunnel Road.

Councilwoman Field asked how the number of trips to the Mall were generated. Mr. Moule said that you take the existing square footage, calculate the amount of trips generated by that (and there are manuals that allow us to do that based on studies from years past) and then you take the number of trips generated by the new size of the Mall, and subtract the two.

Councilwoman Field then asked if an increase in population was used to calculate trips. Mr. Moule said typically no, that it was based upon the development itself. The TIA shows that in the count data that was performed in June, on a Saturday, it shows that the peak levels of traffic to this Mall are lower than what would be calculated using a typical manual. Currently the Mall does generates as much traffic as the manual would estimate.

Thinking about White Pine Drive being the only means in and out of the Kenilworth Forest neighborhood, Councilman Cloninger asked if there was anything else the City can do for the area residents to make that intersection less congested, since the City cannot close Brackettown Road. Mr. Moule said unfortunately there is not a lot that can be done. Some residents have proposed possibly connecting a new road to Kenilworth Road so they can get out that way and then just having White Pine Drive only the entrance for the Mall. He said there are definitely problems associated with that from a land acquisition and topography standpoint. He said the only other thing might be reconfiguring the entrance to allow a new road for the residents and limit White Pine Drive to the Mall, or vice-versa. Or, something that would only allow certain movement, like only left turns or only right turns. However, limiting those movements will, to some degree, negatively impact the other intersection in the corridor.

Councilman Sellers asked if any consideration has been given to making Brackettown Road a one-way road. Mr. Moule said that has not been studied at this point but that it could be analyzed to see what would happen with all the traffic that couldn't go out that way or couldn't come in that way and how that traffic affects the rest of the corridor.

Mr. Ken Putnam, Division Traffic Engineer for the NC DOT, said that they are very interested in working with the City of Asheville in doing whatever they can to improve the signal timing. If this permit is approved, they will forward the TIA to their Raleigh staff for them to review and as soon as they do that, and possibly make some fine tuning, they would begin the process of implementing those changes. It is his understanding that the expansion of the Mall will be complete by the fall of 2000 and that will certainly give them enough time to make some changes, observe it through the 1999 Christmas season, and make further adjustments in 2000. He didn't anticipate a large amount of money to do this - just a matter of manpower. The equipment that is out there now can accommodate this kind of change. He felt this is a great basis to start from. He said that one of the things they have been trying to do over the last several years in the City of Asheville is that anytime a new signal is installed within the City limits of Asheville, they will put pedestrian signals with it. They are in the process of working with the City in trying to identify some of the major intersections that already have signals that need this treatment. To add that equipment at an existing location is about $6-8,000 and there are probably 200 signals. They have already identified certain locations and are working closely with the City staff so that they don't pick one signal that the City doesn't feel is a priority, but obviously anywhere on Tunnel Road is a priority. They already have plans to try to add it at the

Sears driveway and the only reason why they don't have a crosswalk in there yet is simply the crosswalk that needs to go across to the theaters doesn't have a sidewalk to join into. So rather than putting a crosswalk in that leads to nowhere, they are holding off on that.

Councilman Cloninger asked Mr. Putnam if he had any suggestions about White Pine Drive. Mr. Putnam felt that unless you take Brackettown Road completely away, there is really nothing that can be done to keep people from using it. He said that one of the driving habits most people have is to make the easiest turn possible and usually that's a right turn. Since White Pine Drive is the first right turn you can make coming from the west on Tunnel Road going to the Mall, people will be more likely to turn in there. He said they are trying to work with the Police Department in improving the signing in that entire area. He said they are also trying to see how they can improve the signal timing that is in place right now.

Councilwoman Field suggested signage that directed people to a specific lane to get into the Mall might have a great affect on cutting down the traffic into White Pine Drive.

Upon inquiry of Councilman Cobb, Mr. Putnam agreed with City staff in that we can fine tune the entire traffic signal timing system to bring everything down to as minimal delay as possible. He also agreed with City staff in that he did not feel that an additional lane at the southernmost end of the Mall should be a recommendation at this time.

Mr. Alan Glines, the City's Assistant Landscape Architect, used an overhead (City Exhibit 10) to explain that the proposed location of the fence will interfere with the existing tree buffer and any construction of a fence or wall would likely damage tree roots. He said that if the parking lot is shifted over to the east by ten feet (away from the neighborhood), the impact to the trees and their roots would be minimized. This shifting of ten feet would result in a loss of about nine proposed parking spaces. (City Exhibit 11) He felt that the existing vegetation is valuable to minimize the night time lighting impacts from the parking area year-round. He suggested that before construction begins, a fall feeding of the buffer trees in the root zone area should be given which would strengthen the trees and reduce the stress from the proposed construction. He also felt that some type of fence that did not have a continuous concrete foot might minimize the disturbance of the tree roots.

Mayor Sitnick gave some background on the number of parking spaces by stating that of the proposed parking spaces, there are 171 more than the minimum required and 129 less than the maximum required. Of the total spaces for the entire project, existing and proposed, there are 1,731 more than the minimum required and 534 less than the maximum required.

Mr. Tom Carter, Senior Project Manager with CBL & Associates Properties, said that their General Manager has a meeting with the City's Interim Transit Service Director tomorrow to work out allowing the buses to come on site at the Mall. With regard to lighting, Mr. Carter explained that the standard lighting standards for CBL is an average foot candle level of 3.0 feet. The present 100-foot light pole in the cinema parking area provides a lot of light around it, but as you get further away from the light, the coverage level drops off to .2-feet. Therefore, CBL will remove the 100-foot light pole and replace it with a larger number of lower poles 40-feet in height. He said that the lights can be shielded to prevent intrusion into the neighborhood. He stressed they are concerned about the safety and since that particular parking field area is the least used in the Mall, it should be well lighted. He said they would be happy to do a photometric study and that they do them on all projects.

Mr. Carter said that with regard to parking spaces, they have a requirement under their department store documents at a higher level than what the City requires to meet. He said they are at a 4.5 per 1,000. He said that their parking is much more greater than what the City requires, but is within the range the Mayor mentioned earlier.

Mr. Carter said that have already agreed to put a sidewalk in along the front of the Mall and the safety reasons that Council mentioned in having the sidewalk installed are the same issues they feel about the lights in the back and having the proper foot candles installed.

Mr. Carter said that with regard to the fences, they are now proposing a 6-foot wood fence which would be attached to the existing chain link fence that is presently there. That will meet the buffer requirements of the City. The 8-foot fence they are proposing will run along the back of the cinemas and connect with the 6-7 foot fence that is now there up there and will attach to the parking deck fence. They feel that the 8-foot fence would adequately provide for screening, noise, etc.

Mr. Terry Dalton, Architect, said that they are proposing an 8-foot wood fence with no continuous footings. He said they are willing to work with the City's landscape architects, especially on whether the fence will touch the ground or not.

Mr. Carter said they are also proposing to install a 4-foot wall on the end of the parking deck to block the lights of any vehicles. He said there will be light standards on the parking deck for proper lighting and safety.

Mr. Carter said that with regard to noise, two dumpsters will be relocated in the expansion area on both sides of the proposed foot court.

Councilwoman Field asked how does losing the nine parking spaces to save the tree roots impact CBL's commitment to the expansion. Mr. Michael Lebovitz, Senior Vice President of CBL & Associates Properties, said that they if they lose those nine spaces, they would probably have to add them to the parking structure which would be a significant cost of approximately $60,000.

Mr. Dalton said the noise is going to be more controlled by the landscape buffer that is there now and the fence is in addition to that.

Mayor Sitnick voiced concern about the possibility of a car that parks right up to the edge of the steep embankment, might accidentally accelerate and go down the embankment.

Mr. Carter said that all the other issues from the June 23, 1999, letter from the TRC have been or will be complied with when we issue our civil plans, other than the four or five issues discussed.

Mr. Phil Noblett, resident at 297 White Pine Drive and Vice-President of the Kenilworth Forest Community Club, said that the Kenilworth Forest Community Club do not oppose the Mall expansion while many of us feel it is indeed out of scale, that it is large enough now. We also recognize that CBL Associates has some rights to improve their property and it is not their desire to make that property any less than a liable one. At the same time, we as homeowners also have our properties to protect and we are very concerned about impact. There have been incremental impacts to Kenilworth Forest over the years, such as a previous Mall development taking part of our streets and some of our houses, White Pine Drive which was originally only a service road has become a very de facto entrance, traffic has expanded, and we've had lighting intrusion. With regard to the demolition of the Cinemas, he said that particular concerns include security, headlights, privacy, and noise. (Neighborhood Exhibit 1) He passed out photographs supporting their request for City Council to impose the following conditions in connection with this conditional use permit:

1. Require CBL, in conjunction with the City traffic engineer and the NC DOT District Traffic Engineer, to develop a plan to improve traffic flow to and from the

Mall access drive that is opposite Asheville Savings and immediately west of the current Lowe's. There is too little storage on South Tunnel Road traffic to enter the Mall from either East or West, so that the proposed CBL expansion and the expansion of other nearby retail establishments, already in progress, will create major congestion and, as a result, divert traffic to White Pine Drive and Brackettown Road.

2. Close Brackettown Road. This driveway intersects White Pine Drive in rear of the International House of Pancakes. This driveway was not part of the original site plan for the Asheville Mall, but has become a de facto entrance that creates congestion and safety hazards, and impedes the ability of residents to enter and exit the Kenilworth Forest community. A traffic engineering firm has estimated that Mall traffic on White Pine Drive will increase significantly with the expansion now proposed by CBL. The suggestion to make it one-way is very appealing to the neighborhood.

3. Request that CBL reduce by at least 20% light intrusions into the neighborhood, and require that, in no circumstance, will lighting exceed current levels. To document existing light levels, photometric surveys should be conducted at selected points in the neighborhood. These points of measurement would be approved by City staff. Council should stipulate in its conditions that any future lighting changes at the Mall must not result in increased light intrusion at any one or more of the measuring stations.

4. Require CBL to install a noise wall which would run from the embankment that is approximately 100 feet south of the Mall Twin Cinemas to the embankment that adjoins the existing parking deck, a distance of approximately 600 feet. This wall should be approximately 15 feet tall, be designated to achieve a 75% reduction in noise, and meet applicable professional architectural and engineering standards. This would cost approximately $75-100,000 but this is a $15 Million project. In addition, Council should require that the installation of the noise wall be done so as to minimize the destruction of existing mature trees, and that destroyed trees will be replaced by saplings of the same species and planted either in front or in rear of the noise wall.

5. Require CBL to provide a wall of not less than 12 feet in height to the parking deck that is to adjoin the J.C. Penney Company and will overlook the neighborhood. This will prevent headlights from parking deck traffic from shining into the neighborhood and will promote neighborhood privacy and security.

6. Restrict all demolition and construction work to the hours of 7 a.m. to 7 p.m. Monday through Friday. In addition, City Council should require that this work be undertaken to minimize dust and other intrusions on the neighborhood. Further, CBL should be required to store all construction vehicles, equipment and supplies not close than 100 feet from the property lines of neighborhood property owners.

7. City staff should be directed to document existing conditions of vegetative buffers and to monitor regularly on-going demolition and construction work to assure the protection of neighborhood property and CBL compliance with existing ordinances and with the conditions that are established by Council.

He said that given the size and scale of this project, what the neighborhood is asking for is entirely reasonable. They realize there will be some additional expense to the Mall owners. However, they believe that if the traffic flow on South Tunnel Road is improved, businesses along that corridor will be served better, traffic migrating so readily to White Pine Drive will be prevented, and citizens of this community will be happier because they can get to and from those areas very quickly. He did not see this as adversarial, but room for common ground that will protect our neighborhood, our investment and yet allow the Mall's expansion to move forward.

When Vice-Mayor Hay asked if the neighborhood was faced with an either/or choice of the 600-foot sound wall or the trees, what would they prefer, Mr. Noblett said the wall would be their first choice, but he sincerely believed that the wall could be constructed and save the trees as well, if properly done.

Mr. Harold Payne, resident in the Kenilworth Forest community, said that when the Mall was originally built, the Council required a 100-foot buffer between the Mall and the neighborhood, however, after the Mall sued the City, the buffer was reduced to 50-feet. This is the only area that the 50-foot buffer on the Mall property exists and the only reason it exists is because of the cinemas. The buffer continually erodes and Brackettown Road's width increases every time the Mall goes through an expansion. He understands the developer wanting to develop his property right to their property line, however, it scarifies the neighborhood. He felt that the wall can be built and the trees can be saved. He felt that City Council has some control over the traffic on Brackettown Road. He said that he was the person who originally suggested Brackettown Road have a "T" intersection, however, he now realizes he should have suggested a "90 degree angle" intersection. He urged City Council to give the neighborhood good buffering and relief from the traffic congestion.

Ms. Janis Willard, 292 White Pine Drive, believed that Brackettown Road should be closed and that the NC DOT should work out the traffic pattern on Tunnel Road. She felt the 3-story parking deck proposed to be erected will be in full view of rear windows of the neighboring homes. There will be constant vehicle movement, automobile pollution and the deterioration of the air quality. Also, lighting is a problem for the neighborhood, especially in the winter with no foliage on the trees. She asked for the relocation of the dumpsters which are close to the adjoining residential properties. Since disturbance of the peace in our neighborhood has never been addressed to any satisfaction, maybe a daily fine would be appropriate. She requested that the City require a 12-foot high noise wall, that cannot be climbed, which will serve multiple purposes: (1) reduce the noise; (2) reduce and/or restrain the criminally-prone mind and cover some degree of security; (3) stop the trash; and (4) stop the possibility of any vehicle out of control crashing into neighborhood yards. Since plans are in place for demolishing the cinemas and additional parking spaces are to take that space, this will make it the area more dangerous than before. She stress that even a wood fence would be destructible and would wear out.

Ms. Claire Payne, 291 White Pine Drive, said that since the TIA was paid for by the Mall, she felt it was strange that the City has accepted their numbers. She felt an independent study should be conducted. With regard to sustainability, she felt we are in a critical growth period in the City and if we don't get a handle on it we're not going to have a place where people want to live. She urged Council to consider all the concerns of the neighborhood, but don't just base it on the Kenilworth Forest neighborhood, base it on all the neighborhoods in the area. We don't want to lose our quality of life.

Mr. Jack Willard, 292 White Pine Drive, said that the wooden wall would require maintenance and would question how effective it is regarding sound. He requested that a masonry wall be constructed with this main concerns being the intrusion of sound.

Mr. James Geter, 274 White Pine Drive, said that not only is the invasion of privacy an issue with the existing parking garage wall, but noise is an issue as well as the car headlights. He felt that a wall is needed to reduce the noise and give the neighborhood privacy and security. He agreed that Brackettown Road should be closed. He said that even though they want to partner with business and business growth, they must protect their investment.

Mr. Todd Dowell, 225 White Pine Drive, requested that the edge of the parking lot be shifted away from the neighborhood ten feet and a wall (not a wooden fence) be constructed.

Mr. Baechtold responded to a question from Mayor Sitnick about how the buffer is measured.

Vice-Mayor Hay asked if the sidewalk in front of the Mall will connect with the sidewalk in the Dreamland Phase II Project. Mr. Baechtold said that there is existing sidewalk in front of the Dreamland Phase II site and as part of that development, there will be a staff recommendation to extend the sidewalk off-site to the south. He believed that because the requirement is for them to provide sidewalk along the entire frontage of the property lines, and those two property lines do meet, that the sidewalk would also meet. Mr. Baechtold said that on the Lowe's site, having the sidewalk extend from property line to property line is a basic requirement. With regard to the Mall, it is a recommended condition of the approval of the conditional use permit.

Ms. June Lamb, 16 Carrier Street and representative of the Carrier Heights Neighborhood Association, stressed that the UDO and completion of the 2010 Plan was expressly to protect the character and quality of life. She reminded Council that all conditional uses shall, at a minimum, meet the conditions set forth in the UDO. She felt City Council has not been addressing the seven findings required in order to approve the conditional use permit. She explained why she felt Finding Nos. 1, 2, 3, 4, 5 and 7 have not been met by the presentations given thus far. She suggested there be some consideration for a continuance or another forum in which these seven findings could be debated.

Mayor Sitnick closed the public hearing at 8:11 p.m.

Councilwoman Field asked if the parking deck high enough to allow trucks and sport utility vehicles under the deck. Mr. Carter replied that there is enough space because they have service under the deck.

Upon inquiry of Councilwoman Field, Mr. Carter said that the length of the 8-foot fence the Mall is proposing to build is 360 feet.

When Councilwoman Field inquired about perhaps adding some type of wheel stops to the edge of the parking spaces to alleviate the concerns of cars jumping the curb, Mr. Carter said that typically the curb will be the wheel stop but they would consider raising the height of that curb.

When Councilman Cobb asked if there has been any cost comparison done with a sound barrier (panels) vs. fence, Mr. Lebovitz said that the sound barrier wall is approximately four times more expensive.

Upon inquiry of Vice-Mayor Hay about the continuous sidewalk along Tunnel Road, Mr. Dalton said that the requirement is that they run the sidewalk along the front of their property line.

Upon inquiry of Vice-Mayor Hay, City Manager Westbrook said that City Council should approve or disapprove the conditional use permit and give staff the standards Council wants and leave the technical details to be worked out by City staff and the developer.

Planning & Development Director Scott Shuford said that staff will bring back to Council the photometric study that has been discussed, and give Council an opportunity to look at those numbers, as well as the buffering issue. One of the reasons staff was not specific with regard to the buffering measurements is because they needed the public hearing to help them define what type of noise was a problem for the neighborhood and they have gotten that information. Staff will be back with more information on those issues should Council approve the conditional use permit.

City Attorney Oast said that the way City Council typically has been handling the proposed conditional use permits is that Council votes once to approve the permit. Staff then develops an Order that includes the standards and conditions based on Council's comments and staff's input and then the Order is brought back to Council for a second vote. He said that City Council does not have to proceed in that way, however, that is the way that it has been done in the past.

Mr. Lebovitz said that developers have different standards. CBL's standard of an average of a 3-foot candle is something that they have gone throughout their system of properties and they fell it is the safest level. Like City Council is concerned about bus service, they are concerned about lighting. They accept preparing a photometric plan, but the photometric plan is more to make sure they don't have light washing into the neighborhood and that is what we would request as a condition, but not that Council say they can't put more than one foot candle here, or two foot candles here, etc.

Mr. Shuford said that he hoped the information the City gets from the photometric study will address the ambient lighting and that lighting going into the neighborhood, but not necessarily the lighting on the Mall property.

Upon inquiry of Councilman Cobb, Mr. Shuford said that it is his intent to have a before and after look at the lighting in the area. That is the only way you can get a clear understanding of whether you are achieving a reduction or not.

Mayor Sitnick hoped that we consider the safety issue in the parking lot and the safety of customers and employees, as well as the intrusion into the neighborhood.

Councilwoman Field said that this is a real good example of why we don't want cul-de-sacs in residential developments. She said that with regard to the TIA, the City made it a requirement in the UDO to make it the responsibility of the developer to pay for it. The only other option would be for the City to pay for it and we felt it was not appropriate for City taxpayers to pay the bill. We felt that if someone was developing property, they should prepare the TIA. The traffic engineer who prepares the study could well be suspect since they are being paid by the developer. However, on the other hand, engineers are professionals and they use guidelines, standards and regulations that are universal. In addition, we have a City Traffic Engineer to review their work to determine if there were any flaws in the study done. Therefore, she has a problem challenging a professional engineer's traffic study that has been approved by our own traffic engineer. She also has a problem with building an interstate wall on a piece of property that is basically separating a shopping center from a residential area. She felt there are all kinds of sound systems, barriers, reflectors, and absorbers that can solve the problem and she recommended that Council leave that to the professionals to come up with the answer.

Councilman Cloninger said that in order to make as many decisions as we can tonight, and to give as much guidance as we can to staff, the owners of the Mall and to the members of the public, and at the same time reserve our ability to make perhaps some additional decisions once we have more information, it seems to him that there is a consensus that the project should be approved - it's just a question of what conditions we want to imposed in connection with the approval. He also felt that there was consensus in that the recommendations for conditions by staff are good ones and should be included in whatever Council decides. In the same vein, the staff recommendations as to proposed findings on the seven points that Council has to consider in a conditional use permit look reasonable to him and should be included. However, there are some additional conditions that Council needs to look. He feels they boil down into four categories: (1) wall behind the existing cinemas; (2) lighting issue; (3) height of the parking deck wall; and (4) feasibility of whether Brackettown Road can be made one-way. He said he didn't think Council has enough information to impose conditions on any of those four. As to the wall, he felt Council knows they want a wall, but he didn't think they know yet exactly how high they want it or what it should be made of . He's certainly prepared to require a mason wall, but felt that is a very serious issue for the neighborhood. He felt they deserve to have the protection, but in terms of what it should be made out of and how that can be accomplished, Council needs some additional information from staff on that. By the same token, the issue of the set-back. It may well be that Council will want to do that, but whether we require a set-back will depend on what kind of wall we require. We need some additional information on that. On lighting, we know we want to reduce the glare and the ambient light as much as possible as it affects the neighborhood, but we're not exactly sure how we accomplish that and we don't know whether we want to reduce the existing light that is out there as it affects the neighborhood. He didn't know whether that's feasible or whether we want to just simply require that there be no additional light intruding into the neighborhood. We certainly want to restrict the glare. As to the parking deck wall, we don't know how high that needs to be to take away the car headlight and also keep people from peeping over it. On Brackettown Road, we know yet what our ability may be on that. He felt we should look at that issue. He's got some concerns about the feasibility of it from an enforcement standby in that if we tell someone they have to have a one-way road on their private property, how do we enforce that. He wondered if we can at least give an informal indication tonight, if this is satisfactory to Council, that we are going to approve the application with the staff findings as proposed and the conditions imposed by staff, but that we reserve the right to make decisions on these four issues until we have additional information. That shows the public the direction we are headed in. He didn't think the Mall would have to have final decisions on those four issues to go ahead and proceed with additional planning and breaking ground on the main portion.

Mr. Lebovitz said that they feel like they have gone through the process that the City's codes require and they feel like the four items mentioned have major impacts to their department stores. Certainly Brackettown Road is something that is a major impact to the shopping center and lighting is a major impact from department store standards. Those are the Mall's major tenants. The issue of the area behind the cinemas is a major cost item and it is very involved in the design. If Council comes back and requires them to eliminate those parking spaces, they have to find another place to add those parking spaces. It's not just the cost of the wall or the fence or whatever is decided, but it's the cost of adding parking spaces in the structure.

Councilman Cloninger questioned the Mall expansion being cancelled if Council does something that takes away nine parking spaces from that area. He felt that if the developer wants to add the nine parking spaces into the parking deck, that's their decision. However, Mall representatives have said before that that is surplus parking and hardly nobody parks in that area. It seems to him that none of the decisions that Council makes on these four issues would make or break the project.

Mr. Lebovitz respectfully requested that a decision be made. They feel like they have worked with staff and worked to answer questions. He realized they may not seem as important to Council, but most of those items are pretty important to them.

Councilman Cloninger respected the Mall's position, but City Council is not talking about a long delay in making those decision and in the meantime we can give a general approve in concept.

Mayor Sitnick appreciated the work CBL Associates is willing to do with the buses. She said the photometric study is one we can't define specifically, but the condition for light shields is very important in making sure that you provide safety in the lots and as little intrusion as is possible into the neighborhood. Clearly, there has been the defining of where sidewalk will begin and end and that needs to be part of the condition. The move of the dumpsters has been addressed. We know that there is a great need for tree protection and the acceptance of the staff recommendation that the trees be fed before work begins is a condition that is necessary. We certainly know the recommendations of the TRC that have been presented are ones that we want to include. As far as the type of material used in the wall, she would like to leave that up to experts who known about absorption and reflection, etc. With regard to traffic, we need to remember that this is expansion to an already existing project that years before intruded, impacted and changed a neighborhood. She hoped that we don't look to blame the expansion for the initial difficulties that were had by the neighborhood. What we want to do now is make the expansion the least impact that we can. She felt that the privacy issue is one that is going to be very complicated and that we still needed to discuss the height of the parking deck wall. With regard to litter, she didn't think the wall would necessarily protect the neighborhood from litter, although probably the technical people can figure out a way to mitigate the litter problem. Moving the wall out 10 feet is another decision we need to consider. The issue of a continuous poured footing vs. poles we should leave up to the technical people and staff. Another issue is the construction hours of 7 a.m. to 7 p.m.

Mr. Lebovitz said that the demolition of the theater will be done within the hours of 7 a.m. and 7 p.m.. However, he said that there are certain parts of the parking deck and expansion which is very removed (260 feet from the property line) which have to take place after hours for public safety. They will shut down the area while the major part of the construction of the deck takes place, but there still will be some things done after hours that can't be done during normal business hours. He said they can commit to the 7 a.m. to 7 p.m. on the demolition of the theater and be very sensitive at other times because that is right abutting the neighborhood.

Mr. Lebovitz clarified that the height of the parking deck wall is 260 feet from the 50-foot buffer to the neighborhood which is down the hill. He said they have offered an 8-foot high wall or a fence. He said it was highly unlikely, and a site line study can bear this out, that there is not going to be a privacy issue with that.

With regard to the parking deck wall height being sufficient, Mr. Noblett said that if you are elevated, you will see a greater distance than you are at ground level, especially since there is nothing in the way to obstruct the vision.

Councilman Cobb felt that the lighting in the parking lot needs to be at safety level, but we still have to protect the neighborhood. With regard to the fence, he was convinced a noise barrier needs to be constructed - as to how high or how long it is, he would leave that up to the experts. Regarding Brackettown Road, he hoped that it could at least be considered a one-way in only. He also had a concern about the height of the proposed 4-foot parking deck wall. He agreed with Councilman Cloninger on the four categories that still need to be addressed.

Councilman Cloninger said that any conditions that staff imposes, still have to come back to City Council for approval. The other concern about leaving issues to staff is that the residents have redress to City Council, whereas, if they go through this discussion with Council and then Council refers it back to staff, it could leave them feeling dissatisfied in that ultimately City Council didn't make decisions they were elected to do.

Vice-Mayor Hay pointed out that Council can approve the conditional use permit now and with some unresolved issues being spelled out with direction to staff to come back to us.

Using the photometric study as an example only, City Manager Westbrook said staff would like Council to possibly say they would like the new lighting that goes up not to bleed into the neighborhood and that the overall lighting for the entire parking lot not be any greater than it is now. Council would then have set that standard and issued the permit. Then, as we go along, staff would cause the developer to do the photometric study so we could validate that condition.

Councilman Cloninger wondered if it would be feasible that the Mall have the light that they need and want but at the same time reduce the amount of light that is going into the neighborhood. Mr. Shuford responded that Council might indicate that they want to have the glare completely eliminated from the poles, which require some shielding or some other alternative for them to deal with, and that the ambient lighting into the neighborhood, that is not associated with direct glare, be either maintained at it's present level or reduced if possible, based upon the photometric study.

Mr. Shuford said that with regard to the buffer, Council might have a standard that indicates, based upon the type of noise that the residents indicated was a problem, that there be some reasonable reduction of that noise and a study or some information obtained to show how much that would be reduced in order for Council to make a decision. He felt that Council needs to direct staff to look for some reasonable balance between noise reduction and practicality.

Upon inquiry of Mayor Sitnick about whether Council needs to look at the seven conditions separately, City Attorney Oast said that what Council has done in the past is voted the conditional permit up or down and then directed him to draft an Order that comes back to Council with findings. Council can then adjust the Order on the second vote, if they want to. He suggested that be the procedure that Council follow at this time. And in doing so, specify the conditions that Council wants specifically addressed. The four mentioned are Brackettown Road; site lighting; height, length, location, material of the noise wall; and height of the wall on the parking deck - as well as some conditions regarding the sidewalk along the front of the Mall property and establishment of a location for a transit passenger pick-up and discharge.

Councilman Cloninger moved that Council approve the conditional use permit with the conditions recommended by staff and as also discussed at this hearing and that further, Council direct staff to come back with additional recommendations to Council on the following four issues: Brackettown Road; site lighting; height, length, location, material of the noise wall; and height of the wall on the parking deck (as well as some conditions regarding the sidewalk along the front of the Mall property and establishment of a location for a transit passenger pick-up and discharge). This conditional use permit approval being subject to final approval by City Council of the findings and the final conditions. This motion was seconded by Councilman Cobb.

Upon inquiry of Vice-Mayor Hay, City Manager Westbrook said that he understood that Council has a concern about Brackettown Road and wants staff to look at the one-way condition, or any other conditions, that might alleviate that situation. Staff's findings will then be reported to Council so they can make their recommendation.

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Councilwoman Field said that she felt it would be very confusing to have Brackettown Road one-way and this is a much more complex issue that has a lot of other impacts. City Manager Westbrook said that the Traffic Engineer will be looking at all the other impacts.

Vice-Mayor Hay said that he wanted to be specific on some of the conditions. One condition is to make sure that they are required to have a transit stop. With regard to the sidewalk, he wanted the sidewalk be built in coordination with the sidewalk construction at Dreamland Phase II, so the result is a continuous sidewalk. Regarding the sound wall, he was convinced that City Council needs to draw a line on the intrusion into the neighborhood and a serious sound wall be constructed. This is a unique situation in that we have two extremes on the zoning - a major retail development in our City next to a single-family residential area. He did not, however, want to forget that this is a major investment in our community - new jobs, represents vitality of our community, things happening within the City limits, etc.

At the request of Mayor Sitnick, Mr. Shuford said that staff will look at the alternative materials for the sound wall and then let that, in combination of the height of the wall, as well as the existing vegetation determine what the correct solution to the problem should be.

Councilwoman Field said that the trees should be saved and with regard to putting in a concrete wall, perhaps there's a solution that solves the sound problem that isn't a concrete wall. She felt that whether the wall has a solid footing or not, just the construction equipment to construct the wall will probably kill the trees. She felt the bottom line is that it's the foliage and the trees and the mixture of everything together that solves the sound problem - not just one thing.

Councilman Cobb said that CBL Associates have been very cooperative and he feels they want to be a good neighbor but they watch their expenses just like everybody does. He also thinks that the neighborhood has been very sensitive to that and he doesn't think they have been overly demanding in their requests.

Mayor Sitnick said that of the seven conditions, she was concerned about Finding No. 3 and No. 7. She believed that No. 3 has been taken care of since Council has given staff direction and staff will report back to them. No. 7, however, still poses a problem for her. She did not think that this Mall expansion affects the Tunnel Road traffic, as much as a traffic hazard is concerned, because Tunnel Road is already a traffic hazard. However, she did believe that the congestion and hazard that could occur will occur on White Pine Drive, as it is impacted by Brackettown Road.

Mr. Shuford asked for clarification regarding some additional studies Council has requested. With regard to the photometric study, the developer has indicated an agreement to do the study and that will be at the developer's cost. With regard to some additional traffic analysis with regard to Brackettown Road, City staff feels that depending on the scale they get into, the analysis could be quite expensive, as well as time-consuming for them. It may end up being something that is resolved through other means as we look at the different things, such as the legalities of it and staff can report that back to Council. With regard to the construction hours, the developer indicated that they were willing to live within these hours of construction during the demolition of the cinemas, but that the construction that is far removed from the neighborhood might require different hours. He suggested that one way Council could clarify that might be to indicate that these hours of construction would apply only during the time of demolition and that other hours could be observed once the erection of the noise wall occurred.

Councilwoman Field said that another thing about construction is that it changes during different times of the year. She didn't see how Council could possibly limit those hours from 7 a.m. to 7 p.m.

Mayor Sitnick clarified that construction hours would apply only during the time of demolition of the cinemas and that other hours be observed once the erection of the noise wall has occurred.

Councilman Cloninger suggested staff review the construction hours issue again because once the construction is closed in, it seems that they could work any hours they want.

City Engineer Cathy Ball asked for clarification the issue of whether or not City Council is requiring the developer help City staff with the analysis that will have to be done for the recommendation on Brackettown Road. City staff estimates that will cost approximately $3-5,000. It was the consensus of Council that that analysis should have been an original part of the TIA.

Upon inquiry of Mayor Sitnick, Mr. Lebovitz said that they would use some kind of heavy equipment to tear down the cinema walls but they will do everything they can to minimize the disruption to the neighborhood.

The motion made by Councilman Cloninger and seconded by Councilman Cobb carried unanimously.

Mayor Sitnick said that the draft Order will be brought back to City Council for consideration in 30 days and that the 30-day timeframe was dependent upon the timeliness of the submittals from the developer.

At 9:25 p.m., Mayor Sitnick announced a short break.

B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR DREAMLAND PHASE II

Ord. No 2614

Mayor Sitnick opened the public hearing at 9:42 p.m.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

Mr. Dan Baechtold, Urban Planner, said that this is the consideration of a Conditional Use Permit as outlined in the Unified Development Ordinance (UDO) for the Dreamland Phase II retail development located at 83 South Tunnel Road (City Exhibit 1)

On June 7, 1999, the Planning & Development Department received a site plan for a proposed retail development at the location of the current Lowe's at 83 South Tunnel Road. The owner is Commonwealth Dreamland Partners of Knoxville, Tennessee, and the designer is Design Associates. The project is a redevelopment and expansion of the existing Lowe's site on South Tunnel Road. The total proposed retail space for the project is 126,744 square feet. This represents an addition of approximately 54,000 square feet of retail space. Two existing driveways to the site will remain and one will be eliminated. The Technical Review Committee (TRC) reviewed the plans on June 21, 1999, and took action to approve with conditions. The public hearing was legally advertised on July 16, 1999, and July 23, 1999.

Mr. Baechtold then gave a brief overview of the plan. (City Exhibit 2 - existing site) (City Exhibit 3 - proposed site). The site plan shows redevelopment of the existing Lowe's building and expansion of additional retail space. There will be three major tenants, three smaller tenants and a two-story retail out-building proposed. Other changes to the site include elimination of the right-in driveway to the north, a realignment of the main entrance drive, the southernmost drive will still be right-in and right-out, but it will be modified slightly to accommodate some lane widening by the N.C. Dept. of Transportation (NC DOT). He said the total parking provided is 493 spaces.

The Planning and Development staff and the Technical Review Committee find that that the project will meet all the technical standards for development in the Regional Business zoning district if all of the following conditions are addressed:

1. Provide handicap access to bus stop from shopping area to meet NC Accessibility Code requirements which take effect July 1, 1999. Also, requested developer to work with Interim Transit Services Director and City Traffic Engineer to see if the bus stop needed to be relocated.

   Mr. Baechtold said that after meetings between the Transit Services Department and the NC DOT on the best location for that bus stop, he understood the result of those meeting is that the bus stop will remain where it is. (City Exhibit 3) Staff would still like to see some kind of stripped connection between that public bus stop and the entrance to the building.

2. Install ADA ramps at all drive entrances.

   Mr. Baechtold asked that the developer include a standard detail on the plan and indicate that those will be installed.

3. Secure a wastewater allocation for the project from MSD.

   Mr. Baechtold said that this will be handled through the normal permitting process.

4. Submit sewer extension plans to MSD for review and approval.

   Mr. Baechtold said that this will be handled through the normal permitting process.

5. Submit utility plan addressing water service and fire service to the proposed buildings.

   Mr. Baechtold said that this will be handled through the normal permitting process.

6. Obtain additional water meters for proposed new buildings to meet the requirement of one (1) meter per building.

   Mr. Baechtold said that this will be handled through the normal permitting process.

7. Make an application to Water Resources for a Letter of Commitment regarding water availability.

   Mr. Baechtold said that this will be handled through the normal permitting process.

8. Provide a Type "B" Buffer along the portion of the West property line that abuts property zoned RM-16. (UDO sec. 7-11-2)

   Mr. Baechtold (City Exhibit 3) said that this is a matter of a technical revision by the addition of a few more trees to meet our requirements. He said the RM-16 zoned property is currently undeveloped.

9. Stormwater/erosion control facilities must meet UDO requirements. Please refer to the UDO Appendix 7A and Asheville Standards Specifications and Details Manual Section 10, Appendix J.

   Mr. Baechtold said that this will be handled through the normal permitting process.

10. Verify compliance with requirements for slope stability. UDO secs. 7-12-2 (f) (4) and 7-12-2 (e) (2).

    Mr. Baechtold said that this will be handled through the normal permitting process.

11. Work with Ken Putnam of the NC DOT to on the design of the right-in/right-out drive entrance to prohibit motorists from making left turns. If indicated by NCDOT, developer will install a raised concrete median on South Tunnel Road in the area of the drive entrance.

    Mr. Baechtold said that the developer has met with NC DOT, and it's the preference of NC DOT that there not be a concrete median in the center of Tunnel Road. The NC DOT has reviewed the design of the right-in/right-out driveway so that it meets NC DOT specifications.

12. Staff recommends additional right-turn lane storage length for the main exit.

    Mr. Baechtold said that the developer has met with City Traffic Engineer and he understands that the applicant has agreed to revise the drawings to show that additional space.

13. Staff will look at the feasibility of recommending to City Council that they consider requiring this development to construct a road connecting this development with the new Lowe's site on South Tunnel Road.

    Mr. Baechtold said that staff has looked into the feasibility of this condition, however, because of a somewhat significant grade change and the relocation of the stream, City staff feels that the cost for constructing a road would probably outweigh the benefits of having that internal connection.

14. Sidewalk is needed on the adjacent Lowe's development. Staff will investigate the possibility of requiring sidewalk construction on the new Lowe's site as part of the Dreamland Phase II development for a possible recommendation to City Council.

    Staff recommends that sidewalk be constructed along the remainder of the length of South Tunnel Road down to the corner of Swannanoa River Road and then also along Swannanoa River Road in the location of the new Lowe's development. Staff has determined that there is sufficient right-of-way on both roads. Staff feels the sidewalk is necessary for public safety. He said there is existing sidewalk along the frontage of some property on Tunnel Road and but staff would like to make sure that that sidewalk connects to whatever sidewalk the Mall is constructing.

15. Resolve issue regarding building code requirement that buildings be sixty (60) feet from the property lines.

    Mr. Baechtold said that it is his understanding that this issue has been resolved.

Mr. Baechtold then summarized the remaining issues on this development, from staff's perspective: (1) provide access to the bus stop; some kind of connection between the bus stop and the entrance to the buildings; and, to move the bus stop, if necessary; (2) make the needed technical revisions to the drawings with respect to the ADA ramps, adding additional trees in the required buffer area, and the right-turn lane storage for the main exit; and (3) to install the sidewalk along South Tunnel Road in front of the adjacent new Lowe's development and along Swannanoa River Road in front of the new Lowe's development.

Mr. Baechtold then reviewed the staff's responses to the seven findings that City Council must make in order to grant the conditional use permit (City Exhibit 4):

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed development is an reconstruction and expansion of an existing retail facility. The impacts of the development will not materially endanger the public health or safety. The project received technical approval from the Water Resources Department, the Fire Department, MSD, Engineering, and other City Departments.

2. That the proposed use is reasonably necessary for the health and general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region.

   The Tunnel Road corridor is a regional retail center. The current use of the site is large-scale retail. The existing Lowe's store will be vacating the site. The redevelopment of the site as a large-scale retail center will continue the current community function.

3. That the proposed use or development of the land will not substantially injure the value of the adjoining or abutting property.

   The adjoining property consists of a new Lowe's retail center to the south, the Asheville Mall to the north, and undeveloped property zoned RM-16 to the west. A buffer will be provided between this use and the undeveloped RM-16 property.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood in which it is located.

   The proposed development is located on property zoned Regional Business. The neighboring uses along Tunnel Road include a number of large-scale retail developments.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City.

   The Asheville City Plan 2010 indicates commercial development for the Tunnel Road corridor. The proposed development of Dreamland Phase II is consistent with the intent and the standards of the Regional Business zoning district.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   The proposed development is located in an existing developed area. The project received technical approval from the Water Resources Department, the Fire Department, and MSD. The development is located on a five-lane major thoroughfare as identified on the Asheville Thoroughfare Map. Sidewalk facilities are needed along the entire length of South Tunnel Road and Swannanoa River Road to ensure pedestrian safety.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The developer prepared a Traffic Impact Analysis (TIA) for the proposed development as required by the UDO. The TIA considered the impact of this expansion and other projected traffic on the transportation system. The TIA concluded that no major improvements are needed to accommodate the traffic from this development. The City Engineer and Traffic Engineer reviewed the findings of the TIA for accuracy, and concur with the findings.

Upon inquiry of Vice-Mayor Hay about the connecting sidewalk, City Attorney Oast said that after investigation of that issue, it was his opinion that there was significant identify of ownership between this parcel and the adjacent parcel where the new Lowe's building is being constructed and to the extent that the owner is able to do the work, the City can require it, particularly if it is related to a legitimate safety concern that is created by the development that is going in there and because it appears on the Pedestrian Thoroughfare Plan.

When Councilwoman Field asked why the new Lowe's development is not required to install a sidewalk, City Attorney Oast said that new development was approved prior to adoption of the UDO.

Mr. Clay Mooney, representing Design Associates, reviewed some of the conditions outlined by Mr. Baechtold and responded accordingly: (1) Regarding the handicapped ramps - there are existing handicapped ramps at the entrance to the shopping center and if any of them are damaged, they will be replaced and kept in service; (2) With regard to the bus stop, it was determined after conversations with NC DOT and the City Traffic Engineer, that the location was a proper area for that bus stop. Barring any damage to that bus stop, they foresee no change in that present location; (3) They did talk with Mr. Putnam regarding the right-in/right-out entrance and they will certainly coordinate that revision, which is in response to the widening of Tunnel Road; (4) Regarding the exiting storage lane leaving the property - that has been discussed with Mr. Putnam and the City Traffic Engineer and they will be modifying that to effectively double the storage capacity of that right turn lane exiting the property; (5) The issue regarding the sidewalks is one that concerns them. While they are not against it, there are some specific site issues that make that rather difficult. Specifically, with the new Lowe's, the developer extended a triple 10x10 box culvert to facilitate the road widening by NC DOT. Some of their concern is with the widening of that lane within the NC DOT's existing right-of-way. They are concerned about the amount of room that will be left within that existing right-of-way and as it relates to the culvert and how close that sidewalk may be to the edge of that box culvert from the top of curb down to the stream elevation (roughly in the neighborhood of 12 feet). Further down as their site falls, and again not knowing what the final configuration of the shoulder would be following the widening, how much room or shoulder they will have left to construct a sidewalk to the City standards. He can almost assure Council that there will not be 10 feet of right-of-way remaining. Further to complicate that, their required 10-foot landscape strip extends from the existing right-of-way line to their curb line. So, one or the other would have to give in those areas. In the relocation of Haw Creek, if Council remembers, this entire Haw Creek was re-routed to facilitate this construction, so they had an enormous amount of flood issues that had to be resolved. They actually had to do a revision of the Federal Emergency Management Act (FEMA) maps. They worked on this issue for over a year trying to resolve these issues, so they have a lot of tricky things regarding flood modeling and they are concerned with how any further construction in and around this area may affect those calculations. They have worked very hard with the State and Federal governments to get this resolved. They feel like they need to have more study with the

NC DOT regarding what will be remaining after they construct the travel lane; and (6) With regard to the 60-foot clear area between the two buildings, he explained that a document is being prepared that will be attached to the deeds, and that addresses this issue.

Mr. Mooney also explained that he under the impression that the sidewalk was only going to be on the South Tunnel Road side. They have an addition problem in that the convenience store at the corner is not part of this project and they don't feel they can go in front of the convenience store and go around it onto Swannanoa River Road. Also, on Swannanoa River Road, there is no existing curb section - the road drains on the east side down into Swannanoa River and then on the west side it drains across a shoulder into a ditch. If they have to put in a sidewalk there, it would have to be flush or an entire storm drainage system would have to be installed which they feel is totally inappropriate.

Councilwoman Field said that since there is no option other than an full fledged sidewalk, she wondered if it was possible if the developer could put in some stepping stones or some other kind of pedestrian way that wouldn't affect the flood plain issues on the sidewalk on Tunnel Road.

Councilman Cloninger asked if staff had any alternative suggestions about the sidewalks. Assistant Public Works Director Suzanne Molloy said that she spoke to the NC DOT and on Tunnel Road there should probably not be any problems. The right-of-way that exists there is limited. She talked to the person who is over the construction project now with the widening and they said that right now, they are actually extending the shoulder of the roadway. The standard will have to be varied, but the City Engineer can do that within her purview of reviewing the application of saying that it does not have to be a 5-foot planted median. Regarding the Swannanoa River Road sidewalk, that is identified on the Greenway Plan, which is on the Pedestrian Thoroughfare Plan, and it may be that Council decides a different way to handle that. The bottom line is that the City doesn't have a plan for that whole corridor now and those comments were put on because we know that those linkages are intended to be there. Therefore, the Tunnel Road sidewalk should be able to be addressed with a condition that they be required there, working with the Engineering Department on design. On the Swannanoa River Road sidewalk, it is a little bit different because there is no plan for where the long-term greenway would be. These comments were put forth by staff because it was one property owner and staff knew the need was there and if it could be a conditional use, they wanted to recommend it to Council.

Mayor Sitnick questioned how could the City require a sidewalk on Swannanoa River Road if the sidewalk ends before the convenience store property. City Attorney Oast responded that the City could not require the sidewalk to go across the convenience store property.

City Engineer Cathy Ball said that her recommendation is that the City not require the sidewalk on Swannanoa River Road unless we require them to also put in curb and gutter along that Road. The State has said that they don't want sidewalk in unless there is curb and gutter there because it does create a serious drainage problem. She suggested that if the City requires the developer to put in the sidewalk along Tunnel Road to the extent on their property, that we see if they can give an additional right-of-way that will allow us to have a 5-foot strip, if possible. She said that if we have to narrow the 5-foot strip over the culvert section we could then try to widen it back out, if that's possible.

Mr. Tim Scoggins, developer of the project, said that the section of the sidewalk that connects the Dreamland Phase II and going down to the convenience store is not an issue with them as long as it does not involve changing any of the myriads of permits that are involved. There are Federal, State and local permits on this piece of property. If it involves changing the grading plans along Tunnel Road, you are messing with the flood plain and that would be a violation of their Federal permits that we have in place. That parking lot is actually a flood storage area for Swannanoa River Road. If we start filling in that right-of-way any more than we have already currently given the State for adding that lane, we will be flooding people down stream. We know it is very desirable to have it and we will participate in any way that we can, but it is not physically possible, without getting into flooding or serious environmental concerns. They are the proud owners of the first wet detention pond in Western North Carolina and that model took them about 1-1/2 years to build. The ditch lines on Tunnel Road and on Swannanoa River Road are a very integral part of that. He said that sidewalks are important and they will participate and be happy to install it from one piece of property to the other, as long as they don't have to change the grading plans. However, if Council is talking about changing grading plans and going into additional right-of-ways, he doesn't think it's physically possible.

Ms. Ball said that she is familiar about what is allowed in the floodplain area and floodway and what the applicant said is correct. However, if you are taking out the exact same area you are putting back in (like what would be done for a sidewalk) there is no issue that is a problem there. You don't even have to go to FEMA - the City review and approve that itself. That should not be an issue as long as the culvert does not have to be extended.

Councilman Cloninger suggested that the City require a sidewalk on Tunnel Road, conditioned upon it being consistent with Federal laws and permits already obtained to date.

Mr. Scoggins said that as long as the existing grading plan that is in place when the State finishes, they will be glad to build the sidewalk within the constraints of how the State leaves that property. Ms. Ball responded that that would be agreeable with her.

City Manager said that Council could advise staff that they wanted a 5-foot sidewalk. He said that staff does the ability to vary that where it would meet those conditions.

Mayor Sitnick closed the public hearing at 10:30 p.m.

Vice-Mayor Hay said that with regard to the sidewalk on Swannanoa River Road, he didn't think that would be feasible in a lot of ways..

Councilman Cloninger moved to approve the conditional use permit for Dreamland Phase II retail development located at 83 South Tunnel Road subject to the conditions recommended by the TRC, except that with respect to sidewalks, that condition be amended to reflect that sidewalks be required along the portion of Tunnel Road between the Dreamland property line and the Dreamland Convenience Store property line subject to it being able to being done without requiring another flood permit and conditioned upon where the sidewalk goes across the culvert, that the applicant be required to put in handrails that meet the Code. This motion was seconded by Vice-Mayor Hay and carried unanimously.

City Attorney Oast said that he felt that he had enough specificity with respect to this conditional use permit to go ahead and draft the order for the Mayor's signature. City Council instructed the City Attorney to draft the order for the Mayor's signature.

Ordinance BK17- page 468

C. PUBLIC HEARING TO ADD THE MANUFACTURED HOME OVERLAY DISTRICT TO 15 LOTS LOCATED ON MOCKINGBIRD CIRCLE CURRENTLY ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

ORDINANCE NO. 2594 - ORDINANCE TO ADD THE MANUFACTURED HOME OVERLAY DISTRICT TO 15 LOTS LOCATED ON MOCKINGBIRD CIRCLE CURRENTLY ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 10:30 p.m.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of an ordinance to apply the Manufactured Home Overlay District to 15 lots located on Mockingbird Lane currently zoned RM-6 Residential Multi-Family Low Density District.

The Applicants/Owners are James and Sharon Brown, Jack Jenkins, Mark Burton, Paul and Debra Meadows, Theodore LaPier, David and Sue Scarborough, and Nancy Tryon.

The request to apply the Manufactured Home Overlay District to 15 lots on Mockingbird Circle was submitted by owners of 10 of the lots (PIN # 9639.07-59-7193, 8089, 8307, 9333; 9639.07-68-0985, 2842; and 9639.07-69-0021, 0331, 1218, 1285). Since this request outlined a non-contiguous zoning pattern, staff made efforts to contact the other 5 property owners (receiving written opposition from only one property owner), the remaining 5 lots (9639.07-59-7108 and 9056; 9639.07-68-3899; and 9639.07-69-2241 and 3008) were included by the Planning staff as part of the request. This public hearing was legally advertised on July 16, 1999, and July 23, 1999.

The 2010 Plan indicates this area to be low density residential. The current land use indicates a mixture of residential homes, manufactured homes, and some vacant lots. The adjacent neighborhood along Robin Lane was approved for the application of the Manufactured Home Overlay District in 1998.

At the Planning & Zoning Commission public hearing, opposition was expressed by several property owners including some petitioners that were unclear as to what they had signed.

The Planning staff reviewed the request and recommended approval. At their July 7, 1999, the Planning & Zoning Commission meeting, after hearing comments from the area residents and having one property owner request that their property be withdrawn from the request, the Commissioners voted 6 to 1 to recommend approval of the Manufactured Home Overlay District for the 15 lots.

Upon inquiry of Councilwoman Field, Mr. Ownbey read some of the additional restrictions that the overlay requires.

Upon inquiry of Councilman Cobb, Mr. Ownbey said only one single manufactured home can be placed on an individual lot in the Manufactured Home Overlay District.

Mr. Ownbey said that Planning staff is requesting City Council consider the Overlay District on all 15 lots so as not to interrupt the zoning pattern.

Councilman Cloninger noted that the Overlay District does not restrict, but actually gives them an additional use, of their property.

Mayor Sitnick closed the public hearing at 10:40 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2594. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 409

D. PUBLIC HEARING RELATIVE TO CLOSING AN UNNAMED ALLEYWAY OFF HENRIETTA STREET

RESOLUTION NO. 99-112 - RESOLUTION PERMANENTLY CLOSING AN UNNAMED ALLEYWAY OFF HENRIETTA STREET

Mayor Sitnick opened the public hearing at 10:40 p.m.

Ms. Suzanne Molloy, Assistant Director of Public Works, said that this is the consideration of a resolution to permanently close an unnamed alley off Henrietta Street.

A petition has been received from Merrimon Avenue Baptist Church requesting that an unnamed alley off Henrietta Street be permanently closed to public use. The petition received includes the affidavit of Bill Bigham, President of Merrimon Avenue Baptist Church, owner of PIN No. 9649.10-35-9416. Merrimon Avenue Baptist Church owns all of the adjoining land on both sides of this unnamed alleyway.

This unnamed ally is a paper street and has never been opened and used as a street. The City has no plans to utilize this street. All utility companies have been contacted. The resolution of intent to close the unnamed alley off Henrietta Street was advertised in a local paper and the location was posted with the resolution of intent to close.

The Public Works Department staff recommends the resolution to permanently close the an unnamed alley off of Henrietta Street be adopted.

Mayor Sitnick closed the public hearing at 10:41 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Hay moved for the adoption of Resolution No. 99-112. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 262

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON JULY 13, 1999, AND THE WORKSESSION HELD ON JULY 20, 1999

Councilman Sellers moved for the adoption of the minutes of the formal meeting held on July 13, 1999, and the worksession held on July 20, 1999. This motion was seconded by Councilwoman Field and carried unanimously.

B. RESCHEDULING OF PUBLIC HEARING

Councilman Cloninger moved to reschedule the public hearing originally set for August 10, 1999, relative to amending the Unified Development Ordinance regarding standards for the wireless telecommunication facilities to August 24, 1999. This motion was seconded by Councilman Cobb and carried unanimously.

C. BELE CHERE 1999

Mayor Sitnick thanked the staff and volunteers who worked hard to pull off a smooth Bele Chere 1999 Festival.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:45 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - August 3, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr. (arrived at 3:25 p.m.); Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Engineering Services Contract for Critical Needs Grant Project for Water Distribution

Summary: The consideration of (1) approving a contract with McGill Associates to implement engineering services for a recently awarded $3 million State Grant for water distribution improvements and (2) authorizing the Director of Water Resources to establish a Memorandum of Understanding with the City of Asheville Engineering Director for engineering services.

On Thursday, July 15, 1999, five proposals were received from consulting engineering firms for engineering services for Contracts 1-3 of 4 contracts defined under the $3 million State grant. On Monday, July 19, 1999, a selection committee approved by the Water Authority's Policies & Priorities Committee and consisting of Mr. Gary Semlak, Mr. Mike Brookshire, and Mr. Tom Frederick met after reviewing the proposals. The selection committee ranked the proposals based on the following criteria set out in the RFP: firm's demonstrated qualifications, ability to meet the design schedule, project approach, financial standing of firm, and the firm's minority business plan. Based on these criteria, the committee selected McGill Associates as the most qualified for this work and determined that McGill Associates satisfactorily demonstrated the ability to perform all three projects.

Following the evaluation based on RFP criteria, the committee also reviewed McGill Associates' separately submitted fee schedule and determined the proposed fee to be within the project budget for these services. Through further negotiations with McGill, the final recommended contract amount was reduced to $204,600.

Other firms submitting proposals include W. K. Dickson, William G. Lapsley & Associates, Mattern & Craig, and Vaughn & Melton.

The Director of Water Resources has also received and recommends a written proposal from the City of Asheville Engineering Department to provide engineering services for Contract 4 of this grant not to exceed $76,560, which is also well within the project budget.

On July 20, 1999, the Regional Water Authority unanimously approved both staff recommendations. The grant requires engineering design and permitting to be completed by November 1, 1999; therefore, City Council's earliest consideration of this recommendation would be appreciated.

Staff recommends the City Council approve the execution of an engineering contract to McGill Associates for $204,600 and authorize the Director of Water Resources to establish a Memorandum of Understanding with the City of Asheville Engineering Director for engineering services not to exceed $76,560.

Budget Amendment to Fund the Critical Needs Grant Project

Summary: The consideration of a budget amendment, in the amount of $3,000,000, amending Capital Project Ordinance 82-25 (35 Fund - Water Major Capital Improvements Fund) to fund the $3 million State Grant Projects.

By Resolution 82-25 dated October 5, 1982, the Regional Water Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

Capital Project Ordinance 82-25 needs to be amended to include appropriations for the following projects which will be funded with a $3,000,000 Grant and a local match of $289,960:

- $646,820 for Critical Needs Contract #1 - North Asheville to include Madison Avenue, Country Club Road/Grovemont Road/Lynnwood, Woodward Avenue, Richie Street, Orchard Street, Robindale Road, Lee Street/Prospect Street
- $897,700 for Critical Needs Contract #2 - Town Mountain/Beaverdam Areas to include Lynn Cove Road, Lawterdale Road, Cogswood Road, Cherokee Road, Sunset Drive
- $684,760 for Critical Needs Contract #3 - East and South Buncombe to include Chunns Cove Road, Buckeye Cove Road, Beacon Village, Wilson Avenue/Grovemont, Upper Moffit Branch, Deaver Street, Crescent Hill Road
- $1,060,680 for Critical Needs Contract #4 - Northwest Buncombe to include Smith Graveyard Road/Eliada Home, Adams Hill Road/Wolf Park Circle

Staff recommends approval of a budget ordinance amending Capital Project Ordinance 82-25 (35 Fund) to provide funding in the amount of $3,289,960 for Critical Needs Contracts 1, 2, 3, and 4 to be funded with a $3,000,000 Grant and matching funds of $289,960.

Agreement with N.C. Dept. of Transportation for Bicycle Racks

Summary: The consideration of (1) a resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) to provide for the installation of bicycle parking racks in various locations in the City of Asheville and (2) a budget amendment, in the amount of $60,000, for said project.

The 1997-2003 Bicycle Transportation Improvement Program provides for the installation of bicycle racks at various locations throughout the City of Asheville. Public Works staff, in conjunction with the Bicycle Task Force, has developed plans for the installation of approximately 114 bicycle racks in key downtown, park, and other public locations in accordance with the NC DOT standards and specifications. City staff has verified appropriateness based upon pedestrian access issues, streetscape impact, etc. The breakdown of locations is as follows:

Parks and Recreation: 42 - to be installed at park locations throughout the city parks. Some may be stockpiled for future projects.

Central Business District: 31 - Some locations still need to be verified with adjoining property owners. However, definitive sites are on Biltmore Avenue, Battery Park, Page Avenue, Haywood Street, Wall Street, Broadway, Patton Avenue, City Hall, South Market Street, Public Works Building, etc. City staff will present a map at the City Council meeting showing the criteria for selecting a site.

Park and Ride Lots: 3 - Staff is coordinating with Transit Services Director on locations.

Parking Garages: 2 - Staff is coordinating with Parking Services on locations.

Asheville High School: 2

Other Areas: 34 - These will be determined as the project unfolds, and/or stockpiled for future installation. Staff has a list of interested parties that want to be considered for placement (Buncombe County locations, etc.)

The NC DOT has left a lot of flexibility in where the bicycle racks will be ultimately installed. Their main criteria is that they must be on public property or right-of-way. We have to go through formal bid procedures for the racks. Once the Municipal Agreement is signed, we have to get approval from the NC DOT to bid. The racks will probably not be in until the Winter of 1999 and hopefully the installation will be contracted out under the grant. If not, it will be a rainy day winter project and we will be reimbursed for labor and equipment costs. This will depend on the bid results.

The Public Works Department (Bike/Pedestrian Coordinator) will oversee administering the agreement which includes rack installation and distribution to Parks and Recreation, Transit Services, Parking Services, and City Schools. As limited bicycle parking facilities exist, the City of Asheville will greatly benefit from this project.

A budget amendment, in the amount of $60,000, is necessary for the project. Upon completion of the project, the NC DOT will reimburse 100% of all costs for equipment and rack installation for an amount not to exceed $60,000.

The Public Works Department staff recommends adoption of (1) a resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation (TIP Project C-3415) to provide for the installation of bicycle parking racks in various locations in the City of Asheville; and (2) a budget amendment, in the amount of $60,000, for said project.

Grant Proposal to N.C. Dept. of Transportation for Transportation Enhancement Program

Summary: The consideration of a resolution authorizing the City Manager to apply to the N. C. Dept. of Transportation (NC DOT), through the Transportation Enhancement Program, for a grant for (1) sidewalk improvements surrounding the Grove Arcade, (2) Pritchard Park, and (3) the Urban Trail.

Funds are available through the NC DOT in the Transportation Enhancement Program for the Transportation Equity Act for the 21st Century (TEA21). The Transportation Enhancement Program is designed to provide links to traditional and alternative transportation by improving safety, protecting the environment and public health, and creating the opportunity for communities to improve their quality of life.

The Transportation Enhancement Program is a cost reimbursement grant requiring at least a 20% cash match from the local sponsor. Projects must fit within one or more of the eleven enhancement categories, provide a transportation link, all right-of-way must be in public ownership, demonstrate high visibility, and be ready to implement and complete within one year after the award date.

The NC DOT has approximately $12 million to distribute statewide each year for the next three years. The NC DOT is currently in the first call for proposals, and plans to call for proposals in March 2000 and March 2001. The City of Asheville will have the opportunity to apply each year.

A team of staff from the Engineering, Parks and Recreation, and the Public Works Departments met to review the proposed projects using the criteria directed by the NC DOT. One of the primary criteria, as previously outlined, was the requirement to have allocated matching funds budgeted for each project. As a result, the City of Asheville wishes to apply for funds during the first call of proposals for (1) sidewalk improvements surrounding the Grove Arcade, (2) construction of Pritchard Park, and (3) pedestrian streetscape improvements to complete the Urban Trail.

Grove Arcade Pedestrian/Sidewalk Improvements - The project will enhance and facilitate pedestrian and vehicular traffic to and from the Grove Arcade with wider and improved pedestrian access, landscaping, and resurface streets due to sidewalk improvements.

Total project cost: $310,000
Grant request: $175,000
Local match: $135,000 (43%);

Pritchard Park - The project will construct Pritchard Park including pedestrian facilities and access, streetscape improvements, bicycle route connections, and safety features for pedestrians and bicyclists. Traffic analysis is currently in progress and will be available prior to grant award date.

Total project cost: $1,275,000
Grant request: $800,000
Local match: $475,000 (37%);

Urban Trail - The project consists of pedestrian streetscape improvements along the 1.7 mile trail, including decorative pedestrian crossing, installation of ADA ramps, removal of ADA obstacles, installation of the transportation station and a trail information station, installation of tree grates, improved pedestrian lighting, landscaping, and necessary sidewalk improvements.

Total project cost: $584,834
Grant request: $429,134
Local match: $155,700 (26.6%).

The City has several other projects that are potentially eligible for the Transportation Enhancement Program, such as pedestrian improvements in Biltmore Village, College Street Corridor, and construction of the Broadway Greenway. Due to the current position of the projects, staff recommends they not be considered at this time. Necessary details are being pursued on these projects for the next application cycle.

The Engineering, Parks and Recreation, and the Public Works Departments request the City Council review and concur with the recommendation for projects to be included in City of Asheville proposal for the TEA21 Transportation Enhancement Program. The Departments also recommend the City Manager be authorized to apply for and enter into an agreement in the event the City of Asheville receives the grant award.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

HONDA HOOT 2000 PARKING PROPOSAL

Finance Director Bill Schaefer said that this is the consideration of a proposal by Honda Rider's Club of America regarding parking fees for Honda Hoot 2000 and adoption of an enabling resolution.

The Honda Rider's Club of America has sponsored the Honda Hoot Rally in Asheville, North Carolina, for the past six years, and desires to bring the rally to Asheville again in 2000.

For parking arrangements, Honda Rider's Club has proposed a permit system like that used during this year's Rally. Subsequent dialog between Honda Rider's Club and City staff has resulted in the following verbal proposal from Honda:

- Honda will produce and provide a sticker, suitable for affixing to each motorcycle's headlamp, to indicate payment of the parking fee.
- Motorcycles bearing headlamp stickers will be allowed to park in a designated area of the Civic Center parking garage, in designated areas of closed streets and at metered spaces throughout the downtown area for the duration of the rally.
- Honda would remit to the City $3.00 for each pre-registered motorcycle and would provide additional stickers for sale by Parking Services staff on-site at $5.00 each.
- The City will grant "festival status" for Honda Hoot 2000.
- The City will provide overflow motorcycle parking from the Civic Center parking garage along one lane of Rankin Ave. from Walnut to Hiawassee and provide the same street closures as for this year. Honda is aware that Page Ave. closure may not be feasible due to Grove Arcade activity or street/sidewalk construction.

Assuming the same number of pre-registrations and on-site sales as this year, the proposal for 2000 would generate approximately $11,455 from sticker sales. This year's revenue from sticker sales was $4,194.

In order to proceed with planning for the 2000 Rally, Honda had requested a response to their proposal by August 1, 1999. Prior to receipt of their proposal, Honda had been informed that formulation of a plan to accommodate their parking needs would probably extend beyond August 1. On July 20, 1999, following confirmation that the Grove Arcade did not anticipate opening prior to July 1, 2000, they were informed that their proposal would be scheduled to be presented to Council at the August 3 worksession.

If City Council finds the Honda proposal acceptable, staff requests the adoption of the enabling resolution which sets the limited event fee for Honda Hoot 2000.

Upon inquiry of Councilwoman Field, Mr. Schaefer said that less than 12 monthly parkers in the Civic Center Parking Garage were displaced into the Rankin Avenue Parking Garage.

When Councilwoman Field asked how many parking meters were closed down for the Grove Arcade construction, Mr. Schaefer said that about 50 meters are down, out of approximately 730 total in the downtown area.

Mayor Sitnick asked if there was any way to predict if the fence around the Grove Arcade would be gone before the Honda Hoot in 2000. Mr. Schaefer said that he could not predict if the fence would be gone, but even if the fence is removed, there may be other things that hamper traffic, such as, committed sidewalk and lane changes, and repaving. He said they will watch that area through the process and accommodate it the best they can.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

POTENTIAL EXTRATERRITORIAL JURISDICTION EXTENSION INTO THE REYNOLDS MOUNTAIN AREA

Due to a conflict of interest, Councilman Cobb excused Councilman Cloninger from participating in this matter. This motion was seconded by Councilman Sellers and carried unanimously.

Mr. Mike Matteson, Urban Planner, said that the Planning and Zoning Commission has directed the Planning and Development Department staff to pursue the extension of the City's ETJ in the Reynolds Mountain area - north of the City's corporate limits.

This request by the Commission resulted from the Commission's review of the proposed Reynolds Mountain Subdivision, a 174 lot single family subdivision to be located on Reynolds Mountain. Although the proposed subdivision is to be located almost entirely outside of the City's zoning jurisdiction, it is anticipated to have a significant impact on the City's infrastructure and the Lakeview Park neighborhood, through which one of the two access points to the subdivision is proposed.

The proposed ETJ extension would include a portion of the Reynolds Mountain Subdivision (Phase I) as well as additional properties to the north and east which are similar to Reynolds Mountain Subdivision in their potential for development and in the potential impact which future development may have on the City.

The Town of Woodfin is also exploring ETJ extension to include a portion of the subdivision. The Planning and Development Department staff has met with staff from the Town of Woodfin to develop a line of demarcation separating the proposed Town of Woodfin's ETJ from the potential City of Asheville's ETJ. This line of demarcation has been viewed favorably by the Town of Woodfin's Board of Aldermen. The proposed Subdivision will be developed in two phases. Phase I of the Subdivision would fall within the City and Phase II would fall within the Town of Woodfin.

By extending ETJ in this area, the City would gain the ability to anticipate, plan and manage future growth in this area.

Planning and Development Department staff is seeking direction from the City Council regarding the potential extension of the City's ETJ in the Reynolds Mountain area.

City Attorney Oast pointed out that there are certain limitations on what the City can extend to geographically. He said that this boundary line is not etched in stone and is subject to verification on the ground.

City Manager Westbrook explained to Councilman Cobb how the City's extraterritorial jurisdiction area is applied and why we have it in some areas and not in others.

When Councilman Cobb asked about the process, City Attorney Oast said that the initial step is to identify the area Council would like staff to investigate for a potential ETJ extension and then the Planning & Zoning Commission would make their recommendation, along with a zoning recommendation, to City Council.

Mr. Charlie Cunningham felt that City Council should not consider including this area into their ETJ unless they know what zoning will be placed on the property.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

INTERNET BRIEFING

Mr. Larry Bopp, Information Services Director, said that the City began using its Internet web site during 1996. While there have been many updates and additions to its content since then, some of the more advanced Internet capabilities have not yet been implemented at the City. The City has reviewed the content of its current Internet web site and that of several cities and counties across the state. He then identified the current content and capabilities as well as additional capabilities which will be implemented in the future.

TRANSFER OF CABLE TELEVISION FRANCHISE FROM BRENMOR CABLE PARTNERS, L.P., TO ROBIN MEDIA GROUP INC. (d/b/a CHARTER)

Ms. Patsy Meldrum, Assistant City Attorney, said that Brenmor Cable Partners, L.P. (d/b/a InterMedia) and Robin Media Group Inc. (d/b/a Charter) are seeking approval of the assignment and transfer of the cable system from InterMedia to Charter.

InterMedia owns, operates, and maintains a cable television system ("System") in the City of Asheville (the "City"), pursuant to City of Asheville Ordinance No. 2496 and Ordinance No. 2500, dated June 23, 1998, and July 28, 1998, respectively (the "Franchise") and is the current authorized holder of the Franchise.

InterMedia is proposing to assign and transfer the assets, including the Franchise, of the System to Robin Media Group, Inc. ("RMG"), which will then be owned and controlled by Charter Communications, LLC, ("Charter"), subject to, among other conditions, any required approval of the City with respect thereto.

InterMedia and Charter have requested consent from the City to assign and transfer the System, including the Franchise, to RMG in accordance with the requirements of the Franchise by filing FCC Form 394, and accompanying documents, (the "Application") with the City. The terms of the Franchise require that prior to an assignment or transfer of the Franchise, the City must grant its prior written consent thereto. Federal law and the Franchise require a determination by the City that RMG has the requisite legal, technical and financial capability as described in the Application before the transfer is approved.

Based upon a review of the Application and Franchise, City staff is recommending approval of the assignment and transfer of the System, including the Franchise, from Brenmor Cable Partners, L.P. to Robin Media Group Inc., subject to compliance with certain conditions:

(a) RMG assumes all rights, obligations and liabilities of Franchisee under the Franchise including, without limitation, all obligations, if any, of Franchisee as are currently required to have been performed but have not been performed.

(b) The transfer approval shall not in any way waive, diminish or otherwise affect adversely any right that the City has, may have, or may at any time or in any manner subsequently acquire, with respect to any matter, including, without limitation, the right of the City to require compliance with the terms of the Franchise.

(c) RMG shall furnish a performance bond to the City in the minimum amount of $350,000, as required by the Franchise, no later than the Closing Date and shall maintain the performance bond as required by the Franchise.

(d) RMG shall furnish the City with the certificates of insurance required under the Franchise, no later than the Closing Date, and shall maintain the insurance required under the Franchise.

(e) RMG shall furnish certificates from the North Carolina Secretary of State for RMG and Charter Communications, Inc., showing that they are authorized to transact business in North Carolina and that they are in good standing in North Carolina, no later than the Closing Date.

(f) RMG shall furnish the City of Asheville with satisfactory financial statements for Charter Communications, Inc., the parent corporation.

(g) RMG shall furnish to the City, no later than the Closing Date, a financial guaranty from Charter Communications, Inc. in a form and substance satisfactory to the City of Asheville, securing the performance of RMG under the Franchise.

(h) Assumption by Robin Media Group, Inc. in a separate document of the obligations of Brenmor Cable Partners L.P. in that document known as the "Side Letter" dated June 23, 1998, from Bruce J. Stewart, General Counsel, InterMedia, to City Manager James L. Westbrook, Jr.

(i) Payment of past due franchise fees to the City of Asheville by Charter Communications, Inc. in the amount of $25,421 for areas served by Charter Communications, Inc. within the corporate limits of the City of Asheville and for which no franchise had been previously secured from the City of Asheville and for which no franchise fees have been previously paid to the City of Asheville.

(j) Agreement by Robin Media Group, Inc. that it will use its best efforts to secure a provision in its cable system franchise with Buncombe County that, when areas are annexed into the City of Asheville, franchise fees will no longer be paid to Buncombe County but will be paid to the City of Asheville for those areas.

(k) Agreement by Robin Media Group, Inc. that the quarterly reports furnished to the City of Asheville by Robin Media Group, Inc. for franchise fee payments be in a form and substance satisfactory to the City of Asheville and which show the calculations upon which "Gross Annual Revenues," as defined in the Franchise, are made.

(l) Some type of modification to the "state-of-the-art" provisions in the Franchise satisfactory to the City of Asheville to incorporate other cable systems owned by Charter Communications, Inc. for comparison purposes, to ensure that comparisons can be made practically with systems owned by others in North Carolina and to place responsibility on Robin Media Group, Inc. to furnish data from other comparable systems owned by Charter Communications, Inc.

(m) Brenmor and RMG have agreed to the conditions specified in this transfer resolution and shall confirm their consent by signatures set forth below and shall execute and deliver to the City any and all other documents embodying their agreement to and implementing the above conditions, in form and substance satisfactory to the City Attorney, no later than the Closing Date.

City staff recommends approval of the assignment and transfer of the cable system, subject to the conditions set out in the resolution.

Ms. Meldrum responded to various questions and comments from Council relative to the transfer, some being, but are not limited to, what do we know about Charter with regard to the "state-of-the-art" provisions; can we try to re-negotiate some of the franchise provisions, such as

PEG channels and senior citizen discounts; pleased that there is a better accounting procedure in place now for franchise payments; what kind of changes to the service can City residents expect; and will the management change.

Ms. Diane Gilkeson, General Manager for the local Charter office, said that there is no immediate plan in the future to disrupt channels for City residents and when changes are made, customer notifications will be sent out.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

NEXT COMMUNITY MEETING LOCATION

It was the consensus of City Council to cancel the City Council community meeting scheduled for the central area on Tuesday, August 31, 1999, in the Public Works Building. This meeting will be held in conjunction with the Mayor's Roundtable on the Downtown which is scheduled on Thursday, October 7, 1999, at 7:00 p.m. The location of the Roundtable/ Community Meeting has yet to be determined.

BRACKETTOWN ROAD - ASHEVILLE MALL EXPANSION

City Manager Westbrook said that at the City Council meeting held on July 27, 1999, City Council asked staff to analyze several options pertaining to Brackettown Road including closing the road, or making it one-way in or out of White Pine Drive. At that meeting, staff agreed to analyze the data and report back to City Council in approximately 30 days.

The developers for the project have requested that the recommendation regarding Brackettown Road be made sooner, because this condition may have significant impact on the project. The developer's traffic consultant has provided the analysis to City staff and they will review the analysis and be prepared to make a recommendation to City Council at their formal meeting on August 10, 1999.

It was the consensus of City Council to have staff report back to them at their August 10, 1999, their recommendation regarding Brackettown Road in order to give City staff further guidance on that condition.

City Attorney Oast said that this will be an update of Council only by City staff and that no final vote will be taken on the Order until the formal meeting on August 24, 1999.

City Manager Westbrook said that notice of this report will be sent to property owners in the area and a copy of the report will be made available to them as well.

REPORTS ON BOARDS/COMMISSIONS

Vice-Mayor Hay reported that the following vacancies are being advertised: Planning & Zoning Commission, Tourism Development Authority, Tree/Greenway Commission and Regional Water Authority. Councilwoman Field noted that City Council will be hearing a report from City staff in September about splitting the Tree/Greenway Commission into two separate commissions. It was the consensus of City Council to hold their appointment to the Tree/Greenway Commission until appropriate ordinance revisions are made.

It was the consensus of City Council to allow Councilwoman Field look into the possibility of some type of ethics document for City Council. Councilwoman Field said that in the VISION report, it looks as though City Council is unwilling to address the issue, however, City Council feels that they are already doing it. Therefore, she said that she would be happy to research this issue and come back to City Council for a recommendation.

Councilwoman Field briefed City Council on a recent American Institute of Architects Conference she attend which included a roundtable on livable communities. She shared the information with City Council and felt that that it would be very beneficial to Council to hear the presentation made. She suggested at least one of the speakers be invited to attend a Mayor's Roundtable on sustainability . She also suggested that it was important for our Planning & Zoning Department to define neighborhood boundaries so that we can clearly understand how our neighborhoods work together.

At the request of Councilman Cloninger, it was the consensus of City Council to reschedule the public hearing to amend the Unified Development Ordinance to revise the standards of the wireless telecommunication facilities from August 24, 1999, to September 14, 1999.

Mayor Sitnick said that she has instructed the City Manager to develop a policy that focuses on any organization, including non-profits, that receives money from the City be required to have open meetings and open records. After that policy is developed, she will present it to City Council for consideration.

Mayor Sitnick said that she will be bringing up to City Council the possibility of hiring a public information officer in the next fiscal year. In addition, she will discuss with City Council the potential of hiring a full-time grants officer.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 4:37 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - August 10, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

A. OFFICIAL WELCOME AND RECOGNITION OF NEW UNC-A CHANCELLOR JIM MULLEN

On behalf of City Council, Mayor Sitnick officially welcomed new UNC-Asheville Chancellor Jim Mullen.

B. BELE CHERE 1999

Mayor Sitnick formally thanked the staff and volunteers who worked to make Bele Chere 1999 a success.

II. CONSENT AGENDA:

Due to a conflict of interest from Councilman Cloninger, Item E. was removed from the consent agenda.

A. RESOLUTION NO. 99-113 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE INSTALLATION OF BICYCLE RACKS IN VARIOUS LOCATIONS IN THE CITY OF ASHEVILLE

Summary: The consideration of (1) a resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) to provide for the installation of bicycle parking racks in various locations in the City of Asheville and (2) a budget amendment, in the amount of $60,000, for said project.

The 1997-2003 Bicycle Transportation Improvement Program provides for the installation of bicycle racks at various locations throughout the City of Asheville. Public Works staff, in conjunction with the Bicycle Task Force, has developed plans for the installation of approximately 114 bicycle racks in key downtown, park, and other public locations in accordance with the NC DOT standards and specifications. City staff has verified appropriateness based upon pedestrian access issues, streetscape impact, etc. The breakdown of locations is as follows:

Parks and Recreation: 42 - to be installed at park locations throughout the city parks. Some may be stockpiled for future projects.

Central Business District: 31 - Some locations still need to be verified with adjoining property owners. However, definitive sites are on Biltmore Avenue, Battery Park, Page Avenue, Haywood Street, Wall Street, Broadway, Patton Avenue, City Hall, South Market Street, Public Works Building, etc. City staff will present a map at the City Council meeting showing the criteria for selecting a site.

Park and Ride Lots: 3 - Staff is coordinating with Transit Services Director on locations.

Parking Garages: 2 - Staff is coordinating with Parking Services on locations.

Asheville High School: 2

Other Areas: 34 - These will be determined as the project unfolds, and/or stockpiled for future installation. Staff has a list of interested parties that want to be considered for placement (Buncombe County locations, etc.)

The NC DOT has left a lot of flexibility in where the bicycle racks will be ultimately installed. Their main criteria is that they must be on public property or right-of-way. We have to go through formal bid procedures for the racks. Once the Municipal Agreement is signed, we have to get approval from the NC DOT to bid. The racks will probably not be in until the Winter of 1999 and hopefully the installation will be contracted out under the grant. If not, it will be a rainy day winter project and we will be reimbursed for labor and equipment costs. This will depend on the bid results.

The Public Works Department (Bike/Pedestrian Coordinator) will oversee administering the agreement which includes rack installation and distribution to Parks and Recreation, Transit Services, Parking Services, and City Schools. As limited bicycle parking facilities exist, the City of Asheville will greatly benefit from this project.

A budget amendment, in the amount of $60,000, is necessary for the project. Upon completion of the project, the NC DOT will reimburse 100% of all costs for equipment and rack installation for an amount not to exceed $60,000.

The Public Works Department staff recommends adoption of (1) a resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation (TIP Project C-3415) to provide for the installation of bicycle parking racks in various locations in the City of Asheville; and (2) a budget amendment, in the amount of $60,000, for said project.

RESOLUTION BOOK NO. 25 - PAGE 263

B. ORDINANCE NO. 2595 - BUDGET AMENDMENT FOR THE INSTALLATION OF BICYCLE RACKS IN VARIOUS LOCATIONS IN THE CITY OF ASHEVILLE

Summary: See Item "A" above.

At the request of Ms. June Lamb, City Manager Westbrook explained how the budget amendment affects the adopted budget.

ORDINANCE BOOK NO. 17 - PAGE 411

C. **RESOLUTION NO. 99-114 - RESOLUTION FIXING DATE OF PUBLIC HEARING ON AUGUST 24, 1999, TO ANNEX PROPERTY LOCATED ON SWEETEN CREEK ROAD AND PEACH TREE STREET KNOWN AS ROYAL PINES POOL AND PARK PROPERTIES**

RESOLUTION BOOK NO. 25 - PAGE 264

D. **RESOLUTION NO. 99-115 - RESOLUTION FIXING DATE OF PUBLIC HEARING ON AUGUST 24, 1999, TO ANNEX PROPERTY LOCATED OFF OF HENDERSONVILLE ROAD AND KNOWN AS DEERFIELD EPISCOPAL RETIREMENT COMMUNITY INC.**

RESOLUTION BOOK NO. 25 - PAGE 266

E. **RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE REGIONAL WATER AUTHORITY TO AWARD A CONTRACT TO McGILL ASSOCIATES TO IMPLEMENT ENGINEERING SERVICES FOR A RECENTLY AWARDED $3 MILLION STATE GRANT FOR WATER DISTRIBUTION IMPROVEMENTS**

This item was removed from the Consent Agenda due to a conflict of interest from Councilman Cloninger.

F. **ORDINANCE NO. 2596 - BUDGET AMENDMENT TO FUND THE CRITICAL NEEDS GRANT PROJECT**

Summary: The consideration of a budget amendment, in the amount of $3,000,000, amending Capital Project Ordinance 82-25 (35 Fund - Water Major Capital Improvements Fund) to fund the $3 million State Grant Projects.

By Resolution 82-25 dated October 5, 1982, the Regional Water Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

Capital Project Ordinance 82-25 needs to be amended to include appropriations for the following projects which will be funded with a $3,000,000 Grant and a local match of $289,960:

- $646,820 for Critical Needs Contract #1 - North Asheville to include Madison Avenue, Country Club Road/Grovemont Road/Lynnwood, Woodward Avenue, Richie Street, Orchard Street, Robindale Road, Lee Street/Prospect Street
- $897,700 for Critical Needs Contract #2 - Town Mountain/Beaverdam Areas to include Lynn Cove Road, Lawterdale Road, Cogswood Road, Cherokee Road, Sunset Drive
- $684,760 for Critical Needs Contract #3 - East and South Buncombe to include Chunns Cove Road, Buckeye Cove Road, Beacon Village, Wilson Avenue/Grovemont, Upper Moffit Branch, Deaver Street, Crescent Hill Road
- $1,060,680 for Critical Needs Contract #4 - Northwest Buncombe to include Smith Graveyard Road/Eliada Home, Adams Hill Road/Wolf Park Circle

Staff recommends approval of a budget ordinance amending Capital Project Ordinance 82-25 (35 Fund) to provide funding in the amount of $3,289,960 for Critical Needs Contracts 1, 2, 3, and 4 to be funded with a $3,000,000 Grant and matching funds of $289,960.

At the request of Ms. June Lamb, City Manager Westbrook explained how the budget amendment affects the adopted budget.

ORDINANCE BOOK NO. 17 - PAGE 413

G. RESOLUTION NO. 99-116 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY TO THE N.C. DEPT. OF TRANSPORTATION FOR A TRANSPORTATION ENHANCEMENT PROGRAM GRANT FOR (1) SIDEWALK IMPROVEMENTS SURROUNDING THE GROVE ARCADE, (2) PRITCHARD PARK, AND (3) THE URBAN TRAIL

Summary: The consideration of a resolution authorizing the City Manager to apply to the N. C. Dept. of Transportation (NC DOT), through the Transportation Enhancement Program, for a grant for (1) sidewalk improvements surrounding the Grove Arcade, (2) Pritchard Park, and (3) the Urban Trail.

Funds are available through the NC DOT in the Transportation Enhancement Program for the Transportation Equity Act for the 21st Century (TEA21). The Transportation Enhancement Program is designed to provide links to traditional and alternative transportation by improving safety, protecting the environment and public health, and creating the opportunity for communities to improve their quality of life.

The Transportation Enhancement Program is a cost reimbursement grant requiring at least a 20% cash match from the local sponsor. Projects must fit within one or more of the eleven enhancement categories, provide a transportation link, all right-of-way must be in public ownership, demonstrate high visibility, and be ready to implement and complete within one year after the award date.

The NC DOT has approximately $12 million to distribute statewide each year for the next three years. The NC DOT is currently in the first call for proposals, and plans to call for proposals in March 2000 and March 2001. The City of Asheville will have the opportunity to apply each year.

A team of staff from the Engineering, Parks and Recreation, and the Public Works Departments met to review the proposed projects using the criteria directed by the NC DOT. One of the primary criteria, as previously outlined, was the requirement to have allocated matching funds budgeted for each project. As a result, the City of Asheville wishes to apply for funds during the first call of proposals for (1) sidewalk improvements surrounding the Grove Arcade, (2) construction of Pritchard Park, and (3) pedestrian streetscape improvements to complete the Urban Trail.

Grove Arcade Pedestrian/Sidewalk Improvements - The project will enhance and facilitate pedestrian and vehicular traffic to and from the Grove Arcade with wider and improved pedestrian access, landscaping, and resurface streets due to sidewalk improvements.

Total project cost: $310,000
Grant request: $175,000
Local match: $135,000 (43%);

Pritchard Park - The project will construct Pritchard Park including pedestrian facilities and access, streetscape improvements, bicycle route connections, and safety features for pedestrians and bicyclists. Traffic analysis is currently in progress and will be available prior to grant award date.

Total project cost: $1,275,000
Grant request: $800,000
Local match: $475,000 (37%);

Urban Trail - The project consists of pedestrian streetscape improvements along the 1.7 mile trail, including decorative pedestrian crossing, installation of ADA ramps, removal of ADA obstacles, installation of the transportation station and a trail information station, installation of tree grates, improved pedestrian lighting, landscaping, and necessary sidewalk improvements.

Total project cost: $584,834
Grant request: $429,134
Local match: $155,700 (26.6%).

The City has several other projects that are potentially eligible for the Transportation Enhancement Program, such as pedestrian improvements in Biltmore Village, College Street Corridor, and construction of the Broadway Greenway. Due to the current position of the projects, staff recommends they not be considered at this time. Necessary details are being pursued on these projects for the next application cycle.

The Engineering, Parks and Recreation, and the Public Works Departments request the City Council review and concur with the recommendation for projects to be included in City of Asheville proposal for the TEA21 Transportation Enhancement Program. The Departments also recommend the City Manager be authorized to apply for and enter into an agreement in the event the City of Asheville receives the grant award.

RESOLUTION BOOK NO. 25 - PAGE 268

H. MOTION SCHEDULING THE PUBLIC HEARING SET FOR AUGUST 24, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE STANDARDS OF WIRELESS TELECOMMUNICATION FACILITIES TO SEPTEMBER 14, 1999

I. RESOLUTION NO. 99-117 - RESOLUTION SETTING A LIMITED EVENT FEE FOR THE HONDA HOOT 2000 PARKING

Summary: The consideration of a proposal by Honda Rider's Club of America regarding parking fees for Honda Hoot 2000 and adoption of an enabling resolution.

The Honda Rider's Club of America has sponsored the Honda Hoot Rally in Asheville, North Carolina, for the past six years, and desires to bring the rally to Asheville again in 2000.

For parking arrangements, Honda Rider's Club has proposed a permit system like that used during this year's Rally. Subsequent dialog between Honda Rider's Club and City staff has resulted in the following verbal proposal from Honda:

- Honda will produce and provide a sticker, suitable for affixing to each motorcycle's headlamp, to indicate payment of the parking fee.
- Motorcycles bearing headlamp stickers will be allowed to park in a designated area of the Civic Center parking garage, in designated areas of closed streets and at metered spaces throughout the downtown area for the duration of the rally.
- Honda would remit to the City $3.00 for each pre-registered motorcycle and would provide additional stickers for sale by Parking Services staff on-site at $5.00 each.
- The City will grant "festival status" for Honda Hoot 2000.
- The City will provide overflow motorcycle parking from the Civic Center parking garage along one lane of Rankin Ave. from Walnut to Hiawassee and provide the same street

closures as for this year. Honda is aware that Page Ave. closure may not be feasible due to Grove Arcade activity or street/sidewalk construction.

Assuming the same number of pre-registrations and on-site sales as this year, the proposal for 2000 would generate approximately $11,455 from sticker sales. This year's revenue from sticker sales was $4,194.

In order to proceed with planning for the 2000 Rally, Honda had requested a response to their proposal by August 1. Prior to receipt of their proposal, Honda had been informed that formulation of a plan to accommodate their parking needs would probably extend beyond August 1. On July 20, following confirmation that the Grove Arcade did not anticipate opening prior to July 1, 2000, they were informed that their proposal would be scheduled to be presented to Council at the August 3 worksession.

Honda Rider's Club of America has indicated that Mr. Walt Miller will attend the August 3, 1999, worksession to discuss and answer any questions Council may have regarding their proposal.

If City Council finds the Honda proposal acceptable, staff requests the adoption of the enabling resolution which sets the limited event fee for Honda Hoot 2000.

RESOLUTION BOOK NO. 25 - PAGE 269

J. RESOLUTION NO. 99-118 - RESOLUTION RELATIVE TO ASSIGNMENT OF CABLE TELEVISION FRANCHISE FROM BRENMOR CABLE PARTNERS, L.P. TO ROBIN MEDIA GROUP INC. (d/b/a CHARTER)

Summary: Brenmor Cable Partners, L.P. (d/b/a InterMedia) and Robin Media Group Inc. (d/b/a Charter) are seeking approval of the assignment and transfer of the cable system from InterMedia to Charter.

InterMedia owns, operates, and maintains a cable television system ("System") in the City of Asheville (the "City"), pursuant to City of Asheville Ordinance No. 2496 and Ordinance No. 2500, dated June 23, 1998 and July 28, 1998, respectively (the "Franchise") and is the current authorized holder of the Franchise.

InterMedia is proposing to assign and transfer the assets, including the Franchise, of the System to Robin Media Group, Inc. ("RMG"), which will then be owned and controlled by Charter Communications, LLC, ("Charter"), subject to, among other conditions, any required approval of the City with respect thereto.

InterMedia and Charter have requested consent from the City to assign and transfer the System, including the Franchise, to RMG in accordance with the requirements of the Franchise by filing FCC Form 394, and accompanying documents, (the "Application") with the City. The terms of the Franchise require that prior to an assignment or transfer of the Franchise, the City must grant its prior written consent thereto. Federal law and the Franchise require a determination by the City that RMG has the requisite legal, technical and financial capability as described in the Application before the transfer is approved.

Based upon a review of the Application and Franchise, City staff is recommending approval of the assignment and transfer of the System, including the Franchise, from Brenmor Cable Partners, L.P. to Robin Media Group Inc., subject to compliance with certain conditions. Those conditions are set forth in the resolution approving the assignment and transfer.

City staff recommends approval of the assignment and transfer of the cable system, subject to the conditions set out in the resolution.

Mr. Joe Haight, General Manager of InterMedia, thanked City Council for working with him over the past years. He said that he will be leaving his position with InterMedia, however, he would not be leaving the Asheville community and hoped that he can contribute to the community in constructive ways. He said that prior to his leaving, he will make every effort to get the PEG channels up and running.

RESOLUTION BOOK NO. 25 - PAGE 270

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 99-119 - RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE REGIONAL WATER AUTHORITY TO AWARD A CONTRACT TO McGILL ASSOCIATES TO IMPLEMENT ENGINEERING SERVICES FOR A RECENTLY AWARDED $3 MILLION STATE GRANT FOR WATER DISTRIBUTION IMPROVEMENTS

Vice-Mayor Hay moved to excuse Councilman Cloninger from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

Summary: The consideration of (1) approving a contract with McGill Associates to implement engineering services for a recently awarded $3 million State Grant for water distribution improvements and (2) authorizing the Director of Water Resources to establish a Memorandum of Understanding with the City of Asheville Engineering Director for engineering services.

On Thursday, July 15, 1999, five proposals were received from consulting engineering firms for engineering services for Contracts 1-3 of 4 contracts defined under the $3 million State grant. On Monday, July 19, 1999, a selection committee approved by the Water Authority's Policies & Priorities Committee and consisting of Mr. Gary Semlak, Mr. Mike Brookshire, and Mr. Tom Frederick met after reviewing the proposals. The selection committee ranked the proposals based on the following criteria set out in the RFP: firm's demonstrated qualifications, ability to meet the design schedule, project approach, financial standing of firm, and the firm's minority business plan. Based on these criteria, the committee selected McGill Associates as the most qualified for this work and determined that McGill Associates satisfactorily demonstrated the ability to perform all three projects.

Following the evaluation based on RFP criteria, the committee also reviewed McGill Associates' separately submitted fee schedule and determined the proposed fee to be within the project budget for these services. Through further negotiations with McGill, the final recommended contract amount was reduced to $204,600.

Other firms submitting proposals include W. K. Dickson, William G. Lapsley & Associates, Mattern & Craig, and Vaughn & Melton.

The Director of Water Resources has also received and recommends a written proposal from the City of Asheville Engineering Department to provide engineering services for Contract 4 of this grant not to exceed $76,560, which is also well within the project budget.

On July 20, 1999, the Regional Water Authority unanimously approved both staff recommendations. The grant requires engineering design and permitting to be completed by November 1, 1999; therefore, City Council's earliest consideration of this recommendation would be appreciated.

Staff recommends the City Council approve the execution of an engineering contract to McGill Associates for $204,600 and authorize the Director of Water Resources to establish a Memorandum of Understanding with the City of Asheville Engineering Director for engineering services not to exceed $76,560.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Sellers moved for the adoption of Resolution No. 99-119. This motion was seconded by Vice-Mayor Hay and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 274

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO REZONE A PORTION OF A SPLIT-ZONED LOT ON VIRGINIA AVENUE AND HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT

ORDINANCE NO. 2597 - ORDINANCE TO REZONE A PORTION OF A SPLIT-ZONED LOT ON VIRGINIA AVENUE AND HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT

Mayor Sitnick opened the public hearing at 5:20 p.m.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of an ordinance to rezone the remainder of a lot located on Haywood Road from RM-8 Residential Multi-Family Medium Density District to Community Business II District. This public hearing was legally advertised on July 30, 1999, and August 6, 1999.

The petitioner, West Asheville Presbyterian Church, has requested to rezone the rear portion of the church lot (PIN No. 9638.13-24-3282) on Haywood Road from RM-8 to Community Business II so the entire Church property will be zoned the same. The Church wishes to revise its parking area to comply with the new handicapped accessibility code. The Church has also submitted a site plan to increase their parking facility on property they own across Virginia Avenue. The 2010 Plan indicates the area along the frontage of Haywood Road to be institutional and/or commercial. Past expansions of the church have carried over into the residentially zoned area.

The Planning staff reviewed the request and recommended approval. At their July 7, 1999, Planning & Zoning Commission meeting, the Commission voted unanimously to recommend the rezoning of the remainder of one lot located on Haywood Road from RM-8 to Community Business II District.

Ms. Norma Price, resident of 26 Zephyr Drive, urged City Council to rezone the property to Commercial Business II District.

Mayor Sitnick closed the public hearing at 5:26 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved for the adoption of Ordinance No. 2597. This motion was seconded by Councilman Cobb and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 415

B. PUBLIC HEARING TO REZONE SEVEN LOTS ON SAND HILL SCHOOL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2598 - ORDINANCE TO REZONE SEVEN LOTS ON SAND HILL SCHOOL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 5:27 p.m.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of an ordinance to rezone seven lots on Sand Hill School Road from RM-6 Residential Multi-Family Low Density District to RM-16 Residential Multi-Family High Density District. This public hearing was legally advertised on July 30, 1999, and August 6, 1999.

The initial request from the petitioners (Grace and Douglas Beale) was to rezone the seven lots (PIN Nos. 9617.12-86-2597, 4361, 4434, 5361, 5451, 6217, and 6563) on Sand Hill School Road from RM-6 to Institutional to allow for the construction of an assisted living facility. Staff reviewed the request and concurred that the permitted uses in the Institutional Zoning District would be too intense for this neighborhood. After further review, staff recommended to the petitioners that RM-16 would meet their needs and still maintain the residential character of the immediate area. The 2010 Plan indicates this area to be low density residential and institutional. The neighborhood to the south and west contains two schools and a church. The property also borders an industrial park to the north. The RM-16 Zoning District would be compatible with the surrounding residential neighborhood to the east. At the Planning & Zoning Commission public hearing, one couple spoke in opposition and presented a petition with 37 signatures opposing the rezoning. After the meeting, the couple was informed of the protest petition procedure.

The Planning staff reviewed the request and recommended approval of the RM-16 zoning. At their July 7, 1999, meeting the Planning & Zoning Commission voted 5 to 2 to recommend approval of the RM-16 zoning for the seven lots on Sand Hill School Road.

Upon inquiry of Councilwoman Field about what the concerns were from the couple who opposed the rezoning, Mr. Ownbey said that they felt the facility would cause an additional traffic problems along Sand Hill School Road, in addition to the ballfield and recreational facilities on the other side of the school.

Upon inquiry of Councilman Cobb, Mr. Ownbey said that Sand Hill School Road is a state road.

City Attorney Oast reminded City Council that if the property is rezoned, it can developed into any use allowed in the RM-16 zoning district.

Ms. Grace Beale, petitioner, spoke in support of rezoning the property in order to build an assisted living facility.

Mayor Sitnick closed the public hearing at 5:38 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2598. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 417

C. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH THE DEFINITIONS OF COMMUNITY FACILITIES AND COMMUNITY IDENTIFICATION SIGNS, TO DETERMINE THE LOCATIONS OF COMMUNITY IDENTIFICATION SIGNS, TO AMEND THE REGULATIONS REGARDING SIGNS IN THE RIGHT-OF-WAY, AND TO AMEND REGULATIONS REGARDING THE ENFORCEMENT REMEDIES

Mayor Sitnick opened the public hearing at 5:47 p.m.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of amending the Unified Development Ordinance ("UDO") regarding: (1) Enforcement Remedies and Procedures, (2) Signs Located in the Rights-of-Way, (3) On-Premise Signs / Single Tenant Development - Community Identification Signs, and (4) Definition of Community Facilities and Community Identification Signs. This public hearing was legally advertised on July 30, 1999, and August 6, 1999.

During June and July of 1999, the Planning and Zoning Commission held various worksessions and regular meetings at which they discussed and recommended several wording amendments concerning enforcement of zoning violations of the Unified Development Ordinance, providing enforcement and regulation of signs in the rights-of-way, and definition and location of community identification signs.

The Commissioners approved the recommendations of the Planning staff and the Legal staff on regulations regarding enforcement remedies and procedures concerning zoning violations, the placement of signs in the City and State rights-of-way, and the definition of Community Facilities and Community Identification Signs.

The Commissioners held two hearings concerning the location and size of Community Identification Signs (the Haw Creek community requested additional square footage for identification of community facilities) and approved the maximum square footage of the Community Identification Sign to be equal to that of a subdivision or multi-family sign at 16 square feet based on initial community input. After the Commission's decision, it was determined that this recommendation does not meet the needs of the community in adequately identifying community facilities because the sign size is too small.

Should City Council wish to address this issue, staff suggests that ordinance be referred back to the Planning & Zoning Commission to consider additional sign size for the identification of community facilities.

The Planning and Development staff presented these proposed wording amendments to the Planning and Zoning Commission at various meeting at which they voted unanimously to recommend to City Council the adoption of all these wording amendments. Staff recommends referring the ordinance concerning location and size of community identification signs back to the Planning & Zoning Commission to reconsider their recommendation.

Mr. Ownbey and Ms. Sharon Allen, Development Code Administrator, answered several questions from City Council relative to the ordinance revision regarding enforcement remedies and procedures, some being, but are not limited to, why was this provision not included in the UDO since it was included in the old Zoning Ordinance, what is a remove order, how is the provision being enforced now, and is the City enforcing any penalties.

Because City Council would like the opportunity to study each of the four ordinance revisions thoroughly, Councilwoman Field moved to discuss these amendments at a worksession, to be determined by City staff, at which time City Council will schedule the public hearing again. This motion was seconded by Councilman Sellers and carried unanimously.

Councilman Sellers moved to postpone this public hearing indefinitely. This motion was seconded by Councilwoman Field and carried unanimously.

D. PUBLIC HEARING RELATIVE ANNEXING PROPERTY LOCATED OFF OF LONG SHOALS ROAD AND KNOWN AS BILTMORE PARK COMMON AREAS (BILTMORE PARK ANNEXATION SECTION 14), SCHENCK PARKWAY, 100 TECHNOLOGY DRIVE AND THE VOLVO BUILDING PROPERTY

ORDINANCE NO. 2599 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE BY ANNEXING A CONTIGUOUS AREA LOCATED OFF OF LONG SHOALS ROAD AND KNOWN AS BILTMORE PARK COMMON AREAS (BILTMORE PARK ANNEXATION SECTION 14), SCHENCK PARKWAY, 100 TECHNOLOGY DRIVE AND THE VOLVO BUILDING PROPERTY

Mayor Sitnick opened the public hearing at 5:56 p.m.

Mr. Paul Benson, Urban Planner, said that this is the consideration of an ordinance to annex property located off of Long Shoals Road and known as Biltmore Park Common Areas (Biltmore Park Annexation Section 14), Schenck Parkway, 100 Technology Drive and the Volvo Building property. This public hearing was legally advertised on July 30, 1999.

Biltmore Farms, Inc. has submitted an annexation petition for Biltmore Park, Sections 14 (Biltmore Park Common Areas) and 15, (Schenck Parkway/100 Technology Drive) to expand its office/technology park. They have also submitted an annexation petition for Section 16 (Volvo Building property) which is a portion of the Broadlands Technology Park. Section 14 is approximately 20 acres of undeveloped land, Section 15 (Schenck Parkway) is approximately 8 acres of basically a 100-foot right-of-way that extends about 3,500 feet from Long Shoals Road up to the Technology Park, Section 15 (100 Technology Drive) is approximately 5 acres which is scheduled for construction of a 50,000 square foot high-tech flex building for economic development, and Section 16 is the Volvo Building property (approximately 5 acres). He said the total area is 37.3 acres and it is contiguous to the City limits. The effective date of this annexation is February 8, 2000.

The Volvo Building area, along with Sections 14 and 15, is located adjacent to the other sections of Biltmore Park previously annexed by the city, and is located west of Overlook Road and north of Long Shoals Road. This annexation is pursuant to an agreement between Biltmore Farms, Inc. and the City of Asheville.

Petitions requesting annexation of property located off of Long Shoals Road and known as Biltmore Park Common Areas (Biltmore Park Annexation Section 14), Schenck Parkway and 100 Technology Drive were received on May 20, 1999.

On July 16, 1999, the City received a petition dated July 14, 1999, for property known as the Volvo Building Property, which is located on Schenck Parkway adjacent to 100 Technology Drive. It is advisable to consider the annexation of all of these properties at the same time.

Planning staff recommends City Council adopt the ordinance extending the corporate limits of the City of Asheville by annexing a contiguous area located off of Long Shoals Road and known as Biltmore Park Common Areas (Biltmore Park Annexation Section 14), Schenck Parkway, 100 Technology Drive, and the Volvo Building property.

Mayor Sitnick closed the public hearing at 5:57.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 419. This motion was seconded by Councilman Sellers and carried unanimously.

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IV. UNFINISHED BUSINESS:

IV. UNFINISHED BUSINESS:

A. DISCUSSION REGARDING BRACKETTOWN ROAD AS IT RELATES TO THE ASHEVILLE MALL EXPANSION

City Attorney Oast said that on July 27, 1999, City Council voted to issue a conditional use permit for the Asheville Mall expansion, subject to staff preparing and coming back to City Council with some recommendations as to conditions. There was a shortage of some information for City Council to give staff appropriate direction regarding Brackettown Road. The purpose of this discussion is for staff to have that exchange of information with City Council about the information they have learned and to receive direction from City Council how they wish to proceed. This is not a final vote on the Brackettown Road matter because the final vote on the Brackettown Road condition, as well as all of the other conditions of the conditional use permit, will be made on August 24, 1999.

City Traffic Engineer Michael Moule said that at the conclusion of the public hearing on July 27, 1999, for the Asheville Mall Expansion, the City Council requested an evaluation of the impact of modifying the Mall's access to White Pine Drive.

The developer's traffic consultant submitted a Technical Memorandum that analyzed the following four possible scenarios: Scenario I, Full movement as it exists; Scenario II, Brackettown Road closed entirely; Scenario III, Brackettown Road inbound only; and Scenario IV, Brackettown Road outbound only. The estimation of the number and distribution of trips diverted to the remaining Mall accesses and the distribution of these trips among these accesses are reasonable based upon the available data. The number of trips diverted to other Mall accesses was overestimated slightly because no data was available for how much traffic from the adjacent restaurant and service station uses White Pine Drive. This means that the actual resulting levels of congestion from reconfiguring Brackettown Road will probably be a little bit less severe than the predictions from the Technical Memorandum.

Closing or altering the travel patterns on Brackettown Road forces vehicles to other accesses thereby putting increased traffic burden on these intersections. The Technical Memorandum includes diagrams that indicate significant increases due to these redistributed trips at the remaining three driveways and at the intersection of Tunnel Road and South Tunnel Road. The increases due to the closing of White Pine Drive are 3 to 5 times larger than the increases associated with the Mall Expansion. In addition, for the two Scenarios that include closing Brackettown Road to outbound traffic (Scenarios II and III), the redistributed exiting traffic includes high volumes of left turns, which are generally difficult to accommodate. The consultant used the traffic volumes shown on the diagrams then optimized the signal timing for the entire corridor for each Scenario.

The report concludes that the intersections within the corridor will operate at acceptable levels of service during the weekday afternoon peak hour for Scenarios II, III, and IV. This means that each intersection will have an overall level of service of A, B, C, or D; equivalent to an average delay per vehicle of less than 40 seconds. Under all three scenarios, several of the intersections will operate at level of service D, which is generally considered acceptable, but indicates higher delays than would occur if Brackettown Road remains unrestricted. During the Saturday peak hour, all three scenarios have at least one intersection that will operate at a level of service of E or F; levels which are generally considered unacceptable. This translates to an average delay per vehicle at these intersections of 40 seconds or more.

The following attempts to explain the problems that occur during the Saturday peak hour. The original proposal optimized the signals in the corridor by reducing the cycle length. He suggested that reduced cycle lengths are better at serving side streets and driveways, but may reduce the overall capacity of the road. The original traffic study predicted that during the Saturday peak, the intersection of Tunnel Road and South Tunnel Road would operate very near capacity, but with acceptable delay. When the large volumes of traffic diverted from Brackettown Road are added to this intersection, the volume of traffic exceeds its theoretical capacity. In order for this intersection to operate within its capacity, the consultant needed to increase the cycle lengths. This in turn means that the other Mall driveways are not served as often, thus reducing the level of service at these intersections. This problem is more severe under Scenarios II and III than Scenario IV. This is due to the major increase in left turn volumes at various locations created by the redistributed exiting traffic.

Other Factors: Closing or restricting Brackettown Road will allow residents of Kenilworth Forest to access their homes more conveniently, especially during the peak hour. However, this change will require that many other motorists, particularly those accessing the Mall from the Tunnel, will need to travel farther and experience increased delay at several intersections. In general, maintaining multiple connections eases traffic congestion in the long term, whether these connections are to a mall, to a neighborhood, or to a city's downtown.

After reviewing the report and the indicated levels of congestion throughout this corridor, staff recommends that full access (both ingress and egress) be maintained. All three options for restricting Mall access to White Pine Drive would increase congestion throughout the entire corridor. Of the alternatives for restricting Brackettown Road, the "outbound only" option causes the lowest level of congestion, but is still worse than maintaining full access. The original analysis showed that if a shorter cycle length is implemented in the corridor, the delays experienced while entering and exiting White Pine Drive will be shorter than the existing delays, even if the Mall expansion takes place.

Councilman Cloninger asked if it would help to change the design to be more perpendicular where the right hand island of Brackettown Road connects to White Pine Drive in order to discourage people from blocking the right turn lane when coming out of Brackettown Road trying to make a left onto Tunnel Road. Mr. Moule said that Brackettown Road was modified to have a 90-degree angle but there is a radius which creates the effect of not having a real sharp corner. He felt that reducing that radius might create a problem for trucks to make that turn. He personally felt that even with that change and the already existing sign that says "do not block intersection" on the stop sign, will not change the drivers' behavior.

Upon inquiry of Mayor Sitnick, Mr. Moule said that they can look into restricting trucks from coming out of Brackettown Road onto White Pine Drive.

Councilman Cloninger also asked if re-routing Brackettown Road where it enters White Pine Drive further away from the stop light on Tunnel Road would help. Mr. Moule recommended against moving Brackettown Road further away from the traffic light on Tunnel Road in that there is already an existing site distance problem coming over the crest of the hill on White Pine Drive.

Councilwoman Field suggested putting up a traffic light with a blinking yellow light on White Pine Road side and a blinking red light on the Brackettown Road side. Mr. Moule said that his observations are that drivers coming out of Brackettown Road are not coming to a complete stop, however, they do look up to the left and yield to traffic coming down White Pine Drive. He felt that, again, is a behavioral problem and putting up flashing beacons wouldn't help that situation because most people are aware they should stop there. He did say that a full analysis could be done to find out the appropriate speed to come over the crest of the hill on White Pine Drive since there is a perceived non-yielding from Brackettown Road.

Mayor Sitnick wondered if technology was available, similar to that on Merrimon Avenue, where red lights flash when the traffic signal ahead, over a hill, is red. Mr. Moule said that the technology is available and some sort of detection system could be put on Brackettown Road and then have some sort of warning beacons on White Pine Drive. He felt they would want to look into the site distance issue before something like that was installed. He said there are other ways to address the site distance issue, one of which is to put a stop sign on White Pine Drive.

Mayor Sitnick felt that the issues on Brackettown Road existed before the expansion was proposed and she really didn't think that addressing Brackettown Road, as it pertains to the expansion, is an accurate or an appropriate way to do it. She didn't think the expansion is going to have that much more of an impact on Brackettown Road. It may have more of an impact on

Tunnel Road, and because of that, she asked that, however Council votes on this in two weeks, perhaps we can find some reasonable time after the expansion is completed that we reassess whatever impact there is on Brackettown Road and White Pine Drive to be able to institute whatever technology we can so that there is convenience and safety for the neighborhood and for the Mall traffic.

Councilwoman Field asked if Council were to vote to have no traffic entering White Pine Drive from Brackettown Road, would the traffic light on Tunnel Road be removed because there were not be enough cars to warrant the light. Mr. Moule said the area would probably not meet the warrants after that, but there still would be traffic coming off the Exxon Station and the International House of Pancakes. He said it is difficult to predict what the N.C. Dept. of Transportation would do.

Councilman Cobb felt that the City needed to leave Brackettown Road as it currently exists, at this point. He is also convinced that the expansion will increase traffic at the intersection of Brackettown Road and White Pine Drive. He suggested moving the intersection back 50 feet, designing the intersection for a perfect "T", and adding a red light. The light could stay green for the Mall traffic until someone from the neighborhood of White Pine Drive triggers it.

Vice-Mayor Hay wondered if we will be making the storage problem worse on White Pine Drive if the new timing sequences along Tunnel Road are activated. Mr. Moule felt the new timing sequences should make the problems better and that the storage problems would be slightly less.

Upon inquiry of Councilman Cobb, Mr. Moule did not think that the N.C. Dept. of Transportation ("NC DOT") has any plans for a red light at the new Sears entrance. He said that already the spacing between the White Pine Drive signal and the South Tunnel Road signal is shorter than traffic engineers often like for these types of large roads. He felt the more appropriate treatment would be to not allow left turns out of that drive.

Mr. Phil Noblitt, 297 White Pine Drive, said that there is an access at the Sears Auto store and nothing in the study indicated any analysis of that entrance. He said that entrance is probably not more than 200 feet from White Pine Drive and he wished that would have been looked at as well. He would like to know how the traffic signals will be looped. He understands they will reallocate the signalization so that South Tunnel Road and Tunnel Road going toward Wal-Mart are separate. He hasn't gotten any clear indicated from either NC DOT or City staff as to whether White Pine Drive will be with the South Tunnel Road loop or whether it will be with the Wal-Mart loop. The only less than tolerable thresholds that he saw when he looked at the report was on Saturday peak hours. He said that convenience is an issue, but there is also very much a safety issue. He said he would be very disinclined to move Brackettown Road up the hill or to cut off White Pine Drive to lower it because that hillside serves as an effective buffer for noise. He noted that there is a 20% projected increase in turning movements coming off of Brackettown Road onto White Pine Drive. He also mentioned there is the social dimension of traffic that has not been addressed. He understands that traffic engineers want to inconvenience the least number of people, but at the same time, is it better to inconvenience some people occasionally or to inconvenience and put at risk the people from the neighborhood on a daily basis. He said that even though the Highway Capacity Manual suggests that Level D service is deemed acceptable, they do not consider it an acceptable level of service. The neighborhood is concerned about the cumulative impacts of the Lowe's superstore, etc. opening on Tunnel Road. He is very appreciative of City Council looking at Brackettown Road as it enters White Pine Drive and suggested the intersection (not only the centerline) be made a perfect "T". He reiterated that the Kenilworth Forest Community Club's motion passed unanimously to close Brackettown Road or making it one-way. He hoped City Council would try to do what they can to ameliorate the traffic into Brackettown Road and put some measure in that would let you analyze, after the fact, what the total impact has been. He hoped that this issue can resurface when it reaches an unacceptable condition.

Mayor Sitnick said that City Council would revisit any road where they saw safety was an issue.

Mr. Mike Lebovitz, Senior Vice President of CBL & Associates Properties, said that his company feels it is very important and critical for this project moving forward to understand the Council's feelings on the Brackettown Road issue, although he realizes that none of the conditions placed upon the Mall are final until the final vote on August 24. He stressed that the Brackettown Road entrance is of critical importance, not to the expansion of this project, but to the day-to-day viability of the Mall and the success of the Mall. The tax revenues that are generated from this Mall and the overall positive impact it has on the Asheville community is in a great way attributable to the ingress and egress of which Brackettown Road is important, irrespective of the expansion of the Mall. They, too, are concerned about the safety of the residents of the Kenilworth subdivision and they are also concerned about the safety of the patrons of the Mall.

Ms. Margaret Kubilins, the developer's traffic consultant, emphasized two issues - mobility and the efficiency of Tunnel Road. She felt the entire length of Tunnel Road will reap benefits from the shorter cycle lengths, as well as the community and the Kenilworth neighborhood. Regarding the issue of closing Brackettown Road, she participated in various community meetings and one issue that keeps being brought up is mobility and the ease of access to get around. She said that closing one more connection will not be going in the proper direction. She recommended that Council keep the connection as it is. They will work with the NC DOT to improving the access on White Pine Drive by modifying the signal timing.

City Manager Westbrook said that the kind of guidance that staff is looking for in this issue is whether or not whether Brackettown Road be closed, one-way, or left as is. The City's traffic engineer has recommended that it have full movement as it currently exists. The second issue is that Council and the community has concerns about traffic not coming to a full stop as they exit Brackettown Road. Perhaps the guidance to staff could be to work with the developer and the neighbors to come up with a solution on the exiting of the Mall problem, either through design, signal timing, visual indications, etc. that would work in that particular intersection. There may be even some combination of the suggestions made that may work very well, be cost effective and work great for the developer as well as for the neighborhood.

Mayor Sitnick wanted to make it clear to everyone involved that this Council is very concerned not only about the convenience and safety of Mall visitors, but of the convenience and safety of the neighborhood. It was her personal hope that this will not be a stagnant situation that Council makes a decision on in two weeks and leaves alone. She would like to see a review, at a reasonable time after the expansion occurs. Direction to staff will be to make this the very safest area as possible using whatever technology we can. She would also like staff to consider the possibility of limiting truck traffic on Brackettown Road. The points Councilman Cloninger mentioned about the way the right hand curve is configured on Brackettown Road going onto White Pine Drive needs to be reviewed. Council's direction is going to be for staff to work with the developers and the NC DOT to do whatever it takes to make that area safe - not only the intersection of Brackettown Road and White Pine Drive, but the whole road from the crest of the hill on White Pine Drive to the traffic light on Tunnel Road.

Upon inquiry of Councilwoman Field, Mr. Moule said that he did not have the information on the accident rate at the intersection of Brackettown Road and White Pine Drive.

City Attorney Oast said that it was his understanding the recommendation of the City's traffic engineer is that the two-way access on Brackettown Road be maintained and that measures be looked at to ensure that intersection remains as safe as possible or improvements be made to it to make it as safe as possible.

Mayor Sitnick added that any dialog that takes place amongst staff and the developers also include the neighborhood representatives so that they can be at the front-end of whatever is worked out and have the opportunity for input before decisions are made.

V. NEW BUSINESS:

A. MOTION GIVING STAFF DIRECTION REGARDING THE POTENTIAL EXTENSION OF THE CITY'S EXTRATERRITORIAL JURISDICTION INTO THE REYNOLDS MOUNTAIN AREA

Due to a conflict of interest, Vice-Mayor Hay moved to excuse Councilman Cloninger from participating in this issue. This motion was seconded by Councilwoman Field and carried unanimously.

Mr. Mike Matteson, Urban Planner, said that the Planning and Development Department staff is seeking direction from the City Council regarding the potential extension of the City's Extraterritorial Jurisdiction (ETJ) in the Reynolds Mountain area.

The Planning and Zoning Commission has directed the Planning and Development Department staff to pursue the extension of the City's ETJ in the Reynolds Mountain area - north of the City's corporate limits.

This request by the Commission resulted from the Commission's review of the proposed Reynolds Mountain Subdivision, a 174 lot single family subdivision to be located on Reynolds Mountain. Although the proposed subdivision is to be located almost entirely outside of the City's zoning jurisdiction, it is anticipated to have a significant impact on the City's infrastructure and the Lakeview Park neighborhood, through which one of the two access points to the subdivision is proposed.

The proposed ETJ extension would include a portion of the Reynolds Mountain Subdivision as well as additional properties to the north and east which are similar to Reynolds Mountain Subdivision in their potential for development and in the potential impact which future development may have on the City.

The Town of Woodfin is also exploring ETJ extension to include a portion of the subdivision. The Planning and Development Department staff has met with staff from the Town of Woodfin to develop a line of demarcation separating the proposed Town of Woodfin's ETJ from the potential City of Asheville's ETJ. This line of demarcation has been viewed favorably by the Town of Woodfin's Board of Aldermen. The proposed Subdivision will be developed in two phases. Phase I of the Subdivision would fall within the City and Phase II would fall within the Town of Woodfin.

By extending ETJ in this area, the City would gain the ability to anticipate, plan and manage future growth in this area.

Councilman Tomes moved to authorize City staff to investigate the extension of the City's ETJ into the Reynolds Mountain area with the general boundaries outlined by City staff. This motion was seconded by Councilwoman and carried unanimously.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 27, 1999, AND THE WORKSESSION HELD ON AUGUST 3, 1999

Vice-Mayor Hay moved for the adoption of the minutes of the regular meeting held on July 27, 1999, and the worksession held on August 3, 1999. This motion was seconded by Councilman Cobb and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the period of July 9-29, 1999: Marie Brackett (Sanitation), Thomas Jackson (Streets), Louise McAdams (Sanitation), Garland Brothers (Fire), BellSouth (Water), Mary Chambers (Police), Lloyd E. Cutshall (Water), Christine Craig (Parks & Recreation), American Home Patient (Water), Jamie L. Bolick (Water), Debra McDonald (Parks & Recreation), JoAnn Burdette (Water), Andrew Gayle (Parks & Recreation), Penny Beaird (Water) and Whatever Rents (Parks & Recreation).

The following claims were received by the City during the period of July 30-August 5, 1999: Eric Niwinski (Streets), Tammy Bradley (Streets), Rosemary Heffron (Sanitation), Carolyn Radford (Water) and Steve Banner (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Mr. Harold Payne regarding the Asheville Mall expansion and the Time Limit Policy for Speakers

Mr. Harold Payne, 299 White Pine Drive, commented on the traffic issues on White Pine Drive and Brackettown Road. He also felt that the time limit for speakers should be increased to five minutes.

Comments by Ms. June Lamb regarding the Time Limit Policy for Speakers

Ms. June Lamb recommended City staff speak distinctly so that the public can understand what is being said. She also felt the time limit for speakers should be increased to five minutes.

Comments by Mr. Phil Noblitt relative to the Asheville Mall Expansion

Mr. Phil Noblett said that City Council has gone a long way to accommodate the developer's interest, however, he urged City Council to keep in mind there are other issues on the table from the neighborhood.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:25 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - August 17, 1999 - 3:00 p.m.

Worksession

Present: Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Leni Sitnick

Councilman Sellers congratulated Fire Chief John Rukavina for being selected to be on a planning team with six other fire chiefs from amongst the United States in the development of a business plan for the U.S. Fire Administration and the National Fire Academy for the first year of the new millennium.

CONSENT AGENDA:

Budget Amendment for Non-Resident Fees

Summary: The consideration of a budget amendment, in the amount of $23,000, to appropriate expenditures for non-resident fees which have been collected for various Parks and Recreation programs.

Several years ago, City Council approved collecting non-resident fees for various Parks and Recreation services. These fees include services for classes, adult and youth sports, and various clubs that use Parks and Recreation facilities. The Parks and Recreation Department wishes to establish expenditure line items and appropriations in order to spend funds which have been collected. The revenue that has been collected is intended to be used for various capital projects of the department. It is the intent of staff to use these funds in conjunction with various public/private endeavors and other activities or improvements that will benefit the community.

The Parks and Recreation Department requests City Council approve the budget amendment to appropriate funding from revenue collected from non-resident fees totaling $23,000.

Budget Amendment Increasing Appropriations to the Water Capital Projects Fund to include a grant from the Clean Water Management Trust Fund for Watershed Protection Improvements in Mills River Valley.

Summary: The consideration of a budget amendment, in the amount of $589,000, to amend Capital Project Ordinance 82-25 (35 Fund) to provide funding for the Mills River Watershed Protection Project.

By Resolution 82-25 dated October 5, 1982, the Regional Water Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

Capital Project Ordinance 82-25 needs to be amended to provide funding for the Mills River Watershed Protection Project which will protect and improve water quality in the Mills River. This project will include replacing eight stream-side pesticide mixing stations with state-of-the-art agrichemical handling facilities located outside of the floodplain, restoring 41,000 feet of riparian buffer in degraded areas along the Mills River, stabilizing 2.6 acres of streambank using bio-engineering methods, controlling erosion and sedimentation in the Wash Creek watershed, and developing a long-term watershed protection management strategy.

On December 1, 1998, the Regional Water Authority, on behalf of the Mills River Partnership, requested funding from the NC Clean Water Management Trust Fund (NC CWMTF) for the Mills River Watershed Protection Project. Funding of $541,000 was approved by the NC CWMTF on April 12, 1999. The Regional Water Authority will provide matching funds of $100,718 with $33,000 budgeted in 1998/1999, $33,000 budgeted in 1999/2000 and $34,718 budgeted in 2000/2001. The City of Hendersonville will provide $15,000 in matching funds.

Revenues will be increased as follows: $541,000 for NC CWMTF Grant, $33,000 for the Authority's 1999/2000 contribution of matching funds, and $15,000 for Hendersonville's matching funds. The appropriation for the Mills River Watershed Protection Project will increase from $33,000 to $622,000.

Staff recommends approval of the budget amendment amending Capital Project Ordinance 82-25 to provide funding for the Mills River Watershed Protection Project for FY 1999/2000.

Resolution Authorizing a Grant Agreement between the Regional Water Authority and the Clean Water Management Trust Fund for Watershed Protection Measures in Mills River Valley

Summary: The consideration of a resolution authorizing the Chairman of the Regional Water Authority to execute a Grant Agreement with the North Carolina Clean Water Management Trust Fund for the Mills River Watershed Protection Project in the amount of $541,000 to replace pesticide mixing stations and restore riparian buffers on the Mills River and its tributaries.

On December 1, 1999, the Regional Water Authority, on behalf of the Mills River Partnership, requested funding from the NC Clean Water Management Trust Fund (NC CWMTF) for a two-year comprehensive project to preserve and improve water quality in the Mills River watershed. The NC CWMTF approved funding of $730,000 on April 12, 1999, for the following elements of the Mills River Watershed Protection Project:

- Replace eight stream-side pesticide mixing stations with USDA-approved agrichemical handling facilities (AHF's) located outside of the floodplain;
- Preserve approximately 50 acres of existing riparian buffer through a combination of purchased and donated conservation easements;
- Re-vegetate or widen 41,000 feet of riparian buffer in degraded areas along the Mills River and its two forks;
- Stabilize 2.6 acres of streambank using bio-engineering methods;
- Control erosion and sedimentation in the Wash Creek watershed by stabilizing 22 camp sites and installing sedimentation control measures along six miles of road; and
- Develop a long-term watershed protection management strategy.

The grant agreement between the Authority and the NC CWMTF will include all of the projects except the preservation of 50 acres of riparian buffers through purchased or donated easements. The total funding provided for the projects being administered by the Authority is $541,000. The preservation of riparian buffers will require a separate grant agreement between the NC CWMTF and the Carolina Mountain Land Conservancy (CMLC) in the amount of $189,000.

The Regional Water Authority will provide $100,718 in matching funds and $30,972 in in-kind services. The City of Hendersonville will provide a match of $15,000 for the replacement of the mixing stations and the Carolina Mountain Land Conservancy will provide $2,400 in in-kind services for management costs related to the preservation of riparian buffers.

The purpose of this project is to restore water quality in the lower Mills River and Wash Creek while maintaining the outstanding quality of the other streams in the watershed. The grant agreement will be approved as to form by the Authority's counsel before the Grant Agreement is executed.

Staff recommends approval of a resolution authorizing the Regional Water Authority to execute a Grant Agreement in the amount of $541,000 with the North Carolina Clean Water Management Trust Fund

Resolution Authorizing a Contribution Agreement between Regional Water Authority and Natural Resources Conservation Service for design of Agrichemical Handling Facilities for Mixing of Pesticides at Eight Farm Locations in Henderson County

Summary: The consideration of a resolution authorizing the Regional Water Authority to execute a contract with the Natural Resources Conservation Service to complete the final design of Agrichemical Handling Facilities for eight farms in the Mills River valley as required by a grant from the Clean Water Management Trust Fund.

The Regional Water Authority was awarded a grant by the Clean Water Management Trust Fund in March 1999 to make improvements to watershed land management practices to protect the quality of water in the Mills River. A major component of this grant was the award of $329,157 from the Trust Fund, matched by an additional $99,000 from the City's Water Fund and $15,000 from the City of Hendersonville, to relocate the practice of pesticide mixing at up to eight locations from near the streambank to state-of-the-art facilities outside the floodplain.

The grant application and grant award provides for funding disbursements and management and construction practices to be handled as currently provided through the Agricultural Cost-Share program. Further, the state-of-the-art agrichemical handling facilities (AHF) are to conform to the standard design developed by the Natural Resources Conservation Service (NRCS) and Henderson County Soil & Water Conservation District (HSWCD). Through discussions with the HSWCD staff, the Water Resources Department staff have been able to obtain a commitment for engineering to complete the final design of these facilities through registered engineers of the NRCS staff. This has an advantage since NRCS engineers are already very familiar with the AHF standard design, and specific site requirements, and are experienced in working with farmers and agricultural practices. NRCS is an agency of the U S Department of Agriculture.

The contract is called a Contribution Agreement and calls for the complete design, including flood elevation surveying, site plan, grading plan, piping plan, layout, and detailed construction specifications for eight locations, to be completed not later than January 1, 2000 at a fee not to exceed $21,943.00.

Staff recommends the adoption of the resolution authorizing the Regional Water Authority to execute a Contribution Agreement with the Natural Resources Conservation Service.

Lake Craig and Azalea Road Park Survey Contract and Feasibility Study

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with MA Engineering Consultants, Inc., for a survey and feasibility study of the Lake Craig and Azalea Road Park.

This property was identified as a potential recreation and public works resource though task teams initiated by the Parks and Recreation and Public Works Departments. These teams combined and developed a consolidated, conceptual program of recreational (soccer fields, gymnasium complex, ballfields, greenway trails, etc.) and public works facilities (beneficial fill, eco-park, composting, etc.).

Within the conceptual recreational program, partnerships were solidified with Western North Carolina Soccer Foundation, Western North Carolina Youth Sports Complex Foundation, and RiverLink to maximize recreational needs and funding opportunities.

With these organizational efforts in place, City Council directed staff to proceed with the land acquisition process. Consequently, a request for qualifications was sent for the initial phase which entailed a property survey. Staff from Parks and Recreation, Public Works and Engineering Departments followed city procedures and selected MA Engineering Consultants, Inc. as the top firm. A comprehensive boundary and topographic survey will be the scope of service provided by the consultant for $85,173.00 (boundary survey $34,980.00, topographic survey $40,185.00, wetland delineation $10,008.00) for this 150 acre tract. In addition, staff is currently discussing with this consultant, an exact scope of work and cost estimate for a feasibility study of the entire project, which includes the needs of the Public Works and Parks and Recreation Departments.

The Parks and Recreation Department recommends that authorization be given to the City Manager to enter into a contract with MA Engineering Consultants, Inc. for the boundary and topographical survey for Lake Craig and Azalea Road Park and to enter into a change order agreement for a feasibility study if deemed necessary by staff.

Vice-Mayor Hay asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

ANNUAL REPORT ON THE MINORITY BUSINESS PROGRAM

Ms. Mamie Scott, Director of the Office of Minority Affairs, reviewed with City Council the annual report on the Minority Business Program. She explained that this report was prepared pursuant to the Minority Business Plan adopted in May of 1998. Not only does it contain an assessment of the City and County goal attainment and the factors involved in that assessment, but gives information on strategies used to implement the Minority Business Plan. They are encouraged in knowing that they have the support of the Mayor, Council and City staff as we work smarter to increase minority participation. By preparing this report, they have learned that it is imperative that we all take responsibility and intentionally get involved with identifying and recruiting ethnic and women owned businesses in our community to be certified with the Minority Affairs Office. They have also been made aware of areas in which minority owned businesses can participate. This report has been reviewed by the Minority Business Commission.

Ms. Scott then answered various questions from City Council, some being, but are not limited to: how the goals were established; are complaints from the certified minority businesses investigated; why aren't more minority businesses bidding on projects; and how many minority businesses are certified.

Upon inquiry of Councilwoman Field, Finance Director Bill Schaefer said that he would provide a breakdown of the $44 Million City expenditures.

Councilman Tomes felt there is still room for tremendous improvement and hopefully as we look into the future, we will see evidence of that improvement. He also felt that there is an ethical and moral obligation for major and significant contractors to educate them to mentor and nurture people.

Ms. Vickie Gaddy, certified minority owned business owner and member of the Minority Business Commission, spoke in support of the work of the Minority Affairs Office staff.

ANNEXATION STUDY

Mr. Doug Spell, Assistant City Manager, said that on January 12, 1999, City Council members attended a "Tour of Urban Areas" in an effort to see development patterns in areas adjacent to our corporate limits. At the City Council Retreat on January 29, 1999, Mr. Richard Flowe with Benchmark, Inc. presented to City Council "Levels of Priority" to be utilized in assessing potential annexation areas. These levels of priority consisted of the following:

1. Clean up small service inequities;
2. Look at economic base diversification;
3. Address residential areas that lie immediately outside the city limits that have full infrastructure services;
4. Look at residential areas that lie immediately outside the city limits that don't have complete urban area infrastructure;
5. Focus on a balance of areas among these areas for future growth opportunities.

With these levels of priority, City Council authorized the consultant to proceed to identify areas for potential annexation and to present recommendations based upon these priorities.

Benchmark Inc. has prepared a list of areas for consideration as a part of the City's first phase of areas for consideration of annexation. The areas addressed as a part of this first phase were primarily identified based upon the priority of cleaning up service inequities based upon properties that currently have various infrastructure services.

Staff is seeking direction from City Council and would recommend that following the presentation on these areas that Council instruct staff to proceed working with the consultant on preparing the "Plan of Services Report" which is required as part of the annexation process. The Plan of Services Report will identify the boundaries of the properties proposed for annexation and will also identify any service costs or improvements necessary as a part of the annexation process. Upon completion of the Plan of Services Report, a Resolution of Intent would be presented to City Council for consideration of adoption. It should be noted that any proposed annexation as a part of this recommendation would not become effective prior to July 1, 2001.

One other task which is a part of the consultant's Scope of Work for the Annexation Study is to come back to the City in the future with an Annexation Plan. The Annexation Plan will identify specific areas and provide a general time frame for future consideration of annexation based upon the Levels of Priority which Council directed the consultant use in developing the Annexation Plan.

By use of a map, Mr. Richard Flowe identified the areas recommended as part of the first phase annexation. He explained that the areas to be considered in the first round of annexations are largely urbanized, are in close proximity to the present City limits, have significant urban infrastructure services, have significant existing non-residential growth, and are located among important strategic growth categories. Annexation of these areas will address service inefficiencies and inequities without significant budgetary impacts.

The following first group areas are recommended for consideration within the first one to two years:

Area A - This compact area would close a services gap along I-240, east of downtown. The area includes the Coleman Office Park and the Asheville Apostolic Church.

Area B - This compact area would extend the City limits eastward, along the north side of US 70, to encompass a portion of the Blue Ridge Parkway. It includes the Veterans Administration Medical Center, some apartment complexes, an assisted living residence, and a few moderate houses.

Area C - This area would extend the City limits westward along Long Shoals Road. It contains the Carolina Power & Light property, some commercial uses, Valley Springs Middle School, a park, and a large apartment complex with 1,100 residents called "The Forest". The boundary of this area is extended along the right-of-way of I-26 to connect the Airport to the primary corporate limits.

Area D - This compact, commercial area would extend the City limits southward along I-26 and Brevard Road. This area primarily consists of the Ridgefield Business Center and Biltmore Square Plaza.

Area E - This very compact area, which would close a service gap along Leicester Highway, includes a well drilling business, a convenience store, and a manufactured home sales lot.

Each area has a different history behind its development resulting in varying densities, growth patters, vacancies, street designs, property valuations, incomes, and other characteristics. These factors all affect the decisions to annex by influencing the benefit versus cost considerations.

The information below illustrates the general data for each of the first group areas:

	Predominate Land Use	Acreage	Population	Tax Value
A	Commercial	140	0	1,839,700
B	Institutional, Residential	200	550	8,202,000
C	Residential, Industrial	1,310	1,150	38,655,400*
D	Commercial	185	0	77,991,800
E	Commercial	10	0	932,300
Totals		1,745 (2.73 sq. mi.)	1,650	$127,621,200*

* The tax value of Area C does not include the Carolina Power & Light tax valuation assigned by the State of North Carolina which was not available at this time.

Upon inquiry of Councilwoman Field, Mr. Flowe said that these combined areas represent approximately 15% or less single family dwellings. He also said that 75% of these areas deal with service inequities.

Mr. Flowe then briefly explained the process that will need to be followed, noting that the first formal action of Council should take place sometime this winter with final adoption of the ordinance near the end of May or first of June, 2000.

Councilwoman Field asked if the Council could add or delete areas from the Plan during the process. Mr. Flowe explained that Council can make reductions or minor modifications to the Plan for Services, however, if after the public hearing a different approach is recommended, he would recommend at least another public hearing be held so that everyone had an opportunity to see the revised plan.

City Manager Westbrook said that several years ago the VA Medical Center asked to be annexed and City staff recommended that annexation as well. However, the City Council seated at that time chose not to annex them. It was his understanding they are still interested in being annexed, noting that the City has a contract with the VA Medical Center to provide fire service.

City Manager Westbrook said that there was an agreement with Carolina Power & Light Company several years ago on past utility franchise taxes, and even though it's not explicitly stated in the agreement, having talked with former Mayor Martin and some Council members seated at that time, annexation was anticipated within the year and that did not take place.

At the request of Councilman Field, Mr. Flowe said that he would find out how many acres of Area C is water.

After a brief discussion, it was the consensus of City Council to add an additional Area F to the first round of annexations. Area F is to include the hotels (and properties that make sense) at the interchange by the Biltmore Square Mall exit. Vice-Mayor Hay felt it would be a competitive disadvantage to the hotel having to pay higher taxes against the one that doesn't.

Upon inquiry of Councilwoman Field, Mr. Flowe explained that if any voluntary annexation petitions are received, they should be looked at on a case by case basis to determine whether they do or do not affect the strategies planned.

City Manager Westbrook said that anyone having questions about this annexation should be referred to Planning & Development Director Scott Shuford or Assistant City Manager Doug Spell.

It was the consensus of City Council to direct the City Manager to proceed with the preparation of a Plan of Services Report for Areas A-E to be considered for future annexation, including the addition of Area F.

UPDATE ON THE PUBLIC ACCESS PROCESS

Councilman Tomes said that the cable franchise agreement adopted by City Council designates three initial access channels to be used for public, educational and/or governmental programming.

Last November Council discussed several possible ways to organize these channels. The governmental and educational channels were established first because they were less involved and could be on-the-air quickly. It is now time to concentrate on the public access channel.

City Council requested that staff prepare a Request for Proposal (RFP) for proposal soliciting non-profit organizations to run the public access channel. Council also decided to appoint a Public Access Channel Commission following the section of this non-profit organization.

Staff has prepared an RFP that has been reviewed by the City Manager's Office, the Legal Division, Buncombe County and members of the community. Changes were made to the document based on suggestions presented from these different sources.

Staff has also prepared an ordinance establishing the Public Access Channel Commission. This Commission will set policy and oversee the management of the public access channel.

Ms. Robin Westbrook , Public and Community Information Officer, reiterated that this is the consideration of authorizing staff to proceed with the issuance of the RFP for managing the public access channel and the establishment of the Public Access Channel Commission.

In June, a letter was sent to all individuals and organizations that had spoken in favor of public access during previous public hearings announcing that the draft document was available for public comment. A total of five draft documents were picked up for review and comments were received by three individuals. These comments have been included in the RFP.

The RFP will be advertised beginning on Sunday, August 29, 1999. The deadline for submitting proposals will be Friday, October 1, 1999.

Staff requests that City Council approve issuance of the Request for Proposal. Staff further requests that City Council approve the ordinance establishing a Public Access Channel Commission in the near future.

Upon inquiry of Councilman Cobb, Ms. Westbrook said that they have received about 6-12 inquiries about what will be involved in the RFP process.

Mr. Jack Fobes said that he was in total opposition to the proposal.

Ms. Patsy Meldrum, Assistant City Attorney, reviewed with City Council the several possible ways in which to organize this channel.

Ms. Westbrook said that the comments she has heard are not about the content of the RFP, but the process.

Vice-Mayor Hay asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REPORTS ON BOARDS/COMMISSIONS

Vice-Mayor Hay, Chairman of the City Council Boards/Commissions Committee, said that the Committee recommends reappointment of Lionel Williams and Max Haner to the Planning & Zoning Commission and interview for the vacancy left by Jane Mathews; interview for the vacancy left by Randy Fluharty on the Tourism Development Authority; reappoint Charles Worley to the Regional Water Authority; and wait until the next quarterly appointment process on a vacancy on the Tree/Greenway Commission.

BUNCOMBE COUNTY ZONING

At the request of Councilman Cobb, it was the consensus of City Council to instruct the City Manager to coordinate with the Buncombe County Manager a worksession date for City Council to be updated on the County's proposed land use plan. City Council felt the worksession is important to educate the City residents in that they have a stake in the outcome of the zoning in that they can vote on the issue.

ADJOURNMENT:

Vice-Mayor Hay adjourned the meeting at 4:34 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - August 24, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Cobb gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FRIDAY, AUGUST 27 - SUNDAY, AUGUST 29, 1999, AS "GOOMBAY! FESTIVAL DAYS" IN THE CITY OF ASHEVILLE

Mayor Sitnick read the proclamation proclaiming Friday, August 27 - Sunday, August 29, 1999, as "Goombay! Festival Days" in the City of Asheville. She presented the proclamation to Ms. Oralene Simmons, who briefed City Council on some activities taking place during the Festival.

B. PROCLAMATION PROCLAIMING SEPTEMBER 13, 1999, AS "FREDERICK LAW OLMSTED DAY" IN THE CITY OF ASHEVILLE

Vice-Mayor Hay read the proclamation proclaiming Monday, September 13, 1999, as "Frederick Law Olsmsted Day" in the City of Asheville and explained the significance of the new postage stamp honoring Mr. Olmsted. He presented the proclamation to Mr. Bruce Ballard.

II. CONSENT AGENDA:

A. ORDINANCE NO. 2600 - BUDGET AMENDMENT TO APPROPRIATE EXPENDITURES FOR NON-RESIDENT FEES WHICH HAVE BEEN COLLECTED FOR VARIOUS PARKS AND RECREATION PROGRAMS

Summary: The consideration of a budget amendment, in the amount of $23,000, to appropriate expenditures for non-resident fees which have been collected for various Parks and Recreation programs.

Several years ago, City Council approved collecting non-resident fees for various Parks and Recreation services. These fees include services for classes, adult and youth sports, and various clubs that use Parks and Recreation facilities. The Parks and Recreation Department wishes to establish expenditure line items and appropriations in order to spend funds which have been collected. The revenue that has been collected is intended to be used for various capital projects of the department. It is the intent of staff to use these funds in conjunction with various public/private endeavors and other activities or improvements that will benefit the community.

The Parks and Recreation Department requests City Council approve the budget amendment to appropriate funding from revenue collected from non-resident fees totaling $23,000.

ORDINANCE BOOK NO. 17 - PAGE 426

B. RESOLUTION NO. 99-120 - RESOLUTION MODIFYING THE SCHEDULE OF THE CITY COUNCIL MEETINGS TO CANCEL THE AUGUST 31, 1999, CITY COUNCIL COMMUNITY MEETING

RESOLUTION BOOK NO. 25 - PAGE 276

C. ORDINANCE NO. 2601 - BUDGET AMENDMENT TO INCREASE APPROPRIATIONS TO THE WATER CAPITAL PROJECTS FUND TO INCLUDE A GRANT FROM THE CLEAN WATER MANAGEMENT TRUST FUND FOR WATERSHED PROTECTION IMPROVEMENTS IN MILLS RIVER VALLEY

Summary: The consideration of a budget amendment, in the amount of $589,000, to amend Capital Project Ordinance 82-25 (35 Fund) to provide funding for the Mills River Watershed Protection Project.

By Resolution 82-25 dated October 5, 1982, the Regional Water Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

Capital Project Ordinance 82-25 needs to be amended to provide funding for the Mills River Watershed Protection Project which will protect and improve water quality in the Mills River. This project will include replacing eight stream-side pesticide mixing stations with state-of-the-art agrichemical handling facilities located outside of the floodplain, restoring 41,000 feet of riparian buffer in degraded areas along the Mills River, stabilizing 2.6 acres of streambank using bio-engineering methods, controlling erosion and sedimentation in the Wash Creek watershed, and developing a long-term watershed protection management strategy.

On December 1, 1998, the Regional Water Authority, on behalf of the Mills River Partnership, requested funding from the NC Clean Water Management Trust Fund (NC CWMTF) for the Mills River Watershed Protection Project. Funding of $541,000 was approved by the NC CWMTF on April 12, 1999. The Regional Water Authority will provide matching funds of $100,718 with $33,000 budgeted in 1998/1999, $33,000 budgeted in 1999/2000 and $34,718 budgeted in 2000/2001. The City of Hendersonville will provide $15,000 in matching funds.

Revenues will be increased as follows: $541,000 for NC CWMTF Grant, $33,000 for the Authority's 1999/2000 contribution of matching funds, and $15,000 for Hendersonville's matching funds. The appropriation for the Mills River Watershed Protection Project will increase from $33,000 to $622,000.

Staff recommends approval of the budget amendment amending Capital Project Ordinance 82-25 to provide funding for the Mills River Watershed Protection Project for FY 1999/2000.

ORDINANCE BOOK NO. 17 - PAGE 428

D. RESOLUTION NO. 99-121 - RESOLUTION AUTHORIZING A GRANT AGREEMENT BETWEEN THE REGIONAL WATER AUTHORITY AND THE CLEAN WATER MANAGEMENT TRUST FUND FOR WATERSHED PROTECTION MEASURES IN MILLS RIVER VALLEY

Summary: The consideration of a resolution authorizing the Chairman of the Regional Water Authority to execute a Grant Agreement with the North Carolina Clean Water

Management Trust Fund for the Mills River Watershed Protection Project in the amount of $541,000 to replace pesticide mixing stations and restore riparian buffers on the Mills River and its tributaries.

On December 1, 1999, the Regional Water Authority, on behalf of the Mills River Partnership, requested funding from the NC Clean Water Management Trust Fund (NC CWMTF) for a two-year comprehensive project to preserve and improve water quality in the Mills River watershed. The NC CWMTF approved funding of $730,000 on April 12, 1999, for the following elements of the Mills River Watershed Protection Project:

- Replace eight stream-side pesticide mixing stations with USDA-approved agrichemical handling facilities (AHF's) located outside of the floodplain;
- Preserve approximately 50 acres of existing riparian buffer through a combination of purchased and donated conservation easements;
- Re-vegetate or widen 41,000 feet of riparian buffer in degraded areas along the Mills River and its two forks;
- Stabilize 2.6 acres of streambank using bio-engineering methods;
- Control erosion and sedimentation in the Wash Creek watershed by stabilizing 22 camp sites and installing sedimentation control measures along six miles of road; and
- Develop a long-term watershed protection management strategy.

The grant agreement between the Authority and the NC CWMTF will include all of the projects except the preservation of 50 acres of riparian buffers through purchased or donated easements. The total funding provided for the projects being administered by the Authority is $541,000. The preservation of riparian buffers will require a separate grant agreement between the NC CWMTF and the Carolina Mountain Land Conservancy (CMLC) in the amount of $189,000.

The Regional Water Authority will provide $100,718 in matching funds and $30,972 in in-kind services. The City of Hendersonville will provide a match of $15,000 for the replacement of the mixing stations and the Carolina Mountain Land Conservancy will provide $2,400 in in-kind services for management costs related to the preservation of riparian buffers.

The purpose of this project is to restore water quality in the lower Mills River and Wash Creek while maintaining the outstanding quality of the other streams in the watershed. The grant agreement will be approved as to form by the Authority's counsel before the Grant Agreement is executed.

Staff recommends approval of a resolution authorizing the Regional Water Authority to execute a Grant Agreement in the amount of $541,000 with the North Carolina Clean Water Management Trust Fund

RESOLUTION BOOK NO. 25 - PAGE 277

E. RESOLUTION NO. 99-122 - RESOLUTION AUTHORIZING A CONTRIBUTION AGREEMENT BETWEEN THE REGIONAL WATER AUTHORITY AND NATURAL RESOURCES CONSERVATION SERVICE FOR DESIGN OF AGRICHEMICAL HANDLING FACILITIES FOR MIXING OF PESTICIDES AT EIGHT FARM LOCATIONS IN HENDERSON COUNTY

Summary: The consideration of a resolution authorizing the Regional Water Authority to execute a contract with the Natural Resources Conservation Service to complete the final design of Agrichemical Handling Facilities for eight farms in the Mills River valley as required by a grant from the Clean Water Management Trust Fund.

The Regional Water Authority was awarded a grant by the Clean Water Management Trust Fund in March 1999 to make improvements to watershed land management practices to protect the quality of water in the Mills River. A major component of this grant was the award of $329,157 from the Trust Fund, matched by an additional $99,000 from the City's Water Fund and $15,000 from the City of Hendersonville, to relocate the practice of pesticide mixing at up to eight locations from near the streambank to state-of-the-art facilities outside the floodplain.

The grant application and grant award provides for funding disbursements and management and construction practices to be handled as currently provided through the Agricultural Cost-Share program. Further, the state-of-the-art agrichemical handling facilities (AHF) are to conform to the standard design developed by the Natural Resources Conservation Service (NRCS) and Henderson County Soil & Water Conservation District (HSWCD). Through discussions with the HSWCD staff, the Water Resources Department staff have been able to obtain a commitment for engineering to complete the final design of these facilities through registered engineers of the NRCS staff. This has an advantage since NRCS engineers are already very familiar with the AHF standard design, and specific site requirements, and are experienced in working with farmers and agricultural practices. NRCS is an agency of the U S Department of Agriculture.

The contract is called a Contribution Agreement and calls for the complete design, including flood elevation surveying, site plan, grading plan, piping plan, layout, and detailed construction specifications for eight locations, to be completed not later than January 1, 2000 at a fee not to exceed $21,943.00.

Staff recommends the adoption of the resolution authorizing the Regional Water Authority to execute a Contribution Agreement with the Natural Resources Conservation Service.

RESOLUTION BOOK NO. 25 - PAGE 278

F. RESOLUTION NO. 99-123 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MA ENGINEERING CONSULTANTS INC. FOR A SURVEY AND FEASIBILITY STUDY OF THE LAKE CRAIG AND AZALEA ROAD PARK

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with MA Engineering Consultants, Inc., for a survey and feasibility study of the Lake Craig and Azalea Road Park.

This property was identified as a potential recreation and public works resource though task teams initiated by the Parks and Recreation and Public Works Departments. These teams combined and developed a consolidated, conceptual program of recreational (soccer fields, gymnasium complex, ballfields, greenway trails, etc.) and public works facilities (beneficial fill, eco-park, composting, etc.). Within the conceptual recreational program, partnerships were solidified with Western North Carolina Soccer Foundation, Western North Carolina Youth Sports Complex Foundation, and RiverLink to maximize recreational needs and funding opportunities.

With these organizational efforts in place, City Council directed staff to proceed with the land acquisition process. Consequently, a request for qualifications was sent for the initial phase which entailed a property survey. Staff from Parks and Recreation, Public Works and Engineering Departments followed city procedures and selected MA Engineering Consultants, Inc. (from Raleigh, N.C.) as the top firm. A comprehensive boundary and topographic survey will be the scope of service provided by the consultant for $85,173 (boundary survey $34,980, topographic survey $40,185, wetland delineation $10,008) for this 150 acre tract. In addition, staff is currently discussing with this consultant, an exact scope of work and cost estimate for a feasibility study of the entire project, which includes the needs of the Public Works and Parks and Recreation Departments.

The Parks and Recreation Department recommends that authorization be given to the City Manager to enter into a contract with MA Engineering Consultants, Inc. for the boundary and topographical survey for Lake Craig and Azalea Road Park and to enter into a change order agreement for a feasibility study if deemed necessary by staff.

RESOLUTION BOOK NO. 25 - PAGE 279

G. RESOLUTION NO. 99-124 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1999 GOOMBAY! FESTIVAL

Summary: The consideration of a resolution to allow alcoholic beverages on August 27-29, 1999, at the 1999 Goombay! Festival which will be held on August 27-29, 1999, within the area known as City/County Plaza, S. Market Street, Eagle Street, Spruce Street, Wilson Alley, and Beaumont Street.

N.C. Gen. Stat. sec. 18B-300(c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and unfortified wine on public streets, and on property owned, occupied or controlled by the City. The City Council of the City of Asheville has adopted an ordinance pursuant to that statutory authority. That ordinance, Section 11-11 in the Code of Ordinances, provides that the City Council may adopt a resolution making other provisions at a special event or community festival. The 1999 Goombay! Festival Board, YMI Cultural Center and the Parks and Recreation Department recommends that possession and consumption of malt beverages and/or unfortified wine be allowed at the 1999 Goombay! Festival.

The Parks and Recreation Department recommends that City Council adopt the resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the 1999 Goombay! Festival to include the areas as described in the resolution.

RESOLUTION BOOK NO. 25 - PAGE 280

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Sellers moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO THE VOLUNTARY ANNEXATION OF A NON-CONTIGUOUS AREA LOCATED ON SWEETEN CREEK ROAD AND PEACH TREE STREET KNOWN AS ROYAL PINES POOL AND PARK PROPERTIES

ORDINANCE NO. 2602 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE BY ANNEXING A NON-CONTIGUOUS AREA LOCATED ON SWEETEN CREEK ROAD AND PEACH TREE STREET KNOWN AS ROYAL PINES POOL AND PARK PROPERTIES

Mayor Sitnick opened the public hearing at 5:12 p.m.

Mr. Paul Benson, Urban Planner, said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville by annexing a non-contiguous area located on Sweeten Creek Road and Peach Tree Street known as Royal Pines Pool and Park properties. This public hearing was legally advertised on August 13, 1999.

The Trust for Public Land, owner of the Royal Pines Pool and Park, has submitted an annexation petition for the property on which the pool and park are located.

This area is located within three miles of the City's corporate limits. The property is located west of Sweeten Creek Road (US 25A). The total acreage is 5.5 acres. The effective date of this annexation is August 24, 1999.

Planning staff recommends City Council adopt the ordinance extending the corporate limits of the City of Asheville by annexing a non-contiguous area located on Sweeten Creek Road and Peach Tree Street known as Royal Pines Pool and Park properties.

Mayor Sitnick closed the public hearing at 5:15 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2602. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 430

B. PUBLIC HEARING RELATIVE TO THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED OFF OF HENDERSONVILLE ROAD AND KNOWN AS DEERFIELD EPISCOPAL RETIREMENT COMMUNITY INC.

ORDINANCE NO. 2603 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE BY ANNEXING A CONTIGUOUS AREA CONTAINING 24.635 ACRES LOCATED OFF OF HENDERSONVILLE ROAD AND KNOWN AS DEERFIELD EPISCOPAL RETIREMENT COMMUNITY INC.

Mayor Sitnick opened the public hearing at 5:16 p.m.

Mr. Paul Benson, Urban Planner, said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville by annexing a contiguous area containing 24.635 acres located off of Hendersonville Road and known as Deerfield Episcopal Retirement Community, Inc. This public hearing was legally advertised on August 13, 1999.

Deerfield Episcopal Retirement Community, Inc. has submitted an annexation petition for an area of 24.635 acres currently under development for the expansion of the retirement community. The effective date of this annexation is August 24, 1999.

This area is located adjacent to the established section of the Deerfield Episcopal Retirement Community which is within the City's corporate limits. The property is located west of Hendersonville Road (US 25).

Planning staff recommends City Council adopt the ordinance extending the corporate limits of the City of Asheville by annexing a contiguous area containing 24.635 acres located off of Hendersonville Road and known as Deerfield Episcopal Retirement Community.

At the request of Ms. June Lamb, 16 Carrier Street, City Manager Westbrook explained what kind of tax benefits will there be regarding this annexation.

Mayor Sitnick closed the public hearing at 5:22 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2603. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 433

IV. UNFINISHED BUSINESS:

A. CONSIDERATION OF FINDINGS FOR CONDITIONAL USE PERMIT FOR THE ASHEVILLE MALL EXPANSION

ORDINANCE NO. 2604 - ORDINANCE ISSUING A CONDITIONAL USE PERMIT FOR THE ASHEVILLE MALL EXPANSION

Councilman Sellers moved to excuse Councilman Tomes from participating in this matter due his being absent from the public hearing. This motion was seconded by Councilman Cobb and carried unanimously.

City Attorney Oast said that this is the consideration of an ordinance making findings and conclusions, and establishing conditions, for a Conditional Use Permit for the expansion to the Asheville Mall.

On July 27, 1999, City Council held a public hearing and voted unanimously (6 - 0; Councilmember Tomes absent) to issue a Conditional Use permit for the Level III expansion of the Asheville Mall. Staff was directed to research and provide more information to Council relative to certain concerns that surfaced during the public hearing, and to develop proposed conditions to deal with them. Some of this information was presented to Council in a progress report at your August 10, 1999, meeting.

City Attorney Oast briefly summarized the following findings in the Order noting that it is in draft form and may be modified by Council prior to voting on it:

1. Notice of the hearing of this matter was published on July 16, 1999, and July 23, 1999; signs advertising the hearing were posted, and notification was mailed to adjacent property owners.

2. The applicant, CBL and Associates, seeks a Conditional Use Permit for an expansion to the Asheville Mall (herein "the Project).

3. The Asheville Mall is located on approximately 64 acres (herein "Subject Property), situated on the Southwest side of South Tunnel Road (US Highway 74), immediately South of its intersection with Tunnel Road (US Highway 70), and North of its intersection with Swannanoa River Road (N.C. Highway 81).

4. Tunnel Road and South Tunnel Road are both major multi-lane highways carrying a high volume of traffic. The Asheville Mall is the largest shopping center in Western North Carolina and serves a regional market. Across South Tunnel Road from the Subject Property are several strip shopping centers, housing several high traffic retail businesses, and a multiple screen theater. Located nearby on South Tunnel Road are another multiplex theater, a major home improvement retailer (Lowe's), and another strip shopping center.

5. The Lowe's store, currently located immediately to the south of the Subject Property, is constructing an expanded facility immediately to the south of its current location. Plans have been submitted to redevelop the current Lowe's site as a strip shopping center.

6. Interstate 240 passes to the North and East of the Subject Property, and crosses over Tunnel Road. There is a two lane exit from I-240 which deposits exiting traffic at the above-described intersection of Tunnel Road and South Tunnel Road, which intersection is signalized.

7. Located along Tunnel Road to the North and West (heading towards downtown Asheville) are smaller scale commercial uses, consisting of motels, restaurants, retail businesses and automobile service stations, among other uses.

8. Immediately adjacent to the South and West of the Subject Property is an established residential area, Kenilworth Forest, consisting primarily of single family residences on small lots. There are approximately 90 single family residences in Kenilworth Forest.

9. The Subject Property is zoned to a RB-Regional Business -- classification. The other non-residential properties adjacent to the Subject Property and across South Tunnel Road are zoned RB or HB-Highway Business. Kenilworth Forest is zoned RS-4 Medium Density Residential.

10. The City's 2010 plan provides for regional commercial development along the Tunnel Road/South Tunnel Road corridor.

11. The current Asheville Mall contains over 900,000 square feet of enclosed space and approximately 4200 parking spaces. The Project consists of demolishing the existing twin theaters, (approximately 14,000 square feet) located at the South end of the Subject Property, adding approximately 154,000 square feet of retail space and adding a total of 573 new parking spaces. Most of the retail space expansion will occur on the Eastern elevation of the existing mall, on the far side of the building from Kenilworth Forest. Some ground level parking spaces will replace the demolished theaters. Most of the additional parking will be added in a two-tiered parking deck, also to be located on the eastern elevation of the mall building. The amount of land occupied by the Mall will not increase.

12. The Subject Property is served by 5 driveways: 3 signalized two-way driveways along South Tunnel Road, one two way driveway (Brackettown Road) on White Pine Drive at the north end of the Subject Property, and one unsignalized two-way driveway that originates on Tunnel Road just north of the intersection with South Tunnel Road.

13. White Pine Drive, where the Brackettown Road driveway is located, is a two lane residential street and is the only street that serves the Kenilworth Forest neighborhood. The two commercial uses, a restaurant and a service station, located at the intersection of White Pine Drive and Tunnel Road, also have driveways onto White Pine Drive. The intersection of White Pine Drive and Tunnel Road is controlled by a traffic signal.

14. During times of peak usage, including Saturdays, work weeks, homebound rush hour, and seasonal (especially Christmas) holiday shopping, vehicles using the Brackettown Road driveway to enter and exit the mall frequently back up White Pine Drive to the point where the Brackettown Road driveway intersects, resulting in inconvenience and delays to the residents of Kenilworth Forest trying to enter and leave the subdivision. The driveway is just below the crest of a hill on White Pine Drive, and vehicles exiting Kenilworth Forest sometimes have difficulty stopping for backed up Mall traffic.

15. A traffic analysis reviewed and concurred in by the City's staff indicated that the additional traffic generated by the proposed Mall expansion would not significantly worsen the peak usage traffic problems on White Pine Drive, but that closing that driveway or making it a one way entrance would negatively affect the peak hour traffic along Tunnel Road and South Tunnel Road. The traffic analysis also indicated that any traffic problems on White Pine Drive could be mitigated by making adjustments to the signal timing at the White Pine Drive/Tunnel Road intersection, and to other signals in either direction from that intersection along Tunnel Road and South Tunnel Road. The staff's recommendation was that the Brackettown Road driveway not be eliminated or made one way in connection with the Project, but that other adjustments, such as signs, signals, and curbing and markings, should be considered.

16. Residents from Kenilworth Forest expressed concern over the proximity of the Mall and the impact of the proposed expansion to their neighborhood. These concerns centered on (a) traffic, primarily the Brackettown Road driveway, as described above; (b) noise anticipated from the construction and from Mall activities in general; (c) litter and trash from the Mall parking lot; (d) light and glare from the parking lot light poles and from the headlights of cars using the parking lot and parking deck; and (e) privacy, especially in the vicinity of the existing theaters where the grade differential changes.

17. The City's Technical Review Committee has reviewed the Project and indicated that all applicable technical and development standards, including provision of adequate water, sewer and emergency services, storm water and erosion control, and buffering from adjacent residential areas will be met if the Project is developed according to the submitted site plan. The TRC approval was subject to several recommendations as to conditions, which are contained in Attachment 1 hereto, and include:

    1) installation of additional buffer or a solid wall along the property line in the area of the theaters to be demolished, in order to provide a visual and noise buffer.

    2) designing new light fixtures to minimize intrusion of light into the adjacent residential area.

    3) installation of a sidewalk along the entire South Tunnel Road frontage of the Subject Property.

City Attorney Oast said that the conclusions, or determinations, are what Council must make under the ordinance and Council must find in favor of the applicant on each one of the conditions in order for the conditional use permit to be issued. He briefly reviewed the following draft conclusions:

1. The Project is a Level III project within the meaning of City Code Sec. 7-5-9(a) and a Conditional Use Permit is required.

   All notice and advertising requirements were properly and timely met, and no one has objected to this public hearing on the basis of any alleged failure to satisfy said requirements.

2. That the proposed use or development of the Project will not materially endanger the public health or safety in that the Project is an expansion of an existing retail facility in a regional retail shopping area. The Project received technical approval from the Water Resources Department, the Fire Department, and MSD, Engineering, and other City Departments.

3. That the Project is reasonably necessary for the health and general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region.

   The Asheville Mall serves as a regional shopping center. The presence of the mall enhances the successful operation of the surrounding area as a commercial corridor.

4. That the Project will not substantially injure the value of the adjoining or abutting property, provided that adequate buffering and screening are installed so that negative impacts of the mall on adjoining property will not be increased above pre-expansion conditions.

5. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood in which it is located.

   The existing mall is located on property zoned Regional Business. The neighboring uses along Tunnel Road include a number of large-scale retail developments. Adequate buffering and screening are necessary to separate this use from neighboring single-family residential development.

6. That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City.

   The Asheville City Plan 2010 indicates commercial development for the Tunnel Road corridor. The proposed expansion of the Asheville Mall is consistent with the intent and the standards of the Regional Business zoning district.

7. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   The proposed development is located in an existing developed area. The project received technical approval from the Water Resources Department, the Fire Department, and MSD. The mall is located on a five-lane major thoroughfare as identified on the Asheville Thoroughfare Map.

8. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The developer prepared a Traffic Impact Analysis (TIA) for the proposed mall expansion as required by the UDO. The TIA considered the impact of this expansion and other projected traffic on the transportation system. The TIA concluded that "with modifications in the timing will not have a detrimental impact on the traffic operations on S. Tunnel Road." The TIA also indicated that the proposed expansion would have no substantial impact on the existing situation on White Pine Drive. The City Engineer and Traffic Engineer reviewed the findings of the TIA for accuracy, and concur with the findings.

Planning & Development Director Scott Shuford reviewed with Council the following conditions which address the points that City Council raised:

Brackettown Road

The issue of Brackettown Road was an issue City Council reviewed on August 10, 1999, and determined that based upon staff's acceptance of a consultant's report prepared by the applicant, that Council would not modify the traffic access on Brackettown Road. Since that is a performance-based condition that the signalization changes that are proposed for Tunnel Road will resolve some of the access issues, then staff feels it's important that Council consider alternatives if the projected performance does not occur. The following condition will address this potential problem:

1. Brackettown Road - Prior to the issuance of a certificate of occupancy for the Asheville Mall expansion floor area, the traffic signal timing changes recommended by the applicant's consultant in the Mall's vicinity shall be implemented. After a six month performance evaluation period (from the date of the opening of the Mall expansion to the public), staff shall coordinate a public meeting to receive comments from the Kenilworth Forest neighborhood, the applicant, NCDOT, and City Engineering regarding the effectiveness of the signal timing changes in addressing the traffic safety, capacity and convenience objectives of the City in general and the neighborhood and the Mall in particular. If deemed warranted by City staff, further engineering and operational adjustments to the White Pine Drive and Brackettown Road intersection shall be implemented by the applicant, including, but not limited to: adjustments to the intersection design (realignment, radius reduction, one way in or out, etc.); signalization options (flashing red beacons, "traffic in intersection" warning signals, etc.); and/or operational changes ("no truck traffic" signage, etc.). Alternately, further signalization adjustments in the Mall's vicinity may also be considered as a possible means of meeting the performance objectives established in the consultant's report; however, this alternative shall require a similar re-evaluation of the performance within six months of implementation.

After this condition was drafted, staff did hear from the applicant and they did raise an important consideration - they have legal obligations to their tenants with regard to driveway access and they are concerned that the wording proposed will put them in some jeopardy. City staff recognizes that and recommends the following amended version of Condition No. 1:

1. Brackettown Road - Prior to the issuance of a certificate of occupancy for the Asheville Mall expansion floor area, ... If deemed warranted by City staff, further engineering and operational adjustments to the White Pine Drive and Brackettown Road intersection may ~~shall~~ be implemented ~~by the applicant~~, including, but not limited to: ....

Upon inquiry of Councilwoman Field, City Attorney Oast said that this doesn't solve the problem because we don't know until the Mall is expanded what the problem will be. What this does is preserves for the City the right to go in and make appropriate changes to the extent that we can, if deemed warranted by City staff. He said the point of including this condition is to not set up a situation where the City is precluded from going in and making changes if we think the situation warrants it.

Site Lighting

There seems to be a general agreement with this. The Mall's existing lighting creates an unacceptable glare situation and ambient lighting cannot be increased without negatively affecting the Kenilworth Forest neighborhood. The applicant has agreed to insure that the glare effect will be eliminated and that ambient light will be maintained at current levels or reduced. This agreement will be enforced through staff review of the proposed lighting plan prior to issuance of electrical permits for the lighting, comparison of pre-existing photometrics and post-construction photometrics, and shielding of the existing and proposed light sources in order to eliminate glare (the direct visibility of an unshielded light source from the Kenilworth Forest neighborhood).

2. Site Lighting - The applicant shall eliminate all existing glare into the Kenilworth Forest neighborhood and no glare shall be created from the proposed site lighting; for the purpose of this condition, "glare" shall be considered as the direct visibility of any unshielded light source on the Asheville Mall property from any point within the Kenilworth Forest neighborhood. Additionally, ambient light shall not be increased as it affects the Kenilworth Forest neighborhood; preferably, the ambient light should be decreased. To enforce this condition, the applicant shall provide City staff with a pre-construction photometric study and proposed lighting plan prior to the issuance of any electrical permits for the proposed site lighting. A post-installation photometric study shall be provided to City staff by the applicant to allow evaluation of the lighting design and installation in meeting this condition. The applicant shall correct any deficiencies noted by City staff in both the analysis of these studies and the inspection of the effectiveness of the installation prior to the issuance of a certificate of occupancy for the Asheville Mall expansion floor area. Any future installation of outdoor lighting, including upgrades to, or replacement of existing outdoor lighting on Mall property shall be done in accordance with a photometric plan approved by the Planning and Development Director.

Councilman Cloninger suggested the following amendment: ... for the purpose of this condition, "glare" shall be considered as the direct visibility of any unshielded **or inadequately shielded** light source on the Asheville Mall property ...."

Mayor Sitnick suggested the following amendment: "Additionally, ambient light shall not be increased as it affects the Kenilworth Forest neighborhood.~~; preferably, the ambient light should be decreased~~."

Upon inquiry of Councilwoman Field, Mr. Shuford explained what kinds of measures can be taken to decrease the ambient light.

Buffer Wall/Landscaping

The applicant indicated there would be a buffer wall erected essentially at the place where the cinema will be removed. The extent of that buffer wall, from the staff's perspective, is not satisfactory in addressing the issue. Staff feels it needs to be largely along the entire west side of the property from the edge of the existing parking deck all the way to a point beyond the cinema.

3. Buffer Wall/Landscaping - The applicant shall erect a buffer wall consisting of an aesthetically pleasing, acoustic-deadening/absorptive material mounted on posts and projected to reduce noise volume of the specified type (routine auto traffic on the perimeter road, car stereos, and tire squeals) by a minimum of 65% below existing volume as measured along the common property boundary between the Mall and Kenilworth Forest. This buffer wall shall be of a material and height necessary to achieve the specified level of performance and shall be approved by the Planning and Development Director. The buffer wall shall be erected after the demolition of the cinema building and before the start of other construction. The buffer wall shall be erected along the west side of the property boundary starting at the south end of the existing parking deck and running the remainder of the western property boundary to where it jogs to the south (app. 600 ft.); the buffer shall replace the existing vinyl-slatted chain link fence. The buffering along the remaining property boundary shall be a fence-option Type-D buffer. To protect existing trees which form an integral part of the buffer, the following requirements shall be met by the applicant:

   - Existing trees along the west property line shall not be removed.
   - Prior to receiving a zoning permit, the applicant shall submit a tree survey and tree protection plan showing the location of the buffer wall in relationship to the tree trunks to demonstrate that the trees will remain undisturbed; additionally, the applicant shall work with City staff to identify and apply appropriate fertilization to the existing landscape buffer to improve survivability.
   - The edge of the wall shall be no closer than 4 feet from the tree trunks.
   - If necessary, the edge of the proposed parking lot shall be shifted to achieve this performance.

Mr. Shuford said that the City received today from the applicant a proposal to do a buffer wall, and it's not clear to City staff yet where they are proposing it. Their proposal is to do a buffer wall that is a Georgia DOT standard wall, 8-feet tall, consisting of metal panels which are caulked together, that would, given the information that they have presented to the City, come into pretty general compliance with the standard that we propose. We need to give that further study.

Vice-Mayor Hay asked if you determine, before the wall is constructed, that it will in fact reduce the noise by 65%, or do you have to build the wall and then test it before it is known. Mr. Shuford suspected that we will be able to tell with some relative reasonable degree of assurance, given the parameters of the wall whether or not it's going to perform to that standard, and of course, the method of construction may have an affect on that. For instance, if they did not caulk between the panels, sound could leak through there. This particular type of wall, from the information from the applicant, generally seems to cover that range that the neighborhood indicated was a problem.

Councilwoman Field felt the noise reduction should be stated in terms of a range, since not every frequency will be reduced by 65%, and the ultimate desire is to have a substantial decrease in the amount of noise going into the neighborhood. She felt that a better indicator might be the use of the standard in the industry which is a STC level. Mr. Shuford noted that in the information provided to them by the applicant, this particular wall had an STC rating of 27. As to what that exactly means, staff will have to go back and do some calculations to see if that rating meets the intent of Council.

To address Councilwoman Field's concerns, Mr. Shuford suggested the following amendment to Condition No. 3: "The applicant shall erect a buffer wall ... to reduce noise volume of the specified type ... by a minimum of **an average of** 65% ...."

Mayor Sitnick was concerned that the applicant's original proposal lacked specificity and was limited in scope enough for City staff to say that it doesn't address the noise issue raised by the neighborhood. Mr. Shuford explained that at the time the condition was written they had not received further clarification from the applicant as to what type of wall they were proposing. Staff does now have that information, in that they would erect an 8-foot tall buffer wall, however, staff doesn't feel that that limited length proposed by the applicant is sufficient to address the issues City Council felt were important. Staff recommends the buffer wall be erected along the west side of the property boundary starting at the south end of the existing parking deck and running the remainder of the western property boundary to where it jogs to the south (app. 600 ft.), to address the fact that there will be increased traffic activity in the back.

Upon inquiry of Councilwoman Field if the wall proposed by the applicant will allow the vegetative buffer to remain, Mr. Shuford responded that the wall is fairly narrow and it appears that it will allow the vegetative buffer to remain.

Upon inquiry of Councilwoman Field, Mr. Shuford felt that given the way the property drops off and the elevation change that occurs in the back, it seems like to achieve what City Council is after, some physical barrier will have to be constructed. Staff hasn't said what that physical barrier needs to be, but it needs to be in conjunction with the existing landscaping. He is pretty confident that the barrier needs to be the approximately 600 feet in order to achieve that level of noise reduction. However, if City staff finds that it is not necessary, the applicant and staff may come back before City Council to suggest a modification to that condition.

City Attorney Oast said that in an appropriate circumstance, a modification to a condition can be made. He said the intent of the condition staff is proposing is that we get a projection from the people who are going to be installing the wall, or some engineering certification, that the wall is designed to reduce the average noise by 65%.

Councilwoman Cobb didn't want to lose sight of the fact that privacy is an issue for the neighborhood as well.

Upon inquiry of Mayor Sitnick, Mr. Shuford said that the condition would require that the existing vinyl-slatted chain link fence be removed and replaced by the buffer wall.

Existing Parking Deck Privacy Wall

The July 27, 1999, Council meeting included testimony from neighbors immediately adjacent to the existing parking deck who expressed concerns about privacy. While much of the existing parking deck is shielded from the Kenilworth Forest neighborhood by topography, there are some areas where privacy may be an issue. The applicant should address this issue through the selective placement of six foot tall visual barriers.

4. Parking Deck Wall - The applicant shall work with City staff to identify where Kenilworth Forest properties can be seen from the existing parking deck and shall install six foot tall visual barriers where necessary to eliminate privacy concerns. These barriers shall be erected prior to the issuance of a certificate of occupancy for the Asheville Mall expansion floor area.

City staff suggested that might be the possibility of increased planting of evergreens which might have the same effect. Council may wish to consider whether to leave that option a little open-ended in order to give some flexibility to the applicant.

Transit

The applicant has agreed to a City Council suggestion to provide transit access to the Mall. The recommended condition to address this issue is:

5. Transit - Prior to the issuance of a certificate of occupancy for the Mall expansion project, the applicant shall allow access to mall property to the Asheville Transit Authority for pick up and drop off of bus patrons at a mutually agreed-upon location near a primary entrance to the mall. This access shall include internal circulation of transit buses through the mall parking lot.

Mayor Sitnick thanked the developers for agreeing to provide this transit service which has been requested for many years.

Sidewalk

The applicant has agreed to a City staff condition to install sidewalks along the Mall's street frontage. This sidewalk will tie into the one being constructed on the "former" Lowe's site. The recommended condition to address this issue is:

6. Sidewalk - Prior to the issuance of a certificate of occupancy for the Mall expansion project, the applicant shall construct a five-foot sidewalk along the entire frontage of the mall property where none exists as shown on the revised site plan (revision date 7/9/99).

Mayor Sitnick thanked the developers for agreeing to this condition which will be a great safety and convenience benefit to our citizens.

Deliveries/Service

The neighborhood has expressed concern about the timing of deliveries and service activities such as parking lot vacuuming, as well as the location of dumpsters. To address this issue, the following condition is recommended:

7. Deliveries - The applicant shall limit delivery (loading and unloading) and service activities (parking lot vacuuming, dumpster service, etc.) on the west side of the Mall to between the hours of 7:00 a.m. and 10:00 p.m. Dumpsters shall be located as specified on the revised site plan (revision date 7/9/99).

Mr. Shuford said that the applicant does have a concern with this because they indicate that there is some limited ability to influence deliveries by their tenants.

Councilwoman Field agreed that there is nothing a developer can do to tell trucking companies when to deliver. Therefore, she suggested the following amendment: "The applicant shall limit ~~delivery (loading and unloading) and~~ service activities ...."

Councilwoman Field noted that when leases are re-negotiated or new leases are drawn, that something could be included in the lease agreement that the tenant would make every attempt to have deliveries between 7:00 a.m. and 10:00 p.m.

Hours of Construction

The neighborhood has requested some limit on construction hours. The applicant has agreed to limit the time period for cinema demolition, but needs the ability to work a flexible schedule for other construction activities.

8. Hours of Construction - The applicant shall limit construction hours for cinema demolition to the hours between 7:00 a.m. and 7:00 p.m., Monday through Saturday. Upon installation of the proposed buffer wall, construction hours for the Mall expansion shall not be limited.

Proposed Parking Deck Privacy Wall

Mr. Shuford said that there was one issue which was raised by the neighborhood that staff did not propose a condition for. That dealt with the need to have a privacy wall on the proposed parking deck. The applicant has submitted a line-of-sight study that shows that the proposed parking deck will allow someone standing on the part of the deck nearest the closest adjoining residences to see into the backyards of some of these residences. The view distance to these homes is through wooded areas and ranges from 223 ft. to 313 ft. to the property lines and 298 ft. to 410 ft. to the residential structures.

Staff has measured the height of the headlights of the largest vehicles reasonably anticipated to be parked on the parking deck (a Ford F-250 pickup equipped for off-roading; Chevy Tahoe) and has determined that the proposed four foot high wall will contain the light from these vehicle types.

Given these facts, staff does not recommend a condition to address this issue raised by the neighborhood. The neighborhood proposal of a very high privacy wall on top of this parking deck does not appear warranted given the distance involved and the four foot tall screening proposed by the applicant will block headlights.

General discussion:

Upon inquiry of Councilman Cloninger, Mr. Shuford said that many communities are going to performance standards to allow some flexibility and alternative means of meeting conditions. He felt it was important for City staff to address compatibility issues because as our city grows and redevelops we will have more and more cases where neighborhoods are going to come into a potential impact from non-residential or residential development and we need ways to address that.

Upon inquiry of Councilman Cloninger, Mr. Shuford agreed that some of the engineering and operational adjustments spelled out in Condition No. 1 have been determined not feasible and realistically some of them will not be feasible in six months. However, staff was trying to list the items that had been brought forward by the neighborhood and City Council as items to be looked at in six months. He noted that the City Traffic Engineer earlier indicated that some of these measures would have limited effectiveness - for example, a flashing signal on top of the existing stop signs probably would be ignored just as frequently as the stop sign itself, once people got used to seeing it there. But, he said there is always a possibility that it could be introduced and it be effective.

Upon inquiry of Mayor Sitnick, Mr. Shuford said that there is a sign on Brackettown Road that says "Do Not Block Intersection" but still people will try to squeeze out and get in line to make the left hand turn onto Tunnel Road. He felt that perhaps there are some stripping options that could be put on the pavement. He said City staff can pursue that unilaterally.

Vice-Mayor Hay said that essentially we are being told the best thing we can do is rely on the traffic signal changes along South Tunnel Road to mitigate traffic problems at the intersection of White Pine Drive and Brackettown Road. He noted that we are relying on the applicant's consultant making that decision, although our City staff agrees with that decision. What this says is we want to go back in 6 months and see if that's right or not. If it's not right, then we want to do something about it because essentially the representation that was made to us about mitigating traffic was an erroneous representation. Therefore, he didn't know if we should be so willing to let the developer out of the re-evaluation process. They are the ones that represented to City Council in the first place, that this is the way to mitigate the traffic problems. If they were mistaken about that, and I think it's a good faith representation if it turns out not to be true, I think the developer should be a more active participant in what we do to go ahead and meet that need that apparently wasn't met with the traffic study in the first place. Mr. Shuford said that adjustment staff proposed was intended to address the specific issue and that was they did not want to have to re-visit the issue on their part of closing that driveway or making it one way in or one way out. I will try to work on some language that might address that specific thing and that be a city issue - which we always have the right to do - we control the access to our roads so we can put that in as an alternative and let the other things, which are basically signage and warning lights, etc., potentially be the responsibility of the developer.

Mr. Michael Lebovitz, Senior Vice-President of CBL & Associates Properties (owners of the Asheville Mall) said that Condition No. 1 regarding Brackettown Road as drafted and amended is not acceptable to them. Their traffic report made suggestions as a way of accommodating the increased traffic that will be generated by the proposed Mall expansion. The NC DOT controls the signals on Tunnel Road and we can't tell them when to make those changes. They can, however, request those changes be made and file an application for those changes. He felt that Condition 1 puts the burden on the applicants to make those changes and, therefore, he requested that Condition No. 1 be modified.

Regarding Condition No. 1 still, Mr. Lebovitz said that the City has the right to come in and make changes to the public streets around the Mall that the City controls and the Mall has the right to challenge those changes if they chose. But, for them to agree, through this conditional use permit process, to allow the City to potentially make Brackettown Road a one-way in/one-way out, is, in their opinion, giving the City more room to make future changes that can adversely affect their development. For that reason, they requested that Condition No. 1 be modified to eliminate any of those requests.

Mr. Lebovitz agreed that Brackettown Road can be improved in terms of safety, mainly by drivers from the subdivision improving their driving habits and by the Mall patrons improving their driving habits. He agreed that there does need to be increased signage, a better painted stop bar, etc. But, Brackettown Road cannot be something that they allow to potentially be closed or changed as it impacts their development.

With regard to Condition No. 2 (site lighting), Mr. Lebovitz said that you can decrease ambient lighting by making the edge lighting zero, which is a mistake from a safety standpoint. They provided a site photometric study that shows a very low level of lighting at the edge and we propose that level of lighting be maintained because you just can't have no lighting at the edge of the parking lot.

With regard to Condition No. 3 (buffer wall), Mr. Lebovitz said that at the public hearing they understood from Council that the fence they proposed was not acceptable. They have spent a lot of time trying to find something that is acceptable and they chose a Department of Transportation sound wall that is used in Atlanta, Georgia, on I-285 (he passed out three photographs of the wall). He said that in Georgia that wall buffers a major 10-lane freeway from a residential area. With regard to the requirement that the wall reduce noise by 65%, he

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discovered that the 65% was arbitrary and they don't feel it is appropriate because their buffering is beyond the City's Code, as is the sound barrier. They feel that erecting the DOT approved sound barrier is something that is being used in the field and to place an arbitrary percentage on noise is not appropriate. As to the length of the sound barrier, they are not aware of any complaints from the neighborhood residents before they entered into this process. He agreed that to erect a sound barrier to replace the theatre is an important thing to do and that is why they are proposing the wall to be the length of the theatre.

With regard to Condition No. 4 (existing parking deck privacy wall), Mr. Lebovitz said that only one comment was made regarding this issue at the public hearing. Because they have never had any reported incidences, they don't feel that is an appropriate condition because there has been no problem with that in the past.

With regard to Condition No. 7 (deliveries/service), Mr. Lebovitz appreciated the amendment to that condition. He said they can control their services and will agree to that.

Mr. Lebovitz said that the Mall owners want to be good corporate citizens and good corporate neighbors. He said that they did some research and found that 76% of the residents of Kenilworth Subdivision purchased their house after the Mall was built, stressing that they chose to live next to a regional mall. A statement was made earlier that the Mall decreases property values. They talked to several appraisers in town who said that was not a true statement. He said that, as owners of the Mall, they have an obligation to not only protect the neighborhood and be good corporate citizens, but also to enhance the Asheville Mall.

Vice-Mayor Hay agreed with Mr. Lebovitz in that the NC DOT does have control over the signal timing changes and essentially our Condition No. 1 states that the certificate of occupancy will not be issued until NC DOT makes the traffic signal timing changes. He felt that would be a fair request to amend that condition to something similar to "the applicant will do everything humanly possibly to get the NC DOT to make the traffic signal timing changes recommended by the applicant's consultant ...."

Vice-Mayor Hay said that his point of reference to most of these issues is to limit the intrusion by the new expansion. One issue regarding the length of the buffer wall is increased traffic on the back side of the Mall - not only in the space behind the theatre. He noted that the traffic study shows the expansion will result in a 20% increase of traffic on Brackettown Road and if the Mall patrons want to go to the new Mall expansion, they will go along the back of the Mall from Brackettown Road.

Mr. Lebovitz said that with regard to the increased traffic in the back, they are not re-focusing the entrance to the Mall. If anything, the back area will remain a relatively unused over-flow area, even to a lesser extent than it is now because the cinemas are gone. The way this expansion is being designed, this will not be a high traffic area, except possibly in the 19 days during the holiday season.

Councilwoman Field felt that Council needed to be fair to this new developer to make sure that they are addressing problems that are due to the expansion and not pre-existing problems from the prior Mall owners.

Mr. Phil Noblitt, resident of 297 White Pine Drive and representative of the Kenilworth Forest Neighborhood Association, encouraged Council not to summarily exclude any further consideration of Brackettown Road. There are some things that can be done that may not be as radical as closing that Road, or even making it one-way, for example, looking at the turning radius, installation of stop signs, increase signage to promote traffic onto the new Sears Auto Center entrance. Condition No. 1 does call for NC DOT involvement. As he reads the condition, there is no indication that the traffic signal timing changes would be done summarily and without NC DOT input. He said that on the entrance road to the Sears main entrance, there is a "No Truck" sign and he requested that be removed because that specifically diverts truck traffic to White Pine Drive.

Mr. Noblitt proposed Condition No. 2 be amended to read: "glare" shall be considered as the direct visibility of any ~~unshielded or inadequately shielded~~ light source on the Asheville Mall property ...." He was concerned about "refracted" light and felt there may be a need to look at taking existing light levels within the neighborhood itself so that you can address any glare issue that may be very indirect and may be refracted. He believed that Brackettown Road is a safety issue. Since Council has asked how many traffic accidents have been recorded at the intersection of Brackettown Road and White Pine Drive, he felt that to be consistent, Council should ask how many assaults have been made at the Mall to justify that much additional lighting in the Mall itself.

Regarding the buffer wall, Mr. Noblitt requested Council look at the 65% noise reduction at all frequency ranges. Height of the wall is a factor and in his opinion, an 8-foot buffer wall simply will not be adequate, or reasons such as trash thrown over the wall and security. He reemphasized that even if this is some additional expense, this is a $15 million project. He also requested that the noise wall go from one elevation and topography to the other elevation and topography, whether that's 575 feet or 625 feet (specifically from the two existing banks, noting that one bank goes up hill approximately 30-feet beyond the parking deck).

With regard to the parking deck wall, Mr. Noblitt requested that there be some slightly higher elevation than the four foot wall. He felt that some inexpensive could be installed.

Mr. Noblitt felt that Condition No. 7 regarding limiting delivery hours is a critical issue for the neighborhood. If the applicant cannot limit the delivery hours, he felt Council should revisit the neighborhood's request for a 75% noise reduction and 14-foot high sound wall. He agreed that delivery trucks go into the parking lot area at night and wait till the Mall opens. He felt it would be a good faith effort on the part of the Mall to ask their security personnel to ask the delivery truck drivers to turn off their diesel engines when they sleep in their cabs at night waiting for the stores open.

Mr. Noblitt pointed out several issues where Mr. Lebovitz said they weren't aware of or could not be responsible for, however, not once did he hear Mr. Lebovitz say that they would voluntarily do something that might improve the situation. He felt this process allows the developer selectively to accept responsibility. The neighborhood has acted in good faith, agreed to mediation but is disappointed that there was no attempt made to contact them prior to formal notice being given that this project was going before the Technical Review Committee.

Upon inquiry of Mayor Sitnick, City Manager Westbrook said that Mr. Ken Putnam, Division Traffic Engineer for the NC DOT was at the public hearing and said that are very interested in working with the City of Asheville in doing whatever they can to improve the signal timing.

Councilman Cloninger reminded Council that there is an evaluation, which starts six months after the date of the opening of the Mall expansion to the public. City Attorney Oast noted that Condition No. 1 will be amended so that the performance is evaluated six-months after the changes that the City has recommended, and hopefully implemented, by the NC DOT.

Mayor Sitnick asked that the "No Truck" sign on the entrance road to the Sears main entrance be removed.

Councilwoman Field suggested Council take a short break and let Mr. Shuford talk with the neighborhood representative, the developer and the City Attorney to address the issues that City Council has raised.

Councilman Cloninger felt that the City should retain performance standards to allow some flexibility in the noise wall.

At 6:55 p.m., Mayor Sitnick announced a short break.

Mr. Shuford said that the following amended Condition No. 1 is staff's attempt to address the following concerns: (1) the applicant not having the ability to unilaterally influence the NC DOT; (2) the applicant being forced to make adjustments on Brackettown Road because of contractual agreements with tenants; (3) comments from Vice-Mayor Hay with regard to what the City can do if the NC DOT fails to accept the signalization options; and (4) indicate that the City has the right to unilaterally take certain traffic engineering actions:

1. The traffic signal timing changes recommended by the applicant's consultant in the Mall's vicinity shall be immediately presented to the NC DOT for consideration for implementation. The applicant shall work cooperatively with the NC DOT and the City to maximize the potential for implementation of this performance standard. If the NC DOT fails to enact signalization changes or after a six month performance evaluation period (from the date of the opening of the Mall expansion to the public), or the implementation of signalization changes (whichever is later), staff shall coordinate a public meeting to receive comments from the Kenilworth Forest neighborhood, the developer, NC DOT, and City Engineering regarding the effectiveness of the signal timing changes in addressing the traffic safety, capacity and convenience objectives of the City in general and the neighborhood and the Mall in particular. If deemed warranted by City staff, further engineering and operational adjustments to the White Pine Drive and Brackettown Road intersection shall be implemented by the applicant. These options shall not include closure of the intersection or access changes such as one-way in or out, although the City reserves the right to unilaterally take these actions and the applicant has the right to take whatever legal means necessary to preserve his right of access. Alternately, further signalization adjustments in the Mall's vicinity may also be considered as a possible means of meeting the performance objectives established in the consultant's report; however, this alternative shall require a similar re-evaluation of the performance within six months of implementation.

Upon inquiry of Councilman Cloninger, Mr. Shuford said that all intersection design changes would have to be done by the developer, except the drastic ones, such as closure. For example, if there was a need to adjust the radius of the roadway or to install signage, signalization, then those would be at the expense of the developer, but they are relatively minority compared to that one issue.

When Councilman Cobb asked who will do the six-month evaluation after the Mall opens, Mr. Shuford said City staff will convene a meeting of the NC DOT, City Engineering staff, applicant and the neighborhood and talk about whether or not the performance issues have been addressed to everyone's satisfaction. The City will reserve the right to make the ultimate decision with regard to whether Condition No. 1 has been met.

Councilman Cobb was reluctant to eliminate the one-way in/one-way out issue on Brackettown Road. He felt the developer inherited a bad situation and he was not sure whether the City needed to hold the developer liable to make the change. If the City made the mistake years ago, they should assume some responsibility to correct it.

Mayor Sitnick announced that there was City Council consensus on Condition No. 1 as amended by Mr. Shuford after the break.

Mr. Shuford said that the following amended Condition No. 2 is staff's attempt to address the following concern, in addition to the two amendments suggested earlier by Councilman Cloninger and Mayor Sitnick: (1) the neighborhood's need to address the issue from their side of the neighborhood:

2. The applicant shall eliminate all existing glare into the Kenilworth Forest neighborhood and no glare shall be created from the proposed site lighting; for the purpose of this condition, "glare" shall be considered as the direct visibility of any unshielded or inadequately shielded light source on the Asheville Mall property from any point within the Kenilworth Forest neighborhood. Additionally, ambient light shall not be increased as it affects the Kenilworth Forest neighborhood. To enforce this condition, the applicant shall provide City staff with a pre-construction photometric study and proposed lighting plan prior to the issuance of any electrical permits for the proposed site lighting. A post-installation photometic study shall be provided to City staff by the applicant to allow evaluation of the lighting design and installation in meeting this condition. **All photometric studies shall include readings taken from locations in the Kenilworth Forest neighborhood affected by ambient and glare lighting.** The applicant shall correct any deficiencies noted by City staff in both the analysis of these studies and the inspection of the effectiveness of the installation prior to the issuance of a certificate of occupancy for the Asheville Mall expansion floor area. Any future installation of outdoor lighting, including upgrades to, or replacement of existing outdoor lighting on Mall property shall be done in accordance with a photometric plan approved by the Planning and Development Director.

Mr. Lebovitz said that since there are street lights in the neighborhood, it is hard to get a good reading and determine where the lights are coming from when you have multiple light sources. Mr. Shuford responded that if you go in and do a photometric study prior to the installation of the lighting and do one afterwards (the street lighting factor has not changed) and there is a difference, then the City can suggest some adjustments to the lighting.

Mayor Sitnick announced that there was City Council consensus on Condition No. 2 as amended by Mr. Shuford after the break.

Mr. Shuford said that the following amended Condition No. 3 is staff's attempt to address the concerns raised by City Council, in addition to the amendment suggested earlier by Councilwoman Field:

3. Buffer Wall/Landscaping - The applicant shall erect a buffer wall consisting of an aesthetically pleasing, acoustic-deadening/absorptive material(s) mounted on posts and projected to reduce audible noise volume **to a weighted average of not more than 65 decibels during the hours of operation of the Mall** ~~of the specified type (routine auto traffic on the perimeter road, car stereos, and tire squeals) by a minimum of 65% below existing volume~~ as measured along the common property boundary between the Mall and Kenilworth Forest, **and in no case shall the buffer wall be less than eight feet in height**. This buffer wall shall be of a material and height necessary to achieve the specified level of performance and shall be approved by the Planning and Development Director. The buffer wall shall be erected after the demolition of the cinema building and before the start of other construction. The buffer wall shall be erected along the west side of the property boundary starting at the south end of the existing parking deck and

running the remainder of the western property boundary to where it jogs to the south (app. 600 ft.); the buffer shall replace the existing vinyl-slatted chain link fence. The buffering along the remaining property boundary shall be a fence-option Type-D buffer. To protect existing trees which form an integral part of the buffer, the following requirements shall be met by the applicant:

- Existing trees along the west property line shall not be removed.
- Prior to receiving a zoning permit, the applicant shall submit a tree survey and tree protection plan showing the location of the buffer wall in relationship to the tree trunks to demonstrate that the trees will remain undisturbed; additionally, the applicant shall work with City staff to identify and apply appropriate fertilization to the existing landscape buffer to improve survivability.
- The edge of the wall shall be no closer than 4 feet from the tree trunks.
- If necessary, the edge of the proposed parking lot shall be shifted to achieve this performance.

Mr. Shuford said that the City Attorney has been studying this issue from the standpoint of the noise ordinance. He has indicated to them that in an average neighborhood, during daytime, you have an ambient noise of between 60-65 decibels. Staff recommends that standard be measured from the property line, so that during the operating hours of the Mall, there would be an average reading of 65 decibels or less at the property line. The intent of that would be to try to keep the Mall from not creating a non-neighborhood level of noise. Whether that means it needs to be an 8-foot wall or an 18-foot wall is a performance issue to be resolved at some future point.

Mayor Sitnick said that personally she would like to see the buffer wall be erected the full length (along the west side of the property boundary starting at the south end of the existing parking deck and running the remainder of the western property boundary to where it jogs to the south, app. 600 ft.). Mr. Shuford said that if Council wants to go with the true performance standard, Council would not specify the length or height of the wall.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast said the 65 decibel standard is from expert sources he consulted for residential noise levels in urban areas.

When Mayor Sitnick asked if we can amend a condition that would require delivery trucks that come in early for early deliveries, to sleep in a different part of the parking lot, to address the concerns of noise when they leave their motors running all night. City Attorney Oast said that the revised noise ordinance will take part of that. He said that regardless of whether or not the developer or his tenants can control deliveries, the people who make deliveries will have to abide by the noise ordinance. The City has some ability to enforce the noise ordinance on private property and we are in the process of clarifying that ability when the revisions are reviewed by City Council.

Upon inquiry of Councilman Cobb, Mr. Shuford said that if you use the weighted average of not more than 65 decibels, you will balance out those highs and lows and end up with something that basically keeps the noise activity in the neighborhood at neighborhood levels.

When Councilwoman Field asked about comparison of decibels, City Attorney Oast said that a vacuum cleaner is about 90 decibels.

Upon inquiry of Mayor Sitnick about devices that measure decibels, City Manager Westbrook said that the Police Department does have decibel meters.

Mr. Lebovitz said that if noise is the concern of City Council, just set the standard since that can be measured. He realized that they have to extend the privacy area behind the cinema, but there already is a privacy barrier extending to the parking deck (the chain-link fence). He said that after the construction is completed and they find that they are higher than the 65 decibels, they will extend the sound wall to the parking deck.

When Councilwoman Field said that the wall needs to be either a sound wall or a visual wall against the neighborhood, Mr. Lebovitz felt that as long as it is listed as a visual wall, that's fine because it can be of a material that they chose and which they feel is architecturally compatible.

Mr. Noblitt felt that the discussion is moving from a noise wall to a wooden fence. He felt we should be looking to decrease the noise and decrease the light in the neighborhood, because he feels they are making a trade-off on traffic congestion. He said that the fence is also a privacy and security issue and an 8-foot fence is easy for a young person to jump. Even a 10-foot fence would be a trash issue and security issue.

Mayor Sitnick said that we are talking about improvements - meeting a standard for as long and as high as the wall has to go to meet that standard. In addition to that, behind the cinema now there is nothing.

Mr. Noblitt said that there is a barbed-wire fence now behind the cinema and he hoped that the materials would not be mixed and matched so that they could have a continuous fence that would be aesthetically pleasing and not part barbed-wire and part not. He suggested that it be a pleasing fence and be of consistent material.

Councilman Cloninger suggested Council adopt the 600 feet length with the wall to be comprised of whatever materials staff feels fit to meet the decibel requirements and privacy issues.

Upon inquiry of Councilman Cobb, Mr. Shuford said that staff is trying to address the noise level that will not be affected by the City's upcoming noise ordinance. Noise, like boom-boxes, etc. will be addressed by enforcement of the revised noise ordinance.

Mr. Shuford reiterated that City Council does need to address the issue of height and the aesthetics of the wall in Condition No. 1, and Council certainly wants to leave the provision in there about the chain-link fence being removed. He understands that was the consensus of the Council that even though that serves as a barrier to people crossing back and forth to property and it is 8-feet tall, that it is not the level of aesthetics that Council is interested in pursuing.

Mayor Sitnick announced that there was City Council consensus on Condition No. 3 as amended by Mr. Shuford after the break.

Mr. Shuford said that the following amended Condition No. 4 is staff's attempt to address another alternative for the applicant:

4. The applicant shall work with City staff to identify where Kenilworth Forest properties can be seen from the existing parking deck and shall install six foot tall visual barriers where necessary to eliminate privacy concerns. **Alternatives to the visual barrier, such as the planting of evergreens, may be proposed by the applicant and accepted by the City in its sole discretion.** These barriers shall be erected prior to the issuance of a certificate of occupancy for the Asheville Mall expansion floor area.

Mayor Sitnick announced that there was City Council consensus on Condition No. 4 as amended by Mr. Shuford after the break.

Mr. Shuford said that the following amended Condition No. 7 is staff's attempt to address the amendment suggested earlier by Councilwoman Field:

7. Deliveries - The applicant shall limit service activities (parking lot vacuuming, dumpster service, etc.) on the west side of the Mall to between the hours of 7:00 a.m. and 10:00 p.m. Dumpsters shall be located as specified on the revised site plan (revision date 7/9/99).

Mayor Sitnick felt that another way to address parking lot vacuuming is that crews could start cleaning part of lot nearest the neighborhood earlier in evening and end up in the farthest areas later at night.

Again, Mr. Shuford said City staff didn't feel the need to address the issue of the height of the wall on the proposed parking deck because they feel the distance from the properties is going to address that issue.

Mayor Sitnick announced that there was City Council consensus on Condition No. 7 as amended by Mr. Shuford after the break.

Mayor Sitnick noted that Condition Nos. 5, 6 and 8 have consensus by City Council as read by Mr. Shuford before the break.

City Attorney Oast said that if Council is comfortable is voting on the conditions as modified by Mr. Shuford, he will proceed in drafting the Order for the Mayor's signature, upon vote of City Council.

Councilman Cloninger moved to adopt the ordinance which incorporates the order granting the conditional use permit with the modifications as explained by Mr. Shuford. This motion was seconded by Councilman Sellers.

Mayor Sitnick felt that it needs to be absolutely clear to everyone that this Council's main concern, where Brackettown Road is, is safety - secondary to convenience. She agreed with Councilman Cobb in that Brackettown Road was not a problem created by the expansion and it shouldn't be something the current owners have to deal with, and certainly she didn't think that it's Council's intention to give you any surprises in six months after completion of your expansion. She did think it was important to say, however, that whatever this City has to do to make sure Brackettown Road is safe for the neighborhood residents and the Mall patrons, is what we will do when, and if, the time comes to do it.

The motion made by Councilman Cloninger and seconded by Councilman Sellers carried unanimously.

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At 8:10 p.m., Councilman Sellers moved to excuse Councilman Cloninger from the meeting. This motion was seconded by Councilman Cobb and carried unanimously.

V. NEW BUSINESS:

A. MOTION AUTHORIZING CITY STAFF TO ADVERTISE A REQUEST FOR PROPOSAL FROM NON-PROFIT AGENCIES INTERESTED IN MANAGING THE PUBLIC ACCESS CHANNEL

Councilman Tomes said that the cable franchise agreement adopted by City Council designates three initial access channels to be used for public, educational and/or governmental programming.

Last November Council discussed several possible ways to organize these channels. The governmental and educational channels were established first because they were less involved and could be on-the-air quickly. It is now time to concentrate on the public access channel.

City Council requested that staff prepare a Request for Proposal (RFP) for proposal soliciting non-profit organizations to run the public access channel. Council also decided to appoint a Public Access Channel Commission following the section of this non-profit organization.

Staff has prepared an RFP that has been reviewed by the City Manager's Office, the Legal Division, Buncombe County and members of the community. Changes were made to the document based on suggestions presented from these different sources. An ordinance has also been prepared establishing a Public Access Channel Commission which will set policy and oversee the management of the public access channel.

Staff requests that City Council approve issuance of the Request for Proposal. Staff further requests that City Council approve the ordinance establishing a Public Access Channel Commission.

Upon inquiry of Mayor Sitnick, Ms. Robin Westbrook, Public and Community Information Coordinator, said that 4-5 organizations have requested a copy of the RFP.

When Councilman Cobb asked what would happen if we don't get any responses to the RFP, Ms. Westbrook said that then Council can go back and try one of the other possible ways in which to organize this channel.

Mr. Jack Fobes presented Council with the following statement: "It will be interesting to see what reactions you receive from non-profit citizens groups to the Request for Proposals on the operation of a so-called public access TV channel. I feel, however, that the approach which has been adopted is faulty and will result in further delays in providing this new facility for citizens. My thinking begins with two premises. First, that an integrated system for public learning o public service television is desirable, covering so-called government information reporting, school and higher education outreach to the community and public access. All three are public services and all are part of lifelong learning in a community. Moreover, there is likely to be an overlap in programming by the education institutions and those arranging public access. For example, non-profit groups can be expected to bring educational videos for exhibition to either channel. My second and more important premise is this: it is Council's role and responsibility to establish the overall principles, goals, policies and strategies for all three public service TV operations. Moreover, only with such a basis can the next steps toward implementation of an integrated system be fruitful. In my view, the Council should have drafted - perhaps with advice from a citizens committee - and adopted a solemn resolution embodying two provisions. First, there was and is a needed a statement of principles and goals for such an important public service operation. Second, we need to see set forth the policies and strategies within which a government 'channel' and organized education 'channels' and a public access 'channel' should function. One element of such a policy and strategy would cover the future of cable TV services spanning both city and county. Clarification is needed also as to policies governing current and future sources of funding. Although the RFP records some important principles and policies, their place is in a Council resolution. Under present circumstances, any responses to the present RFP will surely be accompanied by questions to the Council on basic policy and strategic considerations. If such a basic policy resolution had been adopted, the Council could logically then have decided whether a single board or commission or separate boards or commissions should be established. The resolution could have directed the single board or the several boards to begin by reviewing tentative plans for the operations involved and to return to the Council with recommendations for authorization of actual operations. The basic resolution would have set forth the second and continuing function of such board or boards, that is, to monitor and to receive accountability reports from the operators, including, by the way, from the City Manager. You will guess that I believe that one public commission should be charged with overseeing all community learning as it is severed through cable television, whether the programs originate with or come from government entities and civil servants, from high school or higher education authorities or from individuals or citizens groups who are given the possibility of 'speaking out' on cable TV. My guess is that no single non-profit group will be able to put together a proposal on public access TV and that efforts to form a responsible and accountable coalition for such service will raise basic questions which bring matters back to the Council for solution. Some, I am sorry to say, will probably welcome the delay in launching what is a difficult and sensitive, but highly desirable form of enhancing learning and promoting citizen participation in democracy. By then, who knows? -- advances in technology and competition for the public eye and ear may have satellite and telephone company services in the picture with the cable franchisees to complicate matters."

Councilman Tomes moved to authorize City staff to advertise the Request for Proposal from non-profit agencies interested in managing the public access channel. This motion was seconded by Councilman Sellers and carried unanimously.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 10, 1999, AND THE WORKSESSION HELD ON AUGUST 17, 1999

Vice-Mayor Hay moved for the adoption of the minutes of the regular meeting held on August 10, 1999, and the worksession held on August 17, 1999. This motion was seconded by Councilman Cobb and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the period of August 6-12, 1999: Deborah I. Parries (Parks & Recreation), BellSouth (Streets) and Patricia Youngblood (Water).

The following claims were received by the City during the period of August 13-19, 1999: Sam Arrington (Water), Janelle Taylor (Police) and Iris Wardlaw (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:17 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - September 7, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Budget Amendment regarding the Jim Crum Memorial

Summary: The consideration of a budget amendment, in the amount of $2,152, to set up a memorial for Jim Crum, former City Print Shop Manager.

Jim Crum, former City Print Shop Manager, recently passed away after an extended illness. A number of City employees who knew and worked with Jim expressed an interest in setting up a memorial to Jim as an expression of appreciation for a special person. Since Jim was an avid skier and supporter of youth activities, the idea of establishing an annual scholarship to assist a deserving youth to participate in the City's learn to ski program was suggested as a fitting memorial to Jim. City employees have contributed a total of $1,076 to the City for the memorial and Jim's family have agreed to match the employee contributions bringing the total to $2,152. This action will set up an ongoing appropriation for the use of this amount as a memorial to Jim.

City staff recommends that a budget amendment for the Jim Crum Memorial be approved.

Brevard Road Annexation Area - Phase II, Contract A, Sewer System Improvements Contract

Summary: The consideration of adopting a resolution awarding the contract for Brevard Road Annexation Area - Phase II - Contract "A" Sewer System Improvements to the lowest responsible bidder, Wolfpen Corporation, in the amount of $249,681.00.

This project is part of the proposed Brevard Road Annexation Area Sanitary Sewer System Improvements and consists of the installation of approximately 3,600 linear feet of eight inch (8") diameter sanitary sewer line and related appurtenances.

The Engineering Department received and publicly opened three (3) bids on Friday, July 30, 1999, at 2:00 p.m. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, Wolfpen Corporation was found to be the lowest responsible bidder with a total bid of $249,681.00. The Engineer's estimate for this project was $312,555.00.

Wolfpen Corporation has performed several projects of this nature in the past without any major problems.

The construction time for this project is identified as 120 calendar days in the contract documents. The Contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he/she shall be in default after the time stipulated in the contract.

Staff recommends that City Council adopt the resolution awarding the bid for Brevard Road Annexation Area - Phase II- Contract "A" Sewer System Improvements to Wolfpen Corporation, the responsible low bidder, and authorize the City Manager to execute all necessary agreements and contracts.

Provisions for Malt Beverages and/or Unfortified Wine at the 1999 Greek Festival

Summary: The consideration of a resolution to allow alcohol at the Asheville Greek Festival on October 1-3, 1999, at the time and location shown on the resolution.

The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City County Plaza on October 1-3, 1999. Local entertainment, food, and vendor displays will be available daily.

N.C. Gen. Stat. sec. 18B-300(c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and unfortified wine on public streets, and on property owned, occupied or controlled by the City. The City Council of the City of Asheville has adopted an ordinance pursuant to that statutory authority. That ordinance, Section 11-11 in the Code of Ordinances, provides that the City Council may adopt a resolution making other provisions at a special event or community festival.

The Parks and Recreation Department recommends that City Council adopt the resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the Asheville Greek Festival to include the areas as described in the resolution.

Revisions of the Regional Water Authority for Asheville, Buncombe and Henderson County By-Laws

Summary: The consideration of a motion revising the Regional Water Authority's By-Laws to reflect the conditions of the Restated and Amended Supplemental Water Agreement dated August 13, 1996.

Most of the changes reflect the requirements of the amended water agreement, and to update other references which have been revised over time, such as change in position title of the Director's position from Director of Water and Sewer to Director of Water Resources. The existing By-Laws were last adopted before the Water Agreement was updated in 1996. The restated Water Agreement in 1996 made a number of changes to the organization of the Authority, including the number of members of the Authority and the inclusion of representation by Henderson County.

One additional change was included in the By-Laws as approved by the Water Authority on August 17, 1999. On the second page, Section V, line 4, the word "appropriate" was substituted for "good" in front of cause to allow each appointing board to the Water Authority (the City Council, Buncombe County Commission, or Henderson County Commission) to decide by two-thirds vote what is appropriate for removing one of its appointments to the Water Authority before the appointee's three year term ended. Mr. Bill Moyer, a member of the Water Authority and Henderson County Commissioner, expressed the desire of the Henderson Commissioners to remove an appointment from its own board if that individual left the Board of Commissioners before the term on the Water Authority expired.

The Water Agreement requires the Water Authority, the City Council, and the Buncombe County Commissioners to consider changes to the Water Authority By-Laws, with the amended By-Laws considered adopted upon the approval of two of the three boards.

The Regional Water Authority recommends approval of the changes to the By-Laws.

Mayor Sitnick wanted to make sure that City Council receives semi-annual reports from the Water Authority.

Bid Award for Bee Tree Creek Crossing

Summary: The consideration of a resolution adopting the recommendation of the Regional Water Authority to award a contract to Cooper Construction Company for the Bee Tree Creek Crossing Project.

The City Engineer's Office received bids on June 29, 1999, for the Bee Tree Creek Crossing waterline improvement project. This was the second scheduled bid opening as there were not three (3) bids at the first bid opening. This project involves the relocation of a 24-inch waterline, in three (3) separate locations along Bee Tree Creek. These relocations are necessary to insure the continued uninterrupted service of this major waterline.

Two (2) bids were received at the June 29th opening with Buckeye Construction Company submitting the low bid of $ 349,220. Following is a summary of the bids received:

Buckeye Construction Co., Canton, N.C.	$349,220
Cooper Construction Co., Hendersonville, N.C.	$366,025
The engineer's estimate for this project is	$340,000

The Office of Minority Affairs has reviewed these bids and has determined that the low bidder, Buckeye Construction Company, did not fully comply with the requirements for documentation of the Minority Business Plan. The second low bidder, Cooper Construction Company, did comply with the requirements of the Minority Business Plan but their bid is over budget.

The Regional Water Authority voted on August 17, 1999, to reject the bid of Buckeye Construction Company and award the contract to Cooper Construction Company.

Since August 17, 1999, staff has met with Cooper Construction Company as part of a "value engineering" review to negotiate reduction in the contract price. The results of these efforts will be prepared as Change Order No. 1 and executed at the time of execution of the construction contract.

The Regional Water Authority recommends to reject the low bid from Buckeye Construction Company for non-compliance with the Minority Business Plan, and a contract be awarded to Cooper Construction Company.

Councilman Tomes was pleased to see that there is a commitment by the City of Asheville to be intentional when dealing with the Minority Business Plan.

Incident Based Crime Reporting System Grant Award

Summary: The consideration of a resolution to authorize the City Manager to accept a grant award from the North Carolina Department of Crime Control and Public Safety, Division of Governor's Crime Commission.

The Governor's Crime Commission has awarded the City a grant in the amount of $19,950. A local matching contribution of $6,650 is required. Total project cost is $26,600. The intent of the project is to implement an automated crime reporting system for the Police Department which will interface with the existing criminal justice information system and the Department's mobile computer network infrastructure. The switch from a manual process to an automated process will result in greater efficiency and accuracy in the department's crime reporting program.

The source for the local match is 110-0000-233-01-02, controlled substance excise tax revenues.

City staff recommends City Council adopt a (1) resolution authorizing the City Manager to accept the grant award and (2) Budget Ordinance Amendment to appropriate funds to the Police Department budget in support to the above referenced grant.

Agreement with Carolina Power & Light Company for Replacement of Ballfield Lights

Summary: The consideration of an agreement with Carolina Power & Light Company for the replacement of ballfield lights at Murphy-Oakley Park and Weaver Park.

Over the past several years, the ballfield lights at both Murphy-Oakley and Weaver Parks have continued to deteriorate. This has caused not only increased maintenance costs but has also resulted in safety concerns for participants. The Parks and Recreation Department has been working with Carolina Power & Light Company (CP&L) on an innovative approach to replacing the ballfield lights without an upfront capital expense. Traditionally, it has cost approximately $75,000 to replace lights at one field. By working with CP&L, we are able to enter into a lease purchase agreement which would allow for monthly payments to CP&L to cover not only the cost of the lights but also maintenance. The monthly fee for Weaver Park would be $587 and the monthly fee for Oakley would be $1,132. The Parks and Recreation Department currently has funds allocated for this expenditure. As stated before, CP&L will maintain the lights over the ten-year lease agreement. This would include replacing any lights, relining the lights, and any other electrical work at the beginning of spring and fall seasons. In addition, after five years, CP&L will completely rewire and relight both ballfields. This total price is turnkey and includes use of concrete poles, which would replace the current poles at both fields. The Department has been spending approximately $12,000 per year in maintenance costs associated with the outdated lights and feels that this equipment rental and maintenance agreement with CP&L would be extremely advantageous to the City.

The Parks and Recreation Department requests City Council approval for the City Manager to enter into an equipment rental and maintenance agreement with Carolina Power & Light for the replacement of the ballfield lights at Murphy-Oakley Park and Weaver Park.

Councilman Cloninger said that his firm does work for Carolina Power & Light Company and wondered if he had a conflict of interest. City Attorney Oast said that he did not feel that Councilman Cloninger had a conflict of interest.

Renewal of Agreement with State for Regional Response Team for Major Hazardous Materials Emergencies in Western North Carolina

Summary: The consideration of a resolution authorizing the Mayor to enter into a new agreement with the North Carolina Department of Crime Control/Public Safety's Emergency Management Division to provide hazardous materials emergency response in Western North Carolina through June of 2001.

In 1994, the North Carolina Assembly established funding for a "regional response" approach to hazardous materials emergencies. This approach involved selection of the state's top six local fire department hazardous materials response teams to respond to multi-county areas in case of emergency using vehicles and equipment furnished by the state. The Asheville Fire Department's Hazardous Materials Response Team was selected as one of these elite teams.

In 1997, the State called for new competitive proposals for regional hazardous materials response teams, and Asheville's team was selected as the WNC team again. This past May, the State once again called for competitive proposals for regional hazardous materials response teams—and, again, Asheville's team was selected as the WNC regional response team.

The new agreement provides for hazardous materials emergency response for major incidents in North Carolina's 20 western counties from October of 1999 through June of 2001. The State will continue to provide and maintain the team's response vehicle ("RRT 6") and related equipment. The State will also reimburse the City for training expenses (up to $24,500), administrative expenses (up to $31,500), workers compensation expenses (up to $8,750) and medical surveillance/evaluation (up to $14,000) for each year of the proposed two-year agreement.

The Fire Chief recommends City Council adopt a resolution authorizing the Mayor into enter in a new agreement with the State of North Carolina through which the City of Asheville will provide hazardous materials emergency response in Western North Carolina, and the State will furnish response equipment and reimburse expenses of the City's hazardous materials response team for such response.

Budget Amendment re: Hazard Mitigation Grant for French Broad River

Summary: The consideration of a budget amendment, in the amount of $2,382,328, from the Federal Emergency Management Agency as a part of the Hazard Mitigation Program.

The City applied for funds in 1997 for a grant from the Federal Emergency Management Agency as a part of the Hazard Mitigation Program. The grant was recently awarded in the amount of $2,382,328 and is designated for the acquisition and improvement of commercial property for the French Broad River Greenway.

The section of greenway represents the City of Asheville's commitment to revitalize and build a greenway corridor along the French Broad River. Earlier developments in the greenway corridor include the French Broad River Park, Amboy Road Park Trail, and land acquisition. The section of greenway will be located on 7.25 acres along Riverside Drive adjacent to Haywood Road. The grant funds will be used for the acquisition and improvement of commercial property for the French Broad River Greenway.

The Parks and Recreation Department recommends City Council to approve the budget amendment, in the amount of $2,382,328, to establish a budget for implementation of the FEMA grant project.

Grant Application for Food Service in After School Program

Summary: The consideration of a resolution authorizing the City Manager to apply for a grant from and enter into an agreement with the N. C. Dept. of Health and Human Services, Division of Maternal and Child Health, to provide food service in the After School Program.

The Parks and Recreation After School Program provides supervised licensed child care, recreation, enrichment activities, and food service to children ages 5 to 12 during after school hours, teacher work days, and holidays at six program sites. Sites are located at Claxton, Dickson, Hall Fletcher, Jones, and Vance Elementary Schools; and Reid Community Center. Sites are licensed by the State of North Carolina with a child/staff ratio of 1 to 25. Snacks are provided in the afternoon, and breakfast and lunch is provided on holidays and teacher work days. Activities include arts and crafts, games, sports, science, music, homework time, and special events. Fees are based on the number of children from each family and frequency of attendance. The Parks and Recreation Department will contract with Asheville City Schools for food service at a rate of $1.00 per breakfast, $1.95 per lunch, and $.85 per snack. The grant will reimburse the Parks and Recreation Department approximately one third of the cost of providing food service in the After School Program. The number of meals will vary based on the total meals actually served each month.

The Parks and Recreation Department recommends the City of Asheville to apply for the grant funds through the Child and Adult Care Food Program.

New Street Name Approval - Medical Park Drive

Summary: The consideration of a resolution accepting the new proposed street name of "Medical Park Drive."

Sweeten Creek Surgery, LLC. Edward B. Shoff, Marian B. Shoff, Eyeland, LLC, Mission - ST. Joseph's Health System, Inc. owners of lots in The Regional Medical Park have petitioned the City of Asheville to accept the street name "Medical Park Drive."

Staff recommends adoption of the resolution.

New Street Name Approval - Patch Adams Drive

Summary: The consideration of a resolution accepting the new proposed street name of "Patch Adams Drive."

David Buckner, John Backe, Shirley Backe, Jasper J. Boyer, Calvin A. Boyer, owners of all the lots off Sandhill Road have petitioned the City of Asheville to accept the street name "Patch Adams Drive."

Staff recommends adoption of the resolution.

At the request of Councilwoman Field, Planning & Development Director Scott Shuford said that he would give her a report on how streets are named.

New Street Name Approval - Vanderbilt Park Drive

Summary: The consideration of a resolution accepting the new proposed street name of "Vanderbilt Park Drive."

Biltmore Farms, Inc., and Cecil Development Group, Inc., owners of all the lots in Vanderbilt Park South Development have petitioned the City of Asheville to accept the street name "Vanderbilt Park Drive."

Staff recommends adoption of the resolution.

Cable Rates for Rebuild

Summary: The consideration of a resolution which would issue a written decision in response to the filings of an FCC Form 1235 and an FCC Form 1240 by Brenmor Cable Partners, L.P. (d/b/a InterMedia) for monthly rates for the basic service tier on its cable system.

Pursuant to federal law and the regulations of the Federal Communications Commission ("FCC"), the City of Asheville ("City") is certified to regulate basic service rates and charges of Brenmor Cable Partners, L.P. ("InterMedia") in the franchised area of InterMedia within the corporate limits of the City.

On May 19, 1997, the City of Asheville received from InterMedia an FCC Form 1235 entitled "Abbreviated Cost of Service Filing for Cable Network Upgrades". The FCC Form 1235 filed with the City of Asheville by InterMedia was for pre-approval of maximum permitted rates for the basic service tier to recover costs for the rebuild of a portion of the cable system. The City of Asheville reviewed that FCC Form 1235 filed by InterMedia and issued an order in Resolution No. 97-90, extending the review period of the FCC Form 1235 by the City of Asheville by 150 days pursuant to federal laws and regulations.

After further review of the FCC Form 1235 filed by InterMedia, the City Council adopted Resolution No. 97-213 on November 11, 1997, which directed InterMedia to keep an accurate account of all amounts received by reason of the rate increase requested pursuant to the FCC Form 1235 filing by InterMedia, in order that the City may, at its option, subsequently issue a written decision regarding the rate request and determine whether or not refunds should be provided to subscribers after completion of the upgrade or rebuild of the cable system.

FCC regulations require a cable system operator who has chosen the pre-approval option to file the FCC Form 1235 again following the end of the month in which upgraded cable services become available and are providing benefits to all customers of rate-regulated services, using actual costs where applicable. The upgrade or rebuild of the cable system was completed for service to customers as of August 1, 1998.

On March 1, 1999, InterMedia filed FCC Form 1240, for the purpose of justifying its monthly rates and hourly service charges for cable services on the basic service tier on its cable system for the time period of June 1, 1999, to May 31, 2000. The new maximum permitted rate for the monthly rate on the basic service tier as calculated by InterMedia on the FCC Form 1240 for the time period of June 1, 1999 to May 31, 2000, was $10.3579. InterMedia proposed to continue charging the current monthly rate of $11.91 for the time period of June 1, 1999, to May 31, 2000, which amount exceeds the new maximum permitted rate of $10.3579, by relying upon the filing of the FCC Form 1235 submitted to the City on May 16, 1997, which determined that an increase in the basic service tier rate of $1.96 per month would be permitted as of the time of filing, based upon a rebuild of the cable system. The new maximum permitted rate of $10.3579 and the increase in the rate of $1.96 per month based on the filing of the FCC Form 1235 would combine to be a rate of $12.32, which is in excess of the current basic service tier rate charged of $11.91 per month.

Based upon the filing of FCC Form 1240 by InterMedia on March 1, 1999, and the filing of FCC Form 1235 by InterMedia on May 19, 1997, the City Council adopted Resolution No. 99-

82 on May 25, 1999, which noted that InterMedia should file again the FCC Form 1235. The resolution also ordered InterMedia to keep an accurate accounting of all fees charged to subscribers on the basis of the FCC Form 1235 filed on May 16, 1997, and the FCC Form 1240 filed on March 1, 1999, in order that the City of Asheville may subsequently issue a decision on the reasonableness of the rates charged.

After adoption of Resolution No. 99-82 by the City Council on May 25, 1999, InterMedia filed again the FCC Form 1235 with the City of Asheville on June 4, 1999. Additional information was required from the Federal Communications Commission and InterMedia regarding the second filing of the FCC Form 1235, which information has now been received.

After further review of all documents and FCC requirements, it appears that the monthly rate of $11.91 charged by InterMedia for the basic service tier, based upon the filings of FCC Form 1235 on May 19, 1997, and June 4, 1999, and the filing of FCC Form 1240 on March 1, 1999, does not exceed the maximum permitted rate per month for the basic service tier as authorized under FCC rules and regulations. The resolution makes that finding.

City staff recommends City Council adopt the resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

CONTRACT REVISIONS

Mr. David Pisha, Civic Center Director, said that this is the consideration of a resolution authorizing the City Manager to amend the lease agreement with Asheville Professional Hockey, Ltd., for the Asheville Civic Center.

The City and Asheville Professional Hockey have entered into an agreement for an initial period of five years with an optional extension for two additional years. The hockey team, as part of the contract, agreed to purchase an ice rink and related equipment. At the end of the initial contract period, the rink ownership passes to the City. A contractual provision, however, allows the City to assume ownership earlier if it so desires. The team has asked the City to consider the possibility of exercising this option. Staff has reviewed this request and believes it would be in the best interest of the City to do so.

In doing so, the City would assume the approximately $90,000 in annual lease payments for the next four years. The City, however, would not be at any financial risk by completing this transaction because the team is willing to give up its share of revenues from public skating and hockey concessions that were part of the original agreement. This revenue sharing was designed to aid the team in making the lease payments. Furthermore, the team has agreed to make up any monetary shortfall the City may suffer under this new agreement when compared to the old one. Therefore, the amount of net proceeds the City will receive is exactly equal to the previous amount it was due. In addition, the team has agreed to buy a new ice cover of the City's choice totally at its own expense (approximately $75-80,000). This cover will also come under City ownership once the loan necessary to finance it is amortized in at most four years.

Should revenues due the City exceed the amount that would have been earned under the old contract, the excess will be applied to accelerate payments of the ice cover. This would have the effect of transferring ownership of it to the City even sooner.

When the ice rink payment is completed by the City, the terms of the contract revert to the terms contained within the "option years" portion of the current contract. The team will once again receive a share of public skating and hockey concession revenues, however, it will be at substantially reduced rates from the current schedule.

The City has always wanted to own the ice rink and related equipment and taking over the lease payment will allow the City to own the rink sooner. By taking over the ice rink lease, the City will not be in any financial jeopardy since the team will make up any revenue shortfall that may occur. Furthermore, the team is willing to supply a new ice cover at their sole expense and turn it over to City ownership within four years.

Staff recommends City Council accept the proposed changes and direct the City Manager to sign the amended lease agreement.

Mr. Daniel Wilhelm, representing the Asheville Professional Hockey Ltd., said that the main reason they have made this request is because it will take that debt off their books and free up capital for other operations.

Vice-Mayor Hay felt that this new venture with hockey has been successful and was pleased that the City has a good and successful partnership with this organization as well.

Upon inquiry of Councilwoman Field, Mr. Wilhelm said that the new ice cover is anticipated to be here after the first week in October, 1999, and explained the material of the new ice cover.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ESTABLISHMENT OF A POLICY ON PUBLIC ART FOR THE CITY OF ASHEVILLE

Councilwoman Field, Chair of the group working on public art, said that this is the consideration of adopting a policy on public art and creating a seven-member Public Art Board to oversee this policy.

Ms. Hojun Welker, Urban Trail Coordinator, said that the City of Asheville, although listed as seventh and thirteenth in two national surveys of favorite "art destination" cities of all sizes and ninth in terms of outstanding small town cultural centers, does not have a policy or program on public art. City Council at both its 1998 and 1999 Retreats discussed the need for some sort of mechanism to deal with public art issues and to promote the installation of public art. The *Downtown Streetscape Plan* and the Cultural Arts Task Force of VISION, INC! both have recommended the establishment of a Public Art Board or Commission. City Council has requested staff prepare a public art policy. A Public Art Working Group, chaired by Councilmember Barbara Field and staffed by the Urban Trail Coordinator, has met monthly since November to draft recommendations that form the basis for the proposed policy statement. The City Manager will make adjustments to realign the organization to accomplish the implementation of this policy by transferring the Urban Trail Coordinator from the Public Works Department to the Parks and Recreation Department. This staff person will implement the policy and continue to oversee the Urban Trail Program. Since the focus of Cultural Arts has been in Parks and Recreation, through the support of the YMI programming, special events and festivals, and other cultural programs, locating the Public Arts function in Parks and Recreation is a natural fit. The Public Art Program will be funded through a 1% annual appropriation of the General Capital Improvement Program ($45-50,000) being dedicated to acquisition and maintenance of Public Art. In addition, an establishing the Public Art Board with members being appointed by City Council is recommended.

The Public Works Department and the Parks and Recreation Department recommend that City Council adopt a public art policy and create a seven-member Public Art Board.

Upon inquiry of Vice-Mayor Hay, City Manager Westbrook explained how the money would be allocated.

Mayor Sitnick said that it is important to recognize that this is not just about art, but also about cultural , education, tourism and economics.

Mayor Sitnick said that she would like included in the master plan that we work with local schools, high schools, and surrounding colleges to see if we can set up a program by which graduate art students can create projects for themselves in their senior years with an eye towards creating a piece of work that can used in a public space.

Councilwoman Field said that it was important to note that the City already owns a great deal of art and crafts and we need to be able to maintain it.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

TRANSFER OF PROPERTY TO BUNCOMBE COUNTY FOR WEST ASHEVILLE LIBRARY EXPANSION

Mr. Irby Brinson, Director of Parks & Recreation, said that this is the consideration of a resolution authorizing the transfer of property currently owned by the City of Asheville to Buncombe County for expansion of the West Asheville Branch Library.

A part of the negotiations for the renovation of the upstairs area of the West Asheville Complex included the transfer of approximately 5400 sq. ft. of area to Buncombe County for expansion of the West Asheville Branch Library. The library wishes to expand the current branch to include a resource area for Library programs and meeting space. The Parks and Recreation Department has been working on this particular issue and wishes to recommend proceeding with a deed transfer of the above property to Buncombe County for this specific use. The Department also recommends that a clause be included in the deed transfer that would require Buncombe County to revert the property back to the City of Asheville if the Library ever moves or if this particular use of the property is no longer an function that results in direct customer services to the citizens. Furthermore, the Parks and Recreation Department is asking for City Council approval to begin negotiations involving both City and County Legal staff in finalizing this agreement. The anticipated value of this property based upon information provided by Ed Vess of Community Development will be approximately $27,000.

The Parks and Recreation Department requests City Council approval to proceed with the transfer of approximately 5400 sq. ft. of property currently owned by the City of Asheville to Buncombe County to be used for library expansion at the West Asheville Branch Library.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RESOLUTION NO. 99-125 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO SERVICE CONTRACTS AND PURCHASE AGREEMENTS NECESSARY TO FACILITATE THE REQUIRED IMPROVEMENTS FOR ACCESSIBILITY AND LIFE-BUILDING SAFETY ISSUES AT THE ASHEVILLE CIVIC CENTER

ORDINANCE NO. 2605 - BUDGET AMENDMENT FOR REQUIRED IMPROVEMENTS AND UPGRADES NECESSARY TO CORRECT ACCESSIBILITY AND LIFE-BUILDING SAFETY ISSUES AT THE ASHEVILLE CIVIC CENTER

Mr. Irby Brinson, Director of Parks & Recreation, said that that this is the consideration of (1) a resolution authorizing the City Manager to enter into service contracts and purchase agreements necessary to facilitate the required improvements for accessibility and life-building safety issues at the Asheville Civic Center; and (2) a budget amendment, in the amount of $122,000, for the required improvements and upgrades necessary to correct accessibility and life-building safety issues at the Asheville Civic Center.

A thorough review has been conducted regarding accessibility and life-building safety issues at the Civic Center, Arena Level, with input from Civic Center staff, the architect (Mathews & Glazer), the structural engineer (Kloesel Engineering), and City of Asheville Building Safety staff (Terry Summey and Harry Taylor). During this review, three different scenarios which included concerts, trade shows, and hockey/public skating were addressed to see how the codes applied to each. The review has produced a comprehensive list of tasks that must receive immediate action to bring the arena level of the Civic Center into compliance with State and local codes regarding accessibility and life-building safety.

The deadline to have the substantial portion of corrective action in place is Friday, October 1, 1999, with all corrective action completed no later than Friday, October 15, 1999. The tentative start date for the project is September 8, 1999, which leaves 28 regular work days (Monday - Friday) and 5 premium work days (Saturdays) to complete the required tasks. It will be necessary to utilize the services of several contractors and material suppliers in an effort to divide the work into several smaller divisions to meet the completion deadline.

Funds for this will be comprised of an appropriation of $82,000 from Fund Balance and re-directing $40,000 from the Civic Center Capital Improvement Projects previously designated for "update of ACC elevator technology."

The Parks and Recreation Department requests City Council to (1) authorize the City Manager to enter into service contracts and purchase agreements necessary to facilitate the required improvements for accessibility and life-building safety issues at the Asheville Civic Center; and (2) authorize a budget amendment, in the amount of $122,000, for the required improvements and upgrades necessary to correct accessibility and life-building safety issues at the Asheville Civic Center.

City Manager Westbrook explained why these actions are being brought to the City Council on short notice.

Councilman Sellers moved to waive the rules and vote at this meeting. This motion was seconded by Councilman Tomes and carried unanimously.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and the ordinance and they would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 99-125. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 283

Councilman Cloninger moved for the adoption of Ordinance No. 2605. This motion was seconded by Vice-Mayor Hay and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 445

Mayor Sitnick said that she would write a letter to the Buncombe County Board of Commissioners to ask if they would be willing to participate in any of the costs for this work since both City and County residents use the Civic Center.

COMMUNITY ORIENTED POLICING GRANT AWARD

Mr. Alan Hyder, Administrative Services Manager, said that this is the consideration of a resolution authorizing the City Manager to accept a grant award from the U. S. Dept. of Justice, Office of Community Oriented Policing Services (COPS), and to adopt a budget amendment, in the amount of $990,454, to support the grant.

The Police Department is planning a project to install 106 in-car mobile computers, and to fund two non-sworn police service technician (PST) positions. The computers will increase officer efficiency by allowing them to complete and submit reports from the field thereby reducing office time and remaining available for service. The police service technicians will perform non law enforcement related tasks now performed by officers. With the PSTs performing such activities as traffic control and direction, cold crime reporting, and the like officers will have more time to commit to law enforcement and community problem solving.

The City has been awarded a grant from the U.S. Dept. of Justice in the amount of $742,840 to fund a portion of the project cost. As part of the grant requirements, the City is required to contribute local matching funds in the amount of $247,614, which is equivalent to 25% of the total project cost. The City's matching requirement will be financed by appropriating a portion of unappropriated fund balance.

City staff recommends City Council adopt the (1) resolution authorizing the City Manager to accept the grant award; and (2) budget amendment, in the amount of $990,454, to appropriate funds in support of the above referenced grant.

City Manager Westbrook said that there has been a commitment from staff to make law enforcement technology driven. He said some of the greater advancements in terms of law enforcement will be through technology.

Mayor Sitnick said that she wrote to Senator John Edwards to see if the City could get out of having to make the match, however, the restrictions were too great.

Upon inquiry of Councilman Cobb, City Manager Westbrook said that over a period of time, with the use of the in-car mobile computers, our officers will be a lot more effective.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UDO WORDING AMENDMENTS

Enforcement Procedures & Remedies

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Assistant City Attorney Patsy Meldrum said that this is the consideration of an ordinance to amend Section 7-18 of Chapter 7 of the Code of Ordinances of the City of Asheville concerning Enforcement Remedies and Procedures.

During June and July of 1999, the Planning and Zoning Commission held various work sessions and regular meetings at which they discussed and recommended a wording amendment concerning the enforcement of zoning violations of the Unified Development Ordinance (UDO).

The amendment was based on a request from City enforcement staff to add language to subsection 7-18-3 describing the contents of the notice of violation. This language was incorporated in the old zoning ordinance but was inadvertently left out of the UDO. The language is as follows:

> The notice of violation may include, but not be limited to, an order to discontinue the illegal use of land, buildings or structures; require removal of illegal buildings, structures or uses or removal of illegal additions, alterations or structural changes; discontinue the illegal work being done; or require any other action to insure compliance with or prevent violation of this chapter.

At the same time this language was requested to be added, the City Attorney's Office recommended relocating the language of subsections (e) and (f) from Section 7-18-3 to new Sections 7-18-4 and 7-18-5 as they described remedies for violations rather than the procedure for and content of notices of violation. The language of subsection 7-18-3 (e) has been relocated to subsection 17-18-4 (a). Other than two minor changes, the language is the same. The minor changes included the addition of the phrase "of a civil penalty" in the first line and the change from "shall" to "may" in the third line. As Section 7-18-2 (c) included criminal penalties as a remedy, a new subsection 17-18-4 (b) was added to set out the enforcement procedure which would be followed in the event of a criminal penalty.

The language in subsection 7-18-3 (f) regarding summary removal of signs/sign structures and remove orders for signs/sign structures was relocated to new Section 7-18-5. Other than a few minor changes, the language is the same. Those minor changes include substituting the word "City" for "Sign Administrator" and "director of building safety" in the first sentence of subsection 7-18-5 (a). In subsection 7-18-5 (b) the first four lines regarding the statutory authority were added.

The Planning and Development staff presented this proposed wording amendment to the Planning and Zoning Commission at their June 24, 1999, worksession and again at their July 7, 1999, regular meeting. After presentation by staff, the Commissioners voted unanimously to recommend to City Council the adoption of this wording amendment.

Mayor Sitnick said that she would like to see the City work with neighborhood groups for kiosks or bulletin boards that can be placed at the entrances to the neighborhoods which yard sale notices, lost dog flyers, etc. can be posted on .

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

Signs Located in the Rights-of-Way

Mr. Ownbey said that this is the consideration of an ordinance to amend Section 7-13-3 of Chapter 7 of the Code of Ordinances of the City of Asheville concerning Signs Prohibited in All Zoning Districts - Signs in the Right-of-Way.

During June and July of 1999, the Planning and Zoning Commission held various worksessions and regular meetings at which they discussed and recommended a wording amendment concerning signs in the right-of-way.

The Planning and Development staff presented for review regulations concerning signs in the rights-of-way. This section generally prohibits signs in the right-of-way with the exception of certain specified signs. This amendment to the ordinance strengthens the methods of enforcement by staff, reduces clutter from three permitted signs to two, increases the number of sign faces from three to four by permitting double-face signs, and reduces the height of signs placed in the right-of-way from nine feet to six feet. It also requires review of permits for signs in the right-of-way by the Public Works Department, the City Traffic Engineer, the Planning and Development staff, and written notification to the adjacent property owner. Specific wording is also incorporated to permit City staff to enforce this section of the ordinance within the N.C. Dept. of Transportation right-of-way.

The Planning and Development staff presented this proposed wording amendment to the Planning and Zoning Commission at their June 24, 1999, worksession. After presentation by staff, the Commissioners voted unanimously to recommend to City Council the adoption of this wording amendment.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

Definition of Community Identification Signs and Community Facilities

Mr. Ownbey said that this is the consideration of an ordinance to amend Section 7-2-5 of Chapter 7 of the Code of Ordinances of the City of Asheville defining Community Identification Signs and Community Facilities.

During June and July of 1999, the Planning and Zoning Commission held various work sessions and regular meetings at which they discussed and recommended a wording amendment concerning the definition of Community Identification Signs and Community Facilities.

The Planning and Development staff presented for review the definition of Community Identification Signs and Community Facilities. When staff began amending other sections of the ordinance, we discovered that the terms "community identification signs" and "community facilities" were not specifically defined in the ordinance.

The Planning and Development staff presented this proposed wording amendment to the Planning and Zoning Commission at their June 2, 1999, regular meeting. After presentation by staff, the Commissioners voted unanimously to recommend to City Council the adoption of this wording amendment.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

Size and Location of Community Identification Signs

Mr. Ownbey said that this is the consideration of an ordinance to amend Section 7-13-4 of Chapter 7 of the Code of Ordinances of the City of Asheville regarding On-Premise Signs/Single Tenant Development - Community Identification Signs.

During June and July of 1999, the Planning and Zoning Commission (Commission) held various worksessions and regular meetings at which they discussed and recommended a wording amendment concerning the location and size of community identification signs.

The Planning and Development staff presented for review the location and size of community identification signs. The request was initiated through the Haw Creek Community after they were required by the City to remove their community identification sign and related community facilities panels. At that time, these particular signs were not permitted under the ordinance.

The Commissioners held two hearings concerning the location and size of Community Identification Signs (the Haw Creek community requested additional square footage for identification of community facilities) and approved the maximum square footage of the Community Identification Sign to be equal to that of a subdivision or multi-family sign at 16 square feet based on initial community input and acceptance by community representation at the meeting. After the Commission's decision, it was determined that the proposed sign size does not meet the needs of the community in adequately identifying community facilities because the overall sign size (including the facility panels) would be too small.

The Planning and Development staff presented this proposed wording amendment to the Planning and Zoning Commission at their June 24, 1999, worksession and again at their July 22, 1999, worksession. After presentation by staff and comments from community representation, the Commissioners voted unanimously to recommend to City Council the adoption of this wording amendment outlining the location of the community identification sign and its maximum square footage.

Since that time, the Planning and Development staff has reviewed the recommendation again with the community and agreed that since the purpose of the community identification sign would be to identify an area larger than a subdivision or multi-family development, the size and design should be larger (the recommendation is a total of 24 square feet). The Commissioners were informed about the specifics at the September 1, 1999, meeting and by consensus, they indicated that they did not want to change their recommendation or see the issue remanded back to them.

A representative from the Haw Creek community explained why the neighborhood would like to have a total of 28 square feet, however, he felt the staff recommendation of 24 square feet would be a good compromise.

City Attorney Oast said that City Council postponed these public hearings indefinitely and that a motion on the September 14, 1999, agenda will be necessary to set the date for the public hearings.

UPDATE ON THE SKATEBOARD PARK, APPROPRIATION AND DESIGN CONTRACT

Mr. Jim Orr, Superintendent of Parks, said that this is the consideration of a resolution authorizing the City Manager to enter into a contract with John Fisher Architects for the design and formulation of construction documents for the new skateboard park and approval of a budget amendment from funds collected from outside sources, in the amount of $568,275.00, to establish a budget for commencing the development of the skateboard park.

The concept of a new skateboard park in Asheville came from members of the Skateboard Task Force which is comprised of staff, skateboarders, Asheville Police Department officers, parents and community leaders. Due to the tremendous popularity and success of the "temporary site," City Council directed staff to proceed with locating a permanent site.

A site was located on land owned by the N.C. Department of Transportation. The parcel of land is located between I -240 to the South; Flint Street on the West; and Cherry Street on the North. The skateboard park will be designed in such a way to be a positive feature for the neighborhood and surrounding businesses.

The Skateboard Task Force developed a conceptual design of the new skateboard park. A Request for Proposal process solicited proposals from qualified firms for the final design and to formulate construction documents. The team of John Fisher Architects, Design Associates and Team Pain was selected as the top firm by an interview panel that was comprised of staff, and members of the Skateboard Task Force. The contract for the scope of service as outlined in the Request for Proposal is for $47,775 (Design $20,950, formulation of construction documents $26,825). Staff has developed an overall budget of $568,275 for the development of the skateboard park. As directed by City Council, staff and members of the Skateboard Task Force will be soliciting funds from outside sources for the development of the park.

The Parks and Recreation Department recommends (1) that authorization be given to the City Manager to enter into a contract with John Fisher Architects for the design and formulation of construction documents for the new skateboard park; and (2) approval of a budget amendment from outside funding, in the amount of $568,275, to establish a budget for commencing the development of the skateboard park.

Mayor Sitnick said that she will write a thank you letter to the N.C. Dept. of Transportation for contributing the land for this purpose.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

ESTABLISHMENT OF THE PUBLIC ACCESS CHANNEL COMMISSION

Ms. Robin Westbrook, Public and Community Information Coordinator, said that this is the consideration of an ordinance establishing a Public Access Channel Commission to develop policy and oversee the management of the public access channel.

In August 1998, City Council adopted a Cable Franchise Agreement allowing InterMedia to provide cable service within the city limits of Asheville. As part of this agreement, InterMedia was required to provide three initial channels to be used for public, educational, and/or government programming. A fourth access channel will be provided when certain programming thresholds are met on other channels.

The educational and government channels are established. In November 1998, the Asheville City Council directed staff to prepare a Request For Proposal (RFP) to solicit non-profit organizations who may be interested in managing the public access channel. Staff has prepared, advertised, and disseminated the RFP to interested organizations. The next step in establishing the public access channel is forming the Public Access Channel Commission.

This Commission will be responsible for developing policy for the public access channel and overseeing the management of the channel.

City staff requests that City Council approve the ordinance establishing a Public Access Channel Commission.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BOARDS & COMMISSIONS

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to confirm the appointment of Stephanie Coleman and Grace Dorn to the Minority Business Commission.

It was the consensus of City Council to prepare the proper paperwork for City Council to reappoint Max Haner and Lionel Williams to the Planning & Zoning Commission. It was also the consensus of City Council to have the City Clerk arrange interviews with Barber Melton, Anne Campbell, Priscilla Bass, Susan Andrew, Jan Howard, Ben Slosman, Peter Alberice and Hedy Fischer for a vacancy on the Planning & Zoning Commission.

It was the consensus of City Council to have the City Clerk arrange interviews with Chris Cavanaugh and possibly Steve Rice (if he is eligible) for a vacancy on the Tourism Development Authority.

It was the consensus of City Council to have the City Clerk arrange an interview with Ted Patton for a vacancy on the Regional Water Authority of Asheville, Buncombe and Henderson County.

OTHER ITEMS:

Mayor Sitnick encouraged City Council liaisons to make reports at the end of the worksession agendas on items they think City Council should be up-dated on.

It was the consensus of City Council to reschedule the Tuesday, October 26, 1999, formal meeting of City Council to Wednesday, October 27, 1999, beginning at 5:00 p.m. in the Council Chamber, 2nd Floor of the City Hall Building, due to the N.C. League of Municipalities Conference being held in Greensboro, N.C., October 24-26, 1999.

City Attorney Oast said that he is looking into a concern raised by Mayor Sitnick about the appointment of the Chair to the Air Pollution Control Board.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:05 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - September 14, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Thomas G. Sellers

INVOCATION

Vice-Mayor gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE WEEK OF SEPTEMBER 27-OCTOBER 1, 1999, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Councilman Tomes read the proclamation proclaiming September 27-October 1, 1999, as "Minority Enterprise Development Week" in the City of Asheville. He presented the proclamation to Mr. Marvin Vierra.

B. PROCLAMATION PROCLAIMING SEPTEMBER 15-OCTOBER 15, 1999, AS "NATIONAL HISPANIC HERITAGE MONTH "

Mayor Sitnick read the proclamation proclaiming September 15-October 15, 1999, as "National Hispanic Heritage Month " in the City of Asheville. She presented the proclamation to Ms. Oralene Simmons and Ms. Edna Campos, who briefed City Council on some activities taking place during the month.

C. RECOGNITION OF URBAN TRAIL VOLUNTEERS

Vice-Mayor Hay read a certificate recognizing Ms. Grace Gordon Pless and Ms. Harriette Gradman Winner for their special contributions and endeavors to enhance the quality of life in Asheville and to tell the story of the City's rich history.

CONTINUANCE REQUEST

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE STANDARDS OF WIRELESS TELECOMMUNICATION FACILITIES

Mayor Sitnick said that on September 13, 1999, she received a letter from Mr. Larry McDevitt, attorney representing Bell Atlantic, requesting that the public hearing be postponed in order for his clients to have an opportunity to review the proposed ordinance for input.

Councilman Cloninger moved to postpone the public hearing on this matter until the October 19, 1999, worksession. This motion was seconded by Councilwoman Field and carried unanimously.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 24, 1999, AND THE WORKSESSION HELD ON SEPTEMBER 7, 1999

B. ORDINANCE NO. 2606 - BUDGET AMENDMENT TO SET UP A MEMORIAL FOR JIM CRUM, FORMER PRINT SHOP MANAGER

Summary: The consideration of a budget amendment, in the amount of $2,152, to set up a memorial for Jim Crum, former City Print Shop Manager.

Jim Crum, former City Print Shop Manager, recently passed away after an extended illness. A number of City employees who knew and worked with Jim expressed an interest in setting up a memorial to Jim as an expression of appreciation for a special person. Since Jim was an avid skier and supporter of youth activities, the idea of establishing an annual scholarship to assist a deserving youth to participate in the City's learn to ski program was suggested as a fitting memorial to Jim. City employees have contributed a total of $1,076 to the City for the memorial and Jim's family have agreed to match the employee contributions bringing the total to $2,152. This action will set up an ongoing appropriation for the use of this amount as a memorial to Jim.

City staff recommends that a budget amendment for the Jim Crum Memorial be approved.

ORDINANCE BOOK NO. 17 - PAGE 448

C. RESOLUTION NO. 99-126 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH WOLFPEN CORPORATION FOR THE PROJECT KNOWN AS BREVARD ROAD ANNEXATION AREA, PHASE II, CONTRACT A, SEWER SYSTEM IMPROVEMENTS

Summary: The consideration of adopting a resolution awarding the contract for Brevard Road Annexation Area - Phase II - Contract "A" Sewer System Improvements to the lowest responsible bidder, Wolfpen Corporation, in the amount of $249,681.00.

This project is part of the proposed Brevard Road Annexation Area Sanitary Sewer System Improvements and consists of the installation of approximately 3,600 linear feet of eight inch (8") diameter sanitary sewer line and related appurtenances.

The Engineering Department received and publicly opened three (3) bids on Friday, July 30, 1999, at 2:00 p.m. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, Wolfpen Corporation was found to be the lowest responsible bidder with a total bid of $249,681.00. The Engineer's estimate for this project was $312,555.00.

Wolfpen Corporation has performed several projects of this nature in the past without any major problems.

The construction time for this project is identified as 120 calendar days in the contract documents. The Contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he/she shall be in default after the time stipulated in the contract.

Staff recommends that City Council adopt the resolution awarding the bid for Brevard Road Annexation Area - Phase II- Contract "A" Sewer System Improvements to Wolfpen Corporation, the responsible low bidder, and authorize the City Manager to execute all necessary agreements and contracts.

RESOLUTION BOOK NO. 25 - PAGE 284

D. RESOLUTION NO. 99-127 - RESOLUTION ISSUING A WRITTEN DECISION IN RESPONSE TO THE FILLING OF AN FCC FORM 1235 AND AN FCC FORM 1240 BY BRENMOR CABLE PARTNERS, L.P. (d/b/a INTERMEDIA) FOR MONTHLY RATES FOR THE BASIC SERVICE TIER ON ITS CABLE SYSTEM

Summary: The consideration of a resolution which would issue a written decision in response to the filings of an FCC Form 1235 and an FCC Form 1240 by Brenmor Cable Partners, L.P. (d/b/a InterMedia) for monthly rates for the basic service tier on its cable system.

Pursuant to federal law and the regulations of the Federal Communications Commission ("FCC"), the City of Asheville ("City") is certified to regulate basic service rates and charges of Brenmor Cable Partners, L.P. ("InterMedia") in the franchised area of InterMedia within the corporate limits of the City.

On May 19, 1997, the City of Asheville received from InterMedia an FCC Form 1235 entitled "Abbreviated Cost of Service Filing for Cable Network Upgrades". The FCC Form 1235 filed with the City of Asheville by InterMedia was for pre-approval of maximum permitted rates for the basic service tier to recover costs for the rebuild of a portion of the cable system. The City of Asheville reviewed that FCC Form 1235 filed by InterMedia and issued an order in Resolution No. 97-90, extending the review period of the FCC Form 1235 by the City of Asheville by 150 days pursuant to federal laws and regulations.

After further review of the FCC Form 1235 filed by InterMedia, the City Council adopted Resolution No. 97-213 on November 11, 1997, which directed InterMedia to keep an accurate account of all amounts received by reason of the rate increase requested pursuant to the FCC Form 1235 filing by InterMedia, in order that the City may, at its option, subsequently issue a written decision regarding the rate request and determine whether or not refunds should be provided to subscribers after completion of the upgrade or rebuild of the cable system.

FCC regulations require a cable system operator who has chosen the pre-approval option to file the FCC Form 1235 again following the end of the month in which upgraded cable services become available and are providing benefits to all customers of rate-regulated services, using actual costs where applicable. The upgrade or rebuild of the cable system was completed for service to customers as of August 1, 1998.

On March 1, 1999, InterMedia filed FCC Form 1240, for the purpose of justifying its monthly rates and hourly service charges for cable services on the basic service tier on its cable system for the time period of June 1, 1999, to May 31, 2000. The new maximum permitted rate for the monthly rate on the basic service tier as calculated by InterMedia on the FCC Form 1240 for the time period of June 1, 1999 to May 31, 2000, was $10.3579. InterMedia proposed to continue charging the current monthly rate of $11.91 for the time period of June 1, 1999, to May 31, 2000, which amount exceeds the new maximum permitted rate of $10.3579, by relying upon the filing of the FCC Form 1235 submitted to the City on May 16, 1997, which determined that an increase in the basic service tier rate of $1.96 per month would be permitted as of the time of filing, based upon a rebuild of the cable system. The new maximum permitted rate of $10.3579 and the increase in the rate of $1.96 per month based on the filing of the FCC Form 1235 would combine to be a rate of $12.32, which is in excess of the current basic service tier rate charged of $11.91 per month.

Based upon the filing of FCC Form 1240 by InterMedia on March 1, 1999, and the filing of FCC Form 1235 by InterMedia on May 19, 1997, the City Council adopted Resolution No. 99-82 on May 25, 1999, which noted that InterMedia should file again the FCC Form 1235. The resolution also ordered InterMedia to keep an accurate accounting of all fees charged to subscribers on the basis of the FCC Form 1235 filed on May 16, 1997, and the FCC Form 1240 filed on March 1, 1999, in order that the City of Asheville may subsequently issue a decision on the reasonableness of the rates charged.

After adoption of Resolution No. 99-82 by the City Council on May 25, 1999, InterMedia filed again the FCC Form 1235 with the City of Asheville on June 4, 1999. Additional information was required from the Federal Communications Commission and InterMedia regarding the second filing of the FCC Form 1235, which information has now been received.

After further review of all documents and FCC requirements, it appears that the monthly rate of $11.91 charged by InterMedia for the basic service tier, based upon the filings of FCC Form 1235 on May 19, 1997, and June 4, 1999, and the filing of FCC Form 1240 on March 1, 1999, does not exceed the maximum permitted rate per month for the basic service tier as authorized under FCC rules and regulations. The resolution makes that finding.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 25 - PAGE 287

E. RESOLUTION NO. 99-128 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1999 GREEK FESTIVAL

Summary: The consideration of a resolution to allow alcohol at the Asheville Greek Festival on October 1-3, 1999, at the time and location shown on the resolution.

The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City County Plaza on October 1-3, 1999. Local entertainment, food, and vendor displays will be available daily.

N.C. Gen. Stat. sec. 18B-300(c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and unfortified wine on public streets, and on property owned, occupied or controlled by the City. The City Council of the City of Asheville has adopted an ordinance pursuant to that statutory authority. That ordinance, Section 11-11 in the Code of Ordinances, provides that the City Council may adopt a resolution making other provisions at a special event or community festival.

The Parks and Recreation Department recommends that City Council adopt the resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the Asheville Greek Festival to include the areas as described in the resolution.

RESOLUTION BOOK NO. 25 - PAGE 290

F. MOTION REVISING THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON BY-LAWS

Summary: The consideration of a motion revising the Regional Water Authority's By-Laws to reflect the conditions of the Restated and Amended Supplemental Water Agreement dated August 13, 1996.

Most of the changes reflect the requirements of the amended water agreement, and to update other references which have been revised over time, such as change in position title of the Director's position from Director of Water and Sewer to Director of Water Resources. The existing By-Laws were last adopted before the Water Agreement was updated in 1996. The restated Water Agreement in 1996 made a number of changes to the organization of the Authority, including the number of members of the Authority and the inclusion of representation by Henderson County.

One additional change was included in the By-Laws as approved by the Water Authority on August 17, 1999. On the second page, Section V, line 4, the word "appropriate" was substituted for "good" in front of cause to allow each appointing board to the Water Authority (the City Council, Buncombe County Commission, or Henderson County Commission) to decide by two-thirds vote what is appropriate for removing one of its appointments to the Water Authority before the appointee's three year term ended. Mr. Bill Moyer, a member of the Water Authority and Henderson County Commissioner, expressed the desire of the Henderson Commissioners to remove an appointment from its own board if that individual left the Board of Commissioners before the term on the Water Authority expired.

The Water Agreement requires the Water Authority, the City Council, and the Buncombe County Commissioners to consider changes to the Water Authority By-Laws, with the amended By-Laws considered adopted upon the approval of two of the three boards.

The Regional Water Authority recommends approval of the changes to the By-Laws.

G. RESOLUTION NO. 99-129 - RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE WATER AUTHORITY TO AWARD A BID TO COOPER CONSTRUCTION COMPANY FOR THE BEE TREE CREEK CROSSING

Summary: The consideration of a resolution adopting the recommendation of the Regional Water Authority to award a contract to Cooper Construction Company for the Bee Tree Creek Crossing Project.

The City Engineer's Office received bids on June 29, 1999, for the Bee Tree Creek Crossing waterline improvement project. This was the second scheduled bid opening as there were not three (3) bids at the first bid opening. This project involves the relocation of a 24-inch waterline, in three (3) separate locations along Bee Tree Creek. These relocations are necessary to insure the continued uninterrupted service of this major waterline.

Two (2) bids were received at the June 29th opening with Buckeye Construction Company submitting the low bid of $ 349,220. Following is a summary of the bids received:

Buckeye Construction Co., Canton, N.C.	$349,220
Cooper Construction Co., Hendersonville, N.C.	$366,025
The engineer's estimate for this project is	$340,000

The Office of Minority Affairs has reviewed these bids and has determined that the low bidder, Buckeye Construction Company, did not fully comply with the requirements for documentation of the Minority Business Plan. The second low bidder, Cooper Construction Company, did comply with the requirements of the Minority Business Plan but their bid is over budget.

The Regional Water Authority voted on August 17, 1999, to reject the bid of Buckeye Construction Company and award the contract to Cooper Construction Company.

Since August 17, 1999, staff has met with Cooper Construction Company as part of a "value engineering" review to negotiate reduction in the contract price. The results of these efforts will be prepared as Change Order No. 1 and executed at the time of execution of the construction contract.

The Regional Water Authority recommends to reject the low bid from Buckeye Construction Company for non-compliance with the Minority Business Plan, and a contract be awarded to Cooper Construction Company.

RESOLUTION BOOK NO. 25 - PAGE 292

H. RESOLUTION NO. 99-130 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE N.C. DEPT. OF CRIME CONTROL & PUBLIC SAFETY TO FUND IMPLEMENTATION OF AN AUTOMATED CRIME REPORTING SYSTEM

Summary: The consideration of a resolution to authorize the City Manager to accept a grant award from the North Carolina Department of Crime Control and Public Safety, Division of Governor's Crime Commission.

The Governor's Crime Commission has awarded the City a grant in the amount of $19,950. A local matching contribution of $6,650 is required. Total project cost is $26,600. The intent of the project is to implement an automated crime reporting system for the Police Department which will interface with the existing criminal justice information system and the Department's mobile computer network infrastructure. The switch from a manual process to an automated process will result in greater efficiency and accuracy in the department's crime reporting program.

The source for the local match is 110-0000-233-01-02, controlled substance excise tax revenues.

City staff recommends City Council adopt a (1) resolution authorizing the City Manager to accept the grant award and (2) Budget Ordinance Amendment to appropriate funds to the Police Department budget in support to the above referenced grant.

RESOLUTION BOOK NO. 25 - PAGE 293

I. ORDINANCE NO. 2607 - BUDGET AMENDMENT TO FUND THE IMPLEMENTATION OF AN AUTOMATED CRIME REPORTING SYSTEM

Summary: See Consent Agenda Item "H" above.

ORDINANCE BOOK NO. 17 - PAGE 450

J. RESOLUTION NO. 99-131 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE U.S. DEPT. OF JUSTICE TO FUND A COMMUNITY POLICING PROJECT

Summary: The consideration of a resolution authorizing the City Manager to accept a grant award from the U. S. Dept. of Justice, Office of Community Oriented Policing Services (COPS), and to adopt a budget amendment, in the amount of $990,454, to support the grant.

The Police Department is planning a project to install 106 in-car mobile computers, and to fund two non-sworn police service technician (PST) positions. The computers will increase officer efficiency by allowing them to complete and submit reports from the field thereby reducing office time and remaining available for service. The police service technicians will perform non law enforcement related tasks now performed by officers. With the PSTs performing such activities as traffic control and direction, cold crime reporting, and the like officers will have more time to commit to law enforcement and community problem solving.

The City has been awarded a grant from the U.S. Dept. of Justice in the amount of $742,840 to fund a portion of the project cost. As part of the grant requirements, the City is required to contribute local matching funds in the amount of $247,614, which is equivalent to 25% of the total project cost. The City's matching requirement will be financed by appropriating a portion of unappropriated fund balance.

City staff recommends City Council adopt the (1) resolution authorizing the City Manager to accept the grant award; (2) budget amendment, in the amount of $990,454, to appropriate funds in support of the above referenced grant.

RESOLUTION BOOK NO. 25 - PAGE 294

K. ORDINANCE NO. 2608 - BUDGET AMENDMENT TO SUPPORT A GRANT FROM THE U.S. DEPT. OF JUSTICE TO FUND A COMMUNITY POLICING PROJECT

Summary: See Consent Agenda Item "J" above.

ORDINANCE BOOK NO. 17 - PAGE 453

L. RESOLUTION NO. 99-132 - RESOLUTION CONFIRMING APPOINTMENTS TO THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the appointments of Stephanie Coleman, representative of the Eagle/Market Streets Development Corporation, and Grace Dorn, representative of the NAACP, on the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The composition of the Minority Business Commission consists of 13 members from various groups.

Jill Arrington, representing the Eagle/Market Streets Development Corporation, and Christy Credle, representing the NAACP, have resigned due to relocation and personal time constraints, respectively. The Commission has met and recommends to City Council the appointments of (1) Stephanie Coleman to serve the unexpired term of Ms. Arrington, term to expire August 1, 2001, or until her successor has been appointed; and (2) Grace Dorn to serve the unexpired term of Ms. Credle, term to expire August 1, 2000, or until her successor has been appointed.

City staff recommends City Council adopt a resolution confirming the appointments of Stephanie Coleman and Grace Dorn on the Minority Business Commission.

RESOLUTION BOOK NO. 25 - PAGE 295

M. RESOLUTION NO. 99-133 - RESOLUTION ESTABLISHING A PUBLIC ART POLICY

Summary: The consideration of adopting a policy on public art and creating a seven-member Public Art Board to oversee this policy.

The City of Asheville, although listed as seventh and thirteenth in two national surveys of favorite "art destination" cities of all sizes and ninth in terms of outstanding small town cultural centers, does not have a policy or program on public art. City Council at both its 1998 and 1999 Retreats discussed the need for some sort of mechanism to deal with public art issues and to promote the installation of public art. The *Downtown Streetscape Plan* and the Cultural Arts Task Force of VISION, INC! both have recommended the establishment of a Public Art Board or Commission. City Council has requested staff prepare a public art policy. A Public Art Working Group, chaired by Councilmember Barbara Field and staffed by the Urban Trail Coordinator, has met monthly since November to draft recommendations that form the basis for the proposed policy statement. The City Manager will make adjustments to realign the organization to accomplish the implementation of this policy by transferring the Urban Trail Coordinator from the Public Works Department to the Parks and Recreation Department. This staff person will implement the policy and continue to oversee the Urban Trail Program. Since the focus of Cultural Arts has been in Parks and Recreation, through the support of the YMI programming, special events and festivals, and other cultural programs, locating the Public Arts function in Parks and Recreation is a natural fit. The Public Art Program will be funded through a 1% annual appropriation of the General Capital Improvement Program being dedicated to acquisition and maintenance of Public Art. In addition, an establishing the Public Art Board with members being appointed by City Council is recommended.

The Public Works Department and the Parks and Recreation Department recommend that City Council adopt a public art policy and create a seven-member Public Art Board.

RESOLUTION BOOK NO. 25 - PAGE 296

N. ORDINANCE NO. 2609 - ORDINANCE ESTABLISHING A PUBLIC ART BOARD

Summary: See Consent Item "M" above.

ORDINANCE BOOK NO. 17 - PAGE 456

O. RESOLUTION NO. 99-134 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CAROLINA POWER & LIGHT COMPANY FOR THE REPLACEMENT OF BALLFIELD LIGHTS AT MURPHY-OAKLEY PARK AND WEAVER PARK

Summary: The consideration of an agreement with Carolina Power & Light Company for the replacement of ballfield lights at Murphy-Oakley Park and Weaver Park.

Over the past several years, the ballfield lights at both Murphy-Oakley and Weaver Parks have continued to deteriorate. This has caused not only increased maintenance costs but has also resulted in safety concerns for participants. The Parks and Recreation Department has been working with Carolina Power & Light Company (CP&L) on an innovative approach to replacing the ballfield lights without an upfront capital expense. Traditionally, it has cost approximately $75,000 to replace lights at one field. By working with CP&L, we are able to enter into a lease purchase agreement which would allow for monthly payments to CP&L to cover not only the cost of the lights but also maintenance. The monthly fee for Weaver Park would be $587 and the monthly fee for Oakley would be $1,132. The Parks and Recreation Department currently has funds allocated for this expenditure. As stated before, CP&L will maintain the lights over the ten-year lease agreement. This would include replacing any lights, relining the lights, and any other electrical work at the beginning of spring and fall seasons. In addition, after five years, CP&L will completely rewire and relight both ballfields. This total price is turnkey and includes use of concrete poles, which would replace the current poles at both fields. The Department has been spending approximately $12,000 per year in maintenance costs associated with the outdated lights and feels that this equipment rental and maintenance agreement with CP&L would be extremely advantageous to the City.

The Parks and Recreation Department requests City Council approval for the City Manager to enter into an equipment rental and maintenance agreement with Carolina Power & Light for the replacement of the ballfield lights at Murphy-Oakley Park and Weaver Park.

RESOLUTION BOOK NO. 25 - PAGE 299

P. RESOLUTION NO. 99-135 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A NEW AGREEMENT WITH THE STATE OF NORTH CAROLINA FOR RENEWAL OF THE ASHEVILLE FIRE DEPARTMENT'S HAZARDOUS MATERIALS RESPONSE TEAM'S STATUS AS "REGIONAL RESPONSE TEAM" FOR MAJOR HAZARDOUS MATERIALS EMERGENCIES IN WESTERN NORTH CAROLINA

Summary: The consideration of a resolution authorizing the Mayor to enter into a new agreement with the North Carolina Department of Crime Control/Public Safety's Emergency Management Division to provide hazardous materials emergency response in Western North Carolina through June of 2001.

In 1994, the North Carolina Assembly established funding for a "regional response" approach to hazardous materials emergencies. This approach involved selection of the state's top six local fire department hazardous materials response teams to respond to multi-county areas in case of emergency using vehicles and equipment furnished by the state. The Asheville Fire Department's Hazardous Materials Response Team was selected as one of these elite teams.

In 1997, the State called for new competitive proposals for regional hazardous materials response teams, and Asheville's team was selected as the WNC team again. This past May, the State once again called for competitive proposals for regional hazardous materials response teams—and, again, Asheville's team was selected as the WNC regional response team.

The new agreement provides for hazardous materials emergency response for major incidents in North Carolina's 20 western counties from October of 1999 through June of 2001.

The State will continue to provide and maintain the team's response vehicle ("RRT 6") and related equipment. The State will also reimburse the City for training expenses (up to $24,500), administrative expenses (up to $31,500), workers compensation expenses (up to $8,750) and medical surveillance/evaluation (up to $14,000) for each year of the proposed two-year agreement.

The Fire Chief recommends City Council adopt a resolution authorizing the Mayor into enter into a new agreement with the State of North Carolina through which the City of Asheville will provide hazardous materials emergency response in Western North Carolina, and the State will furnish response equipment and reimburse expenses of the City's hazardous materials response team for such response.

RESOLUTION BOOK NO. 25 - PAGE 300

Q. ORDINANCE NO. 2610 - BUDGET AMENDMENT FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY AS A PART OF THE HAZARD MITIGATION PROGRAM FOR THE FRENCH BROAD RIVER

Summary: The consideration of a budget amendment, in the amount of $2,382,328, from the Federal Emergency Management Agency as a part of the Hazard Mitigation Program.

The City applied for funds in 1997 for a grant from the Federal Emergency Management Agency as a part of the Hazard Mitigation Program. The grant was recently awarded in the amount of $2,382,328 and is designated for the acquisition and improvement of commercial property for the French Broad River Greenway.

The section of greenway represents the City of Asheville's commitment to revitalize and build a greenway corridor along the French Broad River. Earlier developments in the greenway corridor include the French Broad River Park, Amboy Road Park Trail, and land acquisition. The section of greenway will be located on 7.25 acres along Riverside Drive adjacent to Haywood Road. The grant funds will be used for the acquisition and improvement of commercial property for the French Broad River Greenway.

The Parks and Recreation Department recommends City Council to approve the budget amendment, in the amount of $2,382,328, to establish a budget for implementation of the FEMA grant project.

ORDINANCE BOOK NO. 17 - PAGE 460

R. RESOLUTION NO. 99-136 - RESOLUTION AUTHORIZING THE TRANSFER OF PROPERTY TO BUNCOMBE COUNTY FOR EXPANSION OF THE WEST ASHEVILLE BRANCH LIBRARY

Summary: The consideration of a resolution authorizing the transfer of property currently owned by the City of Asheville to Buncombe County for expansion of the West Asheville Branch Library.

A part of the negotiations for the renovation of the upstairs area of the West Asheville Complex included the transfer of approximately 5400 sq. ft. of area to Buncombe County for expansion of the West Asheville Branch Library. The library wishes to expand the current branch to include a resource area for Library programs and meeting space. The Parks and Recreation Department has been working on this particular issue and wishes to recommend proceeding with a deed transfer of the above property to Buncombe County for this specific use.

The Department also recommends that a clause be included in the deed transfer that would require Buncombe County to revert the property back to the City of Asheville if the Library ever moves or if this particular use of the property is no longer an active function that results in direct customer services to the citizens. Furthermore, the Parks and Recreation Department is asking for City Council approval to begin negotiations involving both City and County Legal staff in finalizing this agreement. The anticipated value of this property based upon information provided by Ed Vess of Community Development will be approximately $27,000.

The Parks and Recreation Department requests City Council approval to proceed with the transfer of approximately 5400 sq. ft. of property currently owned by the City of Asheville to Buncombe County to be used for library expansion at the West Asheville Branch Library.

RESOLUTION BOOK NO. 25 - PAGE 301

S. RESOLUTION NO. 99-137 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF HEALTH AND HUMAN SERVICES TO FUND THE AFTER SCHOOL FOOD SERVICE PROGRAM.

Summary: The consideration of a resolution authorizing the City Manager to apply for a grant from and enter into an agreement with the N. C. Dept. of Health and Human Services, Division of Maternal and Child Health, to provide food service in the After School Program.

The Parks and Recreation After School Program provides supervised licensed child care, recreation, enrichment activities, and food service to children ages 5 to 12 during after school hours, teacher work days, and holidays at six program sites. Sites are located at Claxton, Dickson, Hall Fletcher, Jones, and Vance Elementary Schools; and Reid Community Center. Sites are licensed by the State of North Carolina with a child/staff ratio of 1 to 25. Snacks are provided in the afternoon, and breakfast and lunch is provided on holidays and teacher work days. Activities include arts and crafts, games, sports, science, music, homework time, and special events. Fees are based on the number of children from each family and frequency of attendance. The Parks and Recreation Department will contract with Asheville City Schools for food service at a rate of $1.00 per breakfast, $1.95 per lunch, and $.85 per snack. The grant will reimburse the Parks and Recreation Department approximately one third of the cost of providing food service in the After School Program. The number of meals will vary based on the total meals actually served each month.

The Parks and Recreation Department recommends the City of Asheville to apply for the grant funds through the Child and Adult Care Food Program.

RESOLUTION BOOK NO. 25 - PAGE 302

T. RESOLUTION NO. 99-138 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH JOHN FISHER, ARCHITECTS, FOR THE DESIGN AND FORMULATION OF CONSTRUCTION DOCUMENTS FOR THE NEW SKATEBOARD PARK

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with John Fisher Architects for the design and formulation of construction documents for the new skateboard park and approval of a budget amendment from funds collected from outside sources, in the amount of $568,275.00, to establish a budget for commencing the development of the skateboard park.

The concept of a new skateboard park in Asheville came from members of the Skateboard Task Force which is comprised of staff, skateboarders, Asheville Police Department officers, parents and community leaders. Due to the tremendous popularity and success of the "temporary site," City Council directed staff to proceed with locating a permanent site.

A site was located on land owned by the N.C. Department of Transportation. The parcel of land is located between I -240 to the South; Flint Street on the West; and Cherry Street on the North. The skateboard park will be designed in such a way to be a positive feature for the neighborhood and surrounding businesses.

The Skateboard Task Force developed a conceptual design of the new skateboard park. A Request for Proposal process solicited proposals from qualified firms for the final design and to formulate construction documents. The team of John Fisher Architects, Design Associates and Team Pain was selected as the top firm by an interview panel that was comprised of staff, and members of the Skateboard Task Force. The contract for the scope of service as outlined in the Request for Proposal is for $47,775.00 (Design $20,950.00, formulation of construction documents $26,825.00). Staff has developed an overall budget of $568,275.00 for the development of the skateboard park. As directed by City Council, staff and members of the Skateboard Task Force will be soliciting funds from outside sources for the development of the park.

The Parks and Recreation Department recommends (1) that authorization be given to the City Manager to enter into a contract with John Fisher Architects for the design and formulation of construction documents for the new skateboard park; and (2) approval of a budget amendment from outside funding, in the amount of $568,275.00, to establish a budget for commencing the development of the skateboard park.

RESOLUTION BOOK NO. 25 - PAGE 303

U. ORDINANCE NO. 2611 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR COMMENCING THE DEVELOPMENT OF THE SKATEBOARD PARK

Summary: See Consent Agenda Item "T" above.

ORDINANCE BOOK NO. 17 - PAGE 462

V. RESOLUTION NO. 99-139 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "VANDERBILT PARK DRIVE" LOCATED OFF OF HENDERSONVILLE ROAD IN VANDERBILT PARK SOUTH DEVELOPMENT EXTENDING TO THE CUL-DE-SAC

Summary: The consideration of a resolution accepting the new proposed street name of "Vanderbilt Park Drive."

Biltmore Farms, Inc., and Cecil Development Group, Inc., owners of all the lots in Vanderbilt Park South Development have petitioned the City of Asheville to accept the street name "Vanderbilt Park Drive."

Staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 304

W. RESOLUTION NO. 99-140 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "PATCH ADAMS DRIVE" LOCATED OFF OF SANDHILL ROAD TO A DEAD-END

Summary: The consideration of a resolution accepting the new proposed street name of "Patch Adams Drive."

David Buckner, John Backe, Shirley Backe, Jasper J. Boyer, Calvin A. Boyer, owners of all the lots off Sandhill Road have petitioned the City of Asheville to accept the street name "Patch Adams Drive."

Staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 305

X. RESOLUTION NO. 99-141 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "MEDICAL PARK DRIVE" LOCATED OFF OF SWEETEN CREEK ROAD IN REGIONAL MEDICAL PARK

Summary: The consideration of a resolution accepting the new proposed street name of "Medical Park Drive."

Sweeten Creek Surgery, LLC. Edward B. Shoff, Marian B. Shoff, Eyeland, LLC, Mission - ST. Joseph's Health System, Inc. owners of lots in The Regional Medical Park have petitioned the City of Asheville to accept the street name "Medical Park Drive."

Staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 306

Y. ORDINANCE NO. 2612 - ORDINANCE ESTABLISHING THE PUBLIC ACCESS CHANNEL COMMISSION

Summary: The consideration of an ordinance establishing a Public Access Channel Commission to develop policy and oversee the management of the public access channel.

In August 1998, City Council adopted a Cable Franchise Agreement allowing InterMedia to provide cable service within the city limits of Asheville. As part of this agreement, InterMedia was required to provide three initial channels to be used for public, educational, and/or government programming. A fourth access channel will be provided when certain programming thresholds are met on other channels.

The educational and government channels are established. In November 1998, the Asheville City Council directed staff to prepare a Request For Proposal (RFP) to solicit non-profit organizations who may be interested in managing the public access channel. Staff has prepared, advertised, and disseminated the RFP to interested organizations. The next step in establishing the public access channel is forming the Public Access Channel Commission.

This Commission will be responsible for developing policy for the public access channel and overseeing the management of the channel.

City staff requests that City Council approve the ordinance establishing a Public Access Channel Commission.

ORDINANCE BOOK NO. 17 - PAGE 464

Z. **RESOLUTION NO. 99-142 - RESOLUTION RESCHEDULING THE FORMAL MEETING FROM TUESDAY, OCTOBER 26, 1999, TO WEDNESDAY, OCTOBER 27, 1999, BEGINNING AT 5:00 P.M. IN THE COUNCIL CHAMBER LOCATED ON THE SECOND FLOOR OF THE CITY HALL BUILDING**

RESOLUTION BOOK NO. 25 - PAGE 307

AA. **MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 28, 1999, TO CONSIDER A CONDITIONAL USE PERMIT FOR A CELLULAR TOWER TO BE LOCATED AT 200 TUNNEL ROAD**

BB. **MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 28, 1999, TO CONSIDER A CONDITIONAL USE PERMIT FOR A DUPLEX ON TOWN MOUNTAIN ROAD**

CC. **MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 28, 1999, TO CONSIDER AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO DEFINE THE POWERS AND DUTIES OF THE ASHEVILLE TREE COMMISSION**

DD. **MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 28, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH THE DEFINITIONS OF COMMUNITY FACILITIES AND COMMUNITY IDENTIFICATION SIGNS, TO DETERMINE THE LOCATIONS OF COMMUNITY IDENTIFICATION SIGNS, TO AMEND REGULATIONS REGARDING SIGNS IN THE RIGHT -OF-WAY, AND TO AMEND REGULATIONS REGARDING THE ENFORCEMENT REMEDIES**

EE. **MOTION SETTING A PUBLIC HEARING ON OCTOBER 12, 1999, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CHANGE THE AREA REQUIRED FOR PUBLIC NOTIFICATION FOR CERTIFICATES OF APPROPRIATENESS FOR PROJECTS**

FF. **MOTION SETTING A PUBLIC HEARING ON OCTOBER 12, 1999, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH AS MINOR WORKS THOSE PROJECTS RELATED TO LOCALLY DESIGNATED HISTORIC LANDMARKS FOR THE PURPOSES OF DOWNTOWN DESIGN REVIEW**

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

III. PUBLIC HEARINGS:

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 99-143 - RESOLUTION APPROVING PURCHASE OF CIVIC CENTER ICE FLOOR AND RELATED EQUIPMENT

City Attorney Bob Oast said that this is the consideration of a resolution authorizing the City to purchase the Civic Center ice floor.

Pursuant to the City's lease with Asheville Smoke Pro Hockey (ASPH), ASPH is responsible for providing a competition-grade ice floor for the hockey team. At the end of the five-year initial term of the lease, the City became the owner of the ice floor and related equipment (dasherboards, plexiglass, etc.). The lease provides that, at the end of any of the first four years of the lease, the City may purchase the floor from ASPH essentially for the balance remaining on ASPH's financing obligation (assuming a straight line declining balance).

The City has negotiated with ASPH for the purchase of the floor, on slightly different terms than contemplated in the lease, and City Council has adopted or will adopt a resolution authorizing the City Manager to proceed with appropriate amendments to the lease. This resolution authorizes the City to proceed with the purchase of the ice floor and related equipment.

Ordinarily, purchases of equipment and apparatus are subject to the statutory competitive bidding process. However, the statute provides an exception to the competitive bidding process where the item to be purchased is available from only one source, or when performance or price competition is not available, or when compatibility is an overriding consideration. Purchases made under this section must be approved by the City Council prior to awarding the contract.

The Civic Center ice floor is not a regulation size hockey floor; it was custom fitted to our facility, and is essentially one of a kind. Moreover, following a competitive process conducted by ASPH, and United Hockey League, and in consultation with the Civic Center, Burley's Rink Supply, the manufacturer and installer of the ice floor, was determined to be the only company that could meet the particular needs of the Civic Center and ASPH. Accordingly, the exception in the statute appears to clearly apply, and the resolution contains these findings. We are in the process of obtaining affidavits and other documentation to support this determination.

Whether the City assumes ASPH's loan in connection with this purchase or seeks its own financing, the purchase will be by installment contract. Because the term of the installment purchase contract is less than 5 years, and the amount to be financed is less than $500,000, no approval by the Local Government Commission is required. Because this is not a purchase of real property, no public hearing is required.

If City Council wishes to proceed with the purchase of the Civic Center ice floor and related equipment, adoption of the resolution is recommended.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Hay moved for the adoption of Resolution No. 99-143. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 306

B. RESOLUTION NO. 99-144 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE LEASE AGREEMENT WITH ASHEVILLE PROFESSIONAL HOCKEY, LTD., FOR THE ASHEVILLE CIVIC CENTER

Mr. David Pisha, Civic Center Director, said that this is the consideration of a resolution authorizing the City Manager to amend the lease agreement with Asheville Professional Hockey, Ltd., for the Asheville Civic Center.

The City and Asheville Professional Hockey have entered into an agreement for an initial period of five years with an optional extension for two additional years. The hockey team, as part of the contract, agreed to purchase an ice rink and related equipment. At the end of the initial contract period, the rink ownership passes to the City. A contractual provision, however, allows the City to assume ownership earlier if it so desires. The team has asked the City to consider the possibility of exercising this option. Staff has reviewed this request and believes it would be in the best interest of the City to do so.

In doing so, the City would assume the approximately $90,000 in annual lease payments for the next four years. The City, however, would not be at any financial risk by completing this transaction because the team is willing to give up its share of revenues from public skating and hockey concessions that were part of the original agreement. This revenue sharing was designed to aid the team in making the lease payments. Furthermore, the team has agreed to make up any monetary shortfall the City may suffer under this new agreement when compared to the old one. Therefore, the amount of net proceeds the City will receive is exactly equal to the previous amount it was due. In addition, the team has agreed to buy a new ice cover of the City's choice totally at its own expense. This cover will also come under City ownership once the loan necessary to finance it is amortized in at most four years.

Should revenues due the City exceed the amount that would have been earned under the old contract, the excess will be applied to accelerate payments of the ice cover. This would have the effect of transferring ownership of it to the City even sooner.

When the ice rink payment is completed by the City, the terms of the contract revert to the terms contained within the "option years" portion of the current contract. The team will once again receive a share of public skating and hockey concession revenues, however, it will be at substantially reduced rates from the current schedule.

The City has always wanted to own the ice rink and related equipment and taking over the lease payment will allow the City to own the rink sooner. By taking over the ice rink lease, the City will not be in any financial jeopardy since the team will make up any revenue shortfall that may occur. Furthermore, the team is willing to supply a new ice cover at their sole expense and turn it over to City ownership within four years.

Staff recommends City Council accept the proposed changes and direct the City Manager to sign the amended lease agreement.

Mr. Pisha responded to a question from Councilwoman Field relative to the maintenance of the darker material for the ice cover.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 99-144. This motion was seconded by Councilman Tomes and carried unanimously.

VI. OTHER BUSINESS:

A. LAWSUITS

The following lawsuit was received on August 19, 1999: Carrier Heights Neighborhood Association v. City of Asheville. The nature of the proceeding is: appealing Board of Adjustment decision upholding issuance of Level II permit. This matter will be handled in-house.

The following lawsuit was received on August 25, 1999: George E. Davis and Patricia D. Davis, and Ervin L. Ball Jr. and Carol Ball v. City of Asheville and Board of Adjustment. The nature of the proceeding is: appealing Board of Adjustment decision to deny petitioners' variance requests. This matter will be handled in house.

The following lawsuit was received on August 25, 1999: Outdoor Communications Inc. (now Lamar-OCI South Corporation) v. Board of Adjustment. The nature of the proceeding is: appealing Board of Adjustment decision dismissing appeal from Notice of Violation. This matter will be handled in-house.

The following lawsuit was received on August 27, 1999: Morris Communications Corporation (d/b/a Fairway Outdoor Advertising) v. Zoning Board of Adjustment. The nature of the proceeding is: appealing Board of Adjustment decision dismissing appeal from Notice of Violation. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by June Lamb

Ms. June Lamb, resident of 16 Carrier Street, thanked City Council for approving the transfer of property to Buncombe County for the expansion of the West Asheville Branch Library and hoped that Council would look favorably at funding for that project.

Ms. Lamb suggested that it might be helpful for someone to read the list of consent agenda items so when the meeting is televised, the public will know what items are being considered.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:37 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - September 21, 1999 - 2:40 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger (arrived at 2:45 p.m.); Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; Assistant City Manager S. Douglas Spell; and City Clerk Magdalen Burleson

Absent: City Manager James L. Westbrook Jr.

CLOSED SESSION

At 2:40 p.m. Councilman Cobb moved to go into closed session to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G. S. 143-318.11 (a) (5). This motion was seconded by Councilman Sellers and carried unanimously.

At 3:00 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilman Cloninger and carried unanimously.

CONSENT:

Public Auction

Summary: The consideration of a resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction.

The resolution authorizes the City's Purchasing Division to hold a public auction to dispose of motor vehicles, off-road equipment, and other miscellaneous property declared as surplus by various City departments. The auction is to be held Saturday, October 16, 1999, at 10:00 a.m. in the Public Works Complex, 161 S. Charlotte Street.

City staff recommends City Council approve the resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction.

Fire Station #4 Roof Replacement Contract

Summary: The consideration of a resolution authorizing the City Manager to enter into a roof replacement contract for Fire Station #4 on 300 Merrimon Avenue.

In an effort to maintain City facilities, City staff, through the capital improvement process, has determined Fire Station #4 at 300 Merrimon Avenue requires roof replacement. City staff solicited sealed bids from seven Roofing Contractors, three of which were minority contractors, to supply and install a new roofing system. City staff received bids from three qualified bidders which are as follows:

Construction Advantage, Inc.	$34,474.00
Service One, Inc.	$37,070.00
Stroup Sheet Metal Works, Inc.	$41,480.00

City staff has reviewed all bids and determined that Construction Advantage, Inc. is the lowest bidder and, therefore, recommends acceptance of the base bid amount of $34,474.00.

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Approved funding is available in the capital improvement project account to pay for this roof replacement for Fire Station #4.

The Parks and Recreation Department requests City Council authorize the City Manager to enter into a contract for $ 34,474.00 with Construction Advantage, Inc., for this project.

Hawthorne Village Resurfacing Agreement

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Asheville Paving Company to resurface streets located in Hawthorne Village Subdivision in Asheville, North Carolina.

The City is in need of a contractor to provide paving and resurfacing services for streets in Hawthorne Village Subdivision. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for paving and resurfacing services were solicited and three responses were received. The bidders are listed below:

Company	Bid
Asheville Paving Company	$43/Ton (not to exceed $47,000)
Tarheel Paving Inc.	$47/Ton
Lonesome Mountain Paving Company	$57/Ton
Asphalt Unlimited	$50/Ton

Funding for this project has already been allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt the Resolution Authorizing the City Manager of the City of Asheville to enter into contract with Asheville Paving Company to resurface roads in Hawthorne Village Subdivision.

FAA Grant Agreement

Summary: The consideration of a resolution approving a grant from the Federal Aviation Administration in an amount not to exceed $1,076,956. This grant consists of the following projects: Y2K Verification, Master Plan Update, Wildlife Fencing, ARFF Road and Perimeter Security Road - Phase I.

Application for Elderly and Disabled Transportation Assistance Program Grant

Summary: The consideration of an application for a $20,700 grant of state money routed through Buncombe County for transportation of elderly people to recreation programs in the area.

The City of Asheville has applied for $20,700 for use in transporting elderly persons for recreational purposes. The Parks and Recreation Department will use this money for nutrition programs and additional transportation to events for seniors. These events include such things as a Labor Day picnic, in conjunction with the Council for Aging at Lake Julian and the UNC-A Holiday Concert at UNC-A Campus. These are new trips which the Department has not provided prior to this grant.

The Grant will take the form of a credit when applicable to costs incurred through the use of Mountain Mobility, and disbursements to the City when and if other transportation sources are used. This grant requires no matching amount on the part of the City.

City staff recommends City Council authorize the City Manager to apply for and enter into an agreement with Buncombe County for a grant to transport elderly people to recreation programs in the area.

Acceptance of Street Names in Twin Springs Subdivision

Summary: The consideration of a resolution accepting the new proposed street names of McTindal Circle, Oaken Court and Peeler Drive located in Twin Springs Subdivision.

The City of Asheville Community Development Division, owner of all lots in Twin Springs Subdivision, located on Broadview Drive in Oakley, has petitioned City Council to adopt the new street names of McTindal Circle, Oaken Court and Peeler Drive.

Community Development staff recommends adoption of the resolution accepting the new proposed street names of McTindal Circle, Oaken Court and Peeler Drive located in Twin Springs Subdivision.

Dedication to Public Use the Streets and Easements of Twin Springs Subdivision

Summary: The consideration of a resolution authorizing the Mayor to dedicate to the public use streets and easements on the plat for Twin Springs Subdivision.

The City of Asheville is the owner of record of a 12.353-acre tract of unimproved real property on Broadview Drive within the City limits. Prior to recordation of the final subdivision plat, the City of Asheville must dedicate to public use the streets and easements as shown on the plat.

On August 19, 1997, the City of Asheville and the Asheville Area Habitat for Humanity, Inc. entered into a Memorandum of Understanding to develop a 12.353-acre tract of unimproved land on Broadview Drive within the City limits. The City agreed to construct infrastructure improvements, including water, sanitary sewer, storm water drainage, streets and sidewalks, curb and gutter, electric, telephone, cable, street lighting, and minor landscaping. Habitat will construct 34 affordable housing units to be occupied by income-eligible families, and will transfer title of the individual real property to the qualified family when housing construction is completed.

Community Development staff recommends adoption of the resolution to dedicate the streets and easements in Twin Springs Subdivision to public use.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

BUNCOMBE COUNTY ZONING ORDINANCE

Mr. Jim Coman, Buncombe County's Zoning Administrator, reviewed with City Council the proposed zoning ordinance for Buncombe County. He explained that the County

Commissioners are holding various meetings around the County to explain the ordinance. He said the proposed ordinance is based very heavily upon the Limestone Township zoning ordinance. He reviewed with Council a map showing various land use restrictions that are already in place in Buncombe County, noting that well over 1/3 of the County has some sort of land use regulation already in place, whether by zoning, watersheds, current County zoning or the federally owned lands. He then reviewed with Council the zoning map the County is proposing. He said the proposed Rural Use District, which comprises of 91% of the County's jurisdiction, is probably the most permissive of various zoning districts in terms of what is allowed. He said that the zoning districts as well as the text of the proposed zoning ordinance are susceptible to change. He said they have tried to be cognizant of all the recommendations in the County's land use plan.

Upon inquiry of Councilman Cobb, Mr. Coman said that they have scheduled one meeting in the City of Asheville at Asheville High School on Tuesday, September 28, 1999, beginning at 7:00 p.m.

Mayor Sitnick said that she would send a formal request to the County asking if they could schedule another meeting (just concerning the zoning ordinance) in the City of Asheville on a different day so as not to conflict with the City Council regular meeting schedule.

Upon inquiry of Councilwoman Field, Mr. Coman said that the City will maintain the existing zoning in the extraterritorial jurisdiction.

Upon inquiry of Mayor Sitnick, Mr. Coman said that there has been a County Planning Board since 1994 and a Board of Adjustment since 1982. City Attorney Oast said the City is required by statute, since we do have extraterritorial jurisdiction, to have some representation from the County on the Board of Adjustment and the Planning & Zoning Commission.

Councilman Cloninger noted that City of Asheville residents pay County taxes as well and felt it made perfect sense that City residents should be allowed to vote on the proposed zoning ordinance.

City Planning & Development Director Scott Shuford said that the most significant implication for the City of Asheville resulting from Buncombe County zoning is that the land use patterns in the immediate vicinity of our City limits will become more stabilized as County land use requirements and development standards (height, parking and setbacks) are imposed. This will allow the City to better plan their own land use patterns in these areas, as well as program multi-jurisdiction infrastructure improvements. Because of this, he was highly supportive of the proposed County zoning ordinance. It is a major step forward and provides the City with planning and capital improvement investment opportunities that have not previously existed. Additionally, the County ordinance achieves brevity and clarity through the use of tables for dimensional requirements and uses; he believes our regulations can benefit from a similar approach.

At the request of Mayor Sitnick, Mr. Coman said that he would furnish City Council with black and white copies of the maps.

It was the consensus of City Council to review the proposed County zoning ordinance and then, if appropriate, adopt a resolution far enough in advance of the election date to show the residents were City Council stands on this issue.

EDUCATIONAL ACCESS CHANNEL OPERATING GUIDELINES

Councilman Cobb said the cable franchise agreement adopted by City Council designates three initial access channels to be used for public, educational and/or government programming. In March 1999, City Council approved Ordinance No. 2554 establishing an Educational Access Channel Commission to oversee the development of the educational access channel. The ordinance requires that operating guidelines for the educational access channel be approved by Asheville City Council. At their August 11, 1999, meeting, the Educational Access Channel Commission unanimously approved the operating guidelines. As of September 20, 1999, the Education Channel is operating

Mr. Tim Amos, Chairman of the Educational Access Channel Commission, said the Commission also unanimously approved an overview, mission & objectives statement. The operating guidelines and the overview, mission & objectives statement are both based upon information gathered from the guidelines and operating policies of access channels in other communities as well as input from Commission members, City staff, and Asheville City Council.

Upon inquiry of Mayor Sitnick, Mr. Amos said that even though the public has not had any input into the guidelines, all meetings of the Commission were held in open session. He felt that City Council should review the guidelines first. Mayor Sitnick noted that the public would have an opportunity for input at the formal meeting on September 28, 1999, when City Council considers adoption of the guidelines.

When Mayor Sitnick was concerned that there was no one on the Commission representing the diversity of the community, e.g., the Spanish community, Mr. Amos said that all Commission members are educators or involved in education and assured City Council that there will be an effort to reach out to everyone in the community for diverse language programming. Mr. Jeff Reble, Cable Access Coordinator, said that he would furnish City Council with a list of Commission members.

At the request of Councilwoman Field, Mr. Amos said that he would be happy to send some proposed budget information to City Council.

Upon inquiry of Mayor Sitnick, Mr. Amos said that the guidelines contain language that reads "At no time shall coverage of athletic events or activities exceed 40 percent of available programming hours."

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ESTABLISHMENT OF GREENWAY COMMISSION

Mr. Irby Brinson, Director of Parks and Recreation, said that this is the consideration of an ordinance to establish a Greenway Commission to serve in an advisory capacity for the development of greenways in Asheville.

On October 13, 1998, City Council adopted the Greenway Master Plan for the City of Asheville. Part of that plan included the establishment of a Greenway Commission to serve in an advisory capacity within the City. This ordinance will establish a Greenway Commission made up of interested citizens to promote the establishment of linear park areas known as greenways. The Commission shall consist of seven members. The Executive Director of Quality Forward, Executive Director of Parks, Recreation and Greenway Foundation, Executive Director of RiverLink, and Chair of the Parks and Recreation Advisory Board will serve as ex-officio members of the Commission. Members of the Commission will serve three year staggered terms. In addition, this ordinance will split the greenway function from the Asheville Tree and Greenway Commission, establishing the Asheville Tree Commission as a separate entity from the Greenway Commission. The purpose of the Greenway Commission will be to recommend updates of the Greenway Master Plan, foster communication and coordination among citizens of the City for acquisition and development of greenways, identify potential sites to be acquired, and conduct research, planning and feasibility assessments to support the Greenway Commission. The Greenway Commission will report to the Parks and Recreation Director. The Greenway Commission will establish monthly meeting times and dates to conduct their business.

City Council will determine who on the Asheville Tree and Greenway Commission will serve on the Greenway Commission and will appoint additional members as needed to both Commissions.

The Parks and Recreation Department staff is requesting City Council's approval of an ordinance establishing the Greenway Commission.

After discussion about the number of members on each commission, it was the consensus of City Council to appoint seven members to the Tree Commission and seven members to the Greenway Commission (in addition to the ex-officio members on both commissions).

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

PRESENTATION OF TRANSPORTATION IMPROVEMENT PLAN PRIORITIES

Mr. Ron Fuller, Transportation Planner, said that this is the consideration of authorizing City staff to submit the Priority Needs List to the Technical Coordinating Committee and the Transportation Advisory Committee.

He then reviewed the Transportation Improvement Program (TIP) process and explained that the TIP process has now moved to a two year cycle. He said one year is dedicated to establishing priority needs and the second year is to development of the annual State Transportation Improvement Plan and the Local Transportation Improvement Plan.

He explained that the Board of Transportation utilizes this information as they develop the TIP. Upon recommendation by the Technical Coordinating Committee on October 14, 1999, the draft Priority Needs will be sent out for a required thirty day public review and comment period. The Transportation Advisory Committee will then meet on November 18, 1999, for a public hearing to gather comments and concerns from the public.

The City departments involved in compiling the recommended Priority Needs List consist of the Planning and Development Department, the Public Works Department, the Engineering Department, and the Parks and Recreation Department.

Mr. Fuller then reviewed in detail the following projects on the Priority Needs List:

Accelerated Project

- I-26 Connector (I-2513)
  Accelerate the planning, design and construction of the Asheville Connector to match or precede the construction completion schedule of the US 19-23 upgrade to interstate standards. TIP Project E-3608 should be incidental to and incorporated into this project. Staff also recommends that the proposed design for a full interchange at Amboy Road be included as part of the project.

Endorsement of Existing TIP Projects with Request for Changes

- New Bridge on Biltmore over Swannanoa River (B-2515)
  Reconsider the concept of constructing a temporary bridge east of Biltmore Avenue to accommodate traffic during construction with the possibility of having the City take over the maintenance as a permanent bridge that will coincide with future development plans. Design of B-2515 should incorporate key elements of existing bridge to duplicate historic details of bridge and improve aesthetics. Lighting on bridge should match those on B-1070.

- Long Shoals Road (R-2813)
  Expand the scope of NC 146 (Long Shoals Road) widening project to a multi-lane facility which includes sidewalks on both sides, wide outside lanes for bicycles and a landscaped median. This facility has been identified as a "Gateway Corridor".

- Hendersonville Road (R-2213)
  US 25 (Hendersonville Road) between Old Airport Road (in Henderson County) and US 25A (Sweeten Creek Road) intersection. Construct outside lanes a minimum of 14 feet wide on each side of roadway. Install Share-the-Road signs and bicycle safe drainage grates.

- Sweeten Creek Road (U-2801)
  Extend the widening of US 25A (Sweeten Creek Road) from SR 3229 to Fairview Road and construct new bridge over Swannanoa River. This project should include, in its entirety, sidewalks on both sides, a landscaped median and wide outside lanes. The FY 1998-2004 NC TIP lists the northerly project terminus at SR 3229 (Project U-2801). This facility has been identified as a "Gateway Corridor." A feasibility study should be conducted to determine the impact on the Biltmore Village area. Accelerate to match construction schedule of entire US 25A project.

- Biltmore Avenue (U-3404)
  Recommendation from staff is to delete this project.

- North Louisiana Avenue (U-619)
  Staff recommends a feasibility study be conducted and that other alternatives rather than only a four-lane roadway be constructed.

- NC 191 - Brevard Road (U-3404)
  This facility has been identified as a "Gateway Corridor" and as such, should include design criteria that is sensitive to the physical environment of the area. Staff recommends a four-lane cross section with a landscaped median, wide outside lanes and sidewalks on both sides of the roadway on the section from NC 112 (Sardis Road) to the Blue Ridge Parkway. From the Parkway to NC 280, additional study should be undertaken to determine the best cross section to meet the demands of the community.

Top Ten Project Requests (in order of City staff recommendations):

- Construct turn lanes at targeted intersections on Merrimon Avenue.
- Widen Weaverville Highway (US 25) from Elkwood Avenue intersection to New Stock Road (SR 1740) to three lanes and resurface with curb and gutters and install appropriate signage.
- Widen Fanning Bridge Road (SR 1358) to include wide outside lanes (14 foot lanes).
- Widen Mills Gap Road (SR 3116) from US 25 to US 25A.

- Widen New Haw Creek Road (SR 2032) between Tunnel Road (US 70) and City limits (2-14 foot lanes).
- Widen, resurface, and realign Riverside Drive (NC 251) between Broadway Avenue and the new Craggy prison with 14 foot lanes to safely accommodate bicycles.
- Widen NC 9 from Third Street in Black Mountain to the Montreat gates with sidewalks on one side.
- Reserve right-of-way and extend Cane Creek Road south from approximately 1,000 feet south of the intersection of Old Airport Road (SR 1547) and Cane Creek Road (SR 1545) to the intersection of Howard Gap Road (SR 1006) and Old Howard Gap Road (SR 1556).
- Improve Beaverdam Road to two 14-foot lanes from Merrimon Avenue to City limits with special consideration to bikes and pedestrians.
- Realign the intersection of Reems Creek Road (SR 1003) and South Main Street (SR 2127) in Weaverville.

Mr. Fuller then displayed examples and discussed the "Gateway Corridor" concept as mentioned in some project recommendations.

City staff recommends City Council authorize City staff to submit their recommendations along to the Technical Coordinating Committee and the Transportation Advisory Committee.

Mr. Fuller said that representatives from the N.C. Dept. of Transportation (NC DOT) will be coming to Asheville for three days next week to meet with City Council, staff, and various neighborhood and business groups. When Mayor Sitnick asked that we make sure that those meetings were well advertised and Mr. Fuller responded that the NC DOT would be doing the advertising, not the City.

Mayor Sitnick hoped that if the widening of New Haw Creek Road occurs, that the intersection where Tunnel Road almost intersects with New Haw Creek Road gets reviewed as well.

Mayor Sitnick and Councilwoman Field felt that even though improving Overlook Road is now no. 11 on our top priority needs list (was no. 2 prior year), traffic calming on that State maintained road is long overdue.

Mayor Sitnick was concerned that this is such a big issue and yet so few people attend the Transportation Advisory Committee meetings. She asked Mr. Fuller to see if he can come up with some ways to better advertise the meetings. Mr. Fuller said that they have just finished a fairly in depth process where NC DOT spent $60,000 for consultants to design a public involvement process for us. He felt that recommendations from the process will be positive.

Mayor Sitnick said that she had a meeting with Ken Putnam, from the local NC DOT office, about many NC DOT related issues. She requested that sidewalks be installed whenever the NC DOT builds projects. She asked Mr. Putnam to pass on a request to the NC DOT that truck traffic on I-240 be slowed down as it comes through the City. She asked Mr. Fuller to follow-up on her request. She also felt it would be a great idea that her request include that all 18-wheel trucks stay in the right hand lane when travelling through the City. She expressed concern that I-240 is not built to interstate standards and asked Mr. Fuller what could be done to bring that up to interstate standards. She wanted to make sure that the NC DOT knows that City Council cares about signage, signalization and crosswalks whenever they build roads, in addition to the gateway concepts too.

Mayor Sitnick said that with regard to the I-26 Connector, even though City Council did pass a resolution stating that they would like to see the project completed, she personally has a great desire to see the NC DOT consider a different design that would still require the improvement of the bridge, but may not require eight lanes through West Asheville. She will present to them a different design that has come to her from the public.

Mayor Sitnick asked Mr. Fuller to meet with City Council with any recommendations or changes that he things should be made to the TIP and Council can then send a letter to the TAC in time for them to consider certain suggestions at their meetings.

Councilman Cobb requested the NC DOT be contacted to see if the signalization on Patton Avenue could be reviewed.

Councilwoman Field said that transportation patterns are the key to the growth of the community and thanked Mr. Fuller for his work with the TIP. She explained how important public participation is to the planning of projects.

Mayor Sitnick felt that if the NC DOT can go from six to eight lanes, they should be flexible enough to go from eight lanes to six lanes, if the time changes or community needs change. She stressed we cannot allow the NC DOT to be totally rigid in this community because this is a living, breathing, dynamic community. She felt their new philosophy goes in that direction.

It was the consensus of City Council to review the information presented by Mr. Fuller and place this issue on the October 27, 1999, City Council agenda.

Mayor Sitnick asked that this be placed on the Government Channel to let the public know Council is seeking their input on this very important issue.

RESOLUTION NO. 99-145 - RESOLUTION AUTHORIZING THE MAYOR TO EMPOWER STAFF TO MOVE FORWARD IN THE PLANNING, PURCHASE OF PROPERTY AND DESIGN OF A PARKING DECK IN THE BATTERY PARK AREA

ORDINANCE NO. 2613 - BUDGET AMENDMENT TO HIRE A REAL ESTATE BROKER AND FINANCIAL ADVISOR TO ASSIST IN THE PARKING DECK IN THE BATTERY PARK AREA

Assistant City Manager Spell asked City Council to waive their rules of procedure and vote formally at this meeting because there are some specific activities staff would like to begin on and they feel it is critical that they begin as quick as they can on those.

City Engineer Cathy Ball said that City staff has been working during the past 3-4 months trying to develop some private partnerships with the community in locating a deck and determining how many spaces need to be installed in the deck in the Battery Park area. In doing that, staff has determined that we have a need to have a real estate broker in order to negotiate the agreements and a financial advisor so that we can begin determining the best way to get the money to build the deck. She requested authority from the Mayor to authorize staff to (1) hire a real estate broker to represent the City in negotiations of the land and partnership agreements and appropriate funds for same; (2) hire a financial advisory to assist in developing optimum financing and appropriate funds for same; and (3) develop a Request for Proposals in order to select a consultant to design the parking deck. A budget amendment, in the amount of $130,000, is also requested in that it is the estimated cost for professional services of a real estate broker and financial advisor.

Councilman Cloninger moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Field and carried unanimously.

Councilman Cloninger moved to adopt Resolution No. 99-145. This motion was seconded by Councilman Sellers and carried unanimously.

Vice-Mayor Hay further explained that the City has partners that they want to negotiate with and we also have location issues. The action today is getting the professional help we need.

Councilwoman Field agreed that we are not authorizing staff to purchase anything other than engineering or architectural engineering services to get started on a design, if, and when, we get the property and the partners together.

City Attorney Oast stressed that we are authorizing staff to proceed with negotiations, but not the purchase of any land, and to put out a Request for Proposals for engineering services. Also, staff is authorized to obtain options on purchasing land, but that does not obligate the City to purchase the land.

Councilman Cloninger moved to adopt Ordinance No. 2613. This motion was seconded by Councilman Tomes and carried unanimously.

Assistant City Manager Spell said that the revenue source would be the proceeds from Certificates of Participation.

RESOLUTION BOOK NO. 25 - PAGE 310

ORDINANCE BOOK NO. 17 - PAGE 466

REPORTS ON BOARDS AND COMMISSIONS

Councilwoman Field updated City Council on the MSD issue around the Kenilworth Forest Project.

Councilman Sellers updated City Council on the Mills River Plant which should be operational in mid-October. Assistant City Manager Spell also noted that the Water Resources Department will be proceeding with the Fall Flush to begin in October.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:35 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

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Tuesday - September 28, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; Assistant City Attorney Patsy Meldrum; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: City Attorney Robert W. Oast Jr.

INVOCATION

Councilman Sellers gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 26-OCTOBER 2, 1999, AS "ENOUGH IS ENOUGH WEEK" IN THE CITY OF ASHEVILLE

Councilman Tomes read the proclamation proclaiming September 26-October 2, 1999, as "Enough is Enough Week" in the City of Asheville. He presented the proclamation to Ms. Bonnie Rose, who briefed City Council on some activities taking place during the week.

B. PROCLAMATION PROCLAIMING OCTOBER 3-9, 1999, AS "METAL ILLNESS AWARENESS WEEK " IN THE CITY OF ASHEVILLE

Councilman Cloninger read the proclamation proclaiming October 3-9, 1999, as "Mental Illness Awareness Week" in the City of Asheville. He presented the proclamation to Ms. Lynn Woods who briefed City Council on some activities taking place during the week.

C. PROCLAMATION PROCLAIMING OCTOBER 3-9, 1999, AS "GET ORGANIZED WEEK " IN THE CITY OF ASHEVILLE

Councilman Sellers read the proclamation proclaiming October 3-9, 1999, as "Get Organized Week" in the City of Asheville. He presented the proclamation to Ms. Cheryl Dodd who briefed City Council on some activities taking place during the week.

D. PROCLAMATION PROCLAIMING OCTOBER, 1999, AS "URBAN TRAIL MONTH" IN THE CITY OF ASHEVILLE

Vice-Mayor Hay read the proclamation proclaiming October, 1999, as "Urban Trail Month " in the City of Asheville. He presented the proclamation to Ms. Mitzi Tessier, Chair of the Urban Trail Committee, who briefed City Council on some activities taking place during the month.

E. PROCLAMATION PROCLAIMING OCTOBER, 1999, AS "ASHEVILLE SISTER CITIES MONTH " IN THE CITY OF ASHEVILLE

Councilwoman Field read the proclamation proclaiming October, 1999, as "Asheville Sister Cities Month " in the City of Asheville. She presented the proclamation to Ms. Mary Lasher, President of Asheville Sister Cities Inc., who briefed City Council on some activities taking place during the month.

F. PROCLAMATION PROCLAIMING OCTOBER, 1999, AS "ALPHA DELTA KAPPA MONTH " IN THE CITY OF ASHEVILLE

Councilman Cobb read the proclamation proclaiming October, 1999, as "Alpha Delta Kappa Month " in the City of Asheville. He presented the proclamation to Ms. Shirley McIntosh, District I Vice-President for North Carolina, who briefed City Council on some activities taking place during the month.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 14, 1999, AND THE WORKSESSION HELD ON SEPTEMBER 21, 1999

B. RESOLUTION NO. 99-146 - RESOLUTION AUTHORIZING THE PURCHASING DIRECTOR TO SELL SURPLUS MOTOR VEHICLES, OFF ROAD EQUIPMENT AND OTHER SURPLUS PROPERTY AT PUBLIC AUCTION

Summary: The consideration of a resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction.

The resolution authorizes the City's Purchasing Division to hold a public auction to dispose of motor vehicles, off-road equipment, and other miscellaneous property declared as surplus by various City departments. The auction is to be held Saturday, October 16, 1999, at 10:00 a.m. in the Public Works Complex, 161 S. Charlotte Street.

City staff recommends City Council approve the resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction.

RESOLUTION BOOK NO. 25 - PAGE 311

C. RESOLUTION NO. 99-147 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CONSTRUCTION ADVANTAGE INC. FOR FIRE STATION 4 ROOF AND RELATED REPAIRS

Summary: The consideration of a resolution authorizing the City Manager to enter into a roof replacement contract for Fire Station #4 on 300 Merrimon Avenue.

In an effort to maintain City facilities, City staff, through the capital improvement process, has determined Fire Station #4 at 300 Merrimon Avenue requires roof replacement. City staff solicited sealed bids from seven Roofing Contractors, three of which were minority contractors, to supply and install a new roofing system. City staff received bids from three qualified bidders which are as follows:

Construction Advantage, Inc.	$34,474.00
Service One, Inc.	$37,070.00
Stroup Sheet Metal Works, Inc.	$41,480.00

City staff has reviewed all bids and determined that Construction Advantage, Inc. is the lowest bidder and, therefore, recommends acceptance of the base bid amount of $34,474.00.

Approved funding is available in the capital improvement project account to pay for this roof replacement for Fire Station #4.

The Parks and Recreation Department requests City Council authorize the City Manager to enter into a contract for $ 34,474.00 with Construction Advantage, Inc., for this project.

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D. RESOLUTION NO. 99-148 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH ASHEVILLE PAVING COMPANY TO RESURFACE STREETS IN THE HAWTHORNE VILLAGE SUBDIVISION

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Asheville Paving Company to resurface streets located in Hawthorne Village Subdivision in Asheville, North Carolina.

The City is in need of a contractor to provide paving and resurfacing services for streets in Hawthorne Village Subdivision. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for paving and resurfacing services were solicited and three responses were received. The bidders are listed below:

Company	Bid
Asheville Paving Company	$43/Ton (not to exceed $47,000)
Tarheel Paving Inc.	$47/Ton
Lonesome Mountain Paving Company	$57/Ton
Asphalt Unlimited	$50/Ton

Funding for this project has already been allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt the Resolution Authorizing the City Manager of the City of Asheville to enter into contract with Asheville Paving Company to resurface roads in Hawthorne Village Subdivision.

RESOLUTION BOOK NO. 25 - PAGE 313

E. RESOLUTION NO. 99-149 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE A FEDERAL AVIATION GRANT AGREEMENT

Summary: The consideration of a resolution approving a grant from the Federal Aviation Administration in an amount not to exceed $1,076,956. This grant consists of the following projects: Y2K Verification, Master Plan Update, Wildlife Fencing, ARFF Road and Perimeter Security Road - Phase I.

RESOLUTION BOOK NO. 25 - PAGE 314

F. RESOLUTION NO. 99-150 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY FOR A GRANT TO ASSIST WITH THE TRANSPORTATION OF ELDERLY INDIVIDUALS FOR RECREATIONAL PURPOSES

Summary: The consideration of an application for a $20,700 grant of state money routed through Buncombe County for transportation of elderly people to recreation programs in the area.

The City of Asheville has applied for $20,700 for use in transporting elderly persons for recreational purposes. The Parks and Recreation Department will use this money for nutrition programs and additional transportation to events for seniors. These events include such things as a Labor Day picnic, in conjunction with the Council for Aging at Lake Julian and the UNC-A Holiday Concert at UNC-A Campus. These are new trips which the Department has not provided prior to this grant.

The Grant will take the form of a credit when applicable to costs incurred through the use of Mountain Mobility, and disbursements to the City when and if other transportation sources are used. This grant requires no matching amount on the part of the City.

City staff recommends City Council authorize the City Manager to apply for and enter into an agreement with Buncombe County for a grant to transport elderly people to recreation programs in the area.

RESOLUTION BOOK NO. 25 - PAGE 315

G. RESOLUTION NO. 99-151 - RESOLUTION ACCEPTING THE STREET NAMES OF McTINDAL CIRCLE, OAKEN COURT AND PEELER DRIVE LOCATED IN TWIN SPRINGS SUBDIVISION

Summary: The consideration of a resolution accepting the new proposed street names of McTindal Circle, Oaken Court and Peeler Drive located in Twin Springs Subdivision.

The City of Asheville Community Development Division, owner of all lots in Twin Springs Subdivision, located on Broadview Drive in Oakley, has petitioned City Council to adopt the new street names of McTindal Circle, Oaken Court and Peeler Drive.

Community Development staff recommends adoption of the resolution accepting the new proposed street names of McTindal Circle, Oaken Court and Peeler Drive located in Twin Springs Subdivision.

RESOLUTION BOOK NO. 25 - PAGE 316

H. RESOLUTION NO. 99-152 - RESOLUTION AUTHORIZING THE MAYOR TO DEDICATE TO THE PUBLIC USE STREETS AND EASEMENTS IN TWIN SPRINGS SUBDIVISION

Summary: The consideration of a resolution authorizing the Mayor to dedicate to the public use streets and easements on the plat for Twin Springs Subdivision.

The City of Asheville is the owner of record of a 12.353-acre tract of unimproved real property on Broadview Drive within the City limits. Prior to recordation of the final subdivision plat, the City of Asheville must dedicate to public use the streets and easements as shown on the plat.

On August 19, 1997, the City of Asheville and the Asheville Area Habitat for Humanity, Inc. entered into a Memorandum of Understanding to develop a 12.353-acre tract of unimproved land on Broadview Drive within the City limits. The City agreed to construct infrastructure improvements, including water, sanitary sewer, storm water drainage, streets and sidewalks, curb and gutter, electric, telephone, cable, street lighting, and minor landscaping. Habitat will construct 34 affordable housing units to be occupied by income-eligible families, and will transfer title of the individual real property to the qualified family when housing construction is completed.

Community Development staff recommends adoption of the resolution to dedicate the streets and easements in Twin Springs Subdivision to public use.

RESOLUTION BOOK NO. 25 - PAGE 317

I. MOTION SETTING A PUBLIC HEARING ON OCTOBER 12, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO CONSIDER A NEW HEAD OF MONTFORD TRANSITION OVERLAY DISTRICT AND APPLICATION OF THAT DISTRICT TO NINE LOTS ON MONTFORD AVENUE, HILL STREET AND GUDGER STREET

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Tomes moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

CHANGE OF AGENDA

Councilman Cloninger moved to amend the agenda to change the order of public hearings. This motion was seconded by Councilman Sellers and carried unanimously.

PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR A TELECOMMUNICATIONS TOWER AT 200 TUNNEL ROAD

Mayor Sitnick opened the public hearing at 5:30 p.m.

Urban Plan Dan Baechtold said that this public hearing was advertised on September 17 and September 24, 1999.

Councilman Cloninger moved to continue the public hearing, without further advertisement, until November 23, 1999. This motion was seconded by Councilman Sellers.

Councilman Cloninger said that he is requesting the continuance because City Council will be considering revisions to the standards of wireless telecommunication facilities on November 9, 1999, and he feels it's important that those revisions be considered before any more petitions for cell towers are received. Also, he felt that since Council has not been given adequate time to review this information, the continuance would allow Council to study the request.

When Vice-Mayor Hay asked if Council were to make changes to the ordinance, would it affect this application, since the application was made before the changes were in effect, Assistant City Attorney Meldrum responded that generally applications are subject to the ordinance in effect when they are made. It would be up to the applicant to determine whether or not they would be subject to any amendments after the application was made.

Councilman Cloninger explained that the area the petitioner is asking to be allowed to erect a tower is near McGuffey's on Kenilworth Knoll, very near where BellSouth currently has a tower. We are trying to encourage co-location so that the phone companies will locate more than one antenna on a tower. As it stands now, if BellSouth, who has the current tower there, wanted to take down their tower and construct a new stronger tower that could accommodate more antenna, their tower would have to be reduced from 180 feet to 100 feet. However, one of the proposed revisions to the ordinance would states that where a company already has a tower that is 180 feet and they want to fortify that tower or replace the tower so that it can accommodate more antenna, then the City will let them maintain that same height, rather than requiring them to reduce it to 100 feet. He said that if the proposed revision is adopted by City Council, then at least the petitioner would have the option of looking into the possibility of locating on the BellSouth tower, contingent upon BellSouth being agreeable as well. He felt Council should make that option available to applicants prior to Council ruling on petitions.

An attorney representing American Tower Corporation, petitioner, stated that the current telecommunications facilities standards were subject to extensive revisions and as a result, structure builders and carriers were on hold throughout all of 1999 unable to build out their structures until the ordinance was finalized. Now they have filed a tower application that meets that revised ordinance and he felt they have a reasonable expectation to have their application considered. They do not want to have to wait months for the Council to act upon the proposed ordinance revisions and whether BellSouth will allow them to tear down their tower and rebuild it is a very speculative issue. He felt this was an issue of fairness in that the tower application, as filed under the current ordinance in effect today, should be considered.

Mayor Sitnick noted that if the proposed ordinance passes, the City will be able to offer the co-location option which is something that City Council is very much in favor of having available.

Assistant City Attorney Meldrum asked City Council to be mindful of the provision in the Unified Development Ordinance which reads "a public hearing on the application shall be scheduled by the City Council following review and approval or conditional approval by the Technical Review Committee. The Asheville City Council shall consider the request within 35 days of receiving information regarding the conditional use request from the Planning and Development Director." She said that since City Council has opened the public hearing and after looking at the information, has determined that additional time is needed for review, she felt that City Council has met that provision.

The motion made by Councilman Cloninger and seconded by Councilman Sellers carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH THE DEFINITIONS OF COMMUNITY FACILITIES AND COMMUNITY IDENTIFICATION SIGNS, TO DETERMINE THE LOCATIONS OF COMMUNITY IDENTIFICATION SIGNS, TO AMEND REGULATIONS REGARDING SIGNS IN THE RIGHT -OF-WAY, AND TO AMEND REGULATIONS REGARDING THE ENFORCEMENT REMEDIES

Mayor Sitnick said that this public hearing was opened on Tuesday, August 10, 1999, and continued indefinitely until City Council had an opportunity to review the items in a worksession. These items were reviewed in the September 7, 1999, City Council worksession and on September 14, 1999, a motion was made to set the public hearing on these matters on this date.

Mr. Carl Ownbey, Urban Planner, said that this public hearing was advertised on September 17 and 24, 1999.

ORDINANCE NO. 2615 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES INSERTING THE DEFINITION OF COMMUNITY FACILITIES AND COMMUNITY IDENTIFICATION SIGNS

Mayor Sitnick opened the public hearing at 5:44 p.m.

Mr. Ownbey said that this is the consideration of an ordinance to amend Section 7-2-5 of Chapter 7 of the Code of Ordinances of the City of Asheville defining Community Identification Signs and Community Facilities.

During June and July of 1999, the Planning and Zoning Commission held various work sessions and regular meetings at which they discussed and recommended a wording amendment concerning the definition of Community Identification Signs and Community Facilities.

The Planning and Development staff presented for review the definition of Community Identification Signs and Community Facilities. When staff began amending other sections of the ordinance, we discovered that the terms "community identification signs" and "community facilities" were not specifically defined in the ordinance.

The Planning and Development staff presented this proposed wording amendment to the Planning and Zoning Commission at their June 2, 1999, regular meeting. After presentation by staff, the Commissioners voted unanimously to recommend to City Council the adoption of this wording amendment.

Mayor Sitnick closed the public hearing at 5:48 p.m.

Councilwoman Field moved for the adoption of Ordinance No. 2615. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 476

ORDINANCE NO. 2616 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES DEALING WITH ON-PREMISE SIGNS: SINGLE TENANT DEVELOPMENT - COMMUNITY IDENTIFICATION SIGNS

Mayor Sitnick opened the public hearing at 5:50 p.m.

Mr. Ownbey said that this is the consideration of an ordinance to amend Section 7-13-4 of Chapter 7 of the Code of Ordinances of the City of Asheville regarding On-Premise Signs/Single Tenant Development - Community Identification Signs.

During June and July of 1999, the Planning and Zoning Commission (Commission) held various worksessions and regular meetings at which they discussed and recommended a wording amendment concerning the location and size of community identification signs.

The Planning and Development staff presented for review the location and size of community identification signs. The request was initiated through the Haw Creek Community after they were required by the City to remove their community identification sign and related community facilities panels. At that time, these particular signs were not permitted under the ordinance.

The Commissioners held two hearings concerning the location and size of Community Identification Signs (the Haw Creek community requested additional square footage for identification of community facilities) and recommended approval of the ordinance, with the maximum square footage of the Community Identification Sign to be equal to that of a subdivision or multi-family sign at 16 square feet based on initial community input and acceptance by community representation at the meeting. After the Commission's decision, it was determined that the proposed sign size does not meet the needs of the community in adequately identifying community facilities because the overall sign size (including the facility panels) would be too small.

After receipt of the letter from Mr. Pelly, the Planning and Development staff has reviewed the recommendation again with the community and agreed that since the purpose of the community identification sign would be to identify an area larger than a subdivision or multi-family development, the size and design should be larger. The revised staff recommendation is a total of 24 square feet to include the community identification sign and related community facilities panels with a maximum size of the community identification sign to be 16 square feet. The Commissioners were informed about the staff recommendation at their September 1, 1999, meeting and by consensus, they indicated that they did not want to change their recommendation or see the issue remanded back to them.

At a worksession on this matter on September 7, 1999, the City Council received a report on the revised staff recommendation. Two ordinances are presented for consideration: (1) an ordinance incorporating the recommendation from the Planning and Zoning Commission ("Option One"); and (2) an ordinance incorporating the revised staff recommendation ("Option Two").

The Planning and Development Department recommends adoption of the ordinance incorporating the revised staff recommendation ("Option Two").

Mr. Frank Martin, representative of the Haw Creek Community Association, supported staff's recommendation of a total of 24 square feet which will be large enough to properly identify the community and also provide directions to their six local churches.

Councilwoman Field felt that the six foot maximum height of the sign is not realistic with our terrain.

After a brief discussion about possibly having a range of height, Assistant City Attorney Meldrum said that this particular type of sign is allowed within a City street right-of-way and the only way that it's allowed is upon issuance of an encroachment agreement by the Public Works Department, approval by the Traffic Engineer and permit from the Planning and Development Department. So, with that much review, you may be able to include a range of six to nine feet and let the height be determined based upon that review by City staff. She said that if Council wished to proceed in that direction, she would include the appropriate language in the Option No. Two ordinance.

Mayor Sitnick closed the public hearing at 5:57 p.m.

Councilman Cloninger moved for the adoption of Ordinance No. 2616 (Option Two, as modified by Assistant City Attorney Meldrum). This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 477

ORDINANCE NO. 2617 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES DEALING WITH SIGNS PROHIBITED IN ALL ZONING DISTRICTS - SIGNS LOCATED IN THE RIGHT-OF-WAY

Mayor Sitnick opened the public hearing at 6:00 p.m.

Mr. Ownbey said that this is the consideration of an ordinance to amend Section 7-13-3 of Chapter 7 of the Code of Ordinances of the City of Asheville concerning Signs Prohibited in All Zoning Districts - Signs in the Right-of-Way.

During June and July of 1999, the Planning and Zoning Commission held various worksessions and regular meetings at which they discussed and recommended a wording amendment concerning signs in the right-of-way.

The Planning and Development staff presented for review regulations concerning signs in the rights-of-way. This section generally prohibits signs in the right-of-way with the exception of certain specified signs. This amendment to the ordinance strengthens the methods of enforcement by staff, reduces clutter from three permitted signs to two, increases the number of sign faces from three to four by permitting double-face signs, and reduces the height of signs placed in the right-of-way from nine feet to six feet. It also requires review of permits for signs in the right-of-way by the Public Works Department, the City Traffic Engineer, the Planning and Development staff, and written notification to the adjacent property owner. Specific wording is also incorporated to permit City staff to enforce this section of the ordinance within the N.C. Dept. of Transportation right-of-way.

The Planning and Development staff presented this proposed wording amendment to the Planning and Zoning Commission at their June 24, 1999, worksession. After presentation by staff, the Commissioners voted unanimously to recommend to City Council the adoption of this wording amendment.

Discussion surrounded the illegal posting of signs on utility poles and the process in which the Zoning Office uses when signs are taken down. Ms. Sharon Allen, Development Code Administrator, said that approximately 200 signs a week are being taken down.

Upon inquiry of Vice-Mayor Hay, Ms. Allen said that the ordinance does contain remedies for citing violators and they have used those provisions with repeat offenders.

Mayor Sitnick suggested the City work with the Coalition of Asheville Neighborhoods, who expressed a willingness to go from neighborhood association to neighborhood association to raise the funds, in order to purchase a kiosk that can be placed at the entrances to the neighborhoods to display signs like yard sales, lost dogs, etc. She understood that the Public Works Department could install the kiosks if they are located within the right-of-way.

It was the consensus of City Council that the ordinance be modified to include a range of six to nine feet and let the height be determined based upon that review by City staff.

Mayor Sitnick closed the public hearing at 6:10 p.m.

Vice-Mayor Hay moved for the adoption of Ordinance No. 2617, as modified. This motion was seconded by Councilman Cobb and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 479

ORDINANCE NO. 2618 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING ENFORCEMENT REMEDIES AND PROCEDURES

Mayor Sitnick opened the public hearing at 6:10 p.m.

Mr. Ownbey said that this is the consideration of an ordinance to amend Section 7-18 of Chapter 7 of the Code of Ordinances of the City of Asheville concerning Enforcement Remedies and Procedures.

During June and July of 1999, the Planning and Zoning Commission held various work sessions and regular meetings at which they discussed and recommended a wording amendment concerning the enforcement of zoning violations of the Unified Development Ordinance (UDO).

The amendment was based on a request from City enforcement staff to add language to subsection 7-18-3 describing the contents of the notice of violation. This language was incorporated in the old zoning ordinance but was inadvertently left out of the UDO. The language is as follows:

> The notice of violation may include, but not be limited to, an order to discontinue the illegal use of land, buildings or structures; require removal of illegal buildings, structures or uses or removal of illegal additions, alterations or structural changes; discontinue the illegal work being done; or require any other action to insure compliance with or prevent violation of this chapter.

A few other minor changes have been recommended as shown on the copy of the "Proposed Ordinance."

At the same time this language was requested to be added, the City Attorney's Office recommended relocating the language of subsections (e) and (f) from Section 7-18-3 to new Sections 7-18-4 and 7-18-5 as they described remedies for violations rather than the procedure for and content of notices of violation. The language of subsection 7-18-3 (e) has been relocated to subsection 17-18-4 (a). Other than two minor changes, the language is the same. The minor changes included the addition of the phrase "of a civil penalty" in the first line and the change from "shall" to "may" in the third line. As Section 7-18-2 (c) included criminal penalties as a remedy, a new subsection 17-18-4 (b) was added to set out the enforcement procedure which would be followed in the event of a criminal penalty.

The language in subsection 7-18-3 (f) regarding summary removal of signs/sign structures and remove orders for signs/sign structures was relocated to new Section 7-18-5. Other than a few minor changes, the language is the same. Those minor changes include substituting the word "City" for "Sign Administrator" and "director of building safety" in the first sentence of subsection 7-18-5 (a). In subsection 7-18-5 (b) the first four lines regarding the statutory authority were added.

The Planning and Development staff presented this proposed wording amendment to the Planning and Zoning Commission at their June 24, 1999, worksession and again at their July 7, 1999, regular meeting. After presentation by staff, the Commissioners voted unanimously to recommend to City Council the adoption of this wording amendment.

Assistant City Attorney Meldrum responded to various questions and comments from Council, some being, but are not limited to: the notice of violation wording in secs. 17-18-4 and 17-18-5; what the illegal use of land would constitute; and what is the prescribed period of time within which the violation should be cured,

Councilman Tomes was concerned that the public may not be aware of the provisions in this ordinance. Ms. Allen responded that once a complaint is received, an inspector goes out and tries to make contact with the violator. The inspector would then advise them of the requirements to either get a permit, or stop the violation. If they do not comply, then they follow up with a notice of violation. She stressed that this will mostly be used for repeat offenders and blatant abusers.

Mayor Sitnick closed the public hearing at 6:27 p.m.

Vice-Mayor Hay moved for the adoption of Ordinance No. 2618. This motion was seconded by Councilman Cloninger and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 481

B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO DEFINE THE POWERS AND DUTIES OF THE ASHEVILLE TREE COMMISSION

ORDINANCE NO. 2619 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE TO DEFINE THE POWERS AND DUTIES OF THE ASHEVILLE TREE COMMISSION

Due to the order of the agenda, Assistant City Attorney Meldrum said that this amendment delegates the powers and duties of a combined commission (Tree/Greenway Commission) into one commission, the Tree Commission. By holding this public hearing, Council will be delegating powers to a commission that does not exist until Council adopts the ordinance under new business which separates the Tree/Greenway Commission into two separate commissions (Tree Commission and Greenway Commission). Therefore, to take action on this, Council will need to adopt this amendment to the Unified Development Ordinance subject to adopting the ordinance separating the Tree/Greenway Commission into two separate commissions.

Mayor Sitnick opened the public hearing at 6:27 p.m.

Mr. Gerald Green, Senior Planner, said that this is the consideration of an amendment to the Unified Development Ordinance which would delete references to "Tree and Greenway Commission" and insert "Tree Commission" in its place. This public hearing was legally advertised on September 17 and 24, 1999.

The Planning and Zoning Commission has recommended approval of an amendment to Chapter 7 of the Code of Ordinances which will delete all references to the "Tree and Greenway Commission" and insert "Tree Commission" instead. The proposed ordinance amendment has been drafted in anticipation of Council designating the Tree and Greenway Commission as the

Tree Commission and creating a separate Greenway Commission. With the adoption of the proposed amendment, the Tree Commission will assume those duties and responsibilities previously delegated by the Unified Development Ordinance to the Tree and Greenway Commission. Among these duties and responsibilities are:

- Having a representative serve on the Technical Review Committee;
- Reviewing and commenting on requests for reductions in buffer areas for churches located in residential zoning districts; and
- Review of plans for Level II and Level III site plan projects.

The proposed ordinance amendment would enable the Tree Commission to call upon Planning and Development Department staff for advice and assistance, as the Tree and Greenway Commission can do under the existing ordinance. Adoption of the proposed ordinance amendment is necessary to facilitate the creation of a separate Tree Commission and a separate Greenway Commission.

The Planning and Zoning Commission unanimously recommended approval of the ordinance amendment at their May 5, 1999, meeting. The Planning and Development Department staff recommends approval of the ordinance amendment.

Mayor Sitnick closed the public hearing at 6:31 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2619, subject to adoption of the ordinance separating the Tree/Greenway Commission into two separate commissions which will be considered under "New Business". This motion was seconded by Councilwoman Sellers and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 485

C. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR A DUPLEX ON TOWN MOUNTAIN ROAD

ORDINANCE NO. 2602 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A DUPLEX ON TOWN MOUNTAIN ROAD

Assistant City Attorney Meldrum reviewed with Council the conditional use permit process by stating that City Council will first hear from staff who will describe the proposal and provide some background information. Then the applicant may make a presentation and then comments from the public will be taken. She said that there will be an opportunity for questions and rebuttal comments, as necessary. Following the hearing, Council will then debate the proposal and will take action on the request. It has been Council's practice to have two separate votes, one today to either grant or denial of the request. At the next formal meeting, staff would prepare a written Order summarizing the finding and conclusions either granting or denying issuance of the permit and there would be a separate vote on that written Order.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 6:32 p.m.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

Assistant City Attorney Meldrum said that as documentary evidence is submitted, she will be noting the entry of that evidence into the record.

Mr. Mike Matteson, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Matteson said that this is the consideration of a Conditional Use approval and permit as outlined in the Unified Development Ordinance (UDO) to construct a duplex on a 0.34 acre parcel on Town Mountain Road. The property owner is Dr. Shing Kuai.

By use of a "Sketch Plan" dated July 8, 1999, (City Exhibit 4), Mr. Matteson described the property which is zoned RS-8 Residential Single-Family High Density. Duplexes are conditional uses within the RS-8 zoning district.

Conditional uses are uses which, because of their unique characteristics or potential impacts on the surrounding neighborhood and/or the city as a whole, require individual consideration of their location, design, configuration, and/or operation at the particular location proposed.

In addition to development standards for the zoning district in which they are located, conditional uses must meet certain general and individualized conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare.

The general conditions, which apply to all conditional uses, can be found in Section 7-16-2 (c) of the UDO and are as follows:

1. That the proposed use or development of the land will not materially endanger the public health or safety;
2. That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region;
3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;
4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;
5. That the proposed use or development of the land will generally conform with the comprehensive plan and other official plans adopted by the city;
6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and
7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

There is no indication that these general conditions will not be met by the proposal.

The following individualized conditions, which can be found in Section 7-16-2 (d) (4) of the UDO, apply specifically to duplexes in single-family residential districts:

a. Use districts: RS-2, RS-4, RS-8.

The property is zoned RS-8.

b. Duplexes shall be located a minimum of 300 feet from all other multi-family uses (excluding dwellings with accessory apartments) on the same street in the single-family district.

There is not another multi-family use within 300 feet on the same street and within this single-family district.

c. Minimum lot area shall be 125 percent of that required for a single residential unit in the respective district.

The lot area exceeds this minimum requirement.

d. Parking shall be located in the rear and screened with vegetation from adjacent single-family uses.

The site plan addresses this condition.

e. The structure shall have a single front entrance and other entrances as required.

The proposed structure will have one entrance on the front and the second entrance on the side of the building.

f. Requirements of the N.C. State Building Code shall be met.

State Building Code requirements must be met in order for a building permit to be issued for the project.

At their August meeting, the Technical Review Committee recommended approval of the conditional use permit with a number of conditions which were met with the submittal of revised plans.

The Planning and Development Department staff recommends that City Council hold a public hearing to consider a Conditional Use approval and permit to construct a duplex on a 0.34 acre parcel on Town Mountain Road.

Mr. Alex Cochran, representing Dr. Kuai, said that basically this is building a small house in his back yard. At this time it is uncertain that this will be used as a duplex. He said it may be used for Dr. Kuai's family who will be coming to the United States from Japan. He asked that consideration of this permit be considered at this meeting because if it is approved, waiting another two weeks for approving the written order may make it difficult to break ground.

Vice-Mayor Hay said that in the past Council has had to hammered out different conditions and it was hard to give exact direction to the staff to draft the written Order. However, this may be a situation where Council can give exact direction to staff and it will not have to come back to Council for approval of the written Order.

Assistant City Attorney Meldrum said that if City Council would like to accommodate the petitioner, Council would need a motion to adopt findings that the general conditions and the specific conditions have been met and then staff will draft an Order to indicate that.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 6:46 p.m.

Councilman Cloninger moved to adopt findings that the application complies with the general conditions as set forth in Section 7-16-2 (c) of the Code of Ordinances of the City of Asheville and finds that in addition the application complies with the specific conditions found in Section 7-16-2 (d) (4) of the Code of Ordinances of the City of Asheville. This motion was seconded by Councilman Sellers and carried unanimously.

In consideration of adoption of those findings, Councilman Cloninger moved to grant a conditional use permit to construct a duplex on a 0.34 acre parcel on Town Mountain Road. This motion was seconded by Councilman Tomes and carried unanimously.

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As noted by this action today, Councilman Cloninger has shown that they are willing to approve multi-family units in single-family zoned areas where appropriate.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 99-153 - RESOLUTION ADOPTING THE EDUCATIONAL ACCESS CHANNEL OPERATING GUIDELINES

Mr. Tim Amos, Chairman of the Educational Access Channel Commission, said that the Cable Franchise Agreement adopted by City Council in August 1998 designates three initial access channels to be used for public, educational, and/or government programming.

In March 1999, The Asheville City Council approved Ordinance No. 2554 establishing an Educational Access Channel Commission to oversee the development of the educational access channel. The ordinance requires that operating guidelines for the educational access channel be approved by Asheville City Council. At their August 11, 1999, meeting, the Educational Access Channel Commission unanimously approved the operating guidelines. The Commission is prepared to launch the Education Channel upon approval of these guidelines by City Council.

The Commission also unanimously approved an overview, mission & objectives statement which is also included for informational purposes. Both documents are based upon information gathered from the guidelines and operating policies of access channels in other communities as well as input from Commission members, City staff, and Asheville City Council.

Staff requests that City Council adopt the proposed resolution approving the Educational Television Operating Guidelines as written.

Mayor Sitnick said that the educational programming will be the primary focus and that at no time shall coverage of athletic events exceed 40% of available programming hours. In addition, considering the growing international community in Asheville, and the fact that many languages are spoken in the schools and in the community at large, we make sure that the use of other languages is considered all the time and at every turn. If there is need for interpretation, that might be something to consider.

When Mayor Sitnick asked if the channel that carries the educational station be capable of closed caption, Cable Access Coordinator Jeff Reble said that the capability exists, however, it is not offered like on the other cable stations. He explained that closed captioning is a service that either needs to be purchased or be provided and oftentimes that takes the form of a typist actually creating the captioning which is then transferred over the air to the viewers at home.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cobb moved for the adoption of Resolution No. 99-153. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 318

B. ORDINANCE NO. 2621 - ORDINANCE AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES TO SEPARATE THE ASHEVILLE TREE/GREENWAY COMMISSION INTO THE ASHEVILLE TREE COMMISSION AND THE ASHEVILLE GREENWAY COMMISSION AND TO DEFINE THEIR POWERS AND DUTIES

Mr. Irby Brinson, Director of Parks and Recreation, said that this is the consideration of an ordinance to establish a Greenway Commission to serve in an advisory capacity for the development of greenways in Asheville.

On October 13, 1998, City Council adopted the Greenway Master Plan for the City of Asheville. Part of that plan included the establishment of a Greenway Commission to serve in an advisory capacity within the City. This ordinance will establish a Greenway Commission made up of interested citizens to promote the establishment of linear park areas known as greenways. The Commission shall consist of seven members. The Executive Director of Quality Forward, Executive Director of Parks, Recreation and Greenway Foundation, Executive Director of RiverLink, and Chair of the Parks and Recreation Advisory Board will serve as ex-officio members of the Commission. Members of the Commission will serve three year staggered terms. In addition, this ordinance will split the greenway function from the Asheville Tree and Greenway Commission, establishing the Asheville Tree Commission as a separate entity from the Greenway Commission. The purpose of the Greenway Commission will be to recommend updates of the Greenway Master Plan, foster communication and coordination among citizens of the City for acquisition and development of greenways, identify potential sites to be acquired, and conduct research, planning and feasibility assessments to support the Greenway Commission. The Greenway Commission will report to the Parks and Recreation Director. The Greenway Commission will establish monthly meeting times and dates to conduct their business.

City Council will determine who on the Asheville Tree and Greenway Commission will serve on the Greenway Commission and will appoint additional members as needed to both Commissions.

The Parks and Recreation Department staff is requesting City Council's approval of an ordinance establishing the Greenway Commission.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2621. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 495

C. RESOLUTION NO. 99-154 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION

Vice-Mayor Hay, Chairman of the Boards & Commissions Committee, said that the terms of Max Haner, Lionel Williams and Jane Mathews expired on August 14, 1999.

The Boards & Commissions Committee recommended the reappointment of Mr. Haner and Mr. Williams and that the position of Ms. Mathews be interviewed for. On September 7, 1999, it was the consensus of Council to instruct the City Clerk to prepare the proper paperwork to reappoint Mr. Haner and Mr. Williams to each serve an additional three-year term, terms to expire on August 14, 2002, or until their successors have been appointed.

Vice-Mayor Hay moved to reappoint Max Haner and hearing no opposition, Mr. Haner was unanimously appointed to the Planning & Zoning Commission to serve a three year term, term to expire August 14, 2002, or until his successor is appointed.

Vice-Mayor Hay moved to reappoint Lionel Williams and hearing no opposition, Mr. Williams was unanimously appointed to the Planning & Zoning Commission to serve a three year term, term to expire August 14, 2002, or until his successor is appointed.

On September 14, 1999, City Council interviewed Anne Campbell, Barber Melton, Hedy Fisher, Ben Slosman and Jan Howard. Peter Alberice was interested in the vacancy, however, he was not able to attend the interview on September 14.

Councilman Cobb nominated Barber Melton.

Mayor Sitnick nominated Hedy Fischer.

Councilwoman Field nominated Ben Slosman.

Each Council member voiced praise about all candidates for the Planning & Zoning Commission. After each Council member voiced their nominations, they each spoke in support of their choices.

Barber Melton was supported by two Council members, Ben Slosman was supported by two Council members and Hedy Fisher was supported by three Council members. Since there was not a majority for any candidate, Vice-Mayor Hay suggested in an effort to reduce the field of candidates, each Council member state their number one and number two choices. The number one choices would be given two points and the number two choices would be given one point. Hedy Fisher received eight points, Barber Melton received eight points and Ben Slosman received five points. Vice-Mayor Hay then asked for a show of hands in favor of appointing Hedy Fisher. Mayor Sitnick and Councilmen Cloninger Sellers and Tomes raised their hands. Vice-Mayor Hay then asked for a show of hands in favor of appointing Barber Melton. Vice-Mayor Hay, Councilwoman Field and Councilman Cobb raised their hands. Therefore, Hedy Fisher was appointed to the Planning & Zoning Commission to serve a three year term, term to expire August 14, 2002, or until her successor is appointed.

RESOLUTION BOOK NO. 25 - PAGE 320

D. RESOLUTION NO. 99-155 - RESOLUTION APPOINTING A MEMBER TO THE TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Hay, Chairman of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Tourism Development Authority.

The term of Randy Fluharty as a member on the Tourism Development Authority expired on August 30, 1999. Mr. Fluharty has served two full successive terms and is therefore, not eligible for reappointment.

On September 14, 1999, City Council interviewed Chris Cavanaugh.

Vice-Mayor Hay moved to appoint Chris Cavanaugh and hearing no opposition, Mr. Cavanaugh was appointed to the Tourism Development Authority, to serve a three year term, term to expire August 30, 2002, or until his successor is appointed.

RESOLUTION BOOK NO. 25 - PAGE 321

E. RESOLUTION NO. 99-156 - RESOLUTION APPOINTING A MEMBER TO THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON

Vice-Mayor Hay, Chairman of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Regional Water Authority of Asheville, Buncombe and Henderson.

The term of Charles Worley as a member on the Regional Water Authority expires on September 30, 1999. Mr. Worley is eligible for reappointment.

On September 14, 1999, City Council interviewed Ted Patton.

The Boards & Commissions Committee recommended City Council reappoint Mr. Worley to the Regional Water Authority.

Mayor Sitnick nominated Ted Patton.

Councilwoman Field nominated Charles Worley.

Each Council member spoke in support of their choices.

Ted Patton received four nominations and Charles Worley received three nominations. Therefore, Ted Patton was appointed to the Regional Water Authority to serve a three year term, term to expire September 30, 2002, or until his successor is appointed.

RESOLUTION BOOK NO. 25 - PAGE 322

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville from August 20 - September 16, 1999: Mark Gibney (Streets), Mikola Zzaricheuskiy (Sanitation), Mary Ann Mason (Police), Corinne Kurzman (Water), Debra Sharp (Fire), BellSouth (Water), Buncombe County Sheriff Department (Finance), Westall-Chandley Lumber Co. (Sanitation) and Robin Hester (Sanitation).

The following claims were received by the City from September 17-23, 1999: Charles Gantt (Streets) and Clarence Benton (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

City Manager reported on his recent trip to Saumur, France, as part of a delegation of Sister City representatives. He presented the Mayor with a letter from the Mayor of Saumur along with a report of the some of the activity that took place during that trip.

City Council directed the City Manager to arrange a social for the local delegation to thank them for their help in getting a number of pieces of legislation through the General Assembly.

City Manager Westbrook updated City Council on the efforts being made by the City of Asheville with regard to the Hurricane Floyd Disaster Relief Program.

It was the consensus of City Council to place an item on the next worksession agenda about upcoming City Council meeting dates.

Ms. Carol Collins, representing Citizens for Property Rights, said that Buncombe County's Zoning Administrator Jim Coman was given the opportunity to report to City Council on their proposed ordinance on September 21, 1999, and that presentation is being aired on the Government Channel. The Citizens for Property Rights disagree with the position taken to endorse and promote the County's zoning ordinance. They feel the public deserves to hear both sides of the debate in Council's public education effort. They are tax payers and City Council is using public tax money to promote zoning in airing the video of Mr. Coman's presentation and they feel they should have equal time to make a presentation to City Council at the next worksession. They request this equal time to more fully inform voters of both sides of the issue and that it receive equal broadcasting time. Furthermore, if the City hosts an additional information meeting, either a public forum or in a City Council meeting session, they request equal time and opportunity to give that presentation. They feel that equal time and resources should be given to the opposing side.

Mayor Sitnick said that the City Council has not made any statement that they are endorsing the County's zoning ordinance at this time. However, after further review by City Council of the plan, they will then determine whether or not to support and endorse the ordinance.

It was the consensus of City Council to invite the Citizens for Property Rights to the next formal meeting on October 12, 1999, to make a 10-minute presentation under the item titled "Informal Discussion and Public Comment."

Upon inquiry of Ms. June Lamb, Mayor Sitnick said that no City funds were used for the City Manager's trip to Saumur, France.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:05 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - October 5, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman Earl Cobb; Councilwoman Barbara Field (arrived at 3:05 p.m.); Councilman Thomas G. Sellers; and Councilman O.T. Tomes (arrived at 3:35 p.m.); City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman M. Charles Cloninger

CONSENT:

Fire Safety House Donation

Summary: The consideration of a resolution accepting a trailer-mounted "fire Safety House" donated by the Asheville Firefighters Association.

The Asheville Firefighters Association, a voluntary association that represents Asheville firefighters, conducts periodic fundraising activities, the funds from which are used to help promote community safety from fire. Over the past ten years, the Association has purchased literally hundreds of smoke detectors for free distribution to people who couldn't otherwise afford them.

The Association has acquired a "Fire Safety House"--a reduced-size mock-up of a house mounted on a trailer--that is used to help train children in fire safety techniques, like "Get Low in Smoke," "Stop, Drop and Roll" and "Learn Not to Burn." The Association would like to donate this Fire Safety House to the City of Asheville for use by the Asheville Fire Department in expanding its public fire safety education outreach activities.

Because the Fire Safety House was designed and built for this purpose, maintenance costs are expected to be nominal. No new vehicles would be required--the Fire Department has a vehicle with sufficient towing capacity to convey the Fire Safety House from school to school.

If the City were to pursue acquiring a Fire Safety House on its own, acquisition cost would be approximately $25,000.

The Fire Chief recommends that the City Council adopt a resolution authorizing the City Manager to accept the donation of a Fire Safety House to the City of Asheville by the Asheville Firefighters Association.

Set Public Hearing for Closing Portion of Spruce Street from Eagle Street to South Market Street for November 9, 1999

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UDO AMENDMENT REVIEW

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which are scheduled on Tuesday, October 12, 1999. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Change the area required for public notification for Certificates of Appropriateness for projects

Senior Planner Gerald Green said that this is the consideration of an ordinance to amend the Unified Development Ordinance to change the area required for public notification for Certificates of Appropriateness for projects.

The Planning and Zoning Commission, at their September 1, 1999, meeting, reviewed and recommended approval of an amendment to the Unified Development Ordinance which would revise the notification requirements for public hearings held to receive input on requests for Major Work Certificates of Appropriateness. The public hearings are held by the Historic Resources Commission prior to making a decision regarding the issuance of the Certificate of Appropriateness. The current ordinance requires notification of all owners of property located within 400 feet of the property for which the Certificate of Appropriateness is requested. The proposed amendment would require the following notification:

- For public hearings to consider requests for Certificates of Appropriateness (CA) for new construction, owners of property located within 400 feet of the property for which the CA is requested shall be notified. (No change)

- For public hearings to consider requests for all other major work Certificates of Appropriateness, owners of property located within 150 feet of the property for which the CA is requested shall be notified. (Change from current requirement of 400 feet)

- For the Biltmore Village and Albemarle Park Local Historic Districts, notification of public hearings to consider requests for CA's for major work (excluding new construction) shall be provided to all property owners in the local historic districts. (Currently no requirement for notification of all property owners in these historic districts).

No changes are proposed in the notification requirements for CA requests for new construction. The proposed changes would affect notification of public hearings for CA's for projects such as additions, major landscape projects, addition of windows and/or doors, construction of small outbuildings, etc. The proposed change in notification requirements was requested by the Historic Resources Commission.

The Asheville Planning and Zoning Commission voted 5 to 0 to recommend approval of the wording amendment. The Historic Resources Commission voted unanimously to recommend approval of the amendment. The Planning and Development staff recommends approval of the amendment.

Establish as minor works those projects related to locally designated historic landmarks for the purpose of downtown design review

Urban Planner Mike Matteson said that this is the consideration of an amendment to the Unified Development Ordinance which establishes all work related to Local Historic Landmark buildings and properties as minor works for the purposes of downtown design review.

This wording amendment is designed to streamline the review process for work related to Local Historic Landmark properties which are also located within the Downtown Design Review boundaries.

The Historic Resources Commission (HRC) reviews all changes to Local Historic Landmark properties throughout the county for compliance with the Secretary of the Interior's

Standards for Rehabilitation. HRC's design review process, and compliance with the standards, is mandatory. There are a number of Local Historic Landmark properties which are located downtown, and therefore are subject to review under the City's Downtown Design Review process as well as HRC review.

Downtown Design Review Major Works Projects are reviewed by the Downtown Commission while Downtown Design Review Minor Works Projects are reviewed by staff. Both major works projects and minor works projects are reviewed for compliance with the Downtown Design Review Guidelines.

This ordinance amendment establishes all work related to landmark buildings and properties as minor works projects for the purposes of Downtown Design Review, thus eliminating the need for review by two separate commissions.

At their September 1, 1999, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of this proposed wording amendment.

Head of Montford Transition Overlay District and application of that district to 9 lots on Montford Avenue, Hill Street and Gudger Street

Urban Planner Mike Matteson said that this is the consideration of an amendment to the Unified Development Ordinance to consider the adoption of the Head of Montford Transition Overlay District as well as the application of this overlay district to nine lots at the "Head of Montford".

In late July, the Planning and Development Department received a rezoning application from the Asheville Area Chamber of Commerce for a 4.3 acre site (including 9 individual tax lots) at the Head of Montford.

The initial request was to rezone the property, which is currently zoned a combination of Community Business I, Office and RM-8 to Community Business II.

After examining the rezoning request, staff felt that certain uses would be very appropriate for the site, but that some of the uses permitted in the Community Business II zoning district could be detrimental to the surrounding community. Therefore, staff suggested that the Chamber of Commerce amend its request to ask that a Transition Overlay District be developed and applied to the site. The benefit of such an overlay district is that it can address the unique characteristics of a given area and define more clearly the type of development which will occur. The Chamber agreed to amend their rezoning request as suggested.

In developing the Transition Overlay District, staff first prepared a study of the area which documents its characteristics and describes how a Transition Overlay District can best address the issues.

The preparation of the overlay district involved significant input from both the Chamber of Commerce and the Montford community. A community meeting was held on September 15, 1999, at the Montford Center at which the overlay district was presented and additional input from the community was received.

The Head of Montford Transition Overlay District is designed to guide future development in a way that is beneficial to the immediate area, the Montford community and the City as a whole. The overlay district permits a relatively narrow range of uses and establishes development standards designed to promote compatibility with the historic context of the area and to minimize negative impacts of future development.

City Council is asked to first consider the ordinance amendment to create the Head of Montford Transition Overlay District and then to consider the application of the overlay district to the properties in question.

At their September 22, 1999, meeting, the Planning and Zoning Commission voted unanimously to recommended approval of both the ordinance amendment creating the Head of Montford Transition Overlay District and the application of the overlay district to the properties in question.

The Planning and Development Department staff is also recommending approval of both the ordinance amendment and the application of the overlay district.

Mr. Matteson answered various questions from Council regarding these amendments.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to proceed with the public hearings on October 12, 1999.

REQUIREMENT FOR RECEPTACLES FOR DISPOSAL OF CIGARETTE BUTTS

City Attorney Bob Oast said that Mayor Sitnick had requested that he draft an ordinance requiring businesses to provide receptacles for the disposal of smoking material

The indiscriminate disposal of cigar and cigarette butts in the public areas of the City harms the appearance of the City, is contrary to the public welfare, and is not always adequately addressed by litter laws. The proposed ordinance would require businesses that have one or more outside entrances, whether for the public or for employees only, directly abutting or within ten feet of a public street, sidewalk, right-of-way, or public or private common area, to provide at each such entrance a receptacle for the disposal of smoking materials.

If Council wishes to require receptacles for disposal of cigarette butts, cigar butts, or other smoking material, adoption of the ordinance is recommended.

Upon inquiry of Councilwoman Field relative to the North Carolina handicapped accessibility requirement, City Attorney Oast said that the ordinance is drafted in such a way that the receptacle could be provided at or near the entrance. He said that if the business placed the receptacle inside the establishment, he felt that would satisfy the purposes of the ordinance. He said that that he could a provision in the ordinance that suggests that alternative means may be provided where necessary to comply with building code requirements or handicapped accessibility requirements.

Vice-Mayor Hay was concerned about whether the City should regulate the litter on private property. City Attorney Oast said that the City does regulate a lot of activity that does occur on private property, such as building codes, but it will create an enforcement burden for staff.

Mayor Sitnick said that she didn't feel that the public necessarily discerns the difference between public and private property when it comes to litter.

Councilman Cobb wondered if the City should provide the standardized receptacles if they would not be cost prohibitive. Councilwoman Field responded that most businesses would not want the City to tell them what kind of receptacles they should have.

Mayor Sitnick noted that a number of years ago Quality Forward (who is very much in favor of this ordinance) bought a number of concrete square planters with sand in them and distributed them. However, since that time, owners have changed and businesses have opened and closed and the planters are no longer around.

After discussion about the penalty for violation of the ordinance, it was the consensus of City Council to have the violation be a $10 civil penalty.

Vice-Mayor Hay felt that we should draw the line, in terms of what we require, where our responsibilities are, which is to keep the streets clean. He felt it would be great if we could encourage, rather than require, businesses to have receptacles on their private property. City Attorney Oast responded that since we have an active anti-litter campaign, that would be the appropriate place to add language to that effect.

Upon direction of Council, City Attorney Oast reviewed the changes to the ordinance which include: (1) the removal of private common areas language; (2) making sure this requirement does not conflict with the NC State Building Code or the Handicapped Access Code; and (3) changing violation of the ordinance to a $10 civil penalty.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CITY COUNCIL/STAFF RETREAT

It was the consensus of City Council to hold its annual retreat to identify the key service and budget issues for Fiscal Year 2000-2001 on January 28-30, 2000, at Highland Lake Inn and Conference Center in Flat Rock, North Carolina. Discussion also centered around the possibility of only having the retreat for two days, depending on the agenda.

Mayor Sitnick said that she would appoint three members of Council to work with the City Manager on the agenda.

UPCOMING CITY COUNCIL MEETING DATES

It was the consensus of City Council to amend it's meeting schedule as follows: November 2, 1999 worksession be rescheduled to November 3, 1999; November 9, 1999 - formal; November 16, 1999 - worksession; November 23, 1999 - formal; November 30, 1999 - community meeting at the West Asheville Community Center; December 7, 1999 - formal; December 14, 1999 - worksession; December 21, 1999 - formal; December 28, 1999 - cancel; January 4, 2000 - cancel; January 11, 2000 - formal; January 18, 2000 - worksession; and January 25, 2000 - formal. The meeting dates thereafter will continue to be a worksession on the first and third Tuesdays of each month, formal meetings on the second and fourth Tuesdays of each month, and a community meeting on the fifth Tuesday of any month.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REPORTS ON BOARDS/COMMISSIONS

Vice-Mayor Hay reported that the Boards and Commissions Committee met and reviewed the next quarterly appointment process. He also said that the City Clerk would be developing a reappointment application in which current members would not have to reapply if they are interested in reappointment, however, they can update their initial application if they so choose.

It was the consensus of City Council to have City staff research a request from the Chamber of Commerce and the Economic Development Commission Chair about designating a portion of funding from the City's current contribution to the Chamber of Commerce being designated to the Economic Development Commission.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 4:15 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - October 12, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: M. Charles Cloninger

INVOCATION

Councilman Tomes gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING OCTOBER 25-NOVEMBER 1, 1999, AS "EARTH RELIGIONS AWARENESS WEEK"

Mayor Sitnick read the proclamation proclaiming October 25-November 1, 1999, as "Earth Religions Awareness Week" " in the City of Asheville. She presented the proclamation to Rev. Bryon Ballard, who briefed City Council on some activities taking place during the week.

B. ANNOUNCEMENTS

Mayor Sitnick recognized Ms. Janet Sword and her 6th grade class from Carolina Day School.

Mayor Sitnick thanked Mr. Glen Holbert from the Asheville Firefighters Association for their extremely generous donation of the fire safety house to educate children about fire prevention.

Councilman Sellers invited City Council members and the public to attend the October 21, 1999, 2:00 p.m. grand re-opening of the new West Asheville Police Resource Center at 970 Haywood Road.

On behalf of the City of Asheville, City Manager Westbrook expressed his deep sorrow over the passing of William F. Wolcott Jr. on October 9, 1999. Mr. Wolcott served the City of Asheville for over 45 years until his retirement as Associate City Manager/City Clerk on December 31, 1994. A resolution in memory will be presented to Mr. Wolcott's family.

On behalf of City Council, City Manager Westbrook expressed his deep sorrow over the passing of Councilman Cloninger's father Rowell C. Cloninger.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 28, 1999, AND THE WORKSESSION HELD ON OCTOBER 5, 1999

B. RESOLUTION NO. 99-157 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE DONATION OF A FIRE SAFETY HOUSE TO THE CITY OF ASHEVILLE BY THE ASHEVILLE FIREFIGHTERS ASSOCIATION

Summary: The consideration of a resolution accepting a trailer-mounted "fire Safety House" donated by the Asheville Firefighters Association.

The Asheville Firefighters Association, a voluntary association that represents Asheville firefighters, conducts periodic fundraising activities, the funds from which are used to help promote community safety from fire. Over the past ten years, the Association has purchased literally hundreds of smoke detectors for free distribution to people who couldn't otherwise afford them.

The Association has acquired a "Fire Safety House"--a reduced-size mock-up of a house mounted on a trailer--that is used to help train children in fire safety techniques, like "Get Low in Smoke," "Stop, Drop and Roll" and "Learn Not to Burn." The Association would like to donate this Fire Safety House to the City of Asheville for use by the Asheville Fire Department in expanding its public fire safety education outreach activities.

Because the Fire Safety House was designed and built for this purpose, maintenance costs are expected to be nominal. No new vehicles would be required--the Fire Department has a vehicle with sufficient towing capacity to convey the Fire Safety House from school to school.

If the City were to pursue acquiring a Fire Safety House on its own, acquisition cost would be approximately $25,000.

The Fire Chief recommends that the City Council adopt a resolution authorizing the City Manager to accept the donation of a Fire Safety House to the City of Asheville by the Asheville Firefighters Association.

RESOLUTION BOOK NO. 25 - PAGE 323

C. RESOLUTION NO. 99-158 - RESOLUTION SETTING A PUBLIC HEARING ON NOVEMBER 9, 1999, TO CLOSE A PORTION OF SPRUCE STREET FROM EAGLE STREET TO SOUTH MARKET STREET

RESOLUTION BOOK NO. 25 - PAGE 324

D. RESOLUTION NO. 99-159 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE

Summary: November 2, 1999 worksession be rescheduled to November 3, 1999; November 9, 1999 - formal; November 16, 1999 - worksession; November 23, 1999 - formal; November 30, 1999 - community meeting at West Asheville Community Center; December 7, 1999 - formal; December 14, 1999 - worksession; December 21, 1999 - formal; December 28, 1999 - cancel; January 4, 2000 - cancel; January 11, 2000 - formal; January 18, 2000 - worksession; and January 25, 2000 - formal. The meeting dates thereafter will continue to be a worksession on the first and third Tuesdays of each month, formal meetings on the second and fourth Tuesdays of each month, and a community meeting on the fifth Tuesday of any month.

RESOLUTION BOOK NO. 25 - PAGE 325

E. MOTION SETTING A PUBLIC HEARING ON OCTOBER 27, 1999, TO REPEAL ORDINANCE NO. 2480, SO AS TO REMOVE THE ORDER REQUIRING DEMOLITION OF THE STRUCTURE LOCATED AT 22 SULPHUR SPRINGS ROAD

F. **MOTION SETTING A PUBLIC HEARING ON OCTOBER 27, 1999, TO CONSIDER A REQUEST TO APPROVE A MODIFICATION FROM THE SUBDIVISION STANDARD REQUIRING THAT EACH LOT ABUT A PUBLIC STREET FOR A SUBDIVISION OF A 0.75 ACRE TRACT OF LAND LOCATED ON THIRD STREET INTO TWO LOTS**

G. **MOTION SETTING A PUBLIC HEARING ON OCTOBER 27, 1999, TO CONSIDER A REQUEST TO APPLY THE PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT TO THAT LOT LOCATED AT 121 MERCHANT STREET WHICH HAS AN UNDERLYING ZONING OF RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

H. **MOTION SETTING A PUBLIC HEARING ON OCTOBER 27, 1999, TO CONSIDER THE INITIAL ZONING OF THE ROYAL PINES POOL AND PARK PROPERTIES LOCATED ON SWEETEN CREEK ROAD AND PEACH TREE STREET TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT**

I. **MOTION SETTING A PUBLIC HEARING ON OCTOBER 27, 1999, TO CONSIDER THE INITIAL ZONING OF PROPERTY KNOWN AS DEERFIELD EPISCOPAL RETIREMENT COMMUNITY LOCATED OFF OF HENDERSONVILLE ROAD TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT**

J. **MOTION SETTING A PUBLIC HEARING ON OCTOBER 27, 1999, TO CONSIDER THE REZONING OF A PORTION OF THAT LOT LOCATED ALONG GASTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE II DISTRICT**

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Sellers moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

III. PUBLIC HEARINGS:

A. **PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO CONSIDER A NEW HEAD OF MONTFORD TRANSITION OVERLAY DISTRICT AND APPLICATION OF THAT DISTRICT TO NINE LOTS ON MONTFORD AVENUE, HILL STREET AND GUDGER STREET**

ORDINANCE NO. 2622 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH THE HEAD OF MONTFORD TRANSITION OVERLAY DISTRICT

ORDINANCE NO. 2623 - ORDINANCE AMENDING ZONING OF NINE LOTS ON MONTFORD AVENUE, HILL STREET AND GUDGER STREET

Mayor Sitnick opened the public hearing at 5:22 p.m.

Mr. Mike Matteson, Urban Planner, said that this is the consideration of an amendment to the Unified Development Ordinance ("UDO") to consider the adoption of the Head of Montford Transition Overlay District as well as the application of this overlay district to nine lots at the "Head of Montford". This public hearing was advertised on October 1 and October 8, 1999.

In late July, the Planning and Development Department received a rezoning application from the Asheville Area Chamber of Commerce for a 4.3 acre site (including 9 individual tax lots) at the Head of Montford.

The initial request was to rezone the property, which is currently zoned a combination of Community Business I, Office and RM-8 to Community Business II.

After examining the rezoning request, staff felt that certain uses would be very appropriate for the site, but that some of the uses permitted in the Community Business II zoning district could be detrimental to the surrounding community. Therefore, staff suggested that the Chamber of Commerce amend its request to ask that a Transition Overlay District be developed and applied to the site. The benefit of such an overlay district is that it can address the unique characteristics of a given area and define more clearly the type of development which will occur. The Chamber agreed to amend their rezoning request as suggested.

In developing the Transition Overlay District, staff first prepared a study of the area which documents its characteristics and describes how a Transition Overlay District can best address the issues.

The preparation of the overlay district involved significant input from both the Chamber of Commerce and the Montford community. A community meeting was held on September 15, 1999, at the Montford Center at which the overlay district was presented and additional input from the community was received.

The Head of Montford Transition Overlay District is designed to guide future development in a way that is beneficial to the immediate area, the Montford community and the City as a whole. The overlay district permits a relatively narrow range of uses and establishes development standards designed to promote compatibility with the historic context of the area and to minimize negative impacts of future development.

City Council is asked to first consider the ordinance amendment to create the Head of Montford Transition Overlay District and then to consider the application of the overlay district to the properties in question.

At their September 22, 1999, meeting, the Planning and Zoning Commission voted unanimously to recommended approval of both the ordinance amendment creating the Head of Montford Transition Overlay District and the application of the overlay district to the properties in question.

The Planning and Development Department staff is also recommending approval of both the ordinance amendment and the application of the overlay district.

Mr. Jay Garner, President and CEO of the Chamber of Commerce, said that he was excited about this potential opportunity to partner with the Montford neighborhood and the Asheville community by remaining in downtown Asheville and developing a Chamber Visitor Center and Headquarters Building that is indicative of our community and in developing something that the neighborhood residents and the Chamber would be proud of at the Head of

Montford. He said they have asked the Historic Resources Commission to partner with them in having a design team that will work with their architects that will develop a facility that everyone can be proud of.

Ms. Mary Jo Brezny, Montford resident, stated that the UDO requires that a neighborhood plan, a corridor plan, or an area plan be completed prior to the establishment of a transition overlay district. She said it was difficult to believe that a plan could be completed in the six weeks before it was presented to the Planning & Zoning Commission, especially since the Charlotte Street transition overlay district is taking months to complete. She said the residents of Montford are not aware of the Head of Montford Study, nor were they involved in it, except to the extent they were called for input into the transition overlay district. She was concerned that this procedure has not been carried forth as it should be according to the UDO. She was also concerned about the traffic that will be generated by the Chamber. She felt zoning this one piece of property was illegal spot zoning. She urged City Council to remand this matter back to the Planning & Zoning Commission for the property study that it deserves. Ms. Brezny also noted that the transition overlay district calls for allowing a 45,000 square foot building. She felt this large sized building will be out of proportion to the other commercial buildings in the neighborhood.

Mr. Matteson said that City staff did do a study looking at the property in question as well as the surrounding properties, documenting the characteristics and making recommendations, which included the establishment of a transition overlay district. The Planning & Zoning Commission was furnished a copy of that study well before they took action on the issue. City Council has also been furnished a copy of that study.

Planning & Development Director Scott Shuford said that they felt the transition overlay was a tool provided in our UDO that we could utilize to address the issues and concerns that were being raised by the community, as well as to meet the needs of the Chamber. He said it is a very small transition overlay district and they did look at the possibility of expanding it to include other areas, however, through that research they found no need to extend it further.

Ms. June Lamb, West Asheville resident, also felt that the UDO was not followed in this process with regard to a prior study.

Ms. Myra Fuller, Montford resident, said that many Montford residents are cautiously optimistic about the Chamber's proposed development on this property. They appreciate the Chamber's willingness to work with the neighborhood and the Historic Resources Commission from the very beginning. However, she said area residents are very concerned about the traffic situation that will be created by the Chamber development. She said the Chamber had done a cursory traffic study, however, they didn't take into consideration the Neighborhood Housing Services' ("NHS") gateway project that is due to break ground very soon. The residents, and possibility representatives of NHS, will be meeting with the City's Traffic Engineer to discuss traffic concerns which need to be ironed out prior to any construction. She said that no one in the neighborhood has seen any kind of study that the Planning & Development Department has prepared concerning this area. She said that while the Chamber is perhaps a very good use for this property and we feel like it's in their best interest to do a good development, they are still concerned about commercial encroachment in their neighborhood.

Mr. Jeff Kelly, Montford resident, agreed that the Chamber might be a good use for that property, however, the neighborhood is very concerned about the traffic.

Mr. Matteson said that Planning staff had an initial meeting with 8-10 Montford residents to get their concerns and issues. At that time, staff mentioned that a study was in the process of being done. Staff also mentioned and referred to the study in the community meeting on

September 15 and the presentation to the Planning & Zoning Commission on September 22. He wasn't aware until now that some of the residents didn't know about the study. It certainly was communicated to them that a study had been done. He noted that this was not a full scale small area plan, but this was a study that documented the characteristics of the area and gave some guidance to the development of a transition overlay district.

Mr. Michael Moule, City's Traffic Engineer, said that after reviewing the Chamber study (which is a preliminary study), he noted that there will be a few things that he will be asking that they add to the study. Because the major concern was at the intersection of Hill Street and Montford Avenue, the City is currently having an independent consultant look into the possibility of signalizing the Hill Street approach to that intersection. He hoped to have the recommendation from the consultant shortly. Besides that, he felt the preliminary study shows that even with the additional traffic generated, that the intersections in the interchange area should operate at an acceptable level of service.

Upon inquiry of Vice-Mayor Hay, Mr. Moule said that the existing zoning has a potential for ultimately more traffic than the proposed zoning.

Mayor Sitnick closed the public hearing at 6:03 p.m.

Upon inquiry of Councilman Cobb relative to the potential illegal spot zoning, City Attorney Oast said that other facts you need to look at, in addition to the size, are the consistency with the comprehensive plan, the degree to which the zoning is being proposed differs from the uses of the surrounding properties, and the purpose of the rezoning that is being requested. He felt that the record demonstrates that the staff has carefully looked at these issues and that the zone being established is carefully tailored to fit the peculiarities of the area where is it being proposed. He said there will always be an issue with a small rezoning, however, he felt in this case, it is defensible. City Manager Westbrook also noted that the Planning & Zoning Commission, Planning & Zoning staff and the City Attorney would not have recommended approval if they felt this was an illegal spot zoning.

Mayor Sitnick said that members of Council have previously received a copy of the ordinances and they would not be read.

Vice-Mayor Hay was pleased with the good working relationship between the Chamber, the neighborhood and City staff in trying to find something everyone is satisfied with. The Montford residents he has talked with felt that this is a good choice for that very critical lot. He was glad to hear that the transition overlay will reduce traffic in that area. He liked the extra protection of extending the Historic Resources Commission's jurisdiction beyond the district. He felt this piece of property needs careful development and this process seems to represent to him exactly that kind of careful development.

After speaking in favor of having a transition overlay district tool, especially for this area, Councilwoman Field moved to adopt Ordinance No. 2622. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 1

City Attorney Oast reminded Council that this rezoning is not for any particular use.

Mayor Sitnick said that no matter what this property is used for, that the buffering standards, the landscaping standards and the traffic issues be addressed with the community as much as possible and at the very beginning of the process.

Vice-Mayor Hay moved for the adoption of Ordinance No. 2623. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 7

Councilwoman Field noted that that not every study involves months of work. She suggested a possible amendment to the UDO to clarify what is meant by a transition overlay study, which is different from a small area plan.

B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH AS MINOR WORKS THOSE PROJECTS RELATED TO LOCALLY DESIGNATED HISTORIC LANDMARKS FOR THE PURPOSES OF DOWNTOWN DESIGN REVIEW

ORDINANCE NO. 2624 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH AS MINOR WORKS THOSE PROJECTS RELATED TO LOCALLY DESIGNATED HISTORIC LANDMARKS FOR THE PURPOSES OF DOWNTOWN DESIGN REVIEW

Mayor Sitnick opened the public hearing at 6:12 p.m.

Mr. Mike Matteson, Urban Planner, said that this is the consideration of an amendment to the Unified Development Ordinance which establishes all work related to Local Historic Landmark buildings and properties as minor works for the purposes of downtown design review. This public hearing was advertised on October 1, 1999, and October 8, 1999.

This wording amendment is designed to streamline the review process for work related to Local Historic Landmark properties which are also located within the Downtown Design Review boundaries.

The Historic Resources Commission (HRC) reviews all changes to Local Historic Landmark properties throughout the county for compliance with the Secretary of the Interior's Standards for Rehabilitation. HRC's design review process, and compliance with the standards, is mandatory. There are a number of Local Historic Landmark properties which are located downtown, and therefore are subject to review under the City's Downtown Design Review process as well as HRC review.

Downtown Design Review Major Works Projects are reviewed by the Downtown Commission while Downtown Design Review Minor Works Projects are reviewed by staff. Both major works projects and minor works projects are reviewed for compliance with the Downtown Design Review Guidelines.

This ordinance amendment establishes all work related to landmark buildings and properties as minor works projects for the purposes of Downtown Design Review, thus eliminating the need for review by two separate commissions.

At their September 1, 1999, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of this proposed wording amendment.

Mayor Sitnick closed the public hearing at 6:14 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2624. This motion was seconded by Councilman Cobb and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 10

C. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CHANGE THE AREA REQUIRED FOR PUBLIC NOTIFICATION FOR CERTIFICATES OF APPROPRIATENESS FOR PROJECTS

ORDINANCE NO. 2625 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CHANGE THE AREA REQUIRED FOR PUBLIC NOTIFICATION FOR CERTIFICATES OF APPROPRIATENESS FOR PROJECTS

Mayor Sitnick opened the public hearing at 6:15 p.m.

Mr. Mike Matteson, Urban Planner, said that this is the consideration of an ordinance to amend the Unified Development Ordinance to change the area required for public notification for Certificates of Appropriateness for projects. This public hearing was advertised on October 2, 1999, and October 8, 1999.

The Planning and Zoning Commission, at their September 1, 1999, meeting, reviewed and recommended approval of an amendment to the Unified Development Ordinance which would revise the notification requirements for public hearings held to receive input on requests for Major Work Certificates of Appropriateness. The public hearings are held by the Historic Resources Commission prior to making a decision regarding the issuance of the Certificate of Appropriateness. The current ordinance requires notification of all owners of property located within 400 feet of the property for which the Certificate of Appropriateness is requested. The proposed amendment would require the following notification:

- For public hearings to consider requests for Certificates of Appropriateness (CA) for new construction, owners of property located within 400 feet of the property for which the CA is requested shall be notified. (No change)

- For public hearings to consider requests for all other major work Certificates of Appropriateness, owners of property located within 150 feet of the property for which the CA is requested shall be notified. (Change from current requirement of 400 feet)

- For the Biltmore Village and Albemarle Park Local Historic Districts, notification of public hearings to consider requests for CA's for major work (excluding new construction) shall be provided to all property owners in the local historic districts. (Currently no requirement for notification of all property owners in these historic districts).

No changes are proposed in the notification requirements for CA requests for new construction. The proposed changes would affect notification of public hearings for CA's for projects such as additions, major landscape projects, addition of windows and/or doors, construction of small outbuildings, etc. The proposed change in notification requirements was requested by the Historic Resources Commission.

The Asheville Planning and Zoning Commission voted 5-0 to recommend approval of the wording amendment. The Historic Resources Commission voted unanimously to recommend approval of the amendment. The Planning and Development staff recommends approval of the amendment.

Mayor Sitnick closed the public hearing at 6:17 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2625. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 13

IV. UNFINISHED BUSINESS:

A. CITY COUNCIL/STAFF RETREAT

Mayor Sitnick appointed herself, Vice-Mayor Hay and Councilwoman Field to work with the City Manager on the upcoming City Council/Staff Retreat agenda.

V. NEW BUSINESS:

A. ORDINANCE REQUIRING RECEPTACLES FOR DISPOSAL OF CIGARETTE BUTTS

City Attorney Oast said that that this is the consideration of adoption of an ordinance requiring businesses to provide receptacles for the disposal of smoking material

The indiscriminate disposal of cigar and cigarette butts in the public areas of the City harms the appearance of the City, is contrary to the public welfare, and is not always adequately addressed by litter laws. The proposed ordinance would require businesses that open directly onto sidewalks or public areas to provide buckets or similar receptacles at or near their entrances for disposal of smoking materials.

If Council wishes to require receptacles for disposal of cigarette butts, cigar butts, or other smoking material, adoption of the ordinance is recommended.

Mayor Sitnick recommended that City Council not vote on this ordinance at this time so that we can have the opportunity for additional public input. She stressed that we are looking for a solution to the problem of disposing cigarette butts and other smoking material remnants on the ground. She said Council is willing to consider any possible solution to this problem. Personally she is appalled that we even have to consider passing an ordinance that would establish a way for people to properly dispose of their smoking material debris, rather than throwing them on the sidewalks. This does not, however, address the problem of people emptying their ashtrays from their cars at stop signs, etc. This ordinance was merely an attempt to find a way to ask businesses that had employees who smoke outside their entrances or exits to provide a receptacle for those employees' smoking debris. She is very open to further discussion on this. It is very difficult to enforce litter laws, especially when it only takes about 1 second to dispose a cigarette butt onto the ground and unless you see someone doing it, it is very difficult to enforce. She would like to solve the problem, create awareness of the problem, and implore our citizenry to not dispose of their smoking material debris on the ground. The purpose of introducing the potential ordinance was to open the discussion and find a solution.

City Attorney Oast said that he had made changes to the ordinance as requested by City Council at their October 5, 1999, worksession.

Mayor Sitnick recommended, in addition to receiving more public comment on this issue, that we forward this problem along to the Downtown Commission and ask them to review it and come back to Council, as an advisory commission, within 60 days with any recommendation that they might have.

Councilman Cobb also suggested we obtain input from the Biltmore Village and West Asheville groups.

Councilwoman Field said that there was one point a business roundtable that included representatives from Biltmore Village, West Asheville, the Malls, etc. and maybe we can reconstitute that group into a subcommittee.

City Attorney Oast said that the Downtown Commission is an officially established commission of the City and so your direction to that commission to advise you is certainly appropriate. Whether the Biltmore Village or West Asheville group wishes to participate is up to them, but he will be glad to refer it to them.

Mayor Sitnick said that she would like this to extend to the N.C. Dept. of Transportation which is in some ways the overseer of many of the areas where some of the biggest problems regarding smoking material debris is concerned.

Councilwoman Field agreed that we need to stop the litter, however, she said that the way the ordinance is written, we are penalizing the business owner for someone else's bad habits. She felt there must be a way of putting the punishment where the crime is.

Councilwoman Field moved to continue this matter for 60 days. This motion was seconded by Councilman Sellers and carried unanimously.

Mayor Sitnick suggested that a press release be issued to let the community know that City Council is seeking ideas, thoughts and comments on this issue.

VI. OTHER BUSINESS:

A. PRESENTATION BY THE CITIZENS FOR PROPERTY RIGHTS

Mr. Albert Sneed, attorney representing the Citizens for Property Rights, addressed City Council with their position on the proposed Buncombe County zoning ordinance. In summary, he explained they are concerned with the larger public policy issues: (1) zoning artificially increases the cost of affordable housing; (2) zoning is expensive (staff, cars, etc.) and the money will either have to come from cuts in services or a raise in property taxes; (3) zoning is extremely divisive and City residents should consider the fairness in telling people in the County what to do with their property; and (4) mandatory county-wide zoning will hurt industrial development. He felt there are better ways to deal with land use issues than to adopt the County's zoning ordinance. He urged the City residents to vote no zoning in Buncombe County.

B. PRESENTATION BY PRO-ZONING GROUP

Mr. Neb Cabaniss, representing the Fairview Advisory Coalition and the Citizens for Buncombe's Future, addressed City Council with their position on the proposed Buncombe County zoning ordinance. With the use of a slide program, he explained that growth is the reason they support the implementation of zoning on a County-wide basis. He said that good growth can be beneficial to our community and the consequences of unplanned growth is what causes concern. Some concerns include: farm land can be consumed by urban sprawl, mountainsides can be scarred by unplanned development on steep slopes, sprawl can consume recreational land, strip development along highways increases accidents and slows traffic; and when your neighbor is one mile down the road what he does has little impact on your life; however, when he is next door what he does can radically impact the quality of your life as well as your property values. He stressed that planned and smart growth is the key to the future success of Buncombe County. He said that Buncombe County is the largest rural county in Western North Carolina without county-wide zoning. He urged City Council to publicly support the Buncombe County zoning ordinance.

City's Planning & Development Director Scott Shuford felt that the County zoning is a step in the right direction and is a necessary tool for an area undergoing the transition from rural to urban.

C. CLAIMS

The following claims were received by the City of Asheville during the period of September 24-30, 999: Todd Kent (Finance), Vera Robinson (Streets) and Dearborn Movius (Water).

The following claims were received during the period of October 1-7, 1999: Blue Bird Cab (Police), Sandra Goodwin (Water), Tecora H. Young (Water) and Barbara Styles (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

D. LAWSUIT

The following lawsuit was received by the City of Asheville on October 12, 1999: Scott Alan Gaddy v. the City of Asheville. The nature of the proceeding is that he is seeking a trial de novo from his dismissal from employment with the City of Asheville. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY CAROL COLLINS RE: BUNCOMBE COUNTY ZONING

Ms. Carol Collins was surprised that her request to allow the Citizens for Property Rights equal time for a presentation enlisted another opportunity for the pro-zoning message. Those concerned about going to a county-wide zoning plan are still behind with regard to the City's public education effort which is being aired on the government channel. With regard to infrastructure, she said the incentives for controlling growth in the county, with the incentive based voluntary land use plan that the County did adopt, did guide and direct growth and development in the county without going to a full-blown zoning plan.

B. COMMENTS BY MIKE CARROLL RE: STONER ROAD

Mr. Mike Carroll, representing the Stoner Road Community Club, addressed Council with the following concerns: (1) speeding problem on Stoner Road; (2) need of sidewalks on Stoner Road; (3) tree limbs that need to be cut; and (4) litter.

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City Manager Westbrook said that he would contact Mr. Carroll and address his concerns.

C. CLOSED SESSION

At 7:12 p.m., Councilwoman Field moved to go into closed session for the following reasons: To consult with an attorney employed by the City of Asheville in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuit about which the Council expects to receive advice are: Morris Communications, Inc., d/b/a Fairway Outdoor Advertising Co.; Outdoor Communications, Inc.; Maple Cove, Inc.; and City of Asheville. The statutory authorization is G. S. 143-318.11 (a) (3). This motion was seconded by Councilman Sellers and carried unanimously.

At 7:20 p.m., Councilman Sellers moved to go out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:20 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - October 19, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

MSD Sewer Line Easement

Summary: The consideration of a resolution authorizing the Mayor to execute an easement to the Metropolitan Sewerage District for an existing sewer line which will be upgraded on property owned by the City of Asheville located off of Old County Home Road.

Staff has been working with Martin-McGill, a consultant for the Metropolitan Sewerage District, in coordinating improvements to be made on an existing sanitary sewer line and a permanent easement. The property, located off of Old County Home Road, was dedicated to the City for park use. It is currently undeveloped. The Parks and Recreation Department staff have agreed that the easement will in no way limit the potential use of the property for a park.

City staff recommends that the Mayor be authorized to execute easement documents for an existing sewer line to the Metropolitan Sewerage District in order to upgrade the sewer line located off of Old County Home Road (PIN No. 9628.08-79-7112).

Extension in Deadline for Public Access Channel Proposals

Summary: The consideration of a request from the non-profit organizations interested in submitting proposals to manage the public access channel for an extension in the deadline to submit these proposals.

On August 3, 1999, City staff requested permission to issue a Request for Proposal (RFP) soliciting non-profit organizations who were interested in managing the public access channel. The RFP was issued and a mandatory pre-bid conference was held on September 3, 1999, with all interested bidders. WCQS Radio and the League of Women Voters attended the pre-bid conference. Both organizations requested an extension in the deadline for the proposals. The deadline was originally set for October 15, 1999. The organizations have asked that the deadline be extended to January 28, 2000, so that they can explore the feasibility of forming partnerships to manage the public access channel.

Staff recommends that City Council grant an extension in the deadline to submit proposals to manage the public access channel until January 28, 2000.

Vice-Mayor Hay and Councilwoman Field both expressed their disappointment with the lack of response to the RFP and now with the requested extension, it would be several more months before the channel would be up and running.

It was the consensus of City Council to have Ms. Robin Westbrook, Public and Community Information Officer, submit monthly status reports to City Council on the progress of the two organizations possibly forming a partnership.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

DOWNTOWN COMMISSION AMENDMENTS

Chair of the Downtown Commission Carol King said that this is the consideration of approving revised changes to the ordinance regarding the Downtown Commission.

Last winter, the Downtown Commission reported to you several recommendations that were the result of a technical visit conducted by National Main Street Center. One of the recommendations was to make changes to the ordinance regarding the Downtown Commission. It was felt the ordinance needed to be updated to reflect the changing dynamics in downtown. The recommendation was to shift the focus from revitalization to instead a focus on sustainable and continued development of downtown.

Since then, the Downtown Commission has spent considerable time recently discussing its future efforts as an organization chartered by the City Council. This discussion, along with the ongoing issue identification process involving the Mayor's Roundtable, various focus groups and the Center City Plan meetings, has resulted in a number of suggested revisions to the Downtown Commission's charter which is part of the City Code of Ordinances.

Ms. King then reviewed with Council the suggested changes which involved updating obsolete language, reprioritizing the purposes and powers, restructuring the membership of the Commission, as well as clarifying its role in areas such as promotion, design review and communication.

The Downtown Commission's current initiatives and successes include: Pack Square Task Force; Center City Plan; Downtown Design Review, Streetscape Committee College Street Design Charette, Support for Chamber location downtown; Parking Task Force; Building Code Chapter Nine extension and the National Main Street Technical Visit Recommendations.

The City Development staff of the Planning and Development Department recommend approving the revisions to the ordinance.

Vice-Mayor Hay, Chair of the City Council Boards/Commissions Committee, said that the Committee reviewed these amendments and recommended approval of the changes.

At the request of Councilwoman Field, and with the consensus of City Council, staff was directed to add "promote downtown living" as an objective to reach the Downtown Commission's goals.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UDO AMENDMENT REVIEW

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which are scheduled on Tuesday, November 9, 1999.

Ordinance to Amend the Unified Development Ordinance to revise the standards of wireless telecommunication facilities

Mr. Gerald Green, Senior Planner, said that this is the consideration of an ordinance amending the Unified Development Ordinance with regard to standards for the location of telecommunications facilities in response to issues identified by service providers at the time of adoption of the ordinance.

When the City Council adopted the Telecommunications Facilities Ordinance in January 1999, the service providers identified six areas of concern with the ordinance. City Council directed staff and the Planning and Zoning Commission to study the identified concerns and to propose appropriate revision to the ordinance, if needed. The Commission and staff spent over two months studying the identified issues, even hiring a telecommunications engineer to provide input on the question of tower height. Based upon this study, the Commission is recommending certain revisions to the ordinance. The revisions are presented with the following goals:

- Promote and facilitate co-location of facilities;
- Enable adequate service to be provided to Asheville's citizens and visitors; and
- Protect and preserve Asheville's scenic beauty.

One of the issues of concern identified by the service providers was the tower height limit of 100 feet. The service providers argued that this height limit would limit the ability to provide adequate service and/or result in a proliferation of towers. After studying this issue closely, the Planning and Zoning Commission is recommending the tower height limit remain at 100 feet. Revisions recommended by the Commission include:

- Permitting existing structures (including non-conforming ones) to be improved or rebuilt at the existing height to accommodate co-located equipment;
- Reducing the buffering requirement for co-located equipment;
- Providing City Council authority to reduce the required setback of a new structure from adjacent residential uses and zones;
- Revising the standards for consideration of electric transmission towers as locations for telecommunications equipment; and
- Reducing the maintenance/removal bond amount when the equipment is co-located in an existing equipment shelter.

Representatives of the service providers were involved in the development of the proposed amendments.

The Planning and Zoning Commission voted unanimously to recommend adoption of the proposed amendment. The staff of the Planning and Development Department also recommends adoption of the amendment.

Mr. Green noted that he met with representatives of some service providers earlier in the day and they expressed two concerns: the five year conditional use permit renewal and the tower height issue.

Mr. Larry McDevitt, attorney, asked that City Council delete the five year conditional use permit renewal requirement.

Mr. Gary Pennington, attorney, addressed the concern about limiting the tower heights to 100 feet.

It was the consensus of City Council to proceed with the recommended changes as presented by staff and approved by the Planning & Zoning Commission and instruct the Planning staff to investigate the concerns expressed by the service providers and report back to Council.

Flexible Development Standards

Mr. Gerald Green, Senior Planner, said that this is the consideration of amending the Unified Development Ordinance which would create flexible development standards for setbacks, lot area and dimension, and number of parking spaces and would permit structures which comply with design review standards to be exempt from the setback, height, and building floor area requirements of the underlying zoning district.

The Planning and Zoning Commission, at their October 6, 1999, meeting, reviewed and recommended approval of an amendment to the Unified Development Ordinance which would establish Section 7-11-7 to create flexible development standards. These standards would, under certain conditions, permit the Planning and Development Director to relax the existing standards for setbacks, lot area and dimensions, and number of parking spaces. In addition, it would permit structures which comply with design review standards to be exempt from the setback, height, and building floor area requirements of the underlying zoning district. The Planning and Development Director could approve the following relaxations in the existing standards if certain conditions are met:

- Reduction in required setbacks up to 10% or 24 inches, whichever is greater;
- Up to a 25% reduction in the required number of parking spaces; and
- Up to a 10% reduction in lot area or dimension.

In addition, structures which have been reviewed by a qualified design review board and found to comply with the applicable design guidelines would be exempt from the setback, height, and building floor area requirements of the underlying zoning district.

The Asheville Planning and Zoning Commission voted 7-0 to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the amendment.

Alternative Landscape Compliance

Ms. Stacy Merten, Urban Planner, said this is the consideration of an ordinance to allow the Planning and Development Director to review and approve requests for alternative compliance to the landscape requirements.

Currently the Unified Development Ordinance (UDO) requires that any request for alternative compliance to the landscaping requirement of Article 11, must be heard by the Technical Review Committee (TRC). Since the adoption of the UDO, all requests for alternative compliance meeting the criteria have been approved by the TRC based on the recommendation of staff and the representative from the Tree/Greenway Commission. Most of these requests have been for Level I projects which are typically reviewed in 5-10 days. Often these projects are unnecessarily delayed when seeking alternative compliance due to the current process of review by the TRC. Staff discussed this wording amendment with the TRC and all agreed that it would be beneficial to amend the UDO.

Planning & Development staff presented this wording amendment to the Planning & Zoning Commission at their October 6, 1999, work session and meeting. The Commission voted unanimously to recommend to City Council the adoption of this wording amendment.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to proceed with the public hearings on November 9, 1999.

UPDATE ON CITY'S ENVIRONMENTAL SUSTAINABILITY INITIATIVE

Waste Management Coordinator Karen Rankin said that the City of Asheville has partnered with the Land-of-Sky Regional Council's Waste Reduction Partners (WRP) and the NC Division of Pollution Prevention and Environmental Assistance (DPPEA) to examine and improve the environmental impact of the City's internal operations.

In 1998, Governor Hunt issued a challenge to State agencies to set an example of environmental stewardship in their internal operations. Each agency was charged to plan and select strategies to implement environmental sustainability initiatives into its specific responsibilities and operations. The objective was to make environmental stewardship an integral part of the way government operates.

With the state initiative as a model, the City of Asheville has begun implementation of a similar environmental sustainability program. This program has several goals:

1 Identify current City operations/projects that promote environmental stewardship.
2. Propose future projects that can be both environmentally desirable and economically feasible.
3. Involve all City employees and increase awareness of the environmental component within every employee's job.
4. Create permanent mechanisms and practices that make "environmental excellence" a part of the way the city conducts business.

To date, the WRP team consisting of retired engineers and scientists, has conducted assessments at Fleet Management, City Hall, and the Print Shop. Depending on the facility being examined, these assessments focus on water and energy use, solid waste generation, and emission production. The assessments conducted on City facilities have revealed several opportunities for improving efficiency and reducing waste.

In addition to revealing opportunities for improvement, the team discovered many ways the City is already serving as a model in the area of environmental sustainability. Programs are in place for recycling items ranging from office paper to scrap metal. The use of recycled paper is prevalent and hazardous chemicals are treated and disposed of properly. The team hopes to increase awareness and participation in these current programs through employee education.

With potential opportunities coming forth through the assessments, the need to track impacts becomes obvious. To that end, the team has begun to collect data that could be used as benchmarks for the City's sustainability initiative. Information on the amount of power and water used in City buildings, the amount of paper purchased, and the number of gallons of gasoline used by City vehicles can be collected and compared annually to reveal improvements or areas in need of attention. Collection and analysis of this data is ongoing.

Council was very supportive of the efforts along these lines.

Councilwoman Field supported a facilities management program along with working towards a paperless government.

Mayor Sitnick hoped that the City can find some alternatives to the spray that they use on weeds in curbs and sidewalks, both to keep the toxins out of the ground water and to keep employee exposure down.

Ms. Rankin said that work on the sustainability initiative will continue over the next several months and a final report with recommended action steps will be provided to Council upon completion.

UPDATE ON TRAFFIC ON ST. DUNSTAN'S ROAD

City Engineer Cathy Ball reported to City Council with updated traffic count on the streets in the St. Dunstan's Road neighborhood.

On February 9, 1998, staff requested that City Council pass a resolution in favor of leaving the connection between St. Dunstan's Road and McDowell Street open. Council did so largely because closing it would delay emergency response to the area. City Council asked staff to update them on the status of the traffic, particularly cut-through traffic, once the road was opened.

On February 5, 1999, and February 6, 1999, traffic counts were taken. These counts were taken prior to the opening of St. Dunstan's Road to McDowell Street. Traffic counts were taken on June 25, 1999, through June 28, 1999, after St. Dunstan's Road and McDowell Street were connected.

According to the before and after traffic counts some conclusions can be made:

1. Traffic volumes did not increase significantly in any areas where counts were taken (except near McDowell Street where "before" counts were zero).
2. It appears that on weekdays, approximately 100 cars per day (30%) of the traffic on Grindstaff Road moved (back) to St. Dunstan's Road once the road was reopened.
3. Based on the number of homes on St. Dunstan's Road and Grindstaff Road, there is some cut-through traffic on both St. Dunstan's Road and Grindstaff Road. The number of houses on these two streets is about 30, which would generate approximately 300 one-way trips per weekday. A rough estimation of cut-through trips would be 300 cut-through trips. This means that about 2/3 of the traffic on these two streets are cut-through trips.
4. The highest traffic volume recorded in the neighborhood was less than 500 vehicles per day, which is a relatively low number for a local service residential street.

Staff recommends leaving this street open to allow better access to the neighborhood.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REQUIREMENT FOR OWNERS TO CLEAN UP AFTER ANIMALS

City Attorney Bob Oast said that at the request of Mayor Sitnick, he has prepared a draft ordinance to require pet owners to clean up after their pets.

The ordinance requires pet owners to clean up after their pets, if the pets defecate on public or quasi-public property or right-of-way, or on private property other than that of the pet owner. The ordinance also requires appropriate disposal of any collected fecal matter.

There is already an ordinance provision, Section 3-9(6) in the Asheville City Code, that provides that animal defecation on the property of another may be a nuisance, but this requires a qualitative judgment as to what constitutes a nuisance, and only applies to private property.

This ordinance, like other City animal control ordinances, may be enforced civilly by animal control officers or by a designated agency.

If City Council wishes to require owners to clean up after their pets, adoption of the ordinance is recommended.

Discussion surrounded how the ordinance will be enforced and who will enforce it.

Upon inquiry of Vice-Mayor Hay and upon consensus of City Council, City Attorney Oast said that he would amend the ordinance to include language that if property owners don't mind animals defecating on their private property, then there would be no violation of the ordinance. He noted that he would also amend the language that violation of the ordinance would be a civil penalty.

Councilman Cobb spoke in support of the ordinance and felt it should be enforced city-wide.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REPORTS ON BOARDS/COMMISSIONS

Councilman Sellers reported that at the Regional Water Authority meeting, a request was brought up by Buncombe County Chairman Tom Sobol (and Regional Water Authority member), to amend the Regional Water Authority's by-laws as follows: "All members of the Authority shall serve 3-year terms. No member may serve more than 2 consecutive 3-year terms, but this restriction shall not apply to Authority members who are members of the Buncombe or Henderson County Boards of Commissioners or the Asheville City Council, so long as they remain members of said Boards or Council." City Council agreed that this amendment to the by-laws was appropriate.

City Manager Westbrook said that the Water Authority will be presenting this recommendation for amendment laws to the City Council, Buncombe County Commissioners and Henderson County Commissioners.

OTHER BUSINESS

City Manager Westbrook gave a brief factual report on the unplayable ice conditions, due to an equipment malfunction, that led to a rescheduling in the Asheville Smoke's hockey game on October 15, 1999. He said the cooling tower, an important piece of equipment used in the formation of the ice, malfunctioned during the set-up of the rink causing the ice to freeze more slowly than anticipated.

After Vice-Mayor Hay noted that the City needs to begin to do something with the Civic Center in order to meet the massive community need, Mayor Sitnick said that she would not feel comfortable with imposing the entire burden of responsibility on the Asheville taxpayers.

It was the consensus of City Council to refer the request from the Merchants Action Coalition to have City Council review the possibility of allowing "sandwich board/A-frame" signs on sidewalks within the Central Business District to the Asheville Downtown Commission for their review and recommendation back to City Council.

CLOSED SESSION

At 5:45 p.m., Councilman Cloninger moved to go into closed session to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuit about which the Council expects to receive advice are: City of Asheville, Elijah Jones t/a Jones Convenience Store, NC Alcoholic Beverage Control Commission - statutory authorization is G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Sellers and carried unanimously.

At 5:57 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Vice-Mayor Hay and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:57 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Wednesday - October 27, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 99-160 - RESOLUTION IN MEMORY OF WILLIAM F. WOLCOTT JR.

On behalf of City Council, Mayor Sitnick read the resolution in memory of Mr. William F. Wolcott Jr. She said that the City of Asheville wishes to express its deep sorrow over the passing of William F. Wolcott, Jr., an honored and respected citizen of our City whose death has ended a career of service to our community on October 9, 1999. Prior to his retirement on December 31, 1994, Billy faithfully and conscientiously served the City of Asheville and its citizens for 45 years in many of our most responsible City positions: City Engineer, Director of Aviation, Assistant City Manager, and Associate City Manager/City Clerk. On November 16, 1993, the new South Charlotte Street Public Works Building was named the William F. Wolcott Jr. Building, in recognition of Billy's love for the City and the good deeds he has done for our residents. Billy was devoted to Mary Ellen, his wife of 57 years, his son William F. Wolcott III, his daughter Anne, and his grandchildren. Billy's life was marked by exemplary dedication to the best interests of the community, as he worked for the its economic, cultural and aesthetic betterment as shown by his active involvement in the construction of the William F. Wolcott Jr. Building; the North Fork Reservoir; the Asheville Regional Airport; the Asheville Civic Center; the Motor Transport Facility; and the Civic Center, Rankin Avenue and Wall street Parking Garages. Throughout a long career of public service, Billy's professional leadership and dedication earned the respect, admiration and friendship of all those with whom he came into contact, and this community has sustained a great loss in his death. She then presented the Resolution to Mr. Wolcott's wife, son and daughter.

Resolution No. 99-160 was adopted by acclamation.

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B. STATEMENT BY MAYOR

Mayor Sitnick said that "The Mayor traditionally issues proclamations at the request of individuals or groups, approximately 100 a year. On October 12, 1999, I, not City Council, and I stress, City Council had no part in this, issued a Proclamation of Awareness of Earth Religions. The proclamation neither endorses or embraces any of the Earth Religions, which include Native American Spirituality, Celtic, Pagan, traditional African celebrations, Shintoism, and Daoism, but rather calls for awareness and tolerance. It is not, nor was it ever intended to be a proclamation for witches.

"As the Mayor of a community of great diversity, I believe it is my responsibility to represent all citizens without bias. As a citizen of the United States, I believe in the fundamental, constitutional right of freedom of religion. Our Nation was founded by people escaping religious persecution and unfortunately, religious prejudice continues today - all over the world. It is not for anyone to tell another how to worship their creator. Being "aware" of different religions, of all religions, whether Christian, Jewish, Muslim, Hindu, Native American, or any other, should not be feared. I don't tell anyone how to believe, but I support everyone's right to freedom of religion. I apologize if I have offended anyone, but I support all persons rights to religious freedom and am happy to say that 99% of the communications I have received, whether supportive or not, were from citizens who support the liberties granted by freedom of religion.

"I am deeply saddened that a gesture of good intention to support religious tolerance and freedom has caused division in our community. The proclamations with religious themes that have been issued before, like Rock Hill Baptist Church Week, Calvary Baptist Church Day, Nazareth First Baptist Church Day, Beth Israel Day, Day of Prayer Days, Days of Remembrance, Catholic Schools Week, and Bible Week have never caused a problem or been an issue. I viewed them as part of an ongoing tradition accepted by the good people of our City.

"As an effort toward reconciliation and peace, the Proclamation on Earth Religions Awareness Week has, by mutual agreement, been returned and received by me. I will not issue the Proclamation for Lordship of Jesus Christ Awareness Week. I am suspending the issuance of proclamations and will consider, with the Council, what to do in the future.

"I will issue no further statements and answer no other questions.

"It is my fervent hope that, as we get on with the healing process, we will all have a greater understanding of what our founding fathers meant when they wrote the first amendment to the Constitution."

C. PROCLAMATION PROCLAIMING OCTOBER 31 - NOVEMBER 7, 1999, AS "PORNOGRAPHY AWARENESS WEEK "

Mayor Sitnick read the proclamation proclaiming October 31 - November 7, 1999, as "Pornography Awareness Week and the White Ribbon Against Pornography Campaign " in the City of Asheville. She presented the proclamation to Ms. Gail Harding who briefed City Council on ways to combat the negative impact of pornography in our community.

D. PROCLAMATION PROCLAIMING NOVEMBER, 1999, AS "NATIVE AMERICAN MONTH"

Mayor Sitnick read the proclamation proclaiming November, 1999, as "Native American Month" in the City of Asheville. She presented the proclamation to Ms. Oralene Simmons and Mr. Bruce Two Eagle, who briefed City Council on some activities taking place during the month.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 12, 1999, AND THE WORKSESSION HELD ON OCTOBER 19, 1999

B. RESOLUTION NO. 99-161 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT TO THE METROPOLITAN SEWERAGE DISTRICT IN ORDER TO UPGRADE THE SEWER LINE LOCATED OFF OF OLD COUNTY HOME ROAD

Summary: The consideration of a resolution authorizing the Mayor to execute an easement to the Metropolitan Sewerage District for an existing sewer line which will be upgraded on property owned by the City of Asheville located off of Old County Home Road.

Staff has been working with Martin-McGill, a consultant for the Metropolitan Sewerage District, in coordinating improvements to be made on an existing sanitary sewer line and a permanent easement. The property, located off of Old County Home Road, was dedicated to the City for park use. It is currently undeveloped. The Parks and Recreation Department staff have agreed that the easement will in no way limit the potential use of the property for a park.

City staff recommends that the Mayor be authorized to execute easement documents for an existing sewer line to the Metropolitan Sewerage District in order to upgrade the sewer line located off of Old County Home Road (PIN No. 9628.08-79-7112).

RESOLUTION BOOK NO. 25 - PAGE 327

C. MOTION GRANTING AN EXTENSION IN THE DEADLINE TO SUBMIT PROPOSALS TO MANAGE THE PUBLIC ACCESS CHANNEL UNTIL JANUARY 28, 2000

Summary: The consideration of a request from the non-profit organizations interested in submitting proposals to manage the public access channel for an extension in the deadline to submit these proposals.

On August 3, 1999, City staff requested permission to issue a Request for Proposal (RFP) soliciting non-profit organizations who were interested in managing the public access channel. The RFP was issued and a mandatory pre-bid conference was held on September 3, 1999, with all interested bidders. WCQS Radio and the League of Women Voters attended the pre-bid conference. Both organizations requested an extension in the deadline for the proposals. The deadline was originally set for October 15, 1999. The organizations have asked that the deadline be extended to January 28, 2000, so that they can explore the feasibility of forming partnerships to manage the public access channel.

Staff recommends that City Council grant an extension in the deadline to submit proposals to manage the public access channel until January 28, 2000.

D. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 9, 1999, TO AMEND THE 1999 CONSOLIDATED ACTION PLAN FOR COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAMS

E. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 9, 1999, TO REVISE THE STANDARDS OF WIRELESS TELECOMMUNICATION FACILITIES

F. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 9, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW THE PLANNING AND DEVELOPMENT DIRECTOR TO APPROVE DEVIATIONS FROM CERTAIN DEVELOPMENT STANDARDS

G. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 9, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW THE PLANNING AND DEVELOPMENT DIRECTOR TO REVIEW AND APPROVE REQUESTS FOR ALTERNATIVE COMPLIANCE TO THE LANDSCAPE REQUIREMENTS

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REPEALING ORDINANCE NO. 2480

ORDINANCE NO. 2626 - ORDINANCE REPEALING ORDINANCE NO. 2480 DIRECTING THE DIRECTOR OF BUILDING INSPECTIONS TO DEMOLISH THE DWELLING KNOWN AS 22 SULPHUR SPRINGS ROAD

Mayor Sitnick opened the public hearing at 5:42 p.m.

Mr. Terry Summer, Director of Building Safety, said that this is the consideration of an ordinance repealing the demolition of the structure located at 22 Sulpher Springs Road as adopted in Ordinance No. 2480. This public hearing was advertised on October 15 and October 22, 1999.

On May 26, 1998, an ordinance was adopted by City Council instructing the Director of Building Safety to cause the demolition or otherwise effectuate the purpose of the Minimum Housing Code in regard to the structure located at 22 Sulpher Springs Road. The Owner's Contractors applied and were granted permits on or about June 18, 1998. Once ordered by City Council to comply with the City of Asheville's Minimum Housing Code, Gabriel Ferrari and wife, Livia were very cooperative. The corrections included but were not limited to:

1) Proper venting of the gas hot water heater
2) Installation of complete electrical wiring and service
3) Stairways to the basement and 2nd floor
4) Elimination of the internal accumulation of garbage

All work was completed on 7/9/98 and a "Housing Certificate" was issued. The Certificate is valid until 7/9/05, unless the structure falls back into a state of disrepair.

The Director of Building Safety Department recommends the adoption an ordinance to repeal Ordinance No. 2480 to demolish the structure located at 22 Sulpher Springs Road.

Upon inquiry of Councilman Cobb about the violations of the sign ordinance on the property, Mr. Summey stated that to his knowledge the owners have taken down the signs and is now in compliance with the sign ordinance.

Mayor Sitnick closed the public hearing at 5:45 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2626. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 15

B. PUBLIC HEARING TO CONSIDER A REQUEST TO APPROVE A MODIFICATION FROM THE SUBDIVISION STANDARD REQUIRING THAT EACH LOT ABUT A PUBLIC STREET FOR A SUBDIVISION OF A 0.75 ACRE TRACT OF LAND LOCATED ON THIRD STREET INTO TWO LOTS

Mayor Sitnick opened the public hearing at 5:46 p.m.

Urban Planner Dan Baechtold said that this is the consideration of a request to approve a modification from the subdivision standard requiring that each lot abut a public street for a subdivision of a 0.75 acre track of land located on Third Street into two lots. This public hearing was advertised on October 15 and October 22, 1999.

The subdivision regulations of the Unified Development Ordinance require that all residential lots must abut a public street. In Section 7-15-1(j), the ordinance states: "The Asheville City Council, upon receiving recommendation from the Planning and Zoning Commission, may approve modifications to the standards found in subsection 7-15-1(k)." Further, the ordinance addresses acceptable grounds for modification:

"Modifications from the standards of this article may be granted in cases of physical hardship. Cases of physical hardship shall be defined as those cases where because of the topography of the tract to be subdivided, the condition or nature of adjoining areas, or the existence of other unusual physical conditions, strict compliance with the provisions of this article would cause unusual and unnecessary hardship on the property owner. Financial hardship shall not be considered grounds for a modification. "

Mr. Mychajlo Ostapovich (owner) presented a plat to the City of Asheville for a two lot subdivision. One of the lots does not have the required 25-foot minimum frontage on a public street. The existing tract of land is located on the corner of Wanoca Avenue and Third Street. The tract fronts on a platted right-of-way for an extension of Third Street. The street was never constructed.

At their September 1999 meeting, the Planning and Zoning Commission recommended that Mr. Ostapovich explore alternative methods to create a lot with frontage on a public street. Mr. Ostapovich investigated several options with City staff. Unable to find an acceptable solution for Mr. Ostapovich, staff determined that sufficient physical hardship exists to justify granting a modification to the subdivision regulations.

At their October 1999 meeting, the Planning and Zoning Commission voted unanimously to recommend approval of this request to City Council.

Upon inquiry of Councilwoman Field, City Attorney Oast said that the issuance of any building permit would depend upon appropriate access being provided.

Mayor Sitnick closed the public hearing at 5:50 p.m.

Councilman Tomes moved to approve a modification from the subdivision standard requiring that each lot abut a public street for a subdivision of a 0.75 acre track of land located on Third Street into two lots. This motion was seconded by Councilman Cloninger and carried unanimously.

C. PUBLIC HEARING TO CONSIDER A REQUEST TO APPLY THE PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT TO THAT LOT LOCATED AT 121 MERCHANT STREET WHICH HAS AN UNDERLYING ZONING OF RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2627 - ORDINANCE TO APPLY THE PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT TO THAT LOT LOCATED AT 121 MERCHANT STREET WHICH HAS AN UNDERLYING ZONING OF RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 5:50 p.m.

Senior Planner Gerald Green said that this is the consideration of applying the Planned Unit Development Overlay District to that lot located at 121 Merchant Street (Willow Arbor) which has an underlying zoning of RS-8 Residential Single-Family High Density District. This public hearing was advertised on October 15 and October 22, 1999.

The Planning and Zoning Commission, at their October 6, 1999, meeting, reviewed and unanimously recommended approval of the application of the Planned Unit Development (PUD) overlay zone to a lot of approximately 0.85 acres located on Merchant Street, currently zoned RS-8 Residential Single-Family High Density District. The developers are proposing the construction of an 8 unit residential development on the site. The preliminary master plan approved by the Planning and Zoning Commission calls for the construction of 4 duplex structures on the site. Parking will be screened from the street by the buildings and the site will be buffered from adjacent residential uses by a landscaped buffer. The site plan complies with all standards set forth in the Unified Development Ordinance (UDO) for a PUD. Council's role is to act upon the recommendation of the Planning and Zoning Commission for approval of the application of the PUD overlay zone to the project site. The purposes of the PUD overlay zone, as identified in Sec. 7-9-1 (a) of the UDO, include:

- Encourage better design and maintenance of open space;
- Facilitate more affordable housing; and
- Encourage pedestrian circulation within and adjacent to the PUD.

Council must determine if these and the other goals and purposes of the PUD overlay zone are achieved by the proposed Willow Arbor PUD.

At the public hearing conducted by the Planning and Zoning Commission, neighboring property owners expressed concern about the traffic which would be generated by this development and the existing traffic on Merchant Street. According to the City's Traffic Engineer, the difference between the traffic generated by the proposed development and that generated by permitted single family development on the site is insignificant.

The Planning and Zoning Commission voted 7-0 to recommend approval of the application of the PUD overlay zone. Staff is also recommending approval.

At the request of Councilman Cloninger, City Manager Westbrook said that he would include the developer's name and property owner's name on future staff reports so Council can determine if there might be a conflict of interest.

Noting that this is the first PUD overlay zone request, Mayor Sitnick and Vice-Mayor Hay spoke in favor of the process.

Mayor Sitnick closed the public hearing at 6:00 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2627. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 16

D. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF THE ROYAL PINES POOL AND PARK PROPERTIES LOCATED ON SWEETEN CREEK ROAD AND PEACH TREE STREET TO RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 6:01 p.m.

Urban Planner Stacy Merten said that this is the consideration of an ordinance to zone Royal Pines Pool and Park Properties, located on Sweeten Creek Road and Peach Tree Street, RS-4 Residential Single Family Medium Density District. This public hearing was advertised on October 15 and October 22, 1999.

The Planning and Zoning Commission, at their October 6, 1999, meeting, reviewed and recommended approval to zone the recently annexed non-contiguous property known as Royal Pines Pool and Park located off of Sweeten Creek Road on Sycamore Drive and Peach Tree Street in South Asheville as RS-4 Residential Single Family Medium Density District. Four properties with a total area of 5.5 acres are included as part of the zoning proposal. This was a private pool and park serving the local community and will now be managed by the Parks and Recreation Department of the City of Asheville. There are currently no definitive plans for the property but it is anticipated that it will continue in some type of passive recreational use. The proposed zoning of RS-4 allows for the recreational use to continue while protecting the character of the surrounding neighborhood.

Several community residents expressed their concern that the residential zoning meant that the parcel would become a housing development. It was explained that it was the owner's intent for the parcel to continue as a park. It was also explained that the property is currently zoned residential by Buncombe County and that because the Unified Development Ordinance (UDO) does not have a special district for parks and open space that parks are typically zoned residential, where compatible recreational uses are also permitted. Other concerns had to do with future plans for the park itself, which will ultimately be decided by the City Council with recommendations by Parks & Recreation Department.

The Planning and Zoning Commission voted unanimously to recommend approval of the initial zoning. The Planning and Development staff recommends approval of the new zoning.

Vice-Mayor Hay said that it was his understanding that the deed to the property contains restrictions that prohibit the use for anything other than a park. Ms. Merten said that the deed doesn't specifically state that, however, there is language in the contract as far as the permitted uses being parks and conservation uses.

Mayor Sitnick said that there was significant discussion during adoption of the UDO to consider a zoning classification for parks. She urged City Council to adopt a park designation in the UDO that is specifically applied to parks and didn't zone them according to the land use around them.

Councilman Cloninger agreed with Mayor Sitnick in that a zoning designation for park space should be included in the UDO. He said that because zoning designations can be changed, there might be a lot of situations where Council would want to put a conservation easement on the property so that future Councils cannot change their mind.

City Attorney Oast said that there are some special statutory provisions that deal with land acquired for park purposes and if we acquire land for park purposes, there are certain restrictions on our ability to dispose of it for any other use.

Planning & Development Director Scott Shuford said that his staff is in the process of creating an open space zoning district and will have it before City Council in January of 2000.

Mr. John Ward, property owner in the area, urged City Council not to zone the property until there is a permanent zoning classification for parks. He wanted the property to be left as a park, as it was intended to be.

City Attorney Oast said that if the property is not zoned, it is potentially available for anything. It was his recommendation that if Council is going to zone it, that it be zoned to some restrictive residential classification.

Ms. Doris McQuiggan, property owner in the area, also urged Council to postpone zoning the property until a park designation can be adopted.

When Ms. McQuiggan questioned why the zoning classification was recommended to an RS-4 and not an RS-2, Ms. Merten responded that the RS-4 classification is in keeping with the character of the neighborhood to the north. She also said that if the rest of the property around it were annexed into the City and there is no zoning classification for parks, it would also be like a spot zone to have an RS-2 in the center which would not be contiguous with the rest of the neighborhood.

Upon inquiry of Councilwoman Field, City Attorney Oast explained the specifics of a conservation easement.

Upon inquiry of Vice-Mayor Hay, City Attorney Oast said that the City of Asheville owns the property. City Manager Westbrook said that The Trust for Public Land provided the financial mechanism for the City to purchase the property.

Mayor Sitnick closed the public hearing at 6:20 p.m.

Councilman Cloninger moved to continue this matter until February 22, 2000, which will allow time for the open space zoning classification to be adopted into the UDO. This motion was seconded by Councilman Sellers.

E. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF PROPERTY KNOWN AS DEERFIELD EPISCOPAL COMMUNITY LOCATED OFF OF HENDERSONVILLE ROAD TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2628 - ORDINANCE TO ZONE PROPERTY KNOWN AS DEERFIELD EPISCOPAL COMMUNITY LOCATED OFF OF HENDERSONVILLE ROAD TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 6:27 p.m.

Urban Planner Stacy Merten said that this is the consideration of an ordinance to zone Deerfield Episcopal Retirement Community, Inc., located off of Hendersonville Road, RM-16 Residential Multi-Family High Density District. This public hearing was advertised on October 15 and October 22, 1999.

The Planning and Zoning Commission, at their October 6, 1999, meeting, reviewed and recommended approval to zone the recently annexed property known as Deerfield Episcopal Retirement Community, Inc., located off of Hendersonville Road as RM-16 Residential Multi-Family High Density District. This is a 24-acre tract of property that is part of and contiguous with the existing Deerfield Retirement Community, also zoned RM-16. The newly annexed property is currently under development with two 5-story apartment buildings, a 2-story community center and 13 single family residences. The proposed zoning will allow the proposed development to go forward as planned with adequate infrastructure in place to support the higher density. There was no comment at the public hearing.

The Planning and Zoning Commission voted unanimously to recommend approval of the initial zoning as RM-16 Residential Multi-Family High Density District. The Planning and Development staff recommends approval of the new zoning.

Upon inquiry of Vice-Mayor Hay, Fire Chief John Rukavina said that Asheville is already providing fire protection services to that area already. He explained that the way fire protection works in Buncombe County is that they try to ignore boundaries to the extent that they can. Asheville is the nearest fire department to that populated area, so the expectation would be that if a fire were to occur, they would respond.

Mayor Sitnick closed the public hearing at 6:32 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2628. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 18

F. PUBLIC HEARING TO CONSIDER THE REZONING OF A PORTION OF THAT LOT LOCATED ALONG GASTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE II DISTRICT

ORDINANCE NO. 2629 - ORDINANCE TO REZONE A PORTION OF THAT LOT LOCATED ALONG GASTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE II DISTRICT

At the request of Councilman Tomes, Councilwoman Field moved to excuse Councilman Tomes from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Sellers and carried unanimously.

Mayor Sitnick opened the public hearing at 6:34 p.m.

Senior Planner Gerald Green said that this is the consideration of an ordinance to rezone a portion of a lot located along Gaston Street from RS-8 Residential Single Family High Density District to Office II District. This public hearing was advertised on October 15 and October 22, 1999.

The Planning and Zoning Commission, at their October 6, 1999, meeting, reviewed and unanimously recommended approval of the rezoning of a portion of a lot located on Herman and Gaston Streets from Residential Single-Family High Density District to Office II District. The property for which the rezoning is requested is approximately 6,000 square feet. Current land uses on adjacent parcels include medical offices, a credit union, a clinic, a community center, single family homes, and some vacant land. The property for which the rezoning is requested is vacant. Most of this parcel was rezoned from Office District to Office District II by City Council in March, 1999. Although the ownership of this portion of the parcel had been transferred to Opportunity Corporation at that time, neither the County's tax maps nor the City's zoning maps reflected this transfer. As a result, this area was not included in the rezoning of properties to Office District II in March 1999. Currently the lot is split zoned, with the majority zoned Office II and a small portion zoned Residential Single-Family High Density District. Rezoning of this small portion to Office II would eliminate the split zoning, making it easier for the Opportunity Corporation to proceed with their planned development of the property. The Planning and Development Department has received no public comments regarding the requested rezoning..

The Asheville Planning and Zoning Commission voted 7-0 to recommend approval of the rezoning. The Planning and Development staff recommends approval of the rezoning.

Ms. Vicki Heidinger, Executive Director of the Opportunity Corporation, supported the rezoning request.

Mayor Sitnick closed the public hearing at 6:37 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2629. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 20

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 99-162 - RESOLUTION ENDORSING THE CONCEPT OF ZONING THROUGHOUT BUNCOMBE COUNTY IN AREAS NOT ALREADY SUBJECT TO ZONING LAWS

Councilman Cloninger said that City Council has heard from representatives of Buncombe County, people in the community who are opposed to zoning in the County, and people in the community who are proponents of zoning in the County. He felt that all groups provided good information. He suggested that City Council consider adopting a resolution that endorses the concept of zoning throughout Buncombe County in areas not already subject to zoning laws.

Councilman Tomes, Councilwoman Field, Vice-Mayor Hay and Councilman Cobb all felt that they could support the suggested resolution endorsing the concept.

City Attorney Oast suggested the following resolution language: Whereas, zoning and land use regulations are an effective tool in guiding land use; and Whereas, the City of Asheville is the largest City in North Carolina whose surrounding county is unzoned; and Whereas, the City of Asheville will benefit from zoning in Buncombe County. Now therefore, the City Council of the City of Asheville does hereby endorse the concept of zoning in Buncombe County.

Councilman Cloninger moved to adopt the resolution as read by City Attorney Oast. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 328

B. REPORT ON ST. DUNSTAN'S ROAD TRAFFIC

At the City Council worksession on October 19, 1999, City staff updated City Council on the traffic on St. Dunstan's Road and recommended leaving this road open to allow better access to the neighborhood.

Mayor Sitnick said that just prior to the meeting she received a call from Ms. May, one of the original spokespersons for the neighborhood, who stated that she was unable to attend this meeting and requested City Council postpone this matter.

City Manager Westbrook recommended that since City Council is not taking any action on this and since it was only a report back from staff, rather than rescheduling this for public comment, residents can come to the next formal meeting, or any formal meeting, under "Informal Discussion and Public Comment" and discuss with the Council this issue, since there is no change in the condition on the road.

Mayor Sitnick invited the neighborhood to come to any formal meeting and under the "Informal Discussion and Public Comment" section they can give Council their comments.

V. NEW BUSINESS:

A. ORDINANCE NO. 2630 - ORDINANCE AMENDING THE ASHEVILLE DOWNTOWN COMMISSION

Chair of the Downtown Commission Carol King said that this is the consideration of approving revised changes to the ordinance regarding the Downtown Commission.

Last winter, the Downtown Commission reported to you several recommendations that were the result of a technical visit conducted by National Main Street Center. One of the recommendations was to make changes to the ordinance regarding the Downtown Commission. It was felt the ordinance needed to be updated to reflect the changing dynamics in downtown. The recommendation was to shift the focus from revitalization to instead a focus on sustainable and continued development of downtown.

Since then, the Downtown Commission has spent considerable time recently discussing its future efforts as an organization chartered by the City Council. This discussion, along with the ongoing issue identification process involving the Mayor's Roundtable, various focus groups and the Center City Plan meetings, has resulted in a number of suggested revisions to the Downtown Commission's charter which is part of the City Code of Ordinances.

These suggested changes involve updating obsolete language, reprioritizing the purposes and powers, restructuring the membership of the Commission, as well as clarifying its role in areas such as promotion, design review and communication.

The Downtown Commission's current initiatives and successes include: Pack Square Task Force; Center City Plan; Downtown Design Review, Streetscape Committee College Street Design Charette, Support for Chamber location downtown; Parking Task Force; Building Code Chapter Nine extension and the National Main Street Technical Visit Recommendations.

At the October 19, 1999, worksession, City Council asked that the ordinance be amended to include language to "promote and facilitate downtown living." That language has been included in ordinance.

The City Development staff of the Planning and Development Department recommend approving the revisions to the ordinance.

Vice-Mayor Hay was very pleased with the work the Downtown Commission did on this amendment and said that he is going to request that the Civic Center Commission undertake the same kind of review following the model of the Downtown Commission.

On behalf of City Council, Mayor Sitnick thanked Ms. King for her work on this amendment and the work of the Downtown Commission and all the downtown groups involved in the review.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No 2630. This motion was seconded by Councilman Cloninger and carried unanimously.

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B. MOTION ENDORSING THE TRANSPORTATION IMPROVEMENT PLAN PRIORITIES NEEDS LIST

Mr. Ron Fuller, Transportation Planner, explained the Transportation Improvement Program and the Priority Needs process. He said that nothing has changed from the September 21, 1999, worksession, except they have had the opportunity to meet with the MPO meeting with the Technical Coordinating Committee, which is the staff level technical group that makes recommendations to the Transportation Advisory Committee. At that time they had the list of priorities that the City staff had proposed as well as the last year's priority needs list that was a little different. The Technical Coordinating Committee all agreed that the list that the staff had presented, which Council reviewed in the City Council worksession on September 21, 1999, was the one they would like to see submitted out for the 30-day public review period.

Mr. Fuller explained that the Transportation Improvement Plan which is the Capital Improvement Program for the State of North Carolina as it relates to all aspects of transportation improvements. It is a seven year plan that identifies specific projects such as new facilities, widened facilities, as well as pedestrian, bicycle, aviation, and rail improvements. Meetings begin in the fall to look at transportation needs of the area. A "wish list" referred to as the Priority Needs List (PNL) of new project requests, deletions of current projects and/or changes in existing projects is developed. The PNL is then sent out for at least a 30-day public review and comment period and is available at all branch libraries, all town halls and the County Planning Department. After the 30 day public review and comment, a public hearing is conducted by the Transportation Advisory Committee (TAC). Upon approval by the TAC, the PNL is submitted to the Board of Transportation for their consideration in development of the subsequent State Transportation Improvement Program (STIP). All projects that fall within the planning area are referred to as the Local Transportation Improvement Program (LTIP). The LTIP is then distributed, and after an additional period of public review and comment, a public hearing is conducted to approve as consistent with the STIP. Projects included in the STIP and LTIP are then considered to be in the "Project Selection Document" for the purpose of project funding and development. Upon being selected from the document, planning, design, right-of-way acquisition (if needed) and construction are scheduled. The TIP process has now moved to a two-year cycle. One year is dedicated to establishing priority needs and the second to development of the actual STIP and LTIP.

Mr. Fuller then discussed the "Gateway Corridor'" concept which he noted the NC DOT was "cautiously supportive" of.

Mayor Sitnick asked Mr. Fuller to follow-up with NC DOT on her request to slow truck speed on I-240 and to also encourage the NC DOT to do a better job of maintaining the roads.

Mayor Sitnick asked that Kenilworth Road and Beaucatcher Road be placed high on the list of roads to have speed bumps installed for safety reasons.

Councilman Cobb felt that the current I-26 corridor planned by the NC DOT is a mistake and hoped that a different corridor would be developed.

Councilman Tomes moved to support the Transportation Improvement Plan priorities as presented by staff. This motion was seconded by Councilwoman Field and carried unanimously.

C. ORDINANCE NO. 2631 - ORDINANCE AMENDING CHAPTER 3 OF THE CITY CODE TO REQUIRE CLEANING UP AFTER ANIMALS

At Mayor Sitnick's request, City Attorney Bob Oast said that this is consideration of an ordinance to require pet owners to clean up after their pets.

The ordinance is fairly straightforward and self-explanatory. It requires pet owners to clean up after their pets, if the pets defecate on any public property or upon any street, sidewalk, public way, play area or common grounds owned jointly by the members of a homeowners or condominium association, or upon private property without permission of the occupant of said property, unless such keeper immediately removes and disposes of all feces deposited by such animal by the following methods: (1) collection of the feces by appropriate implement and placement in a paper or plastic bag or other container; and (2) removal of such bag or container to the property of the animal keeper and disposition thereafter in a manner as otherwise permitted by law.

There is already an ordinance provision, Section 3-9(6) in the Asheville City Code, that provides that animal defecation on the property of another may be a nuisance, but this requires a qualitative judgment as to what constitutes a nuisance, and only applies to private property.

This ordinance, like other City animal control ordinances, may be enforced civilly by animal control officers or by a designated agency. Appendix B of the Code prescribes an escalating civil fine for violations of the Animal Control Ordinance, beginning with a $10.00 fine. Section 3-20 provides that no criminal penalty is available for violations that are specifically made subject to a civil penalty. By specifically providing for a civil penalty, criminal penalties are foreclosed by operation of the ordinance.

If City Council wishes to require owners to clean up after their pets, adoption of the ordinance is recommended.

Discussion surrounded how the ordinance would be enforced and who could enforce the ordinance.

Mayor Sitnick noted that adoption of this ordinance will heighten awareness of the problem and might inspire the city to move more quickly to develop some dog parks in downtown.

Mr. Fred English urged City Council to allow only seeing-eye dogs downtown. He also hoped that City Council to prohibit dogs from shopping centers.

When Councilwoman Field expressed concern about the animal being impounded, City Attorney Oast said that he would amend the ordinance to provide that the only penalty available for violations of this ordinance would be the escalating fines set forth in Appendix B of the Code of Ordinances. It was the consensus of City Council to make that amendment.

When Councilwoman Field questioned the removal method, City Attorney Oast said that he would amend the ordinance to state that removal of such bag or container and disposition thereof in a manner as otherwise permitted by law. It was the consensus of City Council to make that amendment.

At the request of Mayor Sitnick and upon consensus of City Council, the ordinance would be amended to be effective January 1, 2000.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No 2631, with the amendments noted above. This motion was seconded by Councilman Sellers and carried on a 6-1 vote, with Councilwoman Field voting "no".

ORDINANCE BOOK NO. 18 - PAGE 28

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of October 8-21, 1999: Donnie Holbrook (Streets), Thomas Bryant (Water) and Loretta Burke (Civic Center).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

With regard to the I-26 corridor to be built through Asheville, Mr. Fred English, professional truck driver, stated that he has hauled hazardous materials through Asheville for several years on I-40 and I-26. Mr. English then expressed his disappointment in (1) the Asheville Motor Speedway closing, and (2) no Council representation at the VA Hospital Ceremony with regard to the Moving Wall Memorial.

Councilwoman Field briefed City Council on her recent trip to the N.C. League of Municipalities meeting in Greensboro, N.C.

At 7:52 p.m., Vice-Mayor Hay moved to go into closed session to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease - statutory authority is G.S. 143-318.11 (a) (5). This motion was seconded by Councilwoman Field and carried unanimously.

At 8:05 p.m., Councilman Cloninger moved to come out of closed session. This motion was seconded by Councilman Sellers and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:05 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Wednesday - November 3, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

Mayor Sitnick recognized Councilman-Elect Charles R. Worley.

CONSENT:

Cellular Phone Service Bid Award

Summary: The consideration of a resolution awarding a contract for cellular telephone service and equipment to U. S. Cellular Corp.

The City of Asheville uses cellular telephone services in the conduct of City business on a daily basis. The City desires to use those services that provide the best cost and coverage possible for its customers. As the communications industry is able to provide increasingly better and less expensive equipment and coverage, the City elected to seek proposals for cellular telephone service. The City advertised in the Asheville Citizen-Times for interested cellular telephone service providers and sent a Request for Proposal for cellular telephone service to prospective bidders. A pre-bid conference was held on September 22 at which three prospective bidders attended. The City received two responses to the Request for Proposal. The bids were originally due on October 1, 1999, however, one bidder expressed a concern regarding a possible need for more time to respond. The due date of the bids was then moved to October 8, 1999. The City has a communications team comprised of various City staff which have reviewed and evaluated the bids for cost and coverage as stated in the Request for Proposal. The team reviewed the proposals, evaluated the equipment submitted by the bidders for clarity and coverage of service, and reviewed certain proprietary information regarding coverage submitted by both bidders. The spreadsheet highlights the basic cost differences between the two proposals. The proposal submitted by U. S. Cellular represents the best overall cost package to the City while providing satisfactory cellular telephone equipment and service coverage.

Funding is available in the Fiscal Year 2000 operating budgets of the various City departments.

Staff recommends the City Council adopt the resolution which awards the contract to U. S. Cellular and authorizes the City Manager to execute the contract and any related documents.

Twin Springs Sewer Easement Conveyance

Summary: The consideration of a resolution authorizing the Mayor to convey to the Metropolitan Sewerage District of Buncombe County the sewer system and sewer system easements of Twin Springs Subdivision.

The City of Asheville is the owner of record of a 12.27-acre tract of unimproved real property on Broadview Drive within the City limits. Infrastructure improvements have been completed and the final plat has been recorded. The City of Asheville must convey to the

Metropolitan Sewerage District of Buncombe County the sewer system and sewer system easements as shown on the as-built/easement survey.

On August 19, 1997, the City of Asheville and the Asheville Area Habitat for Humanity, Inc. entered into a Memorandum of Understanding to develop a 12.27-acre tract of unimproved land on Broadview Drive within the City limits. The City agreed to construct infrastructure improvements, including water, sanitary sewer, storm water drainage, streets and sidewalks, curb and gutter, electric, telephone, cable, street lighting, and minor landscaping. Habitat will construct 34 affordable housing units to be occupied by income-eligible families, and will transfer title of the individual real property to the qualified family when housing construction is completed.

Community Development staff recommends adoption of the resolution to convey to the Metropolitan Sewerage District of Buncombe County the sewer system and sewer system easements of Twin Springs Subdivision.

Grant for Master Street Tree Plan Phase II

Summary: The consideration of a budget amendment, in the amount of $9,873, from a grant from the N. C. Department of Environment and Natural Resources, to establish a budget for the Master Street Tree Program Phase II.

The City of Asheville applied for funds in August 1999 for a grant from the North Carolina Department of Environment and Natural Resources, Division of Forest Resources in the Urban and Community Forestry Grants Program. The grant was recently awarded in the amount of $9,873 and designated for implementing the next phase of the Master Street Tree Program (MSTP) in the south area of Asheville.

The Parks and Recreation Department is responsible for developing a MSTP for street trees on City rights-of-way located within the city limits of Asheville. The existing inventory is almost fifteen years old and does not accurately reflect the trees of the City. The next phase of the process will identify the location, size, condition, and site conditions of trees located in the south area of Asheville. The MSTP will serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community organizations.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $9,873, to establish a budget for the next phase of the Master Street Tree Plan.

Subordination Agreement for Opportunity Corporation

Summary: The consideration of a resolution to authorizing the Mayor and Assistant City Attorney to execute a Deed of Subordination which would subordinate the Deed of Trust granted by the Opportunity Corporation to the City of Asheville for the property purchased on Gaston Street.

By Resolution No. 98-36 the City Council authorized the Mayor to execute any and all documents necessary to exchange property between the City of Asheville and The Opportunity Corporation of Madison-Buncombe Counties, Inc. ("The Opportunity Corporation"), which property was owned by the City of Asheville and located adjacent to the property on which the W.C. Reid Community Center Annex building is located. In exchange for that real property, The Opportunity Corporation was to provide $20,000 in cash for the city of Asheville Parks and Recreation Department to use in funding "mini-park" in the "West End section" of the City of

Asheville and materials and administrative costs of not less that $16,000 to construct a bridge across the creek at the base of property. The Opportunity Corporation acquired and an easement across the property acquired by The Opportunity Corporation for the city to use for greenway purposes. As part of that exchange, The Opportunity Corporation executed a Promissory Note and a deed of Trust against the property to secure the payments to be made to the City of Asheville.

The Opportunity Corporation has paid the $20,000 in cash but, the materials and administrative costs in the amount of not less than $16,000 have not yet been furnished in that City of Asheville is not yet ready to construct the bridge. The Opportunity Corporation desires to construct a new building on the property it has acquired and has secured financing to construct that building. The lender of the construction costs for that building, First Citizens Bank & Trust, desires to have a first lien on that property. The Parks and Recreation Department has no objection to the lien of the City of Asheville being subordinate to the lien of the construction lender for the new building of The Opportunity Corporation.

A Deed of Subordination has been prepared by The Opportunity Corporation, furnished to the City of Asheville, and reviewed and approved by the City Attorney's Office;

The Parks and Recreation Department and the City Attorney's Office recommend adoption of the resolution and execution of the Deed of Subordination.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

1999 BELE CHERE REPORT

Mr. Butch Kisiah, Superintendent of Recreation, said that this is the final report for the 1999 Bele Chere Festival which includes a financial statement and an update of the Strategic Plan.

In January of 1997, City Council approved the Bele Chere Strategic Plan for the next five years. Part of that plan included an annual report to City Council each year after the festival. He reviewed some of the objectives of the goals from the Strategic Plan and a financial statement for the 1999 festival. As the financial statement shows, Bele Chere made a total of $64,875.66. This represents the fourth year in a row that the festival has made a profit. This is due largely to an overall increase in sponsorships and souvenir sales. The profit made from Bele Chere will go into the Festival Fund and will be used to enhance Bele Chere as well as other festivals, therefore reducing the City's taxpayers' support of these events. Tremendous headway was made this year in relationships with the Downtown Merchants, including the second year for "Taste of Asheville." This dialogue has resulted in better communication and trust between both groups. Recognition should be given to all City departments for their involvement with the festival. Without their support and commitment to improving the quality of Bele Chere, the festival could not continue to be successful.

The Parks and Recreation Department and the Bele Chere Board recommend City Council's endorsement of the Annual Report for Bele Chere.

Councilman Sellers hoped that City Council will take a sincere look at continuing the no alcohol on Sunday for future Bele Chere festivals.

Vice-Mayor Hay was impressed that everyone has taken seriously the mandates of the Strategic Plan which shows that plans really can be the foundation for doing something good.

When Vice-Mayor Hay asked about marketing, Mr. Kisiah explained and noted that they are not looking for a bigger Bele Chere in that they feel it's about just the right size.

Mayor Sitnick commented on the 37% increase of sponsorships.

It was the consensus of City Council to endorse the 1999 Annual Report for Bele Chere.

PURCHASE OF REAL PROPERTY AT 8 CEDAR STREET

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing the purchase of property located at 8 Cedar Street and a budget amendment, in the amount of $113,000, for purpose of making intersection improvements in the future.

In recent months, the property located at 8 Cedar Street (PIN No. 9657.07-58-4903) was placed on the market for sale by the owner for $122,500. An appraisal was made of the property, which was $104,000, and after negotiations, the price of $113,000 was agreed upon. The owners of the property are David S. and Robin G. Hylton. City staff became aware of this sale and recognized that this property would need to be acquired in order to make much needed intersection improvements at Cedar Street, Fairview Road, and Liberty Street.

Currently there is a traffic signal located at the intersection of Cedar Street and Fairview Road and another one approximately 100 feet away at Liberty Street and Fairview Road. By purchasing this property, the City could realign these two intersections to create a safer, less congested intersection in the future.

Following purchase of the property, staff will lease the house until such time as the house will need to be relocated to allow for the intersection improvements, move the house to a vacant lot and sell the house, or any combination of the above. These options should generate some revenue from the purchase of the property.

Staff recommends that the Mayor be authorized to execute documents to purchase property located at 8 Cedar Street and to approve a budget amendment, in the amount of $113,000, for the purpose of making intersection improvements in the future.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

AMENDMENT OF 1999 CONSOLIDATED ACTION PLAN

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of an amendment to the City's 1999 Consolidated Action Plan so as to recognize the receipt of additional program income and fund three new projects: (1) purchase of land for housing development in West Asheville; (2) a loan guarantee for the Montford Gateway development; and (3) rent assistance for families at risk of homelessness.

Program Income Receipts - Program income generated by our Community Development Block Grant (CDBG) and HOME programs is estimated at the start of each year. Necessarily, these estimates are conservative. We now have a significant accumulation of unallocated program income from prior years in both the CDBG and HOME programs, and are expecting to receive an additional $90,000 from the sale of a small piece of redevelopment land on Asheland Avenue. There is a total of $191,349 in CDBG and $54,551 in HOME funds is now available for allocation to projects.

Although it would be possible to retain these funds for allocation through the annual process in spring 2000, there are three projects which need funding now, outside the normal cycle.

(1) Purchase of land for Housing Development - The Asheville Housing Authority has offered the City an option to buy a 6.8 acre site at the intersection of Virginia Avenue and Brotherton Avenue in West Asheville. The site is suitable for a Planned Unit Development of 20-30 single family homes to provide home ownership opportunities to low and moderate income families in a setting designed to foster a sense of community. Design features would include: clustered homes joined by footpaths; peripheral on-site parking; commonly-owned play, garden, and green space area; and, if funds allow, a community house for social activities, laundry, etc.

The site has been appraised at $120,000. An allocation of **$130,000 in CDBG** funds is recommended to cover acquisition and pre-development costs.

(2) Montford Gateway Project - In 1998 Neighborhood Housing Services purchased from the City a site at the south end of Montford Avenue for a mixed use development with offices, retail space and apartments. NHS has put together a permanent financing plan incorporating Low Income Housing Tax Credits, a capital advance from Neighborhood Reinvestment Corporation, several foundation grants, a small ($31,250) CDBG grant made in 1998, and a $400,000 bank loan. The bank has required NHS to provide a loan guarantee or reserve amounting to two years of interest on the loan in case the commercial parts of the development are slow to lease. NHS has asked the City to allocate **$70,000 in CDBG** funds for this reserve.

If, as expected, the commercial units are quickly leased, these funds will revert to the City's CDBG fund for re-allocation to other projects through the normal allocation procedure.

(3) HOME Rent Assistance - The State Division of Social Services has announced the availability of $5 million statewide to assist families on welfare or eligible for welfare in securing safe, affordable housing. City, County, DSS, and non-profit agency staff are collaborating to prepare a $400,000 competitive grant application. The lead agency is the Affordable Housing Coalition (AHC). The state grant requires a match of $1 in local funds for every $2 in grant funds. This match would be funds contributed by participating agencies, including CDBG funds already allocated to AHC for rental education and counseling, and HOME funding to be applied directly to rent assistance, which is an eligible HOME activity.

An allocation of **$50,000 in HOME** funds has been requested by the partners in this grant application .

(4) Amendment of 1997 CDBG Grant to Mountain Housing Opportunities - A 1997 CDBG grant made $262,300 available to MHO for infrastructure improvements associated with its housing development in the West End/Clingman Avenue neighborhood. This project has been slow-moving, due in part to the absence of a detailed, site-specific, land-use and design plan for the neighborhood. MHO has requested that $35,000 of the 1997 funding be re-allocated for planning. MHO will also proceed with minor sanitary sewer and storm drain improvements near Rector Street and Park Place. No new funds are required.

Public Hearing Requirements - The changes amount to a substantial amendment to the City's Consolidated Action Plan for 1999-2000 and require a public hearing before Council approval. Notice of the amendment was given on October 29 and November 5, 1999.

Staff recommends amending the 1999 Consolidated Action Plan to include rent assistance in the HOME program, to allocate $200,000 in CDBG funds and $50,000 in HOME funds to the three projects described above, and to re-allocate $35,000 in 1997 CDBG funds from infrastructure improvements to planning in West End/Clingman.

Discussion surrounded several questions raised by Councilman Sellers, in particular the water flow in the Brotherton and Virginia Avenue area.

Mr. Mike Brookshire from the Water Resources Department, said that an extension of a water line was made on Hudson Street and their tests have consistently shown that there is approximately 500 gallons per minute water flow to that area. He said that with normal usage, the addition of 30 more houses in the Brotherton/Virginia area will have a very minor impact on water pressure.

Fire Chief John Rukavina said that they have a standard of 500 gallons per minute for single-family houses and townhouses. Fire Chief Rukavina also answered questions relative to a water storage facility.

Upon inquiry of Mayor Sitnick, Ms. Caplan said that an independent appraiser is reviewing the Housing Authority's appraisal on the land and stressed that they will not pay more than the fair market value.

Upon inquiry of Councilman Cloninger, Ms. Caplan said that the cost of each house will be well below $100,000, however, she could not be specific because the houses have not yet been designed.

Vice-Mayor Hay stated that Council is only being asked to authorize the use of the federal housing monies to purchase the land at Virginia and Brotherton and that the design and plan itself is subject to approval by City Council at a later date.

Councilman Sellers requested a statement from the Fire Chief and Water Resources Department about the water flow in the area, in addition to information about the property values of homes in the area.

Upon inquiry of Councilman Cloninger, Housing Authority Director David Jones said that the money the City pays to the Housing Authority for the purchase of the property on Brotherton and Virginia will be used for affordable housing throughout the community.

Councilwoman Field stressed the need for affordable housing in our area to keep our youth here.

Mayor Sitnick agreed with Councilwoman Field and felt that with the commitment from City Council, the City has risen to the challenge of providing for affordable housing and has done a remarkable job with the limited funds available.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda for a public hearing.

APPROVAL OF ISSUANCE OF MULTI-FAMILY HOUSING REVENUE BONDS BY HOUSING AUTHORITY OF THE CITY OF ASHEVILLE

City Attorney Oast said that this is the consideration of a resolution approving the issuance of revenue bonds by the Housing Authority for the Oak Knoll project.

The Housing Authority of the City of Asheville proposes to issue revenue bonds in the amount of $6,444,000 for the acquisition, rehabilitation, and equipping of a low- and moderate-income housing project in the City of Asheville. This project involves the acquisition and rehabilitation of an existing residential rental project currently known as Oak Knoll Apartments, consisting of 180 units located on Future Drive in Asheville.

The project will be acquired by the Silver Street Development Corporation through the Oak Knoll - Asheville Limited Partnership, which will also perform the rehabilitation work. The Housing Authority will use the bond proceeds to provide financial assistance. In a meeting and public hearing held on October 26,1999, the Housing Authority found that the issuance of the bonds would further the Authority's purpose of promoting low- and moderate-income housing in Asheville, found that the developer was financially responsible and capable of fulfilling its debt repayment obligations, if the financing was provided, and that estimated costs of the acquisition and rehabilitation were not excessive. The financing team was also approved.

The bonds being issued are "private activity bonds" under IRS regulations. Essentially, this is a form of financing that allows private entities to engage in public purpose projects, with some of the advantages of tax exempt financing. There are many requirements and limitations in the use of the money derived from bond proceeds. One of the requirements is that the governmental unit having jurisdiction over the area in which the activity occurs must approve the issuance of the bonds, and this approval may only come after a public hearing. According to the Housing Authority's attorney, concurred in by bond counsel and the attorneys for the developer and issue, this public hearing requirement is satisfied by the public hearing held by the Housing Authority, and a separate hearing by the City is not necessary. Our bond counsel has confirmed this, and this is the position of the Local Government Commission.

If City Council wishes to approve issuance of the revenue bonds for the Oak Knoll project, as required by Sec. 147(f) of the Internal Revenue Code, adoption of the resolution is recommended.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BOARDS AND COMMISSIONS:

Upon inquiry of Vice-Mayor Field, liaison to the Civic Center Commission, it was the consensus of City Council to ask the Civic Center Commission to take upon the task of reviewing the role and mission of the Commission, similar to what was recently done with the Asheville Downtown Commission. The Commission will have City staff support and is requested to report back to City Council with some recommendations on how to make changes to the ordinance which established the Commission.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Ralph Morris to the Alcoholic Beverage Control Board.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Darryl Hart as a Regular member to the Board of Adjustment. The Clerk was also instructed to ask the City Alternate members if they would be interested in the Regular member position which David Young was not interested in being reappointed to. Therefore, the Clerk was instructed to arrange interviews for the following Alternate members, if appropriate: Joseph Brady, Patricia Grant, Chris Goodwin and Burt Stanford. Interviews will also be arranged for Derek Weekley for an Alternate position and Anne Campbell for a Regular position. Sondra Slosman will also be considered for a position, however, there is no need for an interview.

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It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Kathryn Liss and Cynthia Janes to the Community Relations Council.

It was the consensus of City Council to have Vice-Mayor Hay contact Brenda Sconyers to verify that she is still interested in serving on the Downtown Commission. If Ms. Sconyers is interested, the City Clerk was instructed to arrange interviews for Chuck Pickering, Bill Byrne and Kim MacQueen for vacancies on the Downtown Commission. If Ms. Sconyers is not interested in serving, the City Clerk was instructed to prepare the proper paperwork to appoint Mr. Pickering, Mr. Byrne and Ms. MacQueen to the Downtown Commission. City Council also instructed the City Attorney to prepare an ordinance to temporarily increase the membership of the Downtown Commission to include the two current City Council members currently on the Commission, until their term on City Council expires. At such time when the Council members' terms end, only one member of City Council will be on the Commission.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Bill Schaefer to the Firemen's Relief Fund.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Doug Spell to the Metropolitan Sewerage District Board.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Jim McCulley to the Transit Commission, subject to Vice-Mayor Hay confirming with Mr. McCulley that he will be able to serve due to health problems. The City Clerk was instructed to arrange interviews for Claudia Nix and Pauline Kaltsunis.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Gerry Hardesty, Bruce Mulkey, John Tate and Casey Carmichael to the Greenway Commission. Since said Commission is to be made up of seven members, the City Clerk was also instructed to add this Commission in the next quarterly appointment process.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Kasty Latven, Sofia Mannos, Peter Gentling and Margaret Tinker for the Tree Commission. The City Clerk was instructed to arrange interviews with Monty Wooten and Philip Cusick. Also the Clerk was instructed to verify if Brian Inman was a City of Asheville resident, and if so, to ask him if he would be interested in being interviewed for a vacancy on the Tree Commission.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Ellen Rickman, Pamela Myers, S. Tucker Cooke, Judith Barber, Judy Swan, Carol Pennell and Caroline Mason to the Public Art Board.

Since only two applications were received for this new five member board, it was the consensus of City Council to readvertise the vacancies on the Public Access Channel Commission with a deadline of December 31, 1999.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:50 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - November 9, 1999 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor Edward C. Hay Jr., Presiding; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Leni Sitnick

INVOCATION

Councilman Cobb gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THURSDAY, NOVEMBER 11, 1999, AS "VETERANS DAY" IN THE CITY OF ASHEVILLE

Vice-Mayor Hay read the proclamation proclaiming Thursday, November 11, 1999, as "Veterans Day " in the City of Asheville.

II. CONSENT:

Mr. Daniel Breen asked that Item G. from the Consent Agenda be removed for discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 27, 1999, AND THE WORKSESSION HELD ON NOVEMBER 3, 1999

B. RESOLUTION NO. 99-163 - RESOLUTION AWARDING A CONTRACT FOR CELLULAR TELEPHONE SERVICE AND EQUIPMENT TO U.S. CELLULAR CORPORATION

Summary: The consideration of a resolution awarding a contract for cellular telephone service and equipment to U. S. Cellular Corp.

The City of Asheville uses cellular telephone services in the conduct of City business on a daily basis. The City desires to use those services that provide the best cost and coverage possible for its customers. As the communications industry is able to provide increasingly better and less expensive equipment and coverage, the City elected to seek proposals for cellular telephone service. The City advertised in the Asheville Citizen-Times for interested cellular telephone service providers and sent a Request for Proposal for cellular telephone service to prospective bidders. A pre-bid conference was held on September 22 at which three prospective bidders attended. The City received two responses to the Request for Proposal. The bids were originally due on October 1, 1999, however, one bidder expressed a concern regarding a possible need for more time to respond. The due date of the bids was then moved to October 8, 1999. The City has a communications team comprised of various City staff which have reviewed and evaluated the bids for cost and coverage as stated in the Request for Proposal. The team reviewed the proposals, evaluated the equipment submitted by the bidders for clarity and coverage of service, and reviewed certain proprietary information regarding coverage submitted by both bidders. The spreadsheet highlights the basic cost differences between the two proposals. The proposal submitted by U. S. Cellular represents the best overall cost package to the City while providing satisfactory cellular telephone equipment and service coverage.

Funding is available in the Fiscal Year 2000 operating budgets of the various City departments.

Staff recommends the City Council adopt the resolution which awards the contract to U. S. Cellular and authorizes the City Manager to execute the contract and any related documents.

RESOLUTION BOOK NO. 25 - PAGE 329

C. RESOLUTION NO. 99-164 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY TO THE METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY THE SEWER SYSTEM AND SEWER SYSTEM EASEMENTS FOR TWIN SPRINGS SUBDIVISION

Summary: The consideration of a resolution authorizing the Mayor to convey to the Metropolitan Sewerage District of Buncombe County the sewer system and sewer system easements of Twin Springs Subdivision.

The City of Asheville is the owner of record of a 12.27-acre tract of unimproved real property on Broadview Drive within the City limits. Infrastructure improvements have been completed and the final plat has been recorded. The City of Asheville must convey to the Metropolitan Sewerage District of Buncombe County the sewer system and sewer system easements as shown on the as-built/easement survey.

On August 19, 1997, the City of Asheville and the Asheville Area Habitat for Humanity, Inc. entered into a Memorandum of Understanding to develop a 12.27-acre tract of unimproved land on Broadview Drive within the City limits. The City agreed to construct infrastructure improvements, including water, sanitary sewer, storm water drainage, streets and sidewalks, curb and gutter, electric, telephone, cable, street lighting, and minor landscaping. Habitat will construct 34 affordable housing units to be occupied by income-eligible families, and will transfer title of the individual real property to the qualified family when housing construction is completed.

Community Development staff recommends adoption of the resolution to convey to the Metropolitan Sewerage District of Buncombe County the sewer system and sewer system easements of Twin Springs Subdivision.

RESOLUTION BOOK NO. 25 - PAGE 331

D. ORDINANCE NO. 2632 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FROM A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR THE MASTER STREET TREE PLAN PHASE II

Summary: The consideration of a budget amendment, in the amount of $9,873, from a grant from the N. C. Department of Environment and Natural Resources, to establish a budget for the Master Street Tree Program Phase II.

The City of Asheville applied for funds in August 1999 for a grant from the North Carolina Department of Environment and Natural Resources, Division of Forest Resources in the Urban and Community Forestry Grants Program. The grant was recently awarded in the amount of $9,873 and designated for implementing the next phase of the Master Street Tree Program (MSTP) in the south area of Asheville.

The Parks and Recreation Department is responsible for developing a MSTP for street trees on City rights-of-way located within the city limits of Asheville. The existing inventory is almost fifteen years old and does not accurately reflect the trees of the City. The next phase of the process will identify the location, size, condition, and site conditions of trees located in the south area of Asheville. The MSTP will serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community organizations.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $9,873, to establish a budget for the next phase of the Master Street Tree Plan.

ORDINANCE BOOK NO. 18 - PAGE 30

E. RESOLUTION NO. 99-165 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS FOR THE PURCHASE OF REAL PROPERTY AT 8 CEDAR STREET FOR THE PURPOSE OF MAKING INTERSECTION IMPROVEMENTS IN THE FUTURE

Summary: The consideration of a resolution authorizing the purchase of property located at 8 Cedar Street and a budget amendment, in the amount of $113,000, for purpose of making intersection improvements in the future.

In recent months, the property located at 8 Cedar Street (PIN No. 9657.07-58-4903) was placed on the market for sale by the owner for $122,500. The owners of the property are David S. and Robin G. Hylton. City staff became aware of this sale and recognized that this property would need to be acquired in order to make much needed intersection improvements at Cedar Street, Fairview Road, and Liberty Street.

Currently there is a traffic signal located at the intersection of Cedar Street and Fairview Road and another one approximately 100 feet away at Liberty Street and Fairview Road. By purchasing this property, the City could realign these two intersections to create a safer, less congested intersection in the future.

Following purchase of the property, staff will lease the house until such time as the house will need to be relocated to allow for the intersection improvements, move the house to a vacant lot and sell the house, or any combination of the above. These options should generate some revenue from the purchase of the property.

Staff recommends that the Mayor be authorized to execute documents to purchase property located at 8 Cedar Street and to approve a budget amendment, in the amount of $113,000, for the purpose of making intersection improvements in the future.

RESOLUTION BOOK NO. 25 - PAGE 332

F. ORDINANCE NO. 2633 - BUDGET AMENDMENT TO PURCHASE REAL PROPERTY LOCATED AT 8 CEDAR STREET

Summary: See Consent Agenda Item "E" above.

ORDINANCE BOOK NO. 18 - PAGE 32

G. RESOLUTION AUTHORIZING THE MAYOR TO APPROVE ISSUANCE OF MULTI-FAMILY HOUSING REVENUE BONDS BY THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE

This item was removed from the Consent Agenda for further discussion.

H. RESOLUTION NO. 99-166 - RESOLUTION AUTHORIZING THE VICE-MAYOR AND ASSISTANT CITY ATTORNEY TO EXECUTE A DEED OF SUBORDINATION AGREEMENT FOR THE DEED OF TRUST GRANTED BY THE OPPORTUNITY CORPORATION OF MADISON-BUNCOMBE COUNTIES, INC. TO THE CITY OF ASHEVILLE FOR PROPERTY ON GASTON STREET

Summary: The consideration of a resolution to authorizing the Vice-Mayor and Assistant City Attorney to execute a Deed of Subordination which would subordinate the Deed of Trust granted by the Opportunity Corporation to the City of Asheville for the property purchased on Gaston Street.

By Resolution No. 98-36 the City Council authorized the Mayor to execute any and all documents necessary to exchange property between the City of Asheville and The Opportunity Corporation of Madison-Buncombe Counties, Inc. ("The Opportunity Corporation"), which property was owned by the City of Asheville and located adjacent to the property on which the W.C. Reid Community Center Annex building is located. In exchange for that real property, The Opportunity Corporation was to provide $20,000 in cash for the city of Asheville Parks and Recreation Department to use in funding "mini-park" in the "West End section" of the City of Asheville and materials and administrative costs of not less that $16,000 to construct a bridge across the creek at the base of property. The Opportunity Corporation acquired and an easement across the property acquired by The Opportunity Corporation for the city to use for greenway purposes. As part of that exchange, The Opportunity Corporation executed a Promissory Note and a deed of Trust against the property to secure the payments to be made to the City of Asheville.

The Opportunity Corporation has paid the $20,000 in cash but, the materials and administrative costs in the amount of not less than $16,000 have not yet been furnished in that City of Asheville is not yet ready to construct the bridge. The Opportunity Corporation desires to construct a new building on the property it has acquired and has secured financing to construct that building. The lender of the construction costs for that building, First Citizens Bank & Trust, desires to have a first lien on that property. The Parks and Recreation Department has no objection to the lien of the City of Asheville being subordinate to the lien of the construction lender for the new building of The Opportunity Corporation.

A Deed of Subordination has been prepared by The Opportunity Corporation, furnished to the City of Asheville, and reviewed and approved by the City Attorney's Office;

The Parks and Recreation Department and the City Attorney's Office recommend adoption of the resolution and execution of the Deed of Subordination.

RESOLUTION BOOK NO. 25 - PAGE 333

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Tomes moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

RESOLUTION NO. 99-167 - RESOLUTION AUTHORIZING THE MAYOR TO APPROVE ISSUANCE OF MULTI-FAMILY HOUSING REVENUE BONDS BY THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE

City Attorney Oast said that this is the consideration of a resolution approving the issuance of revenue bonds by the Housing Authority for the Oak Knoll project

The Housing Authority of the City of Asheville proposes to issue revenue bonds in the amount of $6,444,000 for the acquisition, rehabilitation, and equipping of a low- and moderate-income housing project in the City of Asheville. This project involves the acquisition and rehabilitation of an existing residential rental project currently known as Oak Knoll Apartments, consisting of 180 units located on Future Drive in Asheville.

The project will be acquired by the Silver Street Development Corporation through the Oak Knoll - Asheville Limited Partnership, which will also perform the rehabilitation work. The Housing Authority will use the bond proceeds to provide financial assistance. In a meeting and public hearing held on October 26,1999, the Housing Authority found that the issuance of the bonds would further the Authority's purpose of promoting low- and moderate-income housing in Asheville, found that the developer was financially responsible and capable of fulfilling its debt repayment obligations, if the financing was provided, and that estimated costs of the acquisition and rehabilitation were not excessive. The financing team was also approved.

The bonds being issued are "private activity bonds" under IRS regulations. Essentially, this is a form of financing that allows private entities to engage in public purpose projects, with some of the advantages of tax exempt financing. There are many requirements and limitations in the use of the money derived from bond proceeds. One of the requirements is that the governmental unit having jurisdiction over the area in which the activity occurs must approve the issuance of the bonds, and this approval may only come after a public hearing. According to the Housing Authority's attorney, concurred in by bond counsel and the attorneys for the developer and issue, this public hearing requirement is satisfied by the public hearing held by the Housing Authority, and a separate hearing by the City is not necessary. Our bond counsel has confirmed this, and this is the position of the Local Government Commission.

If City Council wishes to approve issuance of the revenue bonds for the Oak Knoll project, as required by Sec. 147(f) of the Internal Revenue Code, adoption of the resolution is recommended.

Mr. Daniel Breen urged City Council to require the developer put in writing that rates would not be raised and that current employees would not be fired. He stressed that this issue needed more time to be reviewed and the developer should be required to come in and explain exactly what is proposed.

The Manager of the Oak Knoll property stated that they do have concerns about their current positions and that they do not want their tenants to lose their housing.

City Attorney Oast explained what is being approved is rehabilitation work for a housing project that is projected to be low and moderate income. There are certain limitations on the amount of rent that can be charged for a development like this. With regard to the management staff at Oak Knoll, he suggested that the Housing Authority be contacted because they are a separate government entity as far as those things are concerned.

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 99-167. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 335

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO PERMANENTLY CLOSING SPRUCE STREET FROM EAGLE STREET TO SOUTH MARKET STREET

RESOLUTION NO. 99-168 - RESOLUTION TO PERMANENTLY CLOSING SPRUCE STREET FROM EAGLE STREET TO SOUTH MARKET STREET

Vice-Mayor Hay opened the public hearing at 5:17 p.m.

Director of Public Works Mark Combs said that this the consideration of a resolution to permanently close Spruce Street from Eagle Street to South Market Street. The public hearing was advertised on October 15, October 22, October 29 and November 5, 1999.

The petition has been received from Mount Zion Mission Baptist Church, owners of parcels 9648-07-59-0873, 9648-06-49-9911, 8786, and 7794, requesting that South Spruce Street from Eagle Street to South Market Street be permanently closed to public use. Mount Zion Baptist Church believes the closing of the street will help eliminate a public nuisance, help eliminate crime from the area, and enhance overall redevelopment efforts by non-profits in the area.

The Public Works Department staff recommends the resolution to permanently close South Spruce Street from Eagle Street to South Market Street be adopted, with the following retention of easements for the City of Asheville, the Metropolitan Sewerage District, and Carolina Power and Light Company for the full length and width of Spruce Street to be closed for maintenance of existing public utilities and to access to (and maintenance of) an all-weather driving surface as required for Fire Department emergency access and operations.

Mr. Abraham Adams urged City Council to keep the road open in that the road leads to a church. He said that when there is a crowd of people in the area, this is just another way the people can get around without having to wait. He felt that the Sanitation Division should take care of the litter and trash in the area and that the Police Department should take care of drugs and crime. He didn't feel like the road needed to be closed to eliminate those concerns.

Rev. John Grant, representing the Mt. Zion Missionary Baptist Church, presented City Council with a petition containing 218 signatures. Said petition reads "We the undersigned support the closing of S. Spruce Street from 47 Eagle Street to S. Market Street because of illegal activities, urination and defecation happening on and around our property." He said the street is often cluttered with trash, wine and beer bottles, beer cans, brown paper bags, etc. and is frequented by alcoholics, drug addicts, prostitutes and others with arrest records who engage themselves and often urinate and defecate in the area. They feel the closing will help eliminate a public nuisance, will help eliminate crime from the area and will enhance the overall redevelopment efforts by non-profits in the area.

Ms. Willie Mae Brown, representative from the Mt. Zion Development Community Organization, showed Council pictures of the portion of the road requested to be closed, which she felt would easily let City Council know why they are requesting that it be closed. Ms. Brown said that for the past 8-10 years she has been organizing clean-ups in that area and it's shocking to see the amount of litter and the kind of illegal activity in that area. She said that they have clean-ups scheduled four times a year, however, on that stretch of road, it has to be cleaned up at least twice a week.

Councilwoman Field wondered if closing this portion might make it more attractive for crime and other illegal activities. Rev. Grant responded that if the road is closed, they will work even closer with the Police Department to maintain and police the area. He also felt that if they can stop the traffic on the road, then that will significantly help reduce the problem.

Councilman Tomes applauded the Church and other non-profits in the area that have a strong resolve for rehabilitating the area. He also felt that closing the road is a first step in the right direction.

Councilman Cobb felt that this area has great potential for a walkable community in which businesses can locate in which will attract visitors to our City.

Ms. Bonnie Love urged City Council to not close this road. She felt that City Council should not close off a street that leads directly to a church, irregardless of the behavior of the people and irregardless of environmental circumstances. She felt to close this road will be segregating a community that is already segregated.

Vice-Mayor Hay closed the public hearing at 5:37 p.m.

Vice-Mayor Hay said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Tomes moved for the adoption of Resolution No. 99- 168. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 336

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE STANDARDS OF WIRELESS TELECOMMUNICATION FACILITIES

ORDINANCE NO. 2634 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE STANDARDS OF WIRELESS TELECOMMUNICATION FACILITIES

Vice-Mayor Hay opened the public hearing at 5:45 p.m.

Mr. Gerald Green, Senior Planner, said that this is the consideration of an ordinance amending the Unified Development Ordinance with regard to standards for the location of telecommunications facilities in response to issues identified by service providers at the time of adoption of the ordinance. This public hearing was legally advertised on October 29 and November 5, 1999.

When the City Council adopted the Telecommunications Facilities Ordinance in January 1999, the service providers identified six (6) areas of concern with the ordinance. City Council directed staff and the Planning and Zoning Commission to study the identified concerns and to propose appropriate revision to the ordinance, if needed. The Commission and staff spent over two (2) months studying the identified issues, even hiring a telecommunications engineer to provide input on the question of tower height. Based upon this study, the Commission is recommending certain revisions to the ordinance. The revisions are presented with the following goals:

- Promote and facilitate co-location of facilities;
- Enable adequate service to be provided to Asheville's citizens and visitors; and
- Protect and preserve Asheville's scenic beauty.

One of the issues of concern identified by the service providers was the tower height limit of 100 feet. The service providers argued that this height limit would limit the ability to provide adequate service and/or result in a proliferation of towers. After studying this issue closely, the Planning and Zoning Commission is recommending the tower height limit remain at 100 feet. Revisions recommended by the Commission include:

- Permitting existing structures (including non-conforming ones) to be improved or rebuilt at the existing height to accommodate co-located equipment;
- Reducing the buffering requirement for co-located equipment;
- Providing City Council authority to reduce the required setback of a new structure from adjacent residential uses and zones;
- Revising the standards for consideration of electric transmission towers as locations for telecommunications equipment;
- Reducing the maintenance/removal bond amount when the equipment is co-located in an existing equipment shelter; and
- Clarify wording regarding the posting of the maintenance/removal bond.

Representatives of the service providers were involved in the development of the proposed amendments.

The Planning and Zoning Commission voted unanimously to recommend adoption of the proposed amendment. The staff of the Planning and Development Department also recommends adoption of the amendment.

Mr. Green responded to various questions from Council, some being, but are not limited to, is the City going to be able to provide adequate service to the citizens, are we limiting competition, and what is and how big is a search radius.

Councilwoman Field felt that protecting our beauty is very important, but going into the next century with the communications needs, she wanted to be absolutely sure that we are not creating an environment that puts us in a second rate position for the kinds of business and the kinds of economic development that we would like to have here.

Mr. Larry McDevitt, attorney representing Bell Atlantic Mobile, felt that the amendments represent some very positive steps to make the ordinance more workable. He did note, however, that he is working with City staff on two other amendments which deal with the height of the towers and the five year conditional use principle.

Councilman Cloninger felt that the ordinance, with these revisions, achieves the goal of preserving the beauty of our area. In fact, he felt further amendments should not be considered for a while in order to give enough time for the ordinance to be effective.

Vice-Mayor Hay closed the public hearing at 6:00 p.m.

Vice-Mayor Hay said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Tomes moved for the adoption of Ordinance No. 2634. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE

C. PUBLIC HEARING TO AMEND THE CITY'S 1999 CONSOLIDATED ACTION PLAN

RESOLUTION NO. 99-169 - RESOLUTION APPROVING AMENDMENTS TO THE 1999 CONSOLIDATED ACTION PLAN FOR THE HOME AND COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS

ORDINANCE NO. 2635 - BUDGET AMENDMENT IN THE AMOUNT OF $70,000 IN CDBG FUNDS FOR THE MONTFORD GATEWAY PROJECT, $50,000 IN HOME FUNDS FOR HOME RENT ASSISTANCE, AND THE REALLOCATION OF $35,000 IN THE 1997 CDBG GRANT TO MOUNTAIN HOUSING OPPORTUNITIES

ORDINANCE NO. 2636 - BUDGET AMENDMENT IN THE AMOUNT OF $130,000 FROM CDBG FUNDS FOR THE ACQUISITION OF LAND IN WEST ASHEVILLE AND PRE-DEVELOPMENT COSTS

Vice-Mayor Hay opened the public hearing at 6:03 p.m.

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of an amendment to the City's 1999 Consolidated Action Plan so as to recognize the receipt of additional program income and fund three new projects: (1) purchase of land for housing development in West Asheville; (2) a loan guarantee for the Montford Gateway development; and (3) rent assistance for families at risk of homelessness.

Program income generated by our Community Development Block Grant (CDBG) and HOME programs is estimated at the start of each year. Necessarily, these estimates are conservative. We now have a significant accumulation of unallocated program income from prior years in both the CDBG and HOME programs, and are expecting to receive an additional $90,000 from the sale of a small piece of redevelopment land on Asheland Avenue. Information shows that a total of $191,349 in CDBG and $54,551 in HOME funds is now available for allocation to projects.

Although it would be possible to retain these funds for allocation through the annual process in spring 2000, there are three projects which need funding now, outside the normal cycle.

Purchase of land for Housing Development - The Asheville Housing Authority has offered the City an option to buy a 6.8 acre site at the intersection of Virginia Avenue and

Brotherton Avenue in West Asheville. The site is suitable for a Planned Unit Development of 20-30 single family homes to provide home ownership opportunities to low and moderate income families in a setting designed to foster a sense of community. Design features would include: clustered homes joined by footpaths; peripheral on-site parking; commonly-owned play, garden, and green space area; and, if funds allow, a community house for social activities, laundry, etc.

The site has been appraised at $120,000. An allocation of **$130,000 in CDBG** funds is recommended to cover acquisition and pre-development costs.

Montford Gateway Project - In 1998 Neighborhood Housing Services purchased from the City a site at the south end of Montford Avenue for a mixed use development with offices, retail space and apartments. NHS has put together a permanent financing plan incorporating Low Income Housing Tax Credits, a capital advance from Neighborhood Reinvestment Corporation, several foundation grants, a small ($31,250) CDBG grant made in 1998, and a $400,000 bank loan. The bank has required NHS to provide a loan guarantee or reserve amounting to two years of interest on the loan in case the commercial parts of the development are slow to lease. NHS has asked the City to allocate **$70,000 in CDBG** funds for this reserve.

If, as expected, the commercial units are quickly leased, these funds will revert to the City's CDBG fund for re-allocation to other projects through the normal allocation procedure.

HOME Rent Assistance - The State Division of Social Services has announced the availability of $5 million statewide to assist families on welfare or eligible for welfare in securing safe, affordable housing. City, County, DSS, and non-profit agency staff are collaborating to prepare a $400,000 competitive grant application. The lead agency is the Affordable Housing Coalition (AHC). The state grant requires a match of $1 in local funds for every $2 in grant funds. This match would be funds contributed by participating agencies, including CDBG funds already allocated to AHC for rental education and counseling, and HOME funding to be applied directly to rent assistance, which is an eligible HOME activity.

An allocation of **$50,000 in HOME** funds has been requested by the partners in this grant application .

Amendment of 1997 CDBG Grant to Mountain Housing Opportunities - A 1997 CDBG grant made $262,300 available to MHO for infrastructure improvements associated with its housing development in the West End/Clingman Avenue neighborhood. This project has been slow-moving, due in part to the absence of a detailed, site-specific, land-use and design plan for the neighborhood. MHO has requested that $35,000 of the 1997 funding be re-allocated for planning. MHO will also proceed with minor sanitary sewer and storm drain improvements near Rector Street and Park Place. No new funds are required.

The changes amount to a substantial amendment to the City's Consolidated Action Plan for 1999-2000 and require a public hearing before Council approval. Notice of the amendment was given on October 29 and November 5, 1999.

At the City Council worksession on November 3, 1999, City Council requested the following additional information on the Virginia/Brotherton site:

Fire Flow - Asheville's fire code includes "fire flow" requirements for new subdivisions and major projects.

The minimum fire flow requirement for single-family dwellings or townhouses with two-hour fire separations between townhouse units is 500 gallons per minute. Fire flow requirements for all other occupancy types begin at 1000 gallons per minute.

The fire code also provides for a "sprinkler credit"--if a building is equipped with an approved sprinkler system, the fire flow requirement can be cut in half, as long as there is sufficient fire flow to supply the sprinkler system and estimated non-fire water demand.

In the case of sprinkler-equipped single-family dwellings/townhouses, the fire flow requirement would be the flow required to support the sprinkler system and domestic needs, or 250 gallons per minute, whichever is greater.

Water Supply - Virginia Avenue is supplied by a 6-inch cast iron waterline. This 6-inch waterline is connected to an existing 8-inch waterline on Haywood Road and has cross-connecting 6-inch waterlines at Langwell Avenue and Drake Street.

Domestic water service for the entire Virginia Avenue area is excellent. Static pressures range from 120 psi (pounds per square inch) near Haywood Road to near 170 psi at the lower end of Virginia. The additional water demand created by the proposed (20-30) residential units being proposed on Brotherton Avenue will have negligible impact on water service to existing customers in the neighborhood.

Fire flows along Virginia Avenue range from excellent to adequate. Fire flows in excess of 3,000 gallons per minute (gpm) are available on Virginia Avenue at Haywood Road. Hydrant flow tests at the Brotherton/Virginia Avenue intersection have ranged from a low of 460 gpm to a high of 540 gpm. This variation is due to other demands on the water system at the time of the test, but tests on average have been at least 500 gpm. The 540 gpm test was conducted on 11/3/99.

The Water Resources Department is confident that they can provide water service to this proposed development without any negative impact on existing customers in the neighborhood.

Property Values - Twenty-three residential property values closest to the Brotherton Avenue site were assessed using the 1998 taxes. The median value is $62,400 . Staff estimates that current fair market values would be 10-25% higher, depending on the condition of the property, bringing the median value to about $75,000. The homes are generally of modest size, built in the middle years of this century, mostly before the second world war. They appear to be in fair to good condition, but because of their age may have somewhat out-dated plumbing, wiring, and heating systems, or lack some amenities generally found in newer homes, e.g. a second bathroom. The proposed development would create homes of comparable size and similar market position, with values within the range of the existing homes but towards the upper end of the range, because they would be newer.

It is unlikely that the proposed new development would have any significant impact on the values of existing homes in the neighborhood.

Use of Sale Proceeds by the Housing Authority - David Jones, Executive Director of the Housing Authority of the City of Asheville, stated at the November 3 worksession that the Authority will apply the proceeds of sale of the Brotherton Avenue Site to the construction of new public housing on scattered sites ("Project 19"), which is currently under way. He said that this is consistent with instructions he has received from HUD.

Staff recommends amending the 1999 Consolidated Action Plan to include rent assistance in the HOME program, to allocate $200,000 in CDBG funds and $50,000 in HOME funds to the three projects described above, and to re-allocate $35,000 in 1997 CDBG funds from infrastructure improvements to planning in West End/Clingman.

Upon inquiry of Councilman Sellers, Ms. Caplan explained that a planned unit development is a way of arranging the units on a site so that in parts of the site you may exceed the number of units per acre that the site is zoned for, but in other parts of the site you have no buildings - so it evens out. There is a process set out in the Unified Development Ordinance for approval of the site plan.

When Councilman Cobb asked what Ms. Caplan meant by a co-housing development, Ms. Caplan said that the term has nothing to do with communes. It is much more like a condominium than a commune. She said that there are approximately 300 co-housing communities in the United States. She said that the main features are to cluster the housing fairly close, to have footpaths and gardens between the houses, to have common management of the open spaces to encourage community uses of the open spaces, and to have a community building for people to meet. She said the difference between a condominium and a co-housing development would be these community activities and the fact that management of the development is not turned over to a board, but is undertaken equally by the owners. She said that each unit will probably resemble townhouses and will be a normal self-contained house. The owner would own it under normal fee simple deed, in addition to owning a share of the common areas.

When Councilman Cobb noted that under the RS-8 zoning the site is allowed to have up to 50 or more units, Ms. Caplan said that it would be difficult to develop 50-60 units on this site and co-housing development seems to work best with less than 30 homes. She stressed that the City will control how many units are built because the City will be the owner of the land and the site plan will have to be approved by the City too.

Councilwoman Field described some of the following common areas at the Westwood co-housing development: a community building, a workshop area, an area for day care, a garden and orchard, etc.

Mr. Mike Brookshire, Engineer with the Water Resources Department, said that the improvements made was a new 6-inch line on Hudson Street, between State Street and Landwell Avenue. He said that all records and tests indicate that there is also a 6-inch line from Landwell to Brotherton. He said that they were going to dig the waterline up, but when they got there the Water Resources Department crew found two values, one on Brotherton and one just past Brotherton further down the hill on Virginia Avenue. They operated the values and counted the turns, and it is consistent with a 6-inch waterline. He said that to compliment the values that they found, it is physically impossible to flow the amounts of water that we have found on Brotherton through a 2-inch line.

Councilman Sellers noted that the minutes of a 1994 meeting when this site was discussed, the Fire Chief indicated that this area had a 2-inch waterline. The minutes reflect that "if it is a 2-inch line, it would be suitable for domestic purposes, but not for fire flow purposes."

Fire Chief John Rukavina said that at the time the statement was made in 1994, it may have been speculation based on the amount of water flow and information he had at the time from the Water Authority.

Mr. Dick Rice, representing the West Asheville Community League, said that $130,000 for the Housing Authority's 6.8 acres is a per acre price of $19,117; however, since only about four acres are considered buildable, the price per acre is $27,083, which is unreasonable. Mr. Rice said that in the late 1980's or early 1990's the property was purchased by three businessmen who tried for years to sell the property. It was finally sold to the Housing Authority for a price of $64,500 and $9,000 for an additional two acres. He felt that if real estate is so scare and valuable, why haven't developers rushed to buy this property. He said that the 1994 City Council minutes reveal that Mr. Holcombe, former Water Resources Director, and Fire Chief John Rukavina both testified that there is only a 2 inch waterline at the lower end of Virginia Avenue and that the fire flow is inadequate. However, Mr. Brookshire said there is a 6 inch waterline at this location. He felt the waterline needed to be dug up to be sure about it's size. With regard to fire flow, sprinkler systems are worthwhile but they require a lot of water. He felt that the pathways between the housing units will be a breezeway for fire to spread. When the Housing Authority wanted to build on the property back in 1994, the issue was, and still is, safety. He stressed that (1) if the water supply is improved to provide water necessary to protect the number of units proposed to be built, as well as the rest of the neighborhood; (2) if one and two bedroom single-family homes are built according to the RS-8 zoning; and (3) if handicapped people were provided for, then new affordable homeowners would be very welcome in our backyard.

The following individuals spoke against the City purchasing the property on Virginia/Brotherton to build co-housing units for the following reasons: the infrastructure in the area is already overburdened, increased traffic on Virginia Avenue will contribute to the already speeding on that road, the property is not suitable to build houses on, there is presently inadequate water in the area, there are no sidewalks on Virginia Avenue, Virginia Avenue is a narrow road, residents need to see a design of the proposed units, there should be a smaller number of units built and they should become part of the existing neighborhood, I-240 interchange plans may affect the property, 20-30 units are too many for just the two acres of buildable property, and if there is a 6-inch waterline on Virginia Avenue then it is probably very old and rust inside the pipe will restrict the water flow:

Mr. Richard Nantelle, resident on Virginia Avenue
Mr. William Cogburn, resident of the area
Mr. Carlos Montgomery, resident of the area
Mr. Steve Gruber, affordable housing developer
Ms. Lisa Rentis, 32 Virginia Avenue
Ms. Martha M. Gosnell, resident of the area
Ms. Margaret Ballew, resident of the area
Ms. Rebecca Miller, 268 Virginia Avenue
Ms. Kay Cowan, resident of the area

Vice-Mayor Hay closed the public hearing at 7:17 p.m.

Upon inquiry of Councilwoman Field, Fire Chief Rukavina said that the fire flow requirement for a single-family home is 500 gallons per minute and the fire flow for a community center is 1,000 gallons per minute. He noted that if the community center were sprinklered and there was an adequate water supply, there would be a 50% credit for that, so theoretically, that would be 500 gallons per minute.

With regard to traffic, Councilwoman Field felt that Virginia Avenue would be a good candidate for incorporating some of the traffic calming devices. She suggested that the Traffic Engineer report on the street condition.

Councilwoman Field was concerned, as was the rest of City Council, about the whether the waterline on Virginia Avenue is a 2 inch line or a 6 inch line.

Upon inquiry of Councilman Cobb, Mr. Gruber said that 40-50 units could be built on the property under the RS-8 zoning designation. Councilwoman Field also noted that in the Unified

Development Ordinance there are some incentives for building affordable housing that will allow us to increase the density per acre based on the number of affordable units.

Councilman Sellers questioned how close will the I-240 construction come to Virginia Avenue and is the loop to Amboy Road going to take out the Hidden Cove Apartments. Planning & Development Director Scott Shuford said that the I-240 construction has not bee settled and the design has not been set. In fact, we have asked them to look at an alignment there that would move the access roads, in terms of the interchange, a little bit away from this area. However, we do not have an exact alignment, but it will come close.

Councilman Sellers said that he was not comfortable in voting on the land purchase issue with some of the questions raised. He suggested separating that issue from the other three issues (Montford Gateway Project, HOME Rent Assistance and Amendment of the 1997 CDBG grant to Mountain Housing Opportunities) which he was in favor of supporting.

Councilman Cloninger hoped that some of the unresolved issues can be answered so that the City can acquire the property. He felt Council should be specific with the questions they would like to have answered by City staff.

Vice-Mayor Hay has heard the community say that dedicating this site to the creation of affordable housing is a good thing and they favor it. However, they are concerned about what will happen on that property. He noted that there is a long way to go before the City decides what will happen with that property. Some remaining questions are, is the waterline sufficient, is traffic going to be a problem, along with other issues that come up with any development. Until designs and proposals are made and until there has been neighborhood input, City Council will not make any decisions on what will happen to the property. However, the first step is to acquire the property and what is in front of Council today is to take some of some of our federal housing funds and use them to acquire this property and dedicate it to affordable housing. Then we can move forward in designing exactly what we are going to do with it, with neighborhood input. On that basis, he would support the budget amendment to allow the City to purchase the property.

Councilwoman Field agreed with Vice-Mayor Hay, with the caveat that the City Manager be authorized to purchase the property, subject to absolute assurance that the waterline in the area is adequate and that the additional 20-30 units will not have a major impact on Virginia Avenue.

Vice-Mayor Hay agreed that if there is not a 6 inch line in the area and the traffic study shows the additional 20-30 units will increase traffic, then it's inappropriate to build 20-30 units. But, even if there is a 2 inch line, then the City can build what is appropriate for that site, based on what the infrastructure is and what the traffic concerns are and we can get into that as the project is designed.

Councilman Cloninger said then there would be the issue of cost feasibility. If the City is faced with a substantially reduced number of units that can be built, then would the City want to purchase the property for the price that is on the market. He did hope that the City can acquire the property and do a planned unit development, however, he felt some of the questions should be answered before a definite decision is made on acquiring the property.

Councilman Tomes felt that there are two different issues - one is the acquisition of the property and the other is what will be built on the property. Since what will be built on the property (after the unresolved questions have been answered) will have to come back to City Council, then he would be willing to support moving ahead with the acquisition.

Councilman Cobb felt that the unresolved questions should be answered prior to acquiring the property.

Councilman Cloninger suggested that Council vote to set aside $130,000 for the purchase of the land, but not actually close on the purchase of the property, subject to receiving a report from staff that satisfactory responds to the concerns raised by City Council. This way, if it comes to light that it's not feasible to build 20-30 units on the property, the City will not have acquired the property.

City Attorney Oast said that he was not certain of what HUD requirements are, however, he felt City Council could (1) go ahead and approve the entire budgetary request, but not authorize the City Manager to close on the property acquisition until the questions have been answered by a report to City Council; or (2) approve the budgetary amendment, minus the $130,000 for land purchase, and wait until the report from staff on the questions, along with authority for the City Manager to acquire it.

Vice-Mayor Hay said that members of Council have been previously furnished with a copy of the resolution and ordinance and they would not be read.

Councilman Cloninger moved to adopt Resolution No. 99-169, approving amendments to the 1999 Consolidated Action Plan for the HOME and CDBG Programs, with the deletion of $130,000 in CDBG funds for the acquisition of land in West Asheville and pre-development costs for the development of 20-30 single family homes. This motion was seconded by Councilman Sellers and carried unanimously.

Councilwoman Field moved to adopt Ordinance No. 2635, a budget amendment in the amount of $70,000 in CDBG funds for the Montford Gateway Project; $50,000 in HOME funds for HOME Rent Assistance; and the reallocation of $35,000 in the 1997 CDBG grant to Mountain Housing Opportunities. This motion was seconded by Councilman Cloninger and carried unanimously.

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Councilwoman Field moved to adopt Ordinance No. 2636, a budget amendment in the amount of $130,000 from CDBG funds for the acquisition of land in West Asheville and pre-development costs, subject to the City Manager not actually closing on the property pending a report from staff providing City Council with satisfactory answers to concerns raised by City Council about the property and the impact that a project of 20-30 units would have on the surrounding neighborhood. This motion was seconded by Councilman Cloninger and carried on a 4-2 vote with Councilmen Cobb and Sellers voting "no".

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Councilman Cobb felt it would be better to defer action on the land acquisition until all the questions raised by City Council have been satisfactorily answered.

Councilman Cloninger noted that if the questions are not answered to City Council's satisfaction, then the $130,000 will remain in the CDBG budget and appropriated somewhere else.

Councilman Cloninger moved to amend Resolution No. 99-169, to amend the CDBG Action Plan for FY 1999 to appropriate $130,000 in CDBG funds for the acquisition of land in West Asheville and pre-development costs for the development of 20-30 single family homes, provided that authorization for such purchase be considered by City Council following a report by the City Manager which addresses the following issues: (1) verification of waterline size; (2) report from the Traffic Engineer on if the additional 20-30 units will cause a major impact on the service level on Virginia Avenue, including assurance that the City will consider traffic calming devices to address concerns raised by the neighborhood; (3) whether or not the expansion of I-240 would take a piece of the property; (4) adequacy of sewer in the area; and (5) adequacy of water pressure throughout the day, including peak period. This motion was seconded by Councilwoman Field.

Councilwoman Field felt it was important that the City purchase this property and do something with this piece of land, and whether it is exactly what has been described today may not be what happens. However, she doesn't want to purchase the land without knowing that there is adequate water available.

Vice-Mayor Hay again felt the City should proceed with purchasing the property and design something that is appropriate for the area with the current infrastructure. He said he would vote against the motion because he felt these issues will be addressed before the site plan is approved.

Councilman Cobb again stressed that it would be better to defer action on the land acquisition until all the questions raised by City Council have been satisfactorily answered.

The motion made by Councilman Cloninger and seconded by Councilwoman Field failed on a 3-3 vote with Councilwoman Field and Councilmen Cloninger and Tomes voting "yes" and Vice-Mayor Hay and Councilmen Cobb and Sellers voting "no".

Vice-Mayor Hay moved to reconsider the motion made by Councilman Cloninger and seconded by Councilwoman Field. This motion was seconded by Councilman Cloninger and carried on a 4-2 vote, with Councilmen Cobb and Sellers voting "no".

The main motion made by Councilman Cloninger and seconded by Councilwoman Field was reconsidered and carried on a 4-2 vote with Councilmen Cobb and Sellers voting "no".

RESOLUTION BOOK NO. 25 - PAGE 338

D. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW THE PLANNING & DEVELOPMENT DIRECTOR TO APPROVE DEVIATIONS FROM CERTAIN DEVELOPMENT STANDARDS

ORDINANCE NO. 2637 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW THE PLANNING & DEVELOPMENT DIRECTOR TO APPROVE DEVIATIONS FROM CERTAIN DEVELOPMENT STANDARDS

Vice-Mayor Hay opened the public hearing at 7:52 p.m.

Mr. Gerald Green, Senior Planner, said that this is the consideration of amending the Unified Development Ordinance which would create flexible development standards for setbacks, lot area and dimension, and number of parking spaces and would permit structures which comply with design review standards to be exempt from the setback, height, and building floor area requirements of the underlying zoning district. This public hearing was advertised on October 29 and November 5, 1999.

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The Planning and Zoning Commission, at their October 6, 1999, meeting, reviewed and recommended approval of an amendment to the Unified Development Ordinance which would establish Section 7-11-7 to create flexible development standards. These standards would, under certain conditions, permit the Planning and Development Director to relax the existing standards for setbacks, lot area and dimensions, and number of parking spaces. In addition, it would permit structures which comply with design review standards to be exempt from the setback, height, and building floor area requirements of the underlying zoning district. The Planning and Development Director could approve the following relaxations in the existing standards if certain conditions are met:

- Reduction in required setbacks up to 10% or 24 inches, whichever is greater;
- Up to a 25% reduction in the required number of parking spaces; and
- Up to a 10% reduction in lot area or dimension.

In addition, structures which have been reviewed by a qualified design review board and found to comply with the applicable design guidelines would be exempt from the setback, height, and building floor area requirements of the underlying zoning district.

The Asheville Planning and Zoning Commission voted 7-0 to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the amendment.

Vice-Mayor Hay closed the public hearing at 7:56 p.m.

Vice-Mayor Hay said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2637. This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 45

E. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW THE PLANNING & DEVELOPMENT DIRECTOR TO REVIEW AND APPROVE REQUESTS FOR ALTERNATIVE COMPLIANCE TO THE LANDSCAPE REQUIREMENTS

ORDINANCE NO. 2638 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW THE PLANNING & DEVELOPMENT DIRECTOR TO REVIEW AND APPROVE REQUESTS FOR ALTERNATIVE COMPLIANCE TO THE LANDSCAPE REQUIREMENTS

Vice-Mayor Hay opened the public hearing at 7:56 p.m.

Ms. Stacy Merten, Urban Planner, said this is the consideration of an ordinance to allow the Planning and Development Director to review and approve requests for alternative compliance to the landscape requirements. This public hearing was advertised on October 29 and November 5, 1999.

Currently the Unified Development Ordinance (UDO) requires that any request for alternative compliance to the landscaping requirement of Article 11, must be heard by the Technical Review Committee (TRC). Since the adoption of the UDO, all requests for alternative compliance meeting the criteria have been approved by the TRC based on the recommendation of staff and the representative from the Tree/Greenway Commission. Most of these requests have been for Level I projects which are typically reviewed in 5-10 days. Often these projects are unnecessarily delayed when seeking alternative compliance due to the current process of review by the TRC. Staff discussed this wording amendment with the TRC and all agreed that it would be beneficial to amend the UDO.

Planning & Development staff presented this wording amendment to the Planning & Zoning Commission at their October 6, 1999, work session and meeting. The Commission voted unanimously to recommend to City Council the adoption of this wording amendment.

Vice-Mayor Hay closed the public hearing at 7:58 p.m.

Vice-Mayor Hay said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2638. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 49

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of October 22-November 4, 1999: Gene Kelly (Traffic Engineering), Donald Ledford (Traffic Engineering), Steve Parten (Civic Center), John H. Whitmire (Streets), Asheville Smoke (Civic Center), Evelyn Bruhn (Water) and Joe Barlow (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Pack Place Sign

Ms. Nan Davis and Ms. Julie Brandt, representatives of Re-design the Sign, read a statement to City Council objecting to the sign in front of Pack Place. "We were quite surprised when we found out that the sign ordinances DO NOT allow a sign like the one at Pack Place but that City Council approved a wording amendment that allowed this sign to contradict the regulations that were in place. The City Council, in that amendment, gave Pack Place permission to go beyond the limits that had been set for electronic signs and changed the definition of an electronic sign so that Pack Place could have the frantically active, animated sign it now has. Further the Pack Place Board requested another favor and was granted an encroachment agreement from Public Works so they could put the sign out on the sidewalk, with is public property." They feel that Pack Place is a wonderful asset to our City and they are supportive of the museums and their desire to attract attention to their events. Their objection is that this sign does not belong on the square because it is out of character in scale and materials with Pack Square. They are also concerned about the precedent it sets for other businesses that want and need signage. They feel that guidelines for signage should be a part of the first information every business receives when planning to come into the City and they should know that even though compliance is not mandatory, that Asheville is very serious about keeping the historical and small mountain town feeling in our downtown. Since Pack Square is going to be studied and the future of the square considered, they ask that City Council consider removing the sign. In the Pack Place encroachment agreement there is a provision for removal of the Pack Place sign should it come in conflict with any project or program undertaken by the City. They urged City Council to remove the sign so that this area of Pack Place Square can be a part of the total plans being made for renovating the Square. They suggested moving the sign to another location where it could be useful in announcing either events at Pack Place or events going on throughout the City. Perhaps move the sign to somewhere that businesses would want to pay to advertise on it or perhaps it could be sold to a business where its scale, materials and animated lights would be appropriate.

It was the consensus of City Council that the City Attorney to review the encroachment agreement and report back to City Council at a worksession to know what their options are with regard to this sign.

Closed Session

At 8:12 p.m., Councilman Tomes moved to go into closed session to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuit about which the Council expects to receive advice are: CC&J Enterprises, City of Asheville, Jackson Park/Woolsey Neighborhood Association - statutory authorization is contained in G. S. 143-318.11 (a) (3). This motion was seconded by Councilwoman Field and carried unanimously.

At 8:40 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilman Tomes and carried unanimously.

VIII. ADJOURNMENT:

Vice-Mayor Hay adjourned the meeting at 8:40 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - November 16, 1999 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman H. Earl Cobb

CONSENT:

Demolition of 119 Springside Road

Summary: This is the consideration of an ordinance directing the Director of the Building Safety Department to demolish and remove the structure located at 119 Springside Road.

This structure is located in Central Asheville with an address of 119 Springside Road. Over the years, the Building Safety Department has received numerous complaints from neighboring property owners. The structure is a one-story wooden frame house that has been extensively neglected over the years resulting in substantial deterioration and dilapidation. The Code Enforcement Officer's efforts to eliminate this nuisance has been frustrated by the inability to locate the current owner and a lack of knowledge of the whereabouts of the record owner. After requesting assistance from the Legal staff in the fall of 1999 and receiving same in October of 1999, notice to the Owner was published and a hearing was conducted before the Director Designee on October 21, 1999.

Subsequent to the October 21, 1999, hearing , the Housing Code Coordinator was contacted by the Owner, Nancy E. M. Harmon. Ms. Harmon informed the Housing Code Coordinator that she was in complete agreement that the structure located at 119 Springside Road should be demolished. Ms. Harmon came to the Complaint Notice of Hearing and signed the consent to demolish and wavier of notice. Ms. Harmon stated that she was not financially able to cause the structure to be demolished and removed. Ms Harmon stated that she had no problem with the City immediately proceeding with the demolition of the structure. Ms. Harmon, who is a widow, has executed appropriate forms to allow the City to dispense with all further procedures required by law to protect the interest of the property owners. Ms. Harmon desires for the City to immediately proceed with the demolition and removal of the structure and to place a lien against the property for the cost of the demolition.

General information:

- Fair market value of house is $55,300.00 (disputed).
- Value to rebuild the house only is $87,594.00.
- Land value without the house is $13,100.00.
- Estimated cost to demolish is $4,000.00.

Funds to demolish and remove the structure are available in the Building Safety Department.

The Building Safety Director recommends adoption of an ordinance directing the demolition of 119 Springside Road.

Municipal Agreement for Inspection of Bridges

Summary: The consideration of a resolution authorizing the Mayor to enter into a municipal agreement with the N.C. Department of Transportation (NC DOT) on a bi-annual basis for the reinspection of bridges on the Municipal Street System.

In 1983 the Federal Highway Administration developed the Federal Off-System Bridge Replacement Program. Since the establishment of the program, the City has replaced 17 bridges through the program. The program is funded 80% through federal funds and 20% through City funds and administered by the NC DOT. To remain eligible for replacement funds and avoid penalties, it is required that all public bridges are inspected every two years. The NC DOT offers three options for meeting the bi-annual inspection requirements. One is to do the inspection with City forces; two is for the City to hire a consultant to do the inspections; three is for the City to allow the Department of Transportation to do the inspections through a qualified private engineering firm.

Since 1983, the City has elected to execute an agreement with NC DOT to accomplish the required inspection through their personnel or engineering consultants. This process allows high numbers of bridges to be inspected under one contract or operation, and therefore, results in minimum inspection cost per bridge. NC DOT representatives anticipate the inspection costs to be $2,000 per bridge for the upcoming inspection. The City has 25 bridges in need of inspection this year which would bring the cost to $50,000. The City's share of 20% is $10,000. Funds for the City's share are budgeted in the Public Work's Bridge Maintenance line item.

The Public Works Department staff recommends adoption of the resolution authorizing the Mayor to execute a municipal agreement with the NC DOT for inspection of bridges on the Municipal Street System.

Grant Application to State for Funds to Purchase Van for Transporting Older Adults, etc., to Parks and Recreation Activities

Summary: The consideration of a resolution authorizing the City Manager to apply for and enter into an agreement with the N. C. Department of Health and Human Services to fund the purchase of a 15 passenger van.

Funds are available through the N. C. Department of Health and Human Services in the Human Services Grant Program to benefit older adults, adults with disabilities, at-risk children, and youth and families. The City of Asheville wishes to apply for funding to purchase a 15 passenger van to assist in transporting participants in all four categories to and from recreation program sites.

The lack of transportation is one of the primary barriers that prevent most people in the category groups from benefiting from the services of Asheville Parks and Recreation. The van will be used in conjunction with existing vans and other transportation services to assist in providing transportation to approximately 1180 participants per week from all four categories, a 64% increase over the current level of service. Existing staff holding a current North Carolina license will operate the vehicle.

The grant will provide 100% of the project costs, with no match required by the City of Asheville.

The Parks and Recreation Department recommends the City of Asheville to apply for the grant funds through the N. C. Department of Health and Human Services in the Human Services Grant Program to purchase a 15 passenger van.

Budget Amendment re: Legal Services

Summary: The consideration of a budget amendment to increase appropriated fund balance by $45,000 to cover outside legal counsel expenses including the billboard defense lawsuit.

For Fiscal Year 1999-2000, the Legal Services Division budget for general outside legal counsel was $24,000. There was no separate appropriation established for the billboard lawsuit defense.

During the current fiscal year, the Legal Services Division paid approximately $16,500 to the Charlotte law firm of Horack, Talley, Pharr & Lowndes for billboard lawsuit expenses using funds from its general outside legal counsel budget. In addition, Legal Services has paid approximately $4,031 in general outside legal counsel expenses. Approximately $3,468 remains in the outside legal counsel budget.

Currently there is a payment due in the amount of $19,500 for the billboard defense. The Charlotte law firm anticipates an additional $6,000 in billboard expenses for the remainder of the year. To cover the remaining billboard expenses, Legal Services is requesting an appropriation in the amount of $45,000 from fund balance. The balance left from this appropriation will be used to replenish the general outside counsel budget for the remainder of the year.

City staff recommends City Council appropriate $45,000 from fund balance to cover remaining billboard expenses and the replenish the general outside legal counsel budget.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

REGIONAL WATER AUTHORITY'S SEMI-ANNUAL REPORT

Water Resources Director Tom Frederick summarized the of the activities of the Water Resources Department and the Regional Water Authority for Fiscal Year 1998-99. He reported on several of their programs within the last year, including (1) activities and accomplishments in demand management corresponding to the drought within the past year; (2) update on the Pipeline Replacement Program and the Mills River Water Treatment Plant construction; (3) development of a Critical Needs List for the Water Distribution System; (4) successful award of over $3.5 million in grants for both water distribution system improvements and Mills River watershed protection; (5) performance of the divisions of the Department; and (6) budget highlights from Fiscal Year 1998-99.

The annual report has traditionally served as one of the two semi-annual reports from the Water Authority to the City Council as prescribed by Article IV, Section D of the Water Agreement. A memorandum to City Council is planned in the spring and will serve as the second report.

Mr. Frederick responded to several questions and comments raised by City Council, some being, but are not limited to: why water rates are raised and what that additional revenue is used for, how much of the 21 million gallons per day is coming from the new Mills River Plant, what is the status of the conservation program, will there be funds available in the near future to

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

HAW CREEK VOLUNTEER FIRE DEPARTMENT AMENDED AGREEMENT

Fire Chief John Rukavina said that this is the consideration of a resolution authorizing the City Manager to enter into an amended agreement with the Haw Creek Volunteer Fire Department, Inc. for a one-year period.

In 1988, the City of Asheville and the Haw Creek Volunteer Fire Department, Inc. entered into a five-year fire protection agreement in connection with the City's annexation of part of the Haw Creek Fire Department's fire district, pursuant to N.C.G.S. 160A-49.1. In 1991, that contract was amended (again, in connection with an annexation). In December of 1997, the contract was extended for a two-year period; this extension was not required by N.C.G.S. 160A-49.1, but the City Council and Haw Creek's Board of Directors agreed that there were benefits to extending the contract, and providing limited continuing direct payments.

City staff and Haw Creek representatives have been working to negotiate a continuing agreement, because the Haw Creek Volunteer Fire Department depends on continuing City response to the Chunn's Cove area for fire insurance rating (and, thus, fire tax) credits. The recommended contract amendments include this continuing service, but end direct payments to Haw Creek.

The Fire Chief recommends City Council adoption of a resolution authorizing the City Manager to enter into the amended agreement with the Haw Creek Volunteer Fire Department, Inc. for a one-year period.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ABC INVESTIGATION - 55 SOUTH MARKET STREET

City Attorney Oast said that this is the consideration of a resolution requesting the N.C. Alcoholic Beverage Control Commission to investigate alcohol sales at 55 South Market Street, known as Jones Convenience Store.

In July of this year, the North Carolina General Assembly adopted Session Law 1999-312, amending G.S. 18B-309 of the ABC law. The new law was effective on October 1. The amendment provides that certain types of businesses that hold ABC permits and are located in designated urban redevelopment areas may not have alcoholic beverages sales in excess of 50% of the total annual sales of the business. The types of businesses covered by this provision include retail businesses as defined in G.S. 18B-1000(7), which includes the convenience store at 55 South Market. The new law further provides that the ABC Commission "shall suspend or revoke a permit issued by it if the permitee is in violation of [the new law]."

In order to invoke this investigation or audit by the ABC Commission, the law requires that the City Council of the affected municipality request it.

If Council wishes request an audit of Jones Convenience Store at 55 South Market Street, adoption of the resolution is recommended.

Vice-Mayor Hay was concerned if would be limiting the other kinds of new businesses that might want to relocate in the area. City Attorney Oast said that what the law addresses is establishments that are essentially off-premise types of businesses which the convenience store improve the facility of South Charlotte Street, are discussions underway with the Town of Woodfin, how do our water rates compare with other communities not in North Carolina but of similar size, and what is the percentage of the revenues from residential and non-residential users.

Discussion surrounded the legislation which requires the City pay for the relocation of water lines for NC DOT projects. Mr. Frederick noted that our present obligation this year is $259,000 and next year it is anticipated that the costs will be over $1 Million.

Mr. Frederick said that because of the result of the successful water conservation campaign, based on data they have observed, they do not project that they will realize the revenues in the current year that were assumed when they adopted a $20.6 million budget. They are now projecting their revenues to be just over $19 million this year.

City Manger Westbrook said that the City really needs to sell water. He said that we have had some plant closings in the textile and related industries, as part of a national trend, and they will be replaced with knowledge based industry that will probably use less water.

Councilman Cloninger felt as part of the conservation evaluation, the Water Authority should look again at a rate structure of major water users vs. residential users.

FINANCING PURCHASE OF A FIRE TRUCK AND TRASH CANS

Finance Director Bill Schaefer said that this is the consideration of a resolution authorizing the installment financing of one fire truck and 4,000 trash cans and the associated budget revisions.

The City of Asheville Capital Improvement Budget includes authorization in FY 99/00 for the lease purchase of a pumper fire truck ($195,574.00) and 4,000 trash cans ($163,656.25) which are to be used in conjunction with two specialized auto-reach sanitation trucks in a pilot program.

The Finance Department sought proposals from 31 firms to finance the purchase of the pumper and trash cans. Proposals were received from twelve firms, the best of which was submitted by Crestar Leasing Corporation - - 4.951% interest for ten years (amortization of the trash cans portion will extend over a five-year period while the pumper will extend to ten years).

The proposed resolution authorizes an installment purchase contract between the City of Asheville and Crestar Leasing Corporation for the purchase of the pumper and trash cans and authorizes the City Manager to execute and deliver any and all necessary documents.

Financing for the two auto-reach sanitation trucks in the pilot program, along with a Fire Department severe service vehicle, in the amount of $495,000.00, was awarded to Wachovia Leasing Corp. in December 1998. Proceeds from that financing have been held in escrow pending delivery of the vehicles. Since payment for the vehicles is not made until delivery to and acceptance by the City, the $495,000 remained in fund balance as of the end of FY '99. Due to the delay in delivery, it is now necessary to adopt a FY 1999-2000 budget amendment which appropriates lease purchase proceeds currently held in fund balance in order to complete the purchase of the auto-reach sanitation trucks and the severe service vehicle. Delivery of the vehicles is expected within the next forty-five days.

City staff recommends City Council adopt the resolution authorizing the installment financing of one fire truck and 4,000 trash cans and the associated budget revisions.

is. To the extent that an on-premise establishments were to locate in the redevelopment area and their primary business is dispensing alcoholic beverages, then he didn't think this requirement would affect them. This just applies to certain kinds of retail establishment.

Some discussion occurred about whether the City should request an audit of any business in that small redevelopment area. City Attorney Oast said that he thought the convenience store is the only off-premise establishment in the redevelopment area.

At the request of Councilman Cloninger, City Attorney Oast said that he would find out how many ABC permits have been issued in that redevelopment area.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REPORTS ON BOARDS & COMMISSIONS

Vice-Mayor Hay gave an update on the vacancies on the Downtown Commission, the Board of Adjustment and the Transit Commission.

Councilwoman Field requested to be the liaison to the newly created Public Art Board.

OTHER ITEMS

Mayor Sitnick stated that City Council is dedicated and committed to finding remedies for the aging Civic Center. She felt that we should reach out to all who use the Civic Center, including Buncombe County, tourists, regional visitors, etc. to help pay for the costs to fix the Civic Center and not rely on the Asheville taxpayers to pay for it all. She urged the fans to continue their energetic support of the Asheville Smoke team and the management of Asheville Smoke.

Vice-Mayor Hay stressed the serious need to proceed with plans regarding the Civic Center. A feasibility report with regard to the Civic Center should be forthcoming to City Council in the very near future.

Councilwoman Field asked for an estimate and breakdown of costs on what the total would be to fix the Civic Center. She asked that this information be discussed at the upcoming City Council Retreat.

ADJOURNMENT

Mayor Sitnick adjourned the meeting at 4:58 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - November 23, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Vice-Mayor Hay gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 9, 1999, AND THE WORKSESSION HELD ON NOVEMBER 16, 1999

B. RESOLUTION NO. 99-170 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR INSPECTION OF BRIDGES

Summary: The consideration of a resolution authorizing the Mayor to enter into a municipal agreement with the N.C. Department of Transportation (NC DOT) on a bi-annual basis for the reinspection of bridges on the Municipal Street System.

In 1983 the Federal Highway Administration developed the Federal Off-System Bridge Replacement Program. Since the establishment of the program, the City has replaced 17 bridges through the program. The program is funded 80% through federal funds and 20% through City funds and administered by the NC DOT. To remain eligible for replacement funds and avoid penalties, it is required that all public bridges are inspected every two years. The NC DOT offers three options for meeting the bi-annual inspection requirements. One is to do the inspection with City forces; two is for the City to hire a consultant to do the inspections; three is for the City to allow the Department of Transportation to do the inspections through a qualified private engineering firm.

Since 1983, the City has elected to execute an agreement with NC DOT to accomplish the required inspection through their personnel or engineering consultants. This process allows high numbers of bridges to be inspected under one contract or operation, and therefore, results in minimum inspection cost per bridge. NC DOT representatives anticipate the inspection costs to be $2,000 per bridge for the upcoming inspection. The City has 25 bridges in need of inspection this year which would bring the cost to $50,000. The City's share of 20% is $10,000. Funds for the City's share are budgeted in the Public Work's Bridge Maintenance line item.

The Public Works Department staff recommends adoption of the resolution authorizing the Mayor to execute a municipal agreement with the NC DOT for inspection of bridges on the Municipal Street System.

RESOLUTION BOOK NO. 25 - PAGE 339

C. RESOLUTION NO. 99-171 - RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR A GRANT FROM THE N.C. DEPT. OF HEALTH AND HUMAN SERVICES TO PURCHASE A VAN TO ASSIST WITH TRANSPORTING OLDER ADULTS, ADULTS WITH DISABILITIES, AT-RISK YOUTH AND FAMILIES TO PARTICIPATE IN PARKS & RECREATION PROGRAMS

Summary: The consideration of a resolution authorizing the City Manager to apply for and enter into an agreement with the N. C. Department of Health and Human Services to fund the purchase of a 15 passenger van.

Funds are available through the N. C. Department of Health and Human Services in the Human Services Grant Program to benefit older adults, adults with disabilities, at-risk children, and youth and families. The City of Asheville wishes to apply for funding to purchase a 15 passenger van to assist in transporting participants in all four categories to and from recreation program sites.

The lack of transportation is one of the primary barriers that prevent most people in the category groups from benefiting from the services of Asheville Parks and Recreation. The van will be used in conjunction with existing vans and other transportation services to assist in providing transportation to approximately 1180 participants per week from all four categories, a 64% increase over the current level of service. Existing staff holding a current North Carolina license will operate the vehicle.

The grant will provide 100% of the project costs, with no match required by the City of Asheville.

The Parks and Recreation Department recommends the City of Asheville to apply for the grant funds through the N. C. Department of Health and Human Services in the Human Services Grant Program to purchase a 15 passenger van.

RESOLUTION BOOK NO. 25 - PAGE 340

D. RESOLUTION NO. 99-172 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AMENDED AGREEMENT WITH THE HAW CREEK VOLUNTEER FIRE DEPARTMENT INC. FOR A ONE-YEAR PERIOD

Summary: the consideration of a resolution authorizing the City Manager to enter into an amended agreement with the Haw Creek Volunteer Fire Department, Inc. for a one-year period.

In 1988, the City of Asheville and the Haw Creek Volunteer Fire Department, Inc. entered into a five-year fire protection agreement in connection with the City's annexation of part of the Haw Creek Fire Department's fire district, pursuant to N.C.G.S. 160A-49.1. In 1991, that contract was amended (again, in connection with an annexation). In December of 1997, the contract was extended for a two-year period; this extension was not required by N.C.G.S. 160A-49.1, but the City Council and Haw Creek's Board of Directors agreed that there were benefits to extending the contract, and providing limited continuing direct payments.

City staff and Haw Creek representatives have been working to negotiate a continuing agreement, because the Haw Creek Volunteer Fire Department depends on continuing City response to the Chunn's Cove area for fire insurance rating (and, thus, fire tax) credits. The recommended contract amendments include this continuing service, but end direct payments to Haw Creek.

The Fire Chief recommends City Council adoption of a resolution authorizing the City Manager to enter into the amended agreement with the Haw Creek Volunteer Fire Department, Inc. for a one-year period.

RESOLUTION BOOK NO. 25 - PAGE 341

E. ORDINANCE NO. 2639 - ORDINANCE TO DEMOLISH 119 SPRINGSIDE ROAD

Summary: This is the consideration of an ordinance directing the Director of the Building Safety Department to demolish and remove the structure located at 119 Springside Road.

This structure is located in Central Asheville with an address of 119 Springside Road. Over the years, the Building Safety Department has received numerous complaints from neighboring property owners. The structure is a one-story wooden frame house that has been extensively neglected over the years resulting in substantial deterioration and dilapidation. The Code Enforcement Officer's efforts to eliminate this nuisance has been frustrated by the inability to locate the current owner and a lack of knowledge of the whereabouts of the record owner. After requesting assistance from the Legal staff in the fall of 1999 and receiving same in October of 1999, notice to the Owner was published and a hearing was conducted before the Director Designee on October 21, 1999.

Subsequent to the October 21, 1999, hearing , the Housing Code Coordinator was contacted by the Owner, Nancy E. M. Harmon. Ms. Harmon informed the Housing Code Coordinator that she was in complete agreement that the structure located at 119 Springside Road should be demolished. Ms. Harmon came to the Complaint Notice of Hearing and signed the consent to demolish and wavier of notice. Ms. Harmon stated that she was not financially able to cause the structure to be demolished and removed. Ms Harmon stated that she had no problem with the City immediately proceeding with the demolition of the structure. Ms. Harmon, who is a widow, has executed appropriate forms to allow the City to dispense with all further procedures required by law to protect the interest of the property owners. Ms. Harmon desires for the City to immediately proceed with the demolition and removal of the structure and to place a lien against the property for the cost of the demolition.

General information:

- Fair market value of house is $55,300.00 (disputed).
- Value to rebuild the house only is $87,594.00.
- Land value without the house is $13,100.00.
- Estimated cost to demolish is $4,000.00.

Funds to demolish and remove the structure are available in the Building Safety Department.

The Building Safety Director recommends adoption of an ordinance directing the demolition of 119 Springside Road.

ORDINANCE BOOK NO. 18 - PAGE 52

F. RESOLUTION NO. 99-173 - RESOLUTION FIXING DATE OF PUBLIC HEARING ON DECEMBER 7, 1999, ON THE QUESTION OF THE VOLUNTARY ANNEXATION OF CONTIGUOUS PROPERTY LOCATED WEST OF OVERLOOK ROAD AND IDENTIFIED AS BURNSIDE PHASE III AT BILTMORE PARK

RESOLUTION BOOK NO. 25 - PAGE 342

G. RESOLUTION NO. 99-174 - RESOLUTION AUTHORIZING AN INSTALLMENT PURCHASE CONTRACT BETWEEN CRESTAR LEASING CORPORATION AND THE CITY OF ASHEVILLE TO FINANCE THE ACQUISITION OF A FIRE TRUCK AND 4,000 TRASH CANS

Summary: The consideration of a resolution authorizing the installment financing of one fire truck and 4,000 trash cans and the associated budget revisions.

The City of Asheville Capital Improvement Budget includes authorization in FY 99/00 for the lease purchase of a pumper fire truck ($195,574.00) and 4,000 trash cans ($163,656.25) which are to be used in conjunction with two specialized auto-reach sanitation trucks in a pilot program.

The Finance Department sought proposals from 31 firms to finance the purchase of the pumper and trash cans. Proposals were received from twelve firms, the best of which was submitted by Crestar Leasing Corporation - - 4.951% interest for ten years (amortization of the trash cans portion will extend over a five-year period while the pumper will extend to ten years).

The proposed resolution authorizes an installment purchase contract between the City of Asheville and Crestar Leasing Corporation for the purchase of the pumper and trash cans and authorizes the City Manager to execute and deliver any and all necessary documents.

Financing for the two auto-reach sanitation trucks in the pilot program, along with a Fire Department severe service vehicle, in the amount of $495,000.00, was awarded to Wachovia Leasing Corp. in December 1998. Proceeds from that financing have been held in escrow pending delivery of the vehicles. Since payment for the vehicles is not made until delivery to and acceptance by the City, the $495,000 remained in fund balance as of the end of FY '99. Due to the delay in delivery, it is now necessary to adopt a FY 1999-2000 budget amendment which appropriates lease purchase proceeds currently held in fund balance in order to complete the purchase of the auto-reach sanitation trucks and the severe service vehicle. Delivery of the vehicles is expected within the next forty-five days.

City staff recommends City Council adopt the resolution authorizing the installment financing of one fire truck and 4,000 trash cans and the associated budget revisions.

RESOLUTION BOOK NO. 25 - PAGE 344

H. ORDINANCE NO. 2640 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR THE FINANCING PURCHASE OF A PUMPER FIRE TRUCK

Summary: See Consent Agenda Item "G" above.

ORDINANCE BOOK NO. 18 - PAGE 57

I. ORDINANCE NO. 2641 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR THE FINANCING PURCHASE OF 4,000 TRASH CANS WHICH ARE TO BE USED IN CONJUNCTION WITH THE TWO SPECIALIZED AUTO-REACH SANITATION TRUCKS

Summary: See Consent Agenda Item "G" above.

ORDINANCE BOOK NO. 18 - PAGE 59

J. ORDINANCE NO. 2642 - BUDGET AMENDMENT TO AUTHORIZE DISBURSEMENT OF PROCEEDS OF DECEMBER 29, 1998, INSTALLMENT PURCHASE CONTRACT

Summary: See Consent Agenda Item "G" above.

ORDINANCE BOOK NO. 18 - PAGE 61

K. ORDINANCE NO. 2643 - BUDGET AMENDMENT TO COVER OUTSIDE LEGAL COUNSEL EXPENSES INCLUDING THE BILLBOARD DEFENSE LAWSUIT

Summary: The consideration of a budget amendment to increase appropriated fund balance by $45,000 to cover outside legal counsel expenses including the billboard defense lawsuit.

For Fiscal Year 1999-2000, the Legal Services Division budget for general outside legal counsel was $24,000. There was no separate appropriation established for the billboard lawsuit defense.

During the current fiscal year, the Legal Services Division paid approximately $16,500 to the Charlotte law firm of Horack, Talley, Pharr & Lowndes for billboard lawsuit expenses using funds from its general outside legal counsel budget. In addition, Legal Services has paid approximately $4,031 in general outside legal counsel expenses. Approximately $3,468 remains in the outside legal counsel budget.

Currently there is a payment due in the amount of $19,500 for the billboard defense. The Charlotte law firm anticipates an additional $6,000 in billboard expenses for the remainder of the year. To cover the remaining billboard expenses, Legal Services is requesting an appropriation in the amount of $45,000 from fund balance. The balance left from this appropriation will be used to replenish the general outside counsel budget for the remainder of the year.

City staff recommends City Council appropriate $45,000 from fund balance to cover remaining billboard expenses and the replenish the general outside legal counsel budget.

ORDINANCE BOOK NO. 18 - PAGE 63

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Tomes moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR A TELECOMMUNICATIONS TOWER AT 200 TUNNEL ROAD

Mayor Sitnick said that this public hearing was opened on September 28, 1999, and continued until this date.

On September 28, 1999, City Council considered the request for a Conditional Use Permit for a new telecommunications tower at 200 Tunnel Road (Kenilworth Knoll Drive behind Asheville Assisted Housing), and the matter was continued until November 23, 1999, in order to provide additional time for City Council to review the information.

Since the date of the first hearing, staff engaged a consultant to aid in the review of the application. The consultant is Paul Rosa of Digital Landscapes. The consultant's fees will be paid by the applicant, American Tower Corporation, as provided in the Unified Development Ordinance (UDO).

The consultant recommended that City staff require the applicant to conduct a crane or balloon test at the site to simulate the height of the tower as provided in the UDO. Planning staff concurred and sent a letter to American Tower requesting the balloon test.

The balloon test requires advance notice of property owners and could not be conducted prior to the November 23rd public hearing on this matter. For this reason, American Tower has requested a one-month continuance of the public hearing.

As requested by American Tower, a continuance will allow American Tower to conduct the balloon test, and further investigate the possibility of co-locating on the existing BellSouth tower located at the Sports Club of Asheville. A continuance will also allow the City's consultant, Paul Rosa, additional time to review the application.

City staff recommends that City Council continue the public hearing on this matter until December 21, 1999.

Councilwoman Field moved to continue the public hearing until December 21, 1999. This motion was seconded by Councilman Tomes and carried unanimously.

IV. UNFINISHED BUSINESS:

A. REPORT REGARDING PURCHASE OF LAND AT BROTHERTON AND VIRGINIA AVENUES

RESOLUTION NO. 99-175 - RESOLUTION AUTHORIZING THE CITY MANAGER TO PROCEED WITH THE PURCHASE OF THE 7.3 ACRE TRACK OF LAND AT THE INTERSECTION OF BROTHERTON AND VIRGINIA AVENUES FROM THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE

Planning & Development Director Scott Shuford said this is additional information on the issues raised at the November 9, 1999, public hearing regarding City Council's consideration of the purchase of land at Brotherton and Virginia Avenues.

At the November 9 meeting, City Council requested follow-up on four questions in advance of authorizing purchase of a 7.3 acre site from the Housing Authority for the appraised value of $120,000. Planning staff has notified surrounding property owners regarding Council's continued consideration of this matter on November 23, as well as all those who have spoken or participated in public meetings on this proposal. On November 22, the Planning staff met with representatives of the neighborhood to share these findings with them in advance of the Council meeting.

1. **What size water main serves the site and does it provide adequate water pressure and fire flow for future site development?**

City staff exposed the water main on Brotherton Avenue at both ends of the street; at both locations it measured six inches in diameter. Additionally, a pressure check and flow test were performed on November 15 at 8:04 p.m. indicating water pressure in this line at 160 psi and fire flow at 520 gallons per minute with a residual pressure of 20 psi or greater. This is consistent with the previous tests. The water pressure is high enough that residential plumbing should be equipped with a pressure reducing valve; both the water pressure and the fire flow are sufficient for the proposed single family or town house construction.

If a community center or common house is included in the site design, it would require either a fire flow of 1000 gallons per minute or a supplementary fire suppression system for that building alone, e.g. sprinklers.

2. **Is sewer service adequate for future site development?**

MSD has responded orally that allocation of wastewater service would be conditional on the replacement of 600-700 feet of six-inch clay piping by a larger plastic pipe, starting from the manhole in the ravine on the east side of the property. The cost would be $30,000-40,000 to be shared between MSD and the site developer.

3. **What effect will the proposed I-240 widening have on this property?**

Under the most invasive scenario, a small corner of the property (which is proposed to remain undeveloped under any conceptual development plan) would be taken (with appropriate compensation) to accommodate a free-flow interchange with Amboy Road. Over a month ago, City staff asked the N. C. Dept. of Transportation (NC DOT) to examine another, less expensive and less land-intensive alternative design that will allow the site to remain untouched. The NC DOT has asked its design consultant to study this alternative.

By use of a map, Mr. Shuford illustrated the options. He noted that in neither case will development of the property, as we have proposed, be precluded.

4. **What is the traffic impact of the proposed development and will it significantly impact service levels on Virginia Avenue and surrounding roadways?**

Traffic counts performed on November 12-15, 1999, show that Virginia Avenue carries up to 1700 vehicles a day near the intersection with Haywood Road, at an average speed of about 26 mph. Single family development generates around ten one-way trips (or five round-trips) per day per unit. If developed to its maximum zoned density of 58 single family units, roughly 600 additional one-way trips per day would be generated from the property. Under development concepts being entertained by the City, no more than 30 units would be constructed, accounting for not more than 300 one-way trips per day. Both the existing and likely future traffic levels are within the physical capacity of the street, although any traffic increase would have an impact on the "livability" of the street.

Additionally, Virginia is a candidate for traffic calming analysis, although its traffic volume, speeds, and other characteristics would likely not put it as a high priority for the list of traffic calming projects to be undertaken by the City.

In addition to the above four questions posed by Council, staff felt it appropriate to address two more issues that have been raised by the public.

5. **Why have other providers of affordable housing not shown an interest in this site?**

First, the site was not offered to other providers: The Housing Authority approached the City first. Second, the site is not ideally situated for low income rental housing - a primary focus of many of the local providers - due to its distance from public transportation and other services used by low income persons (please note: our proposal is for housing primarily for moderate income home-buyers). Third, the site's limited street frontage requires infrastructure improvements or alternative site design that differs from the standard product offered by providers of single family housing. Fourth, each provider has its own priorities and work program; they are not easily able to acquire and "bank" sites for future development. Fifth, there have been technical development questions about this property that have not been answered until now.

6. **What are the plans for developing this site?**

Our plans are for a moderate income, single-family, ownership development. We have suggested a co-housing type development as it offers an opportunity to minimize infrastructure costs, preserve more of the existing tree canopy, and create a site design pattern that promotes community involvement, but a more traditional development pattern can be considered as well. By use of a map, Mr. Shuford illustrated how the site could be built under a traditional subdivision pattern as well as how a co-housing project could fit on the site. He noted that these are only conceptual sketches, not proposed site plans. He said that the City intends to develop the site in partnership with a non-profit or for-profit developer and an association of prospective homebuyers.

In summary, Planning and Development staff feels the Brotherton site offers an excellent opportunity to address an affordable housing need in a neighborhood that has expressed a willingness to accept such a project if technical concerns were met. The Planning staff does believe those technical issues have been addressed in this report.

Staff recommends that the City Manager be authorized to proceed with the purchase of the site at the price of $120,000.

Upon inquiry of Mayor Sitnick, Mr. Shuford confirmed that City Council is only voting on the purchase of the property at this time. He said that City Council will have future opportunities to have input, as will the community, in the ultimate development pattern of the property.

Upon inquiry of Vice-Mayor Hay, Community Development Director Charlotte Caplan said that once the City purchases the land, then the City can go out and seek a development partner and start recruiting potential homeowners. She noted that this is consistent with the Housing Action Plan.

Upon inquiry of Councilman Cobb, Ms. Caplan said that if the City partners with a for-profit, the City would require that the value of the road, sewer, etc. improvements be passed onto the home-buyer, probably in the form of a no-cost or low-cost second mortgage. The developer would take a profit solely on the construction of the houses.

Mr. Richard Nantelle hoped that City Council would take the initiative to alleviate the speeding problems on Virginia Avenue.

Mr. William Cogburn, retired firefighter and area resident, noted that it doesn't matter what size the waterline is in the area, but how much water can get through the line. He felt that co-housing is not a good use for the area. He hoped that the Council would not authorize a big building on the property with the water supply being what it is. He said that he would welcome some individual homes, but the area will require some improvements.

Ms. Beth Maczka, representing the Affordable Housing Coalition, encouraged City Council to vote in favor of the purchase of this land and asked that as Council is faced with this challenge in the future to continue to not let the infrastructure be a problem. She hoped Council would do all that they can to encourage the Water Authority and MSD to make the infrastructure work so that these concerns can be addressed.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities, spoke to the issue of the appropriateness of the site for residential development and for moderate income housing.

Ms. Charlotte Caplan responded to a concern from Ms. Lila Rentis, 32 Virginia Avenue, about the affordability of the houses. She explained that there are many ways to structure such a development so as to ensure affordability. The price that a low or moderate income person pays for a home in terms of what they have to get a mortgage for and the value of the home can be different.

At the request of Councilwoman Field, Ms. Caplan explained the HUD definition of low and moderate income.

Vice-Mayor Hay was encouraged on how the neighborhood and City staff worked together on the issues raised.

Councilwoman Field felt that it was important that the City proceed with this project, but more important that the City work together with the community to come up with a plan acceptable to that community.

Councilman Cobb noted that he voted against the purchase of the land at the November 9 meeting because of the unanswered questions. However, after hearing the responses by Mr. Shuford, he felt it would be a good chance for home-owners to purchase affordable housing.

Councilwoman Field moved to adopt Resolution No. 99-175 which authorizes the City Manager to proceed with the purchase of the 7.3 acre tract of land at the intersection of Brotherton and Virginia Avenues from the Housing Authority of the City of Asheville and to execute any documents necessary to effectuate this purchase, subject to budgetary limitations. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 346

V. NEW BUSINESS:

A. RESOLUTION REQUESTING THE NORTH CAROLINA ABC COMMISSION TO AUDIT THE ALCOHOL SALES PERCENTAGE OF JONES CONVENIENCE STORE AT 55 SOUTH MARKET STREET

City Attorney Oast said that this is the consideration of a resolution requesting the N.C. Alcoholic Beverage Control Commission to investigate alcohol sales at 55 South Market Street, known as Jones Convenience Store.

In July of this year, the North Carolina General Assembly adopted Session Law 1999-312, amending G.S. 18B-309 of the ABC law. The new law was effective on October 1. The amendment provides that certain types of businesses that hold ABC permits and are located in designated urban redevelopment areas may not have alcoholic beverages sales in excess of 50% of the total annual sales of the business. The types of businesses covered by this provision include retail businesses as defined in G.S. 18B-1000(7), which includes the convenience store at 55 South Market. The new law further provides that the ABC Commission "shall suspend or revoke a permit issued by it if the permitee is in violation of [the new law]."

In order to invoke this investigation or audit by the ABC Commission, the law requires that the City Council of the affected municipality request it.

If Council wishes request an audit of Jones Convenience Store at 55 South Market Street, adoption of the resolution is recommended.

At the request of Councilwoman Field, City Attorney Oast gave a brief history of the concerns associated with this property.

Mr. John Hayes felt that since the City has a commitment for economic empowerment, then City staff should meet with Mr. Jones, along with others, and find a way to let him continue his business and do what is necessary so that he can be a part of the economic growth in this area.

Mr. Samuel Camp felt that the City is singling out Mr. Jones for the audit. He agreed with Mr. Hayes in that the City should sit down and talk with Mr. Jones and perhaps see if the City can purchase his property.

City Attorney Oast said that the requirement applies whether the City asks for an audit or not. If the business is in a redevelopment area and it is an ABC permitted convenience store, then you have to have non-alcoholic sales volume of at least 50%. We are only asking for that to be audited. He said that the City is not trying to put anyone out of business, we are only asking for the ABC Commission, which is the governmental body charged with administering the ABC laws, to make sure they are complied with. He did note that it can result in revocation of the permit.

Councilman Tomes said that since he is a firm believer of collaborative partnerships, and since there seems to be a willingness to try to create that kind of positive dialogue with Mr. Hayes, Mr. Camp, Mr. Jones and City staff, then he would be amenable to letting that dialogue take place with hopefully some positive results.

City Attorney Oast noted that there is no deadline for asking for the audit and that City Council can ask for the audit anytime. He did note that there is a pending contested case proceeding initiated by the ABC Commission to suspend or revoke the ABC permits of the convenience store and that will be heard by the ABC Commission on December 3.

Councilman Tomes asked how would the December 3 hearing by the ABC Commission impact the recommendation before City Council. City Attorney Oast responded that the December 3 hearing could also result in the suspension or revocation of the ABC permits. He said that it is for a different type of alleged violation, having to do with the suitability of the neighborhood.

When Councilman Cloninger suggested that City Council wait to see what happens at the December 3 hearing, City Attorney Oast said that we would know the outcome of that hearing by the first of the year.

City Attorney Oast said that his office and the Community Development office are willing to work with Mr. Jones or anyone who wants to be part of the recovery in the area.

Vice-Mayor Hay said that the City has been struggling with this for several years with the urging of the police and the urging of the other stakeholders down in the Eagle/Market Street area. He said that if Mr. Hayes and Mr. Camp think there is an opportunity to resolve some issues, then he suggests they sit down and get working with Mr. Jones and the City Attorney. He said now is the time to make something happen because the City hasn't been able to.

Councilwoman Field noted that there has been several attempts to work with members of the community, other non-profits and other organizations to purchase the property. However, if the City is involved, they cannot pay more than the appraised value and it is her understanding that the amount of money that has been asked for by Mr. Jones is considerably higher than the appraised value.

Councilman Tomes moved to table this matter pending the outcome of the December 3 ruling. This motion was seconded by Councilman Cobb and carried unanimously.

B. RESOLUTION NO. 99-176 - RESOLUTION APPOINTING A MEMBER TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Vice-Mayor Morris said that the term of Ralph Morris, as a member on the ABC Board, expired on November 13, 1999. This resolution will reappoint Mr. Morris to serve an additional three year term, term to expire November 13, 2002, or until his successor has been appointed.

Councilman Cloninger moved for the adoption of Resolution No. 99-176. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 347

C. RESOLUTION NO. 99-177 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

Vice-Mayor Hay said that the terms of Darryl Hart (Regular), David Young (Regular), Chris Goodwin (Alternate) and Burt Stanford (Alternate) on the Board of Adjustment expire on January 21, 2000. Also, Rose Rose has resigned as an Alternate, thus leaving an unexpired term until January 21, 2001.

On November 3, 1999, it was City Council's intent to reappoint Mr. Hart as a Regular member to serve an additional three year term, term to expire on January 21, 2003.

On November 4, 1999, David Young contacted the City Clerk and advised her that he is interested in reappointment to the Regular position if City Council wished him to continue serving.

On November 9, 1998, City Council interviewed Chris Goodwin (current City Alternate) for a position as a Regular member. Patricia Grant and Joe Brady (current City Alternates) and Anne Campbell were all interested in appointment to a Regular position; however, they were unable to come in for an interview. Richard Fort (current County Alternate) has also expressed interest in appointment to a Regular position.

All new appointments will begin their term on January 22, 2000, and end their term on January 21, 2003, or until their successor have been appointed.

Councilman Cloninger moved to reappoint Darryl Hart as a Regular member to serve an additional three year term, term to expire January 21, 2003. This motion was seconded by Councilwoman Field and carried unanimously.

Councilwoman Field nominated David Young for reappointment as a Regular member.

Councilman Cloninger nominated Chris Goodwin as a Regular member.

After Vice-Mayor Hay asked if anyone in the audience would like to comment on this matter and hearing none, each Council member voted: David Young received 5 votes and Chris Goodwin received 2 votes. Therefore, David Young was reappointed as a Regular member to serve an additional three year term, term to expire January 21, 2003.

Councilman Cloninger moved to reappoint Chris Goodwin as an Alternate member to serve an additional three year term, term to expire January 21, 2003. This motion was seconded by Councilman Tomes and carried unanimously.

The City Clerk was instructed to re-advertise for the two Alternate positions in the next quarterly appointment process.

RESOLUTION BOOK NO. 25 - PAGE 348

D. RESOLUTION NO. 99-178 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Vice-Mayor Hay said that the terms of Kathryn Liss and Cynthia Janes expire on December 31, 1999. This resolution will reappoint Ms. Liss and Dr. Janes to each serve an additional three year term, terms to expire December 31, 2002, or until their successors have been appointed.

Mayor Sitnick moved for the adoption of Resolution No. 99-178. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 349

E. RESOLUTION NO. 99-179 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE DOWNTOWN COMMISSION

Vice-Mayor Hay said that the terms of Brenda Sconyers, Jim Samsel and Garry Moffitt, as members on the Asheville Downtown Commission, expire on December 31, 1999.

On November 3, 1999, Vice-Mayor Hay was asked to contact Ms. Sconyers to verify that she was still interested in serving. If Ms. Sconyers' was interested in remaining on the Commission, the City Clerk was to arrange for interviews for Chuck Pickering, William Byrne and Kim MacQueen.

Councilwoman Field noted that Vice-Mayor Hay was unable to contact Ms. Sconyers to confirm her interest in reappointment. However, Ms. Sconyers no longer lives, works or owns property in the downtown area.

Councilwoman Field moved to appoint Chuck Pickering, William Byrne and Kim MacQueen to each serve a three year term. Their terms will begin on January 1, 2000, and expire on December 31, 2002, or until their successors have been appointed. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 350

F. RESOLUTION NO. 99-180 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Vice-Mayor Hay said that the term of Bill Schaefer, as a member of the Firemen's Relief Fund, expires on January 1, 2000. This resolution will reappoint Mr. Schaefer to serve an additional two year term, term to expire January 1, 2002, or until his successor has been appointed.

Councilman Cloninger moved for the adoption of Resolution No. 99-180. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 351

G. RESOLUTION NO. 99-181 - RESOLUTION APPOINTING MEMBERS TO THE GREENWAY COMMISSION

Vice-Mayor Hay said that on September 28, 1999, Ordinance No. 2621 was adopted separating the Tree/Greenway Commission into the Tree Commission and the Greenway Commission and defining their individual powers and duties.

Pursuant to City Council's request on November 3, 1999, this resolution will appoint Gerry Hardesty, Bruce Mulkey, John R. Tate and Casey Carmichael to the Greenway Commission.

On November 9, 1999, City Council interviewed Philip Cusick and Pauline Kaltsunis.

It was the consensus of City Council to (1) appoint Gerry Hardesty, Bruce Mulkey, and John R. Tate to each serve a three year term respectively, terms to expire December 31, 2002; (2) appoint Casey Carmichael and Pauline Kaltsunis to each serve a two year term respectively, terms to expire December 31, 2001; and (3) appoint Philip Cusick to serve a one year term, term to expire December 31, 2000. All terms will be until their successors have been appointed.

The City Clerk was instructed to re-advertise in the next quarterly appointment process the one additional vacancy on the Greenway Commission.

RESOLUTION BOOK NO. 25 - PAGE 352

H. RESOLUTION NO. 99-182 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS

Vice-Mayor Hay said that the term of S. Douglas Spell expires on January 19, 2000. This resolution will reappoint Mr. Spell to serve a three year term, term to expire January 19, 2003, or until his successor has been appointed.

Mayor Sitnick moved for the adoption of Resolution No. 99-182. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 353

I. RESOLUTION NO. 99-186 - RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ART BOARD

Vice-Mayor Hay said that on September 14, 1999, Ordinance No. 2609 established a Public Art Board to consist of seven members appointed by City Council.

On November 3, 1999, City Council instructed the City Clerk to prepare the proper paperwork to appoint Carol Pennell, S. Tucker Cooke, Judith Barber, Ellen Rickman Judy Swan, Pamela Myers and Caroline Mason to the Public Art Board.

It was the consensus of City Council to appoint Carol Pennell, S. Tucker Cooke, Judith Barber and Ellen Rickman to each serve a four year term, terms to begin immediately and expire on December 31, 2003, or until their successors have been appointed; and (2) appoint Judy Swan, Pamela Myers and Caroline Mason to each serve a two year term, terms to begin immediately and expire on December 31, 2001, or until their successors have been appointed.

RESOLUTION BOOK NO. 25 - PAGE 357

J. RESOLUTION NO. 99-187 - RESOLUTION APPOINTING MEMBERS TO THE TRANSIT COMMISSION

Vice-Mayor Hay said that the term of Jim McCulley expires on December 31, 1999. Tom Tomlin's term expires after the new Transit Facility becomes operational and when City Council appoints his replacement.

On November 3, 1999, the City Clerk was instructed to prepare the proper paperwork to reappoint Mr. McCulley, subject to Vice-Mayor Hay confirming with Mr. McCulley that he is interested in serving. However, Vice-Mayor Hay was unable to reach Mr. McCulley and therefore, suggested that the City Clerk contact Mr. McCulley and advise him that when his health improves that he contact her and let her know which Board he would be interested in serving on.

On November 9, 1999, City Council interviewed Claudia Nix and Pauline Kaltsunis.

It was the consensus of City Council to appoint Claudia Nix, as a member of the Transit Commission, to serve a two year term, term to expire December 31, 2001, or until her successor has been appointed.

Councilman Sellers moved to retain Mr. Tomlin on the Transit Commission until his term expires on December 31, 2000. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 358

K. RESOLUTION NO. 99-188 - RESOLUTION APPOINTING MEMBERS TO THE TREE COMMISSION

Vice-Mayor Hay said that on September 28, 1999, Ordinance No. 2621 was adopted separating the Tree/Greenway Commission into the Tree Commission and the Greenway Commission and defining their individual powers and duties.

On November 3, 1999, City Council instructed the City Clerk to prepare the proper paperwork to appoint Kasty Latven, Peter Gentling, Sofia Mannos and Margaret Tinkler to the

Tree Commission. Said term dates will be determined after the seven member board has been appointed, with board members being notified of term dates by the City Clerk.

On November 9, 1999, City Council interviewed Philip Cusick, Pauline Kaltsunis and Monty Wooten.

It was the consensus of City Council to (1) appoint Kasty Latven, Peter Gentling and Sofia Mannos to each serve a three year term respectively, terms to expire December 31, 2002; (2) appoint Margaret Tinkler and Ginger Mahler to each serve a two year term respectively, terms to expire December 31, 2001; and (3) appoint Monty Wooten to serve a one year term, term to expire December 31, 2000. All terms will be until their successors have been appointed.

The City Clerk was instructed to re-advertise in the next quarterly appointment process the one additional vacancy on the Tree Commission.

RESOLUTION BOOK NO. 25 - PAGE 359

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of November 5-18, 1999: Ricky Reeves (Water), Keith Gretzy (Civic Center), Phyllis Whitlow (Streets), Amy Young (Police) and Tim Moore (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUIT

The City received a Petition for Writ of Certiorari on November 1, 1999, which is generally described as follows: Budget Motel, Inc., v. Zoning Board of Adjustment of the City of Asheville. The nature of the proceeding is seeking reversal of decision to deny sign variance requests.

This matter will be handled in-house. Further investigation may result in a referral outside the office.

C. PRIMARY ELECTION RESULTS - CITY OF ASHEVILLE - OCTOBER 5, 1999

GENERAL ELECTION RESULTS - CITY OF ASHEVILLE, NOVEMBER 2, 1999

Attached hereto as Exhibit "A" is the abstract containing the number of legal votes cast in the Primary Election, City of Asheville, held on October 5, 1999. Also attached as Exhibit "B" is the abstract containing the number of legal votes cast in the General Election, City of Asheville, held on November 2, 1999.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:32 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Exhibit "A"

STATE OF NORTH CAROLINA – BUNCOMBE COUNTY
BOND ELECTION/CITY OF ASHEVILLE PRIMARY
OCTOBER 5, 1999

The Buncombe County Board of Elections, having opened, canvassed, and judicially determined the original returns of the Bond Election/City of Asheville in the precincts in this county, held as above stated, do hereby certify that the above is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office named, the name of each person voted for, and the number of votes given for each person for the office named.

This 8th day of October, 1999.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix my notary seal, this 8th day of October, 1999.

Trena D. Parker

Trena D. Parker

My Commission Expires 6/14/2000

Talmage Penland

CHAIRMAN

Winona McDonnold

SECRETARY

Linda Reese

MEMBER

BUNCOMBE COUNTY BOARD OF ELECTIONS

Asheville City Council/School Bond

October 5, 1999

Election Returns

Buncombe County

Precincts Reporting 27

Carroll Thompson	14	11	15	7	11	19	8	7	13	0	7	0	1	250	0.85%
O.T. Tomes	109	73	98	41	93	133	34	40	86	13	29	2	5	3,079	10.47%
Terry M. Whitmire	106	90	97	34	114	162	40	31	73	8	14	1	3	3,247	11.04%
Charles R. Worley	176	202	202	48	116	277	86	97	146	20	33	0	5	3,186	10.84%

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Asheville City Council/School Bond

October 5, 1999

Election Returns

Buncombe County

Precincts Reporting 27

Asheville City Council																
Precinct Reporting	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Cecil Beumer	9	12	23	76	80	49	38	37	39	5	5	19	21	44	57	52
Larry Blair	17	13	15	27	38	35	24	25	48	15	7	14	9	19	46	30
Earl Cobb	18	25	34	97	60	36	54	58	60	29	24	23	46	65	214	108
H.K. Edgerton	29	88	50	47	22	13	44	86	33	57	22	17	16	41	16	17
Jim Ellis	26	39	43	246	345	82	85	63	142	34	14	34	27	29	97	82
George Ettwein	1	2	2	1	3	1	4	2	4	2	0	3	1	1	5	1
Betty Garofano	19	48	40	72	72	43	66	44	42	9	13	21	17	10	99	29
Harrill Dean Heath	3	16	15	14	12	5	11	9	6	1	4	7	5	2	15	4
Louise Hutchison	7	9	18	28	20	21	28	15	21	17	6	31	15	21	40	29
June Lamb	7	29	28	79	46	41	44	13	32	10	5	27	14	33	112	36
Ukiah Sativa Morrison	8	27	21	18	14	7	10	7	9	3	4	6	12	8	15	10
Brownie Newman	46	225	130	320	187	100	170	40	64	19	14	46	37	61	169	93
Micheal Overman	22	20	48	250	401	73	49	48	58	11	3	29	30	65	106	82
Brian Peterson	58	122	103	287	215	120	169	71	97	28	13	95	82	127	333	183
Tommy Sellers	24	26	28	112	162	103	66	55	75	9	11	54	83	80	191	139
Carroll Thompson	3	10	4	15	24	12	11	15	5	2	4	5	1	4	14	8
O.T. Tomes	158	273	177	200	134	73	194	307	81	237	114	53	51	116	95	60
Terry M. Whitmire	160	307	186	202	212	122	207	238	78	239	122	62	39	107	124	69
Charles R. Worley	45	56	71	268	410	131	86	87	99	39	15	47	68	77	168	111

Asheville City Council														Total	%
Precinct Reporting	17	18	19	20	21	22	23	24	25	65	66	[illegible]7	68	29,399	100.00%
Cecil Beumer	54	72	67	29	61	74	25	54	60	5	13	0	4	1,084	3.69%
Larry Blair	22	18	27	7	75	28	30	39	45	1	6	0	2	682	2.32%
Earl Cobb	39	42	50	25	37	47	31	62	61	1	16	1	4	1,367	4.65%
H.K. Edgerton	22	18	27	8	23	18	13	11	18	1	2	0	0	759	2.58%
Jim Ellis	151	158	198	36	90	220	50	46	103	15	32	0	2	2,489	8.47%
George Ettwein	3	2	5	0	7	1	0	0	3	1	0	0	0	55	0.19%
Betty Garofano	48	103	78	21	59	84	25	15	49	9	16	1	2	1,154	3.93%
Harrill Dean Heath	13	1	11	8	7	10	5	8	7	1	1	0	0	201	0.68%
Louise Hutchison	12	13	24	9	35	21	11	25	21	1	5	0	0	503	1.71%
June Lamb	64	42	36	20	33	53	14	39	31	7	16	2	2	915	3.11%
Ukiah Sativa Morrison	9	3	7	3	9	11	5	8	12	1	2	0	0	249	0.85%
Brownie Newman	157	41	63	40	106	177	30	26	110	11	25	1	4	2,512	8.54%
Micheal Overman	113	133	142	25	96	286	56	141	70	14	21	0	3	2,395	8.15%
Brian Peterson	156	106	139	52	140	171	63	89	119	9	38	2	7	3,194	10.86%
Tommy Sellers	72	98	112	21	89	120	[redacted]	122	126	8	25	0	8	2,078	7.07%

[redacted] [redacted]

Ashe[redacted]ty Council/School Bond

October 5, 1999

Election Returns

Buncombe County

Precincts Reporting 66

Poll Book																
Precinct Reporting	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Election Day	247	499	387	848	874	389	489	461	357	300	154	204	202	337	678	401
Curbside	0	2	2	2	5	0	0	2	0	0	0	1	0	0	1	1
Poll Book																
Precinct Reporting	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32
Election Day	477	451	491	158	429	773	275	305	416	221	231	114	284	479	192	60
Curbside	0	1	1	0	0	1	0	2	0	1	1	0	0	1	0	0
Poll Book																
Precinct Reporting	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48
Election Day	423	315	252	146	122	99	239	341	179	356	351	321	107	94	193	276
Curbside	1	0	1	0	0	0	0	1	0	0	2	6	0	0	0	0
Poll Book																
Precinct Reporting	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64
Election Day	149	274	274	216	264	201	314	464	63	124	336	295	258	287	156	364
Curbside	1	0	0	0	0	0	0	2	0	1	1	1	0	0	0	0
Poll Book																
Precinct Reporting	65	66	67	68												
Election Day																
Election Day Transfers			7													
Absentee Voters (one stop)		170														
Absentee Voters (Mail in)	62															
Provisional Voters				43												
Curbside																

Total	%
20,359	100.00%
20,036	98.41%
7	0.03%
170	0.84%
62	0.30%
43	0.21%
41	0.20%

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Exhibit "B"

STATE OF NORTH CAROLINA—BUNCOMBE COUNTY
GENERAL ELECTION, CITY OF ASHEVILLE
OFFICE OF CITY COUNCIL

NOVEMBER 2, 1999

The Buncombe County Board of Elections, having opened, canvassed, and judicially determined the original returns of the General Election, City of Asheville, in the Asheville City Precincts of this County, held as above stated, do hereby certify that the above is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office named, the name of each person and/or question voted for, and the number of votes given for each.

This the 5th day of November, 1999.

Talmage Penland
CHAIRMAN

Winona McDonald
SECRETARY

Linda Reese
MEMBER

Witness my hand and official seal, this 5th day of November, 1999.

(official seal)

Notary Public

My commission expires 6/14/2006

BUNCOMBE COUNTY BOARD OF ELECTIONS

nber 2, 1999
Election Returns
Buncombe County

Precincts Reporting 27

Asheville City Council																
Precinct Reporting	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Jim Ellis	71	93	108	477	622	249	183	180	284	52	47	98	110	159	349	260
Brownie Newman	107	440	264	564	390	270	349	242	246	67	66	136	175	221	475	268
Brian Peterson	124	264	263	522	473	308	371	233	275	119	54	199	225	324	659	413
O. T. Tomes	208	338	307	299	209	126	272	431	169	272	154	96	93	214	210	142
Terry M. Whitmire	242	466	381	581	643	324	385	483	304	275	171	161	152	321	449	271
Charles R. Worley	93	81	153	488	628	267	186	182	243	49	41	122	139	219	447	307

Asheville City Council															
Precinct Reporting	17	18	19	20	21	22	23	24	25	65	66	67	68	Total	%
Jim Ellis	309	420	401	100	199	507	141	262	261	27	71	5	5	39,972	100.00%
Brownie Newman	333	214	239	102	280	365	86	160	246	32	84	3	4	6,050	15.14%
Brian Peterson	286	321	380	106	325	391	132	299	291	33	90	2	3	6,428	16.08%
O. T. Tomes	167	137	181	79	183	192	67	120	149	32	63	5	1	7,485	18.73%
Terry M. Whitmire	366	390	403	129	324	507	129	241	283	40	91	11	8	4,916	12.30%
Charles R. Worley	313	394	383	94	245	527	150	320	298	25	76	5	6	8,531	21.34%
														6,481	16.21%

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Tuesday - November 30, 1999
West Asheville Community Center
970 Haywood Road

7:00 p.m. - Community Meeting

Present: Mayor Leni Sitnick, Presiding: Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Edward C. Hay Jr. (arrived at 8:38 p.m.)

The following topics were raised by residents and addressed by City Council and City staff: concerns expressed about proposed I-26 connector and suggestions of alternate routes; need for speed abatement on Vermont, Haywood Road, Virginia Avenue and Brevard Road; request for City Council to write a letter to NC DOT asking them to revisit the entire design process for the I-26 connector; request to paint speed bumps; request for traffic calming devices on Westwood Place; Brotherton/Virginia Avenues property purchase by the City should be looked at thoroughly; need for sidewalks on Virginia Avenue and Fairfax Avenue; need for traffic calming devices on Virginia Avenue and Fairfax Avenue; request to restrict cars from parking on Virginia Avenue; City's plan for Y2K and hate groups; concerns about water adequacy at Brotherton/Virginia Avenue site; need for noise ordinance to address car stereos; concern about City planting high growing grass on Westwood Place resulting in problems with trimming; request to grant money to library system for meeting room in West Asheville Library; how were funds obtained to refurbish the West Asheville Community Center for the Police Resource Center; and City Council needs to make the quality of life the bottom line in all decisions.

Mayor Sitnick adjourned the meeting at 8:45 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - December 7, 1999 - 4:00 p.m.

ORGANIZATIONAL SESSION:

Mayor Sitnick welcomed everyone to the organizational session and introduced Dr. Buddy Corbin, Calvary Baptist Church; Rabbi Shmuel Birnham, Beth Israel Synagogue; Rev. L. C. Ray, Greater New Zion Baptist Church, and Mr. Howard Hanger, Jubilee Community Church, each who gave the invocation.

Mayor Sitnick then announced that Councilman-Elect Charles R. Worley was out of the country and would be administered the Oath of Office when he returns.

The Honorable Earl J. Fowler Jr., Buncombe County Chief District Judge, administered the Oath of Office to the following:

Councilwoman Terry M. Whitmire
Councilman Brian L. Peterson

RESOLUTION NO. 99-183 - RESOLUTION OF APPRECIATION FOR COUNCILMAN H. EARL COBB

Mayor Sitnick read the resolution.

Resolution No. 99-183 was adopted by acclamation.

Mayor Sitnick presented Mr. Cobb with the resolution, a plaque, his name plate and a City pen.

RESOLUTION BOOK NO. 25 - PAGE 354

RESOLUTION NO. 99-184 - RESOLUTION OF APPRECIATION FOR COUNCILMAN THOMAS G. SELLERS

Mayor Sitnick read the resolution.

Resolution No. 99-184 was adopted by acclamation.

Mayor Sitnick presented Mr. Sellers with the resolution, a plaque, his name plate and a City pen.

RESOLUTION BOOK NO. 25 - PAGE 355

RESOLUTION NO. 99-185 - RESOLUTION OF APPRECIATION FOR COUNCILMAN O. T. TOMES

Mayor Sitnick read the resolution.

Resolution No. 99-185 was adopted by acclamation.

Mayor Sitnick presented Rev. Tomes with the resolution, a plaque, his name plate and a City pen.

RESOLUTION BOOK NO. 25 - PAGE 356

ELECTION OF VICE-MAYOR

Vice-Mayor Hay nominated Councilman Cloninger as Vice-Mayor of the City of Asheville, stating that Councilman Cloninger is the most senior member on Council who has not been Vice-Mayor and that his service has been exemplary.

Councilwoman Field nominated Councilwoman Whitmire as Vice-Mayor of the City of Asheville, stating that traditionally the person who received the most votes during the General Election is appointed as Vice-Mayor.

There being no further nominations, by a show of hands, Councilman Cloninger was elected as Vice-Mayor on a 5-1 vote, with Councilwoman Field voting "no".

Mayor Sitnick announced that a recess would be held for approximately 15 minutes.

REGULAR MEETING

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr. Councilman Brian L. Peterson; and Councilwoman Terry M. Whitmire; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	Councilman-Elect Charles R. Worley

City Manager Westbrook asked that a resolution be added to the agenda which would ratify the execution by the Mayor and Assistant City Attorney of a deed releasing a portion of the property described in a deed of trust granted to the City in order that one-half of the property identified as 100 Technology Drive may be sold.

PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF CONTIGUOUS PROPERTY LOCATED WEST OF OVERLOOK ROAD AND IDENTIFIED AS BURNSIDE PHASE III AT BILTMORE PARK

ORDINANCE NO. 2644 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED WEST OF OVERLOOK ROAD AND IDENTIFIED AS BURNSIDE PHASE III AT BILTMORE PARK

Mayor Sitnick opened the public hearing at 5:12 p.m.

Mr. Paul Benson, Urban Planner, said that this is the consideration of a resolution fixing the date of a public hearing on December 7, 1999, on the question of annexation of property located west of Overlook Road and identified as Burnside Phase III, Biltmore Park. He said that the public hearing was advertised on November 26, 1999.

Biltmore Farms, Inc. has submitted an annexation petition for Burnside Phase III, Biltmore Park. He said that this is the 15th section of Biltmore Park that has asked for voluntary annexation. This area, is west of and adjacent to Burnside Phase II, Biltmore Park which was annexed into the City last year. Biltmore Park is generally located west of Overlook Road and north of Long Shoals Road. This annexation is pursuant to an agreement between Biltmore Farms, Inc. and the City of Asheville.

The area proposed for annexation consists of 15.5 acres and is platted for 14 single-family residential lots, and a small park area. The area will be accessed by Burnside Lane, White Ash Drive and Barbarry Lane.

Utilities and streets are being developed by Biltmore Farms Inc. City services will begin on the effective date of annexation. Biltmore Farms, Inc. has requested that the effective date of annexation be six months from the adoption of the ordinance.

City staff recommends City Council adopt an ordinance annexing of property located west of Overlook Road and identified as Burnside Phase III, Biltmore Park.

Mayor Sitnick closed the public hearing at 5:16 p.m.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2644. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 65

APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON NOVEMBER 23, 1999, AND THE WORKSESSION HELD ON NOVEMBER 30, 1999

Vice-Mayor Cloninger moved adopt the minutes of the formal meeting held on November 23, 1999, and the worksession held on November 30, 1999. This motion was seconded by Councilman Hay and carried unanimously.

MOTION SETTING A PUBLIC HEARING ON DECEMBER 21, 1999, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH SUPPLEMENTAL DEVELOPMENT STANDARDS FOR LARGE RETAIL STRUCTURES

Councilman Hay moved to set a public hearing for December 21, 1999, to consider an amendment to the Unified Development Ordinance to establish supplemental development standards for large retail structures. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

MOTION SETTING A PUBLIC HEARING ON DECEMBER 21, 1999, TO CONSIDER A CONDITIONAL USE PERMIT FOR SWEETEN CREEK CONDOMINIUMS (THE CARLYLE) LOCATED AT 3196 SWEETEN CREEK ROAD

Councilwoman Whitmire moved to set a public hearing for December 21, 1999, to consider a conditional use permit for Sweeten Creek Apartments located at 3196 Sweeten Creek Road. This motion was seconded by Councilman Peterson and carried unanimously.

RESOLUTION NO. 99-189 - RESOLUTION CONFIRMING AN APPOINTMENT ON THE MINORITY BUSINESS COMMISSION

Summary: On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

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The composition of the Minority Business Commission consists of 13 members from various groups.

Laura Todd Thompson, representing the American Institute of Architects, has resigned. The American Institute of Architects has endorsed Jacquelyn A. Schauer to represent them on the Minority Business Commission. The Commission has met and recommends to City Council the appointment of Ms. Schauer to serve the unexpired term of Ms. Thompson, term to expire August 1, 2001, or until her successor has been appointed.

City staff recommends City Council adopt a resolution confirming the appointment of Jacquelyn A. Schauer on the Minority Business Commission.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 99-189 This motion was seconded by Councilwoman Whitmire and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 360

RESOLUTION NO. 99-190 - RESOLUTION RATIFYING THE EXECUTION BY THE MAYOR AND ASSISTANT CITY ATTORNEY OF A DEED RELEASING PROPERTY FROM A DEED OF TRUST GRANTED BY BILTMORE FARMS INC. TO THE CITY OF ASHEVILLE AS SECURITY FOR ADVANCING FUNDS FROM THE ISSUANCE OF CERTIFICATES OF PARTICIPATION FOR CONSTRUCTION OF A BUILDING AT BILTMORE PARK TECHNOLOGY CENTER

Assistant City Attorney Patsy Meldrum said that this is consideration of a resolution ratifying the execution by the Mayor and Assistant City Attorney of a deed releasing a portion of the property described in a deed of trust granted to the City in order that one-half of the property identified as 100 Technology Drive may be sold.

In 1997, the City of Asheville, Western North Carolina Regional Economic Development Non-Profit Corporation (hereinafter "Advantage West') and Biltmore Farms, Inc. entered into an agreement regarding the construction of a building to be located in a business park known as Biltmore Park Technology Center (hereinafter "1997 Agreement"). Biltmore Farms, Inc. owns the land on which the business park is located and on which the building was constructed. The 1997 Agreement provided that the City would issue certificates of participation in the amount of $2,500,000 for construction of the building and the certificates of participation were issued in 1997. Under the 1997 Agreement, Advantage West was to market the lease or sale of the building.

In December of 1998, the parties entered into an Amendment and Restatement of Agreement (hereinafter "1998 Agreement") wherein the property where the building was constructed was reconfigured and certain terms and conditions were updated and clarified.

The building has been constructed and marketed and one-half of the building and property has now been sold. As security for the issuance of the certificates of participation, the City of Asheville was granted a deed of trust on the property where the building is constructed and was provided an irrevocable letter of credit also securing that financing. As part of the sale of one-half of the building, it was necessary for the City of Asheville to release one-half of the property from the description included in the deed of trust in exchange for payment of one-half of the principal amount advanced to Biltmore Farms, Inc., payment of interest and other costs of issuance for the certificates of participation and payment of one-third of the net proceeds of the sale of the property pursuant to the 1998 Agreement. The rest of the property remains subject to the deed of trust.

The resolution ratifies the execution of the deed releasing one-half of the property from the deed of trust granted to the City. As the closing occurred between City Council meetings, it is now necessary for that execution to be ratified.

Upon inquiry of Councilwoman Field, Ms. Meldrum said that this action benefits the City in several ways: (1) the property will be in an active use by a new buyer so there will be a tax base after February 2000; (2) there is more interest in the Technology Park which means more jobs and more economic development; (3) in exchange for the releasing this portion of the property from the deed of trust, the City received a payment on the principle of the Certificates of Participation - approximately $1.8 million had been advanced for construction of the building and about $900,000 of that was paid back; (4) the City was repaid some interest and cost of issuance for the Certificates of Participation; and (5) because the property was sold instead of leased during the first two years after a Certificate of Completion was issued for the property, the City, along with Biltmore Farms and Advantage West shared in net proceeds from the sale of the property.

The City Attorney's Office recommends adoption of the resolution.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Resolution No. 99-190. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 361

CLAIMS

The following claims were received by the City of Asheville during the period of November 19 - December 2, 1999: Laura Hale (Fire), Sally Carter (Fire), Sheri Gaffney (Civic Center), Dan Wilhelm (Civic Center), Shirley Pope (Police), Catherine Russell (Police), Dan Hughes (Police), Marvin Manning (Water), David Herbert (Water) and Emily Belcher (Water).

These claims have been referred to the Asheville Claims Corporation for investigation.

Mayor Sitnick adjourned the meeting at 5:23 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - December 14, 1999 - 3:00 p.m.

Worksession

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

City Attorney Oast announced that Councilman Charles R. Worley was administered his Oath of Office on December 9, 1999, by City Clerk Burleson.

CONSENT:

Budget Amendment to Amend Water Capital Project - 29 Fund

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 92-17 (29 Fund - Water Bond Capital Improvements Fund) to reflect transfer of completed projects to fixed assets and to restate budgeted revenues and appropriations to better reflect what is expected to be received and spent.

By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds. Staff recommends the following changes to the capital project ordinance:

Revenues:

- Investment earnings are increased to reflect additional unexpected interest received on the 1992 General Obligation Bonds and the 1996 Revenue Bonds.
- The Contribution From Other Funds (General Obligation Bonds), Sale of Water Revenue Bonds 1996, and State Clean Water Loan are adjusted to reflect transfer of completed projects to fixed assets.
- Contribution from other Funds - Water Resources and Appropriated Fund Balance are being deleted. These budgets were set up to reflect the Authority's contribution of $5 million to the 1996 Revenue Bond Projects that was required in the 1996 Bond Indenture. This contribution was made in the 30 Fund (operating budget) and the 35 Fund (major capital projects) and will not be made to the 29 Fund.

Appropriations:

- General Operations/Bond Issue is being changed to $1 million to reflect bond issue costs and some arbitrage payments. The Debt Service Reserve Fund and Capitalized Interest are being deleted. Debt Service and Interest has been budgeted and expended in the 30 Fund (operating budget).
- The Mills River Regional Water Resources Project, Water Distribution Master Plan, Leak Reduction/Mapping, and Pipeline Replacement Phase II are being decreased to reflect transfer of completed projects to fixed assets. There are also some excess funds remaining after closing projects that are being reprogrammed to other projects or deleted to offset decreases in revenue.
- Broadway Water Line (DOT), Pipeline Phase III, and Chemical Improvements have been completed and are being closed to reflect a transfer of the completed projects to fixed assets.

The Regional Water Authority approved these changes at their October 19, 1999, meeting.

Staff recommends approval of a resolution amending Capital Project Ordinance 92-17 to better reflect expected revenues and appropriations.

MSD Easements Over Portion of Property on Galax Street

Summary: The consideration of a resolution authorizing the Mayor to convey easements over a portion of property located on Galax Street in connection with the Fairfax Avenue Asheville Master Plan Project.

The subject property is located on Galax Street and backs up to property fronting on Fairfax Avenue. It is shown as Lots 51, 52, 53 and 54 on a plat recorded in Plat Book 154, Page 102, Buncombe County Registry (PIN 9638.17-22-2169) and contains 40,946 square feet. Due to its size, shape and topography it is suitable for subdividing into four buildable parcels.

Metropolitan Sewerage District of Buncombe County, North Carolina, has requested a Permanent Easement containing 171 sq. ft. along with a Temporary Construction Easement containing 561 sq. ft. over a portion of said Galax Street property. The easement would enable MSD to complete the sewer improvements in the Fairfax Avenue Asheville Master Plan project which will benefit the community as well as the subject property.

Approval of the resolution will authorize conveyance of the easement to MSD.

Community Development staff recommends adoption of the resolution.

Fair Housing Assistance Program Grant Funds

Summary: The consideration of a budget amendment, in the amount of $40,400, to increase federal funding for the Fair Housing Assistance Program for Fiscal Year 1998/99.

The City has been carrying out its fair housing program under contract with the Asheville-Buncombe Community Relations Council and Fair Housing Commission since January 1988, using HUD Fair Housing Assistance Program (FHAP) funds. The City's Community Development Division serves as Lead Entity and monitors the program. On November 24, 1998, City Council approved a 1998/99 budget of $18,400, equal to the HUD FHAP grant for the twelfth year of this program. HUD amended this in June 1999 adding $25,000 to give a total of $43,400.

The City has now received another grant agreement from HUD allocating a further $40,400 in Fiscal Year 1999 FHAP funds. HUD has treated this as a second amendment to the 1999 agreement, because it is using last year's funds in a "catch-up" process. A budget ordinance is needed to appropriate the new funds. Our next FHAP grant will be for Fiscal Year 2000, using Fiscal Year 2000 funds.

Community Development staff recommends adoption of the budget amendment.

Unattended Fuel Facility

Summary: The consideration of a resolution authorizing installation and operation of unattended fuel facility at the City's service station.

The City's service station is operated by the Department of Public Works. Mark Combs, Director of Public Works, has asked for Fire Department assistance with meeting fire code standards so that the motor fuel pumps at the service station can be operated by vehicle drivers without an attendant. Those standards having been met, and the installation having been approved by the Fire Department's Life Safety Division, the State Fire Code now requires City Council approval.

The Fire Chief recommends City Council authorize installation and operation of an unattended fuel facility at the City's service station through adoption of the resolution.

Financing the Purchase of Revenue Control and Gate Equipment

Summary: The consideration of a resolution authorizing the installment financing of revenue control and gate equipment for the City's parking decks.

The City of Asheville Fiscal Year 1999-2000 Budget for the Parking Services Fund includes authorization for the installment purchase of revenue control and gate equipment for the Rankin Avenue, Wall Street and Civic Center Parking Decks (amount to be financed $295,474.00).

The Finance Department had previously sought proposals from 31 firms to finance the purchase of a fire truck and 4,000 trash cans. Twelve proposals were received, the best of which was submitted by Crestar Leasing Corporation - - 4.96% for five years. Crestar Leasing Corporation has offered to extend those very favorable rates to finance the revenue control and gate equipment purchase.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and Crestar Leasing Corporation for the purchase of the revenue control and gate equipment and authorizes the City Manager, Finance Director and City Clerk to execute and deliver any and all necessary documents.

Council adopt the resolution and enabling budget amendment.

When Mayor Sitnick asked about the broken gate arms at the Rankin Street deck, City Manager Westbrook said that we have been aware of those problems, however, they can't be repaired because they don't make repair parts for them anymore.

Amendment to the Asheville-Buncombe Minority Business Plan

Summary: This is the consideration of a resolution to amend the Minority Business Plan in order to enhance and clarify provisions of the Plan.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan was subsequently amended in November 1998, to expand participation in the Mentor-Protégé Program.

At their meeting on November 23, 1999, the Minority Business Commission recommended that the Plan be amended to enhance and clarify provisions of the Plan. The most significant changes include a listing of the requirements of minority businesses for certification under the Plan (page 15). The requirements have not changed; but, have been listed in the Plan in order to make the public aware of the policy and process. The only other significant amendment (page 8) allows contractors the opportunity to submit all of the minority business forms necessary to document the level of "good faith effort" made during the time of the bid (as is done presently) or to submit only the MB Form 1 (the Utilization Commitment listing which minority businesses will be used as subcontractors) with the bid; then turn in the rest of the documentation within 72 hours after the bid opening. This change evolved as a result of a roundtable discussion held with utility contractors, City department directors and the Office of Minority Affairs. This does not dilute the good faith effort requirement that must be made during the initial bidding process; however, it does allow a little more time for completion of the paperwork to document that effort.

The resolution amends the Plan as recommended by the Minority Business Commission. The recommended revision to the Plan will also be presented to the Buncombe County Commission for their consideration and adoption.

The Minority Business Commission recommends City Council adopt the resolution.

Renaming Old Fire Station 4 at 300 Merrimon Avenue in Honor of Harley Shuford, Asheville Fire Investigator

Summary: The consideration of a resolution naming Old Fire Station 4, located at 300 Merrimon Avenue, in honor of retiring Fire Investigation Supervisor Harley Shuford.

Asheville Fire Department Fire Investigation Supervisor Harley Shuford is retiring from his position after more than 30 years of service to people in Asheville and Buncombe County (and beyond) as a Firefighter , Fire Investigator and Fire Investigation Supervisor. He has determined the cause of hundreds (if not thousands) of fires during his career, and, in cooperation with the District Attorney's office, has established an arson arrest and conviction rate that is significantly above the national average.

Harley Shuford also played a crucial role in the development of the Asheville-Buncombe Arson Task Force, was unanimously selected as the Task Force's first director, and continues as director of the Task Force to this day. In large part because of Harley Shuford's contributions, the Asheville-Buncombe Arson Task Force has been selected by the U.S. Fire Administration as a model arson task force for study by other communities wishing to establish a local arson task force.

Harley Shuford is retiring from service, effective January 1, 2000. It is proposed that an appropriate City commemoration of Harley Shuford's service would be the naming of Old Fire Station 4, 300 Merrimon Avenue, in honor of Harley Shuford. (Old Fire Station 4 has served as headquarters for the Asheville-Buncombe Arson Task Force in recent years.)

The Fire Chief recommends adoption by City Council of the resolution providing for the naming of Old Fire Station 4 in honor of Harley Shuford.

Authority for the Water Authority to Acquire Property by Eminent Domain and Waiver of Conflict in Legal Representation

Summary: The consideration of resolutions: (1) authorizing the institution of legal proceedings to acquire an easement for waterline installation on part of Monte Vista Road; and (2) waiving a conflict in legal representation to allow the Water Authority's counsel to bring the action in the City's name.

(1) Eminent Domain – the Regional Water Authority of Asheville, Buncombe and Henderson will soon need to complete installing new water lines and extending its service to an area on the west side of town beyond the City limits that includes Monte Vista Road. A waterline is proposed for installation in the area between the road and the drainage ditch along Monte Vista Road. Other than the temporary inconvenience associated with construction, this installation will not impair the usability of the affected residential properties, which will be served by the new line.

Agreements have been reached with other property owners on Monte Vista Road and the property at 721 Monte Vista Road, owned by Oris and Elizabeth Balding, is the only holdout. The Water Authority authorized the initiation of legal proceedings to acquire the property in its meeting on September 21, 1999.

Pursuant to the Water Agreement, any real property or interest in real property acquired by the Water Authority must be held in the City's name. By extension, any proceeding in eminent domain to acquire the property must be brought in the City's name, and the City's authorization is therefore required in order for the Water Authority to take this action.

(2) Waiver of Conflict – The Water Authority is specifically authorized, pursuant to Section VI. N. of the Water Agreement, to employ its own legal counsel. The Authority's counsel is the law firm of Van Winkle, Buck, Wall, Starnes and Davis. That firm is also counsel for parties who oppose the City in several pending legal proceedings, notably the billboard litigation, and regularly represents property owners in land use disputes with the City. Technically, representation of the City by Van Winkle in this eminent domain matter is a conflict that the City must waive. This is a minimal conflict and Van Winkle's representation of the City in this eminent domain proceeding will not give them access to any information that could compromise the City's position in any matter where they represent parties opposing the City.

City staff recommends City Council (1) adopt the resolution authorizing the institution of eminent domain proceedings in the City's name, as the Water Authority has requested; (2) if the City Council has no objection to the Water Authority's use of the law firm of Van Winkle, Buck, Wall, Starnes and Davis in this eminent domain proceedings, the resolution waiving the conflict should also be adopted.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

CITY OF ASHEVILLE/UNC-ASHEVILLE COOPERATIVE AGREEMENT

UNC-Asheville Chancellor Jim Mullen said that he has been working with the City Manager on a concept of bringing young kids to the UNC-Asheville campus. There are already a number of programs in place and he hoped they could expand them and work in partnership with the City to create a community building which would result in a wonderful win-win situation for both the City and UNC-Asheville.

City Manager Westbrook said that the City needs a larger community center in north Asheville and they have also discussed the use of some of UNC-A's ballfields as an adjunct part of this whole agreement. It appears that the University's part would be the land and the City's portion would be the cost of the building and some of the programming. Before proceeding further, he asked for Council's authority to continue working with the University on this concept and trying to track down some grants.

Councilwoman Field said that she was aware of the possibility of a downtown campus for a portion of UNC-A's art department in building a gallery, etc. If we are indeed considering renovations and expansions to the Civic Center, she felt there may be a possibility for the City and UNC-A to partner in something in the future regarding that.

It was the consensus of City Council to instruct the City Manager to continue working with UNC-A on this concept.

LEAD POISONING PREVENTION PROGRAM

Ms. Nan Burnett, Program Coordinator for the Lead Poisoning Prevention Program ("LPPP"), and Mr. Charles McKenzie, Regional Environmental Health Specialist, explained that lead is the number one environmental health disease for children in the country. Countless numbers of children are unknowingly exposed to other dangers of lead poisoning which can cause damage to the brain and nervous system, learning and behavior problems, reduced attention span and hyperactivity, and numerous other health problems. Yet, Buncombe County has one of the lowest rates of blood-lead level screening of children in the state.

The Lead Poisoning Prevention Program, based out of UNC-Asheville, and funded by the Center for Disease Control and the United Way, is working to increase awareness of the sources and risks of lead poisoning in children. LPPP and the Buncombe County Health Center are working together in an effort to carry out free blood-lead screening for all children between the ages of six months and six years.

The most effective way to ensure that the greatest number of children are tested for lead is to include the test in the required vaccination schedule provided by the state using federal guidelines.

Locating children at risk should also include identifying those that are most likely to be exposed to lead. Lead-based paint, lead-contaminated dust, old plumbing fixtures and pipes, and many other features of older homes continue to be the main sources of lead-poisoning in children. There are 18,891 homes in Buncombe County built before 1950 and all except those that have recently been remodeled are likely to have lead-based paint. Houses constructed between 1950 and 1978 have an 85% chance of having lead somewhere in the house. Surveys have shown that lead-contaminated dust is the major source of lead poisoning. These find dust particles are particularly dangerous because they scatter easily and are difficult to control and it is easy for them to enter the body with every breath.

Although sellers and landlords are required by law to provide an EPA pamphlet about lead in the home to all buyers and renters, this regulation is often not enforced. All sellers and landlords are required to notify new buyers or renters of the likelihood of lead contamination in the home being sold or leased. Incorporated a lead inspection with the certificate of occupancy would ensure a lead free safe home. In addition, renovations or home repairs of houses containing lead-based paint must follow the strict guidelines prepared by the Dept. of Housing and Urban Development. A certified lead-abatement contractor should be utilized whenever there is any disturbance to lead-based paint. Currently, so such contractor exists in Asheville.

They hoped that these recommendations would be followed.

Mayor Sitnick suggested some ideas in order to get spread this information to the community and thanked Ms. Burnett and Mr. McKenzie for expanding Council's knowledge on this matter.

ADDITION TO THE COLBURN GEM AND MINERAL MUSEUM

Mr. Dan Lazar, representing the Colburn Gem & Mineral Museum, said that they are requesting the Mayor to execute a Waiver and Release of Building Restriction to allow the construction of an addition for the Colburn Gem & Mineral Museum on property conveyed to the City of Asheville and leased to Pack Place Education Arts & Science Center, Inc. He explained that they need to increase the size of the Museum to accommodate the increase in growth for earth science education. By the use of a map, he showed Council the approximate location of the portion of the courtyard on which the building would be constructed.

The City of Asheville owns property on which Pack Place Education Arts & Science Center, Inc. ("Pack Place") is located. Colburn Gem & Mineral Museum ("Colburn Museum") is located within Pack Place. Colburn Museum desires to expand the portion of the Pack Place building occupied by it into a portion of an area known as a "courtyard," which is identified as "Tract Two" on "Lot D" on that plat recorded in Plat Book 56 at Page 64 in the Office of the Register of Deeds for Buncombe County.

In the deed wherein Pack Plaza Associates Limited Partnership ("Pack Plaza") conveyed to the City of Asheville certain properties, including Lot D shown on the above-referenced plat, there is a provision wherein the City and Pack Plaza promised that they would not permit the construction of any permanent building or roof structure in, on or above the property identified as Tract Two of Lot D as shown on the above-referenced plat.

In a Memorandum of Understanding dated October 28, 1988, by and among the City, Pack Place and Pack Plaza, the City and Pack Place agreed that they would not construct any permanent building or room structures in the courtyards, including Tract Two of Lot D of the above-referenced plat.

Landmark Management, PBL Investment, LLC ("Landmark") is a successor to the interests of Pack Plaza. Landmark and Pack Place have agreed to permit the construction of the extension of the building for Colburn Museum. It is necessary to execute a document wherein the consent of the parties to the construction of the extension of the Colburn Museum can be recorded in the Office of the Register of Deeds for Buncombe County.

The City Attorney's Office recommends adoption of the resolution.

Councilman Hay said that he is a member of the Pack Place Board and space at Pack Place is very precious. He stated that this request is the end of a year-long process.

After Councilwoman Field looked at the architect's drawings of the expansion, she said that she had some serious technical questions but would meet with the architect to have her concerns addressed. However, she did state that the concept is fine.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UDO AMENDMENT REVIEW

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which are scheduled on Tuesday, January 11, 2000, and Tuesday, January 25, 2000. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Supplemental Development Standards for Large Retail Structures

Senior Planner Gerald Green said that this is the consideration of amending the Unified Development Ordinance which would establish supplemental development standards for large retail structures.

The Planning and Zoning Commission, at their November 10, 1999, meeting, reviewed and recommended approval of an amendment to the Unified Development Ordinance which would establish supplemental development standards for large retail structures. Structures subject to the supplemental development standards are identified in the amendment as:

- Single tenant retail structures with a gross floor area of more than 75,000 square feet in the Highway Business District;
- Single tenant retail structures with a gross floor area of more than 100,000 square feet in the Regional Business, Commercial/Industrial, Industrial, and River Districts; and
- Multiple tenant retail structures with a gross floor area of more than 100,000 square feet in the Highway Business, Regional Business, Commercial/Industrial, Industrial, and River Districts.

Goals of the supplemental development standards are to:

- Employ high quality building design;
- Blend building design and layout with other site features;
- Avoid bland and monotonous building design; and
- Ensure that buildings contribute to the community character of the City.

To achieve these goals, the ordinance amendment establishes supplemental development standards addressing building design, building material and color, landscaping and buffering, lighting, pedestrian amenities and circulation, and customer entrances. Design professionals and developers are provided a great deal of flexibility in meeting the supplemental development standards through the provision of a variety of design standards from which they may choose. Meeting approximately 70% of the standards will result in a recommendation for approval of a basic retail structure; bulk retail structures will have to meet approximately 50% of the supplemental standards.

The amendment identifies large retail structures as conditional uses. During the review process they would be reviewed for compliance with the supplemental development standards. The amendment does not require an additional review process for these structures, as they are currently reviewed as conditional uses.

The Asheville Planning and Zoning Commission voted 6-0 to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the amendment.

Mr. Green answered several questions from Council on this proposed amendment.

Detached Garages as Accessory Uses

Urban Planner Carl Ownbey said that this is the consideration of an ordinance amending the Unified Development Ordinance regarding detached garages as accessory uses.

The Planning and Development staff has received several requests over the past several months proposing the placement of detached garages in front of the principal structure. Since this placement is not permitted under section 7-16-1.c.2.d of the Unified Development Ordinance, these requests have been taken to the Board of Adjustment for a variance.

This wording amendment will permit the location of a detached garage in front of the principal structure if:

1) the garage is not located in the front setback;
2) the garage is located and/or designed so that it is not the principal structural feature on the lot and the scale is subordinate to and the building materials are compatible with the principal structure or other design features; and
3) the garage doors are not oriented to the front street.

Given the topography of the Asheville area and the unusual shapes of some lots in the City, the proposed ordinance amendment will provide reasonable options and flexibility in the location of detached garages.

The Planning and Development staff presented this proposed wording amendment to the Planning and Zoning Commission at their December 1, 1999, regular meeting. After presentation by staff, the Planning and Zoning Commissioners voted 6-1 to recommend to City Council the adoption of this wording amendment.

Since City Council did not want to amend the ordinance to permit anyone to place a detached garage in front of the principal structure if they didn't have a hardship of either the lot size or the topography, it was the consensus of City Council to have staff revise the language in the proposed ordinance which would delegate some flexibility of the planning staff to determine if a hardship exists.

Banks as Residential Related Commercial Services in RM-16

Urban Planner Stacy Merten said that this is the consideration of an ordinance amending the Unified Development Ordinance to allow banks to be included as residential related commercial services in RM-16 Residential Multi-Family High Density districts.

Currently the Unified Development Ordinance (UDO) limits residential related commercial services to dining halls, beauty shops, barber shops, laundry facilities, food stores, newsstands, drug stores, and flower and gift shops as uses by rights subject to special requirements in the RM-16 zoning district. This amendment will expand the limits to allow banking facilities. This amendment was precipitated by a specific request from the Deerfield Community to locate a small, 423 square foot, banking center in one of their buildings for use only by residents of the community. The amendment also prohibits drive-through facilities for all residential related commercial services and specifies that all of the services shall occupy no more than 25 square feet per dwelling within the residential development. There was no comment at the public hearing

Planning & Development staff presented this wording amendment to the Planning & Zoning Commission at their December 1, 1999, meeting. The Commission voted unanimously to recommend to City Council the adoption of this wording amendment.

Ms. Merten responded to questions regarding design criteria.

North Area Extraterritorial Jurisdiction Extension and Zoning

Vice-Mayor Cloninger stated that the law firm of which he is a partner in represents the owner/developer of property which would be brought into the extraterritorial jurisdiction in the north area and therefore, he would not be participating in any discussions concerning this matter.

Urban Planner Mike Matteson said that this is the consideration of an ordinance extending the City's Extraterritorial Jurisdiction (ETJ) in an area north of the City's corporate limits and the zoning of properties within the area.

In response to direction from both the Planning and Zoning Commission and City Council, the Planning and Development Department staff is proposing the extension of the City's ETJ in an area north of the City's corporate limits.

The provisions for exercising powers in an area of ETJ are governed by N. C. Gen. Stat. sec. 160A-360. These provisions grant a city the authority to extend ETJ "within a defined area extending not more than one mile beyond its limits". With the approval of the Board of County Commissioners, a city of more than 25,000 population can extend its ETJ up to three miles beyond its corporate limits. Upon the establishment of extraterritorial jurisdiction, property within the ETJ area becomes subject to the City's zoning, subdivision and other land development ordinances.

The area proposed for ETJ extension totals approximately 616 acres and is primarily either undeveloped or developed at a low residential density. The topography of the area is generally steeply sloping and mountainous. The proposed Reynolds Mountain Subdivision, which received preliminary plat approval from the Planning and Zoning Commission in December of 1998, is partially within the area proposed for ETJ extension.

The proposed boundaries for the ETJ area follow the phase line within the Reynolds Mountain Subdivision (as illustrated on the approved preliminary plat) and otherwise generally follow property lines or streets. At one point, at the northern end of the area, the boundary coincides with the one-mile distance from the City's corporate limits.

The Town of Woodfin is also pursuing the extension of ETJ in the area. Staff from the Planning and Development Department worked with Town of Woodfin officials to determine a line of demarcation separating potential City of Asheville ETJ with potential Town of Woodfin ETJ. This general line of demarcation has been endorsed by the Asheville City Council on August 10, 1999, and the Town of Woodfin Board of Aldermen.

Another issue associated with the ETJ extension is the zoning of the properties within the area. Staff has studied the area and is recommending a combination of RS-2 (residential single-family low density) and RS-4 (residential single family medium density) zoning. RS-2 zoning is recommended for the majority of the area, where current lot sizes are generally large and where steep slopes suggest low densities. RS-4 zoning is recommended in an area which is generally developed with a number of properties which, due to their size (under ½ acre), would be non-conforming within the RS-2 zoning district.

He reviewed a map which shows the area proposed for ETJ extension and another showing the proposed zoning within the area.

Council is asked to (1) determine whether to extend the City's ETJ in this area; and if so, to zone the properties within the area.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearings on January 11, 2000, and January 25, 2000.

GROVE ARCADE

Vice-Mayor Cloninger said that his firm represents the Grove Arcade Public Market Foundation and he would not participate in this matter.

City Attorney Oast said that the lessee and developer of the Grove Arcade are proposing some amendments to the Lease and Operating Agreement between the Grove Arcade Public Market Foundation ("GAPMF") and the City that will assist GAPMF and its sublessees in financing the renovations and improvements to the building.

In the Spring of 1997, the City acquired the Grove Arcade Building by Quitclaim Deed from the United States Government. The building was built originally as a public market and was so operated until 1942, when the federal government took it over in connection with the country's World War II efforts. The building's exterior windows and doors were bricked up by the federal government, which used the building until 1994.

The conveyance to the City was essentially without consideration, but it was subject to significant restrictions on how the City could dispose of the building and how it could be used. The Grove Arcade Public Market Foundation (herein "GAPMF"), a non-profit corporation, was established for the purpose of rehabilitating Grove Arcade. In August of 1997, the City entered into a long term lease of the Grove Arcade building to GAPMF. The redevelopment proposal calls for the public market to be reestablished on the First Floor and Mezzanine and for a combination of office and residential uses on the Third and Fourth Floors. GAPMF, with the permission of the City, subleased the upper floors to Skelton Development of Atlanta to develop the office and residential uses.

The City's lease with GAPMF recognized that the financial structure for the rehabilitation was subject to change, depending on the availability of such things as tax credits and possible participation of other financial partners. While GAPMF remains ultimately responsible to the City for the debt service on the Certificates of Participation that were issued to finance public market part of the renovations, the City has the authority to approve amendments as necessary to accommodate financial arrangements and participation by other developers.

The uniqueness of the Grove Arcade Rehabilitation project has made conventional financing difficult to obtain, and construction, primarily design work and demolition, have proceeded more slowly than anticipated. Marketing and leasing, however, have gone better than expected. After long negotiations involving GAPMF, Skelton Development, local and national financial institutions, real estate companies, and the United States Government, and after some changes in tax laws, a financial structure has finally been proposed that will: (1) allow GAPMF to take advantage of the significant tax credits available for the historic rehabilitation of the building; and (2) provide for substantial financial participation by another party on both the public market side and the residential/office side of the project.

Since a for-profit (taxpaying) entity was needed to take advantage of the available tax credits, the City Council earlier this year approved the assignment of the lease by GAPMF to Grove Arcade Preservation Inc., a for-profit subsidiary corporation wholly controlled by GAPMF. This was to permit investments in the project and the utilization of legally available tax credits by a qualified New York Stock Exchange investor.

Under the current proposal, the investor will still participate in the project as before, but instead of those tax credits running through one for-profit subsidiary corporation, there will be two for-profit limited liability companies (herein "LLC"):

(a) One of the LLC's will be Grove Arcade Restoration LLC (herein "GAR"), consisting of GAPMF as the managing partner and operating entity, and an investor corporation as a 99% financial participant. GAR will be responsible for developing the first floor, together with portions of the mezzanine and basement, of the Arcade Building as a public market in the same way that GAPMF proposed to do, GAPMF will still have full control as developer and manager of this part of the project.

(b) The other LLC will be the Historic Grove Arcade LLC (herein "HGA"), consisting of a management company controlled by Skelton Development as the managing partner and an investor corporation as a 99% financial participant. HGA will be responsible for developing the second, third and fourth floors of the Arcade Building, together with portions of the mezzanine and basement, in the same way that Skelton Development had previously been approved to do.

Each LLC will essentially be subject to the same agreements as are currently in place with GAPMF and Skelton Development, and each LLC will be managed and controlled by the entities that are currently developing the building. GAPMF will continue to be financially responsible to the City to the same extent as before. Negotiations between GAPMF and Skelton, on the one hand, and the potential investor corporations on the other, for participation in the subsidiary LLC's are not yet finalized, but according to representatives of GAPMF, agreements in principal have been reached, and closing will occur by year's end if the City approves. The extent of the financial participation by the investor corporations is expected to be worth millions of dollars, and should kick the entire project into high gear, such that it will come on line nearly as scheduled, despite delays in the start of construction.

One feature of the new proposal will involve the City becoming an organizational participant in the Grove Arcade development. In order to preserve the ability to use the rehabilitation tax credits, it is necessary that GAPMF, as the managing partner of the for-profit GAR LLC, have 21% participation by an entity that is not controlled by GAPMF. This could be any person or corporation, but GAPMF and its attorneys have suggested that, in order to ensure that the City remains appraised of all activities of GAR, the City would form a wholly-owned subsidiary corporation whose sole purpose is to participate with GAPMF in the ownership structure of GAR. The City's participation would be for ownership purposes only, would be in the nature of a limited partner, would not require any additional financial commitment by the City, and would not expose the City to any additional risk of loss in the event of financial problems.

It is anticipated that within six (6) years, GAPMF will acquire the ownership interest of the investor in GAR, and that Skelton will acquire the ownership interest in HGA. At that point, the ownership structure will revert to its original form. In order to accomplish all of this, several things must occur:

(1) the previously adopted resolution approving assignment of the Grove Arcade lease to Grove Arcade Preservation Inc. must be rescinded;

(2) the lease must be amended to permit the above-described ownership structure.

(3) the subleasing (or assignment) to the LLCs GAR and HGA, by GAPMF must be approved;

(4) certain amendments to the Operating Agreement and the Lease between GAPMF and the City must be approved. The major features of these amendments include:

   (a) the City may not unilaterally terminate the lease with GAPMF for five (5) years (currently, there is no such limitation). This five (5) year non-termination provision is necessary for purposes of the tax credits;

(b) the City must agree that the terms of the Quitclaim Deed from the United States are being complied with in the new arrangement (this approval has been obtained);

(c) the City must agree to a "Non-disturbance and Attornment Agreement," which essentially provides that the City will honor the subleases to the LLC's if GAPMF drops out; (this is a standard feature in a commercial sublease);

(d) the City must agree to the sublessees using their leasehold interest as security to obtain financing (the Lease and Operating Agreement specifically contemplate this);

(e) The City agrees to a starting date for renovation work of 36 months after the date of its Lease to GAPMF (currently, that date is 18 months, and some work has in fact already begun). This will not extend the five (5) year time period for a substantial completion of the improvements.

(5) the City must agree to formation of a corporation to participate with GAPMF in the ownership of the GAR LLC for the public market phase of the projects, or some other arrangement.

What the City gets in return is a guarantee from the investor corporations that, in the event of financial failure by either GAR or HGA, the investor corporation will continue to make half of the ongoing debt service payments to the City to retire the COPs. As noted above, GAPMF is still responsible for the entire payment, but this is an additional source of funds. Also, the investor corporations will immediately make a "bridge loan" of $500,000 to provide for immediate resumption of work on the building until the loan is closed and funds are disbursed next month.

These arrangements are still being worked out in anticipation that the transactions can close by the end of the year. What will be needed from the City is approval to proceed with the items enumerated above, and authority for the Manager and the Mayor to execute appropriate documents. Through its ability to approve subleases, the City will have final approval over the new financial participants in the subsidiary LLC's. If Council agrees to the formation of a subsidiary corporation, the work will be done by GAPMF attorneys, or otherwise paid for by GAPMF.

There is no recommendation at this time, pending further discussion with GAPMF and the receipt of additional information.

City Attorney Oast, Executive Director Aaron Zaresky, Executive Director of the GAPMF, and Mr. Lou Bissette, Attorney for the GAPMF, answered numerous questions from Council relative to this proposed financial structure, some being, but are not limited to: how are historic tax credits used; what is the benefit for the community if this transaction occurs; what is the liability of the City is something happens to the GAPMF; what avenues are available to the City since they would not be able to terminate the lease for five years; what would happen if the City did terminate the lease during the five year period; what constitutes a breach of the lease; what other rights are we giving up over the five year period; when the building is completed, what will be the tax base to the City; who is in charge of construction of the building; how many cents on the dollar is being received on the tax credits; and what are the City's benefits if they agree to form a corporation.

City Attorney Oast said that he will continue discussions with GAPMF and its attorneys in anticipation that the matter will be ready for Council consideration and action at your December 21st meeting.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

At this time, 5:54 p.m., Mayor Sitnick announced a short break.

CENSUS 2000 UPDATE

Urban Planner Carl Ownbey said that this is the consideration of resolution formulating a Census Complete Count Committee to direct the awareness campaign for the Census 2000 Update.

The Census Complete Count Committee will be responsible for the awareness campaign in "getting the word out" to the citizens of the community about the upcoming census count on April 1, 2000. The United States Bureau of the Census has prepared an operations guide to assist the community in the campaign. The Mayor is required to appoint a chairman for the committee and together they must appoint chairmen for the eight (8) subcommittees. These subcommittees, as outlined in the operations guide are:

Government
Religion
Business
Community-Based

Education
Media
Recruiting
Special Housing

A press conference is required announcing the formulating of this committee and the committee must begin work in January of 2000.

The Planning and Development staff recommends the formulating of the Census Complete Count Committee and will provide the committee with staff support during the campaign process.

Mayor Sitnick said that she is in the process of developing a list of people in the community who might be interested in serving on these committees. She encouraged City Council to provide her with any names and she would add those to her list.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on an upcoming formal City Council agenda.

BUNCOMBE COUNTY APPOINTMENT ON THE REGIONAL WATER AUTHORITY

City Manager Westbrook said that this is the consideration of a request from Buncombe County to permit Mr. Thomas Sobol to serve an additional three year term on the Water Authority from October 1999 through September 2002.

The Water Agreement between the City of Asheville and Buncombe County prescribes that each member of the Regional Water Authority be appointed for a three year term, and prescribes that the concurrence of the Water Authority, the City Council, and the Buncombe County Commissioners is required for members to serve additional terms.

The Water Authority By-Laws amended in 1986 by the joint concurrence of the City, County, and Authority, provided that a member of the Authority could serve up to two consecutive terms. Under these by-laws, it has been the practice of the Authority that the appointing authority (the City, Buncombe County, or Henderson County) could re-appoint a member to the Water Authority to a second consecutive term but not longer than two consecutive terms. Several re-appointments have been made since 1986 by both the City and County under these By-Laws. One of these was Mr. Tom Sobol, who was appointed to the Water Authority by Buncombe County in 1993 and reappointed in 1996. He completed two consecutive three-year terms in September 1999.

The County Attorney presented a request to the Water Authority in October 1999 to permit Mr. Sobol to serve a third term. At the regular meeting in November, the Water Authority endorsed this request. The Buncombe County Commissioners reappointed Mr. Sobol as a County representative to the Water Authority for a third term at their December 7, 1999, meeting. Under the terms of the Water Agreement, the City Council must concur in the decision to authorize Mr. Sobol another term.

The staff advises that the City Council exercise strong discretion in the review of all requests for Water Authority members to serve additional terms, to avoid setting a broad precedence that the same members can serve unlimited terms. In this particular case, Mr. Sobol has been a member of the County Commissioners since 1984, and has also served the community over a long period of time in the areas of tourism development and economic development. Should Council agree to reappoint Mr. Sobol, it should be clear that the appointment is for one term and is specifically made in view of the unique circumstances and experience of Mr. Sobol.

Vice-Mayor Cloninger felt this is a unique circumstance since Mr. Sobol is an elected official and we would be confirming an appointment made by the County Commissioners.

Councilwoman Field wondered if Mr. Sobol were not elected to the County Commissioners in 2000 would be remain as a member on the Water Authority.

If Mr. Sobol were not re-elected to the County Commissioners in 2000, Councilman Worley said that the Authority would have the option to have him remain on the Authority since the confirmation would be for an additional 3-year term, or, they could remove him by a 2/3 vote.

Councilman Peterson felt that there were good reasons behind the by-laws that limit serving for two consecutive terms and felt that we should not make exceptions for elected officials.

Councilwoman Field disagreed with the concept of term limits entirely. She felt that term limits don't recognize the knowledge of the person who has served on the committee. She had no problem with confirming Mr. Sobol to another three-year term in his capacity of a County Commissioner, however, she did have concerns if Mr. Sobol was no longer a County Commissioner.

Mayor Sitnick agreed with Councilman Peterson in not making exceptions for officials, however, she does understand the Commissioners wanting representation on the Authority. She was concerned that if Mr. Sobol is not re-elected in 2000 and the County chooses not to replace him with another Commissioner, then he would be serving outside of what the County has asked the City to confirm. She wondered if the County would be willing to ask the City to confirm Mr. Sobol's reappointment for one year and then if he is re-elected, City Council could then reconsider the reappointment at that time. She supported term limits because they bring in fresh ideas and allow other members of the community to serve.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on an upcoming formal City Council agenda.

BRIEFING ON CITY'S Y2K PREPAREDNESS

It was the consensus of City Council to have the City Manager make his report at the formal meeting on December 21, 1999, in order to have the report taped and broadcast on the government channel.

PUBLIC HEARING ON THE CONDITIONAL USE PERMIT FOR A CELL TOWER AT 200 TUNNEL ROAD

Vice-Mayor Cloninger said that at the request of American Tower, City Council continued this matter from its November 23, 1999, meeting to its December 21, 1999, meeting in order to allow time for them to conduct a balloon test at the site to simulate the height of the tower. This balloon test is scheduled for Friday, December 17, 1999. The City's consultant has requested a continuance of the December 21, 1999, hearing in order to provide him additional time to analyze the results of the balloon test and prepare a report for the public hearing before City Council.

It was the consensus of City Council to postpone the December 21 public hearing and to contact American Tower to work with the Planning staff on a rescheduled date.

I-26 CONNECTOR

Mayor Sitnick and Vice-Mayor Cloninger recently attended a Transportation Advisory Committee ("TAC") meeting (which the TAC unanimously voted to encourage the State to proceed expeditiously with the design and construction of the I-26 Connector) and realized that the public is not ready to settle on the issue of the I-26 Connector. It was their recommendation for the City to sponsor a Charette on the I-26 Connector Project with the design issues involved. There is still controversy over the project and a lack of consensus in the community. Since the N. C. Dept. of Transportation (NC DOT) has expressed that they are looking for the community's input and there has been precedence set that the NC DOT does take into account the community's suggestions, the need for this Charette is clear. This is no way will interfere with the resolution City Council passed that asked that the project be completed in a timely manner. However, after the Charette, it may be time to consider another resolution requesting the NC DOT to revisit, review and possibly e-design the I-26 connector.

It was the consensus of City Council to instruct the Planning & Development Director to investigate what other communities have done which led to a successful conclusion on an NC DOT project. Council further instructed the Planning & Development Director to report back as soon as possible on how a Charette with community, former I-26 Asheville Connector Advisory Committee members and design professionals might work. It was hoped that if design professionals are brought in, that community groups help pay for that cost.

ASSIGNMENT OF BOARD/COMMISSION LIAISONS

City Council members were assigned to various boards and commissions as liaisons and/or regular board members.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place appropriate items on an upcoming City Council agenda.

CLOSED SESSION

At 7:25 p.m., Councilwoman Whitmire moved to go into closed session for the following reason: To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations. Statutory authority is G.S. 143-318.11 (a) (4). This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

At 7:50 p.m. Councilwoman Field moved to come out of closed session. This motion was seconded by Councilman Worley and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:50 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - December 21, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Hay gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF THE 1999 STATE 4-A FOOTBALL CHAMPIONS - REYNOLDS ROCKETS

Mayor Sitnick recognized Dr. Tony Baldwin, Principal of A.C. Reynolds High School, Football Coach Bobby Poss and four representatives of the 1999 State 4-A Football Champions - the Reynolds Rockets.

B. RESOLUTION NO. 99-191 - RESOLUTION RENAMING THE OLD FIRE STATION 4, LOCATED AT 300 MERRIMON AVENUE, IN HONOR OF HARLEY SHUFORD

Mayor Sitnick said that this is the consideration of a resolution naming Old Fire Station 4, located at 300 Merrimon Avenue, in honor of retiring Fire Investigation Supervisor Harley Shuford.

Asheville Fire Department Fire Investigation Supervisor Harley Shuford is retiring from his position after more than 30 years of service to people in Asheville and Buncombe County (and beyond) as a Firefighter , Fire Investigator and Fire Investigation Supervisor. He has determined the cause of hundreds (if not thousands) of fires during his career, and, in cooperation with the District Attorney's office, has established an arson arrest and conviction rate that is significantly above the national average.

Harley Shuford also played a crucial role in the development of the Asheville-Buncombe Arson Task Force, was unanimously selected as the Task Force's first director, and continues as director of the Task Force to this day. In large part because of Harley Shuford's contributions, the Asheville-Buncombe Arson Task Force has been selected by the U.S. Fire Administration as a model arson task force for study by other communities wishing to establish a local arson task force.

Harley Shuford is retiring from service, effective January 1, 2000. It is proposed that an appropriate City commemoration of Harley Shuford's service would be the naming of Old Fire Station 4, 300 Merrimon Avenue, in honor of Harley Shuford. (Old Fire Station 4 has served as headquarters for the Asheville-Buncombe Arson Task Force in recent years.)

The Fire Chief recommends adoption by City Council of the resolution providing for the naming of Old Fire Station 4 in honor of Harley Shuford.

Resolution No. 99-191 was adopted by acclamation.

RESOLUTION BOOK NO. 25 - PAGE 363

CONTINUANCE REQUEST:

PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR A TELECOMMUNICATIONS TOWER AT 200 TUNNEL ROAD

At the request of the applicant, City Council continued this matter from its November 23, 1999, meeting to its December 21, 1999, meeting in order to allow time for the applicant to conduct a balloon test at the site to simulate the height of the tower. This balloon test is scheduled for Friday December 17, 1999, between the hours of 8:00 a.m. and 5:00 p.m.

The City engaged a consultant to aid in the review of the application. The consultant is Paul Rosa of Digital Landscapes. Mr. Rosa has requested a continuance to provide additional time to analyze the results of the balloon test and prepare a report for the public hearing before City Council.

The applicant, American Tower, sent a letter to the City agreeing to the continuance. The applicant requests that City Council continue the public hearing to January 11, 2000.

Vice-Mayor Cloninger moved to continue the public hearing until January 11, 2000. This motion was seconded by Councilman Worley and carried unanimously.

II. CONSENT:

Councilman Peterson requested that Consent Agenda Item G. be discussed at the upcoming City Council retreat. He felt that to move the worksession to after 5:00 p.m. would enable more members of the public to attend.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 7, 1999, AND THE WORKSESSION HELD ON DECEMBER 14, 1999

B. MOTION SETTING A PUBLIC HEARING ON JANUARY 11, 2000, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING DETACHED GARAGES AS ACCESSORY USES

C. MOTION SETTING A PUBLIC HEARING ON JANUARY 11, 2000, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW BANKS TO BE INCLUDED AS RESIDENTIAL RELATED COMMERCIAL SERVICES IN RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICTS

D. MOTION SETTING A PUBLIC HEARING ON JANUARY 11, 2000, TO ZONE HEATHBROOK AT BILTMORE PARK, PHASE II, AS RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

E. ORDINANCE NO. 2645 - BUDGET AMENDMENT TO AMEND THE WATER CAPITAL PROJECT ORDINANCE 92-17 (29 FUND)

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 92-17 (29 Fund - Water Bond Capital Improvements Fund) to reflect transfer of completed projects to fixed assets and to restate budgeted revenues and appropriations to better reflect what is expected to be received and spent.

By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds. Staff recommends the following changes to the capital project ordinance:

Revenues:

- Investment earnings are increased to reflect additional unexpected interest received on the 1992 General Obligation Bonds and the 1996 Revenue Bonds.
- The Contribution From Other Funds (General Obligation Bonds), Sale of Water Revenue Bonds 1996, and State Clean Water Loan are adjusted to reflect transfer of completed projects to fixed assets.
- Contribution from other Funds - Water Resources and Appropriated Fund Balance are being deleted. These budgets were set up to reflect the Authority's contribution of $5 million to the 1996 Revenue Bond Projects that was required in the 1996 Bond Indenture. This contribution was made in the 30 Fund (operating budget) and the 35 Fund (major capital projects) and will not be made to the 29 Fund.

Appropriations:

- General Operations/Bond Issue is being changed to $1 million to reflect bond issue costs and some arbitrage payments. The Debt Service Reserve Fund and Capitalized Interest are being deleted. Debt Service and Interest has been budgeted and expended in the 30 Fund (operating budget).
- The Mills River Regional Water Resources Project, Water Distribution Master Plan, Leak Reduction/Mapping, and Pipeline Replacement Phase II are being decreased to reflect transfer of completed projects to fixed assets. There are also some excess funds remaining after closing projects that are being reprogrammed to other projects or deleted to offset decreases in revenue.
- Broadway Water Line (DOT), Pipeline Phase III, and Chemical Improvements have been completed and are being closed to reflect a transfer of the completed projects to fixed assets.

The Regional Water Authority approved these changes at their October 19, 1999, meeting.

Staff recommends approval of a resolution amending Capital Project Ordinance 92-17 to better reflect expected revenues and appropriations.

ORDINANCE BOOK NO. 18 - PAGE 67

F. RESOLUTION NO. 99-192 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY EASEMENTS OVER A PORTION OF PROPERTY ON GALAX STREET TO THE METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY

Summary: The consideration of a resolution authorizing the Mayor to convey easements over a portion of property located on Galax Street in connection with the Fairfax Avenue Asheville Master Plan Project.

The subject property is located on Galax Street and backs up to property fronting on Fairfax Avenue. It is shown as Lots 51, 52, 53 and 54 on a plat recorded in Plat Book 154, Page 102, Buncombe County Registry (PIN 9638.17-22-2169) and contains 40,946 square feet. Due to its size, shape and topography it is suitable for subdividing into four buildable parcels.

Metropolitan Sewerage District of Buncombe County, North Carolina, has requested a Permanent Easement containing 171 sq. ft. along with a Temporary Construction Easement containing 561 sq. ft. over a portion of said Galax Street property. The easement would enable MSD to complete the sewer improvements in the Fairfax Avenue Asheville Master Plan project which will benefit the community as well as the subject property.

Approval of the resolution will authorize conveyance of the easement to MSD.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 364

G. ORDINANCE NO. 2646 - BUDGET AMENDMENT TO INCREASE FEDERAL FUNDING FOR THE FAIR HOUSING ASSISTANCE PROGRAM FOR FISCAL YEAR 1998-99

Summary: The consideration of a budget amendment, in the amount of $40,400, to increase federal funding for the Fair Housing Assistance Program for Fiscal Year 1998/99.

The City has been carrying out its fair housing program under contract with the Asheville-Buncombe Community Relations Council and Fair Housing Commission since January 1988, using HUD Fair Housing Assistance Program (FHAP) funds. The City's Community Development Division serves as Lead Entity and monitors the program. On November 24, 1998, City Council approved a 1998/99 budget of $18,400, equal to the HUD FHAP grant for the twelfth year of this program. HUD amended this in June 1999 adding $25,000 to give a total of $43,400.

The City has now received another grant agreement from HUD allocating a further $40,400 in Fiscal Year 1999 FHAP funds. HUD has treated this as a second amendment to the 1999 agreement, because it is using last year's funds in a "catch-up" process. A budget ordinance is needed to appropriate the new funds. Our next FHAP grant will be for Fiscal Year 2000, using Fiscal Year 2000 funds.

Community Development staff recommends adoption of the budget amendment.

ORDINANCE BOOK NO. 18 - PAGE 71

H. RESOLUTION NO. 99-193 - RESOLUTION AUTHORIZING INSTALLATION AND OPERATION OF AN UNATTENDED SERVICE STATION FACILITY BY THE CITY OF ASHEVILLE PUBLIC WORKS DEPARTMENT

Summary: The consideration of a resolution authorizing installation and operation of unattended fuel facility at the City's service station.

The City's service station is operated by the Department of Public Works. Mark Combs, Director of Public Works, has asked for Fire Department assistance with meeting fire code standards so that the motor fuel pumps at the service station can be operated by vehicle drivers without an attendant. Those standards having been met, and the installation having been approved by the Fire Department's Life Safety Division, the State Fire Code now requires City Council approval.

The Fire Chief recommends City Council authorize installation and operation of an unattended fuel facility at the City's service station through adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 365

I. RESOLUTION NO. 99-194 - RESOLUTION ADOPTING THE 2000 SCHEDULED CITY COUNCIL MEETINGS

Summary: The following schedule of the meetings of the Asheville City Council for 2000 be, and the same is, hereby established as follows: (1) City Council Worksessions; 3:00 p.m.; 1st and 3rd Tuesdays of each month; 1st Floor North Conference Room; City Hall Building, Asheville, N.C. and (2) City Council Formal Meetings; 5:00 p.m.; 2nd and 4th Tuesdays of each month; Council Chamber - 2nd Floor; City Hall Building, Asheville, N.C. This schedule may be amended or modified by resolution.

RESOLUTION BOOK NO. 25 - PAGE 368

J. RESOLUTION NO. 99-195 - RESOLUTION AMENDING THE ASHEVILLE-BUNCOMBE MINORITY BUSINESS PLAN

Summary: This is the consideration of a resolution to amend the Minority Business Plan in order to enhance and clarify provisions of the Plan.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan was subsequently amended in November 1998, to expand participation in the Mentor-Protégé Program.

At their meeting on November 23, 1999, the Minority Business Commission recommended that the Plan be amended to enhance and clarify provisions of the Plan. (A copy of the Plan with recommended changes shown in red is attached hereto.) The most significant changes include a listing of the requirements of minority businesses for certification under the Plan (page 15). The requirements have not changed; but, have been listed in the Plan in order to make the public aware of the policy and process. The only other significant amendment (page 8) allows contractors the opportunity to submit all of the minority business forms necessary to document the level of "good faith effort" made during the time of the bid (as is done presently) or to submit only the MB Form 1 (the Utilization Commitment listing which minority businesses will be used as subcontractors) with the bid; then turn in the rest of the documentation within 72 hours after the bid opening. This change evolved as a result of a roundtable discussion held with utility contractors, City department directors and the Office of Minority Affairs. This does not dilute the good faith effort requirement that must be made during the initial bidding process; however, it does allow a little more time for completion of the paperwork to document that effort.

The resolution amends the Plan as recommended by the Minority Business Commission. The recommended revision to the Plan will also be presented to the Buncombe County Commission for their consideration and adoption.

The Minority Business Commission recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 25 - PAGE 369

K. MOTION SETTING A PUBLIC HEARING ON JANUARY 25, 2000, TO EXTEND THE CITY'S EXTRATERRITORIAL JURISDICTION IN AN AREA NORTH OF THE CORPORATE LIMITS AND INITIALLY ZONE THE PROPERTY RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

L. RESOLUTION NO. 99-196 - RESOLUTION AUTHORIZING AN INSTALLMENT PURCHASE CONTRACT BETWEEN CRESTAR LEASING CORPORATOIN AND THE CITY OF ASHEVILLE TO FINANCE THE ACQUISITION OF REVENUE CONTROL AND GATE EQUIPMENT

Summary: The consideration of a resolution authorizing the installment financing of revenue control and gate equipment for the City's parking decks.

The City of Asheville Fiscal Year 1999-2000 Budget for the Parking Services Fund includes authorization for the installment purchase of revenue control and gate equipment for the Rankin Avenue, Wall Street and Civic Center Parking Decks (amount to be financed $295,474.00).

The Finance Department had previously sought proposals from 31 firms to finance the purchase of a fire truck and 4,000 trash cans. Twelve proposals were received, the best of which was submitted by Crestar Leasing Corporation - - 4.96% for five years. Crestar Leasing Corporation has offered to extend those very favorable rates to finance the revenue control and gate equipment purchase.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and Crestar Leasing Corporation for the purchase of the revenue control and gate equipment and authorizes the City Manager, Finance Director and City Clerk to execute and deliver any and all necessary documents.

Council adopt the resolution and enabling budget amendment.

RESOLUTION BOOK NO. 25 - PAGE 370

M. ORDINANCE NO. 2647 - BUDGET AMENDMENT TO FINANCE THE ACQUISITION OF REVENUE CONTROL AND GATE EQUIPMENT

Summary: See Consent Agenda Item "L" above.

ORDINANCE BOOK NO. 18 - PAGE 73

N. RESOLUTION NO. 99-197 - RESOLUTION FIXING A DATE OF PUBLIC HEARING ON JANUARY 11, 2000, TO CONSIDER THE VOLUNTARY ANNEXAION OF CONTIGUOUS PROPERTY LOCATED WEST OF OVERLOOK ROAD AND IDENTIFIED AS BRAESIDE SECTION 5 OF BILTMORE PARK

RESOLUTION BOOK NO. 25 - PAGE 372

O. RESOLUTION NO. 99-198 - RESOLUTION AUTHORIZING THE REGIONAL WATER AUTHORITY TO ACQUIRE EASEMENTS BY EMINENT DOMAIN

Summary: The consideration of resolutions: (1) Authorizing the institution of legal proceedings to acquire an easement for waterline installation on part of Monte Vista Road; and (2) waiving a conflict in legal representation to allow the Water Authority's counsel to bring the action in the City's name.

(1) Eminent Domain – the Regional Water Authority of Asheville, Buncombe and Henderson will soon need to complete installing new water lines and extending its service to an area on the west side of town beyond the City limits that includes Monte Vista Road. A waterline is proposed for installation in the area between the road and the drainage ditch along Monte Vista Road. Other than the temporary inconvenience associated with construction, this installation will not impair the usability of the affected residential properties, which will be served by the new line.

Agreements have been reached with other property owners on Monte Vista Road and the property at 721 Monte Vista Road, owned by Oris and Elizabeth Balding is the only holdout. The Water Authority authorized the initiation of legal proceedings to acquire the property in its meeting on September 21, 1999.

Pursuant to the Water Agreement, any real property or interest in real property acquired by the Water Authority must be held in the City's name. By extension, any proceeding in eminent domain to acquire the property must be brought in the City's name, and the City's authorization is therefore required in order for the Water Authority to take this action.

(2) Waiver of Conflict – The Water Authority is specifically authorized, pursuant to Section VI. N. of the Water Agreement, to employ its own legal counsel. The Authority's counsel is the law firm of Van Winkle, Buck, Wall, Starnes and Davis. That firm is also counsel for parties who oppose the City in several pending legal proceedings, notably the billboard litigation, and regularly represents property owners in land use disputes with the City. Technically, representation of the City by Van Winkle in this eminent domain matter is a conflict that the City must waive. This is a minimal conflict and Van Winkle's representation of the City in this eminent domain proceeding will not give them access to any information that could compromise the City's position in any matter where they represent parties opposing the City.

City staff recommends City Council (1) Adopt the resolution authorizing the institution of eminent domain proceedings in the City's name, as the Water Authority has requested; (2) If the City Council has no objection to the Water Authority's use of the law firm of Van Winkle, Buck, Wall, Starnes and Davis in this eminent domain proceedings, the resolution waiving the conflict should also be adopted.

RESOLUTION BOOK NO. 25 - PAGE 374

P. RESOLUTION NO. 99-199 - RESOLUTION WAIVING CONFLICT IN LEGAL REPRESENTATION TO ALLOW THE REGIONAL WATER AUTHORITY'S COUNSEL TO BRING AN ACTION IN THE CITY'S NAME

Summary: See Consent Agenda Item "O" above.

RESOLUTION BOOK NO. 25 - PAGE 275

Q. RESOLUTION NO. 99-200 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A WAIVER AND RELEASE OF BUILDING RESTRICTION TO ALLOW THE CONSTRUCTION OF AN ADDITION FOR THE COLBERN GEM AND MINERAL MUSEUM PROPERTY CONVEYED TO THE CITY OF ASHEVILLE AND LEASED TO PACK PLACE EDUCATION ARTS AND SCIENCE CENTER INC.

Summary: The consideration of a resolution would authorize the Mayor to execute a Waiver and Release of Building Restriction to allow the construction of an addition for the Colburn Gem & Mineral Museum on property conveyed to the City of Asheville and leased to Pack Place Education Arts & Science Center, Inc.

The City of Asheville owns property on which Pack Place Education Arts & Science Center, Inc. ("Pack Place") is located. Colburn Gem & Mineral Museum ("Colburn Museum") is located within Pack Place. Colburn Museum desires to expand the portion of the Pack Place building occupied by it into a portion of an area known as a "courtyard," which is identified as "Tract Two" on "Lot D" on that plat recorded in Plat Book 56 at Page 64 in the Office of the Register of Deeds for Buncombe County. She reviewed the approximate location of the portion of the courtyard on which the building would be constructed.

In the deed wherein Pack Plaza Associates Limited Partnership ("Pack Plaza") conveyed to the City of Asheville certain properties, including Lot D shown on the above-referenced plat, there is a provision wherein the City and Pack Plaza promised that they would not permit the construction of any permanent building or roof structure in, on or above the property identified as Tract Two of Lot D as shown on the above-referenced plat.

In a Memorandum of Understanding dated October 28, 1988, by and among the City, Pack Place and Pack Plaza, the City and Pack Place agreed that they would not construct any permanent building or room structures in the courtyards, including Tract Two of Lot D of the above-referenced plat.

Landmark Management, PBL Investment, LLC ("Landmark") is a successor to the interests of Pack Plaza. Landmark and Pack Place have agreed to permit the construction of the extension of the building for Colburn Museum. It is necessary to execute a document wherein the consent of the parties to the construction of the extension of the Colburn Museum can be recorded in the Office of the Register of Deeds for Buncombe County.

The City Attorney's Office recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 376

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Whitmire and carried unanimously.

III. PUBLIC HEARING:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR A TELECOMMUNICATIONS TOWER AT 200 TUNNEL ROAD

Mayor Sitnick said that this public hearing was opened on September 28, 1999, and continued until November 23, 1999. On November 23, 1999, the public hearing was continued until this date.

See Continuance Request above.

B. PUBLIC HEARING RELATIVE TO THE CONDITIONAL USE PERMIT FOR THE SWEETEN CREEK CONDOMINIUMS (THE CARLYLE) LOCATED AT 3195 SWEETEN CREEK ROAD

ORDINANCE NO. 2648 - ORDINANCE APPROVING THE CONDITIONAL USE PERMIT FOR THE SWEETEN CREEK CONDOMINIUMS (THE CARLYLE) LOCATED AT 3195 SWEETEN CREEK ROAD

Mayor Sitnick opened the public hearing at 5:19 p.m.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

Ms. Stacy Merten, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Stacy Merten, Urban Planner, said that this is the consideration of a conditional use permit as outlined in the Unified Development Ordinance (UDO) for the Sweeten Creek Condominiums (the Carlyle) located at 3195 Sweeten Creek Road. This public hearing was legally advertised on December 10 and 17, 1999.

Sweeten Creek Apartments, LLC, has submitted development plans for Level III site plan review. The project is a new 80 unit condominium complex consisting of two 3-story buildings and six 2-story buildings, with a combined total of 108,040 square feet. The developer has reduced the number of units on the site to comply with the UDO requirements for hillside area development. The developer has also obtained permits from the Army Corps of Engineers as there are designated wetlands located in the site. There will be one new driveway entrance off Sweeten Creek Road to serve the development. The Technical Review Committee (TRC) reviewed the plans at their meeting on July 19, 1999, and took action to approve with the following conditions:

- Plans must be revised to show compliance with the City's Hillside Area Development regulations.
- Provide figure for the total open space to be provided as well as a figure for the size of the largest contiguous area of open space. A letter from the Norfolk & Southern Railroad must be submitted which authorizes the use of a portion of the railroad easement for open space.
- The North Carolina Accessibility Code must be met for this project.
- A detailed final landscaping and buffering plan must be approved by the Planning and Development Department. Please note that the City strongly encourages the retention of as much existing vegetation as possible within the required buffer areas.
- Provide detail of the proposed fence which will screen the dumpster locations.

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- Recommend lighting to stay within a 16-20 foot height limit.
- Submit sewer plan to MSD for review and approval
- Plans must meet MSD rehabilitation requirements as outlined in the MSD allocation letter for the project.

City Council must take formal action as set forth in section 7-5-5(e) of the UDO, and must make the following findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]:

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed development is a new condominium development on a hillside with an average slope of 16.5%. The developer has reduced the number of units by 15 less than what would technically be allowed on the site, in compliance with the requirements of the Hillside Area Development Standards The project has also received a permit from the Army Corps of Engineers as there are designated wetlands on the property. The impacts of the development will not materially endanger the public, health or safety.

2. That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region.

   The proposed development will enhance the successful operation of the surrounding community in its basic function by providing needed housing and adding to the mix of housing types available to the community.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The neighboring uses include a mobile home park to the north, and Ravenscroft Condominiums and Arbor Terrace to the south. The site backs up to the railroad on the west side. The plans show a buffer meeting the landscaping requirements of the UDO which will mitigate any possible negative impacts of the new development.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The proposed project is located in an area zoned RM-16. The neighboring uses to the proposed development are also medium to higher density multi-family developments which conform to the zoning and are in character with the proposed development.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City.

   The Asheville City Plan 2010 indicates medium density residential development in this area.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed development is located in an existing developed area. The project received technical approval from the Water Resources Department, the Fire Department, MSD, Engineering and Public Works.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

A Traffic Impact Analysis (TIA) was prepared for this site as required by the UDO. The TIA considered the impact of this development and other projected traffic on the transportation system. The TIA acknowledged that there is an existing problem at the intersection of Sweeten Creek Road and Mills Gap Road, but concluded that the addition of new traffic from this development will only minimally impact this intersection. The City Engineer and Traffic Engineer reviewed the findings of the TIA for accuracy and concur with the findings

A copy of the site plan was previously furnished to City Council for review prior to the public hearing.

The Planning and Development staff and the TRC find that the project will meet all the technical standards for development in the RM-16 zoning district if all of the attached conditions are addressed.

Mr. Jeff MaHaffey, representing Land Planning Collaborative, passed out 3 drawings (Applicant Exhibit 1) and spoke in support of this affordable housing option. He said that the purchase price would be approximately $85-90,000 for each unit.

Mayor Sitnick closed the public hearing at 5:26 p.m.

Councilwoman Whitmire moved to approve Ordinance No. 2648, which approves the conditional use permit for Sweeten Creek Condominiums (the Carlyle) located at 3195 Sweeten Creek Road, subject to the conditions of the Technical Review Committee being met. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 75

C. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE WHICH WOULD ESTABLISH SUPPLEMENTAL DEVELOPMENT STANDARDS FOR LARGE RETAIL STRUCTURE

ORDINANCE NO. 2649 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE WHICH WOULD ESTABLISH SUPPLEMENTAL DEVELOPMENT STANDARDS FOR LARGE RETAIL STRUCTURE

Mayor Sitnick opened the public hearing at 5:28 p.m.

Senior Planner Gerald Green said that this is the consideration of amending the Unified Development Ordinance which would establish supplemental development standards for large retail structures. This public hearing was legally advertised on December 10 and 17, 1999.

The Planning and Zoning Commission, at their November 10, 1999, meeting, reviewed and recommended approval of an amendment to the Unified Development Ordinance which would establish supplemental development standards for large retail structures. Structures subject to the supplemental development standards are identified in the amendment as:

- Single tenant retail structures with a gross floor area of more than 75,000 square feet in the Highway Business District;
- Single tenant retail structures with a gross floor area of more than 100,000 square feet in the Regional Business, Commercial/Industrial, Industrial, and River Districts; and
- Multiple tenant retail structures with a gross floor area of more than 100,000 square feet in the Highway Business, Regional Business, Commercial/Industrial, Industrial, and River Districts.

Goals of the supplemental development standards are to:

- Employ high quality building design;
- Blend building design and layout with other site features;
- Avoid bland and monotonous building design; and
- Ensure that buildings contribute to the community character of the City.

To achieve these goals, the ordinance amendment establishes supplemental development standards addressing building design, building material and color, landscaping and buffering, lighting, pedestrian amenities and circulation, and customer entrances. Design professionals and developers are provided a great deal of flexibility in meeting the supplemental development standards through the provision of a variety of design standards from which they may choose. Meeting approximately 70% of the standards will result in a recommendation for approval of a basic retail structure; bulk retail structures will have to meet approximately 50% of the supplemental standards.

The amendment identifies large retail structures as conditional uses. During the review process they would be reviewed for compliance with the supplemental development standards. The amendment does not require an additional review process for these structures, as they are currently reviewed as conditional uses.

The Asheville Planning and Zoning Commission voted 6-0 to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the amendment.

Upon inquiry of Councilwoman Field, Mr. Green said that in the staff's presentation to City Council, they will address those issues identified to them as major concerns.

Councilwoman Field felt this amendment is a really good start on design based zoning and a way of assuring that a lot of people have input on what happens.

Councilman Hay said that this builds in a communication with staff and let's them tell developers what they would like to see and builds in a structure for that to happen. He understands that it will evolve over time and the points will be revised by staff as they learn more about what the community and Council wants to see.

Upon inquiry of Councilman Peterson, Mr. Green said that if the developers do not make an effort to change their design, staff would point out to City Council that the developer failed to comply with the supplemental development standards noting that the ultimate approval or denial rests with City Council.

Upon inquiry of Councilman Peterson, City Attorney Oast said that staff is discussing the possibility of including the Planning & Zoning Commission in the process of reviewing conditional use permits, and when their review is complete, they will report their results to City Council.

Mayor Sitnick closed the public hearing at 5:51 p.m.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved to adopt Ordinance No. 2649. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 80

IV. UNFINISHED BUSINESS:

A. I-26 DESIGN CONCEPT

Planning & Development Director Scott Shuford said that at last week's worksession, Council directed him to develop a concept on how to obtain additional public input regarding the N. C. Dept of Transportation (NC DOT) corridor project. This direction specified that the added public input process be consistent with the Technical Advisory Committee's recommendation that NC DOT's project schedule be expedited.

Pursuant to this direction, he recommended the following process for allowing meaningful public input in a manner designed to not interfere with the project schedule. If Council is comfortable with this approach, staff will return with more specifics, as well as some general transportation planning information, at an upcoming Council meeting.

First, it is important to provide balanced technical expertise at the design forum. Transportation planning is a field undergoing many innovations and it is critical to take advantage of recent developments in the profession as part of this process. Consequently, he recommended that the City bring in an independent facilitator(s)/observer(s) to provide technical expertise and balance. There are a number of academic sources for this type of facilitator/observer; the use of a university professor insures that we have someone up to date on transportation planning innovations while eliminating the conflict of interest issue that may be applied, fairly or unfairly, to someone in the private sector.

Second, it is crucial that we organize the design forum around separate issues so we can offer input on a wide range of matters. He suggested we set up tables and work areas around the following seven issues. Each table would be staffed with experts in the area, including City staff, Land-of-Sky staff, NC DOT staff, our academic facilitator(s), and members of the earlier corridor design task force, with each table presenting a summary of ideas at the conclusion of the forum for NC DOT consideration.

- West Asheville links (Amboy Road, Brevard Road interchanges; Virginia and Fairfax Avenue connections; etc.)
- 8 laning issue
- Bicycle/Pedestrian/Greenway/Transit issues
- Outer Loop concept
- Buffer issues
- Boulevard treatment for peripheral roads (Patton Avenue, I-240)
- River/Bridge issues

Third, the forum should occur on a Friday and Saturday to maximize input, including Friday evening. Stephens-Lee or the Civic Center would be possible locations for the forum.

Finally, to fit with the NC DOT schedule, the forum will need to occur by mid-February.

Mr. Shuford said that the NC DOT has asked for a formal request for their participation in the design forum. He suggested that, if the Council is comfortable with this proposal, that the Mayor write a letter to the NC DOT making that request.

Mayor Sitnick said that it was clear that there is a lack of consensus in the community regarding this project and a need on the part of the part of the community to ask questions and have concerns addressed.

Upon inquiry of Councilman Hay about the timing of the forum and the April NC DOT public hearing, Mr. Shuford said that if NC DOT is going to have an effective public hearing in April then we will need to give them time to look at the ideas and to actually take them through their engineering process in order to see if the ideas will work from a technical standpoint.

Councilman Hay said that he was told that there is a possibility of raising some private money to help pay for the forum and wondered how strict the NC DOT April public hearing date is. Mr. Shuford said the NC DOT is programming for that date but was unable to say how firm that date would be. If there is some slack in their schedule, he will certainly report back to Council.

Councilman Hay said that it was critical that we not lose any ground in proceeding with this project, however, a month or two at this critical stage may be a month or two well spent to make sure we get the most out of the forum and also that the NC DOT public hearing is as responsive as we want it to be from what we learn from the forum.

Councilwoman Field voiced concern over people raising funds to pay for the forum in that the public may think that the process was tainted. She had no problem in delaying the forum if that would make it a better process. But she did have a problem with delaying the forum in order to give people time to raise funds to help sponsor it.

Vice-Mayor Cloninger felt we could have a better forum if we get participation from a variety of groups, including a variety of financial support. He had no problem in asking foundations, non-profits, etc. to participate with the City financially with the forum.

Councilman Whitmire felt that it would be okay to accept financial help from foundations, however, not from the Chamber of Commerce, for example. She suggested some facilitators that Mr. Shuford might contact to help with the forum.

Councilman Peterson strongly suggested that Mr. Shuford invite the neighborhoods and business groups that will be directly affected by this project to the forum.

When Councilman Peterson asked what the outcome of the product from the forum would be, Mr. Shuford said that past forums have resulted in drawings which will then be transmitted back to the actual design professionals at the NC DOT for consideration.

Upon inquiry of Councilman Peterson about the role the NC DOT staff would be taking in this forum, Mayor Sitnick said that she was assured that the NC DOT staff would be present and would actively participate.

It was the consensus of City Council to have the Mayor send a letter to the NC DOT requesting their participation in the design forum.

V. NEW BUSINESS:

A. RESOLUTION NO. 99-201 - RESOLUTION APPROVING AMENDMENTS TO "LEASE AGREEMENT" AND "PRESERVATION, OPERATION AND REHABILITATION AGREEMENT" FOR GROVE ARCADE BUILDING

RESOLUTION NO. 99-202 - RESOLUTION AUTHORIZING NON-DISTURBANCE AND ATTORNMENT AGREEMENT FOR GROVE ARCADE

RESOLUTION NO. 99-203 - RESOLUTION AUTHORIZING THE CITY TO FORM A CORPORATION FOR THE PURPOSE OF PARTICIPATION IN OPERATION OF GROVE ARCADE PUBLIC MARKET RESTORATION WORK

RESOLUTION NO. 99-204 - RESOLUTION AUTHORIZING CONVEYANCE OF FACADE EASEMENT FOR GROVE ARCADE

Vice-Mayor Cloninger asked to be excused from participating in this issue since his firm represents the Grove Arcade Public Market Foundation. Therefore, Councilman Worley moved to excuse Vice-Mayor Cloninger from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Whitmire and carried unanimously.

City Attorney Oast said that this is the consideration of Amendments to the Lease and Operating Agreement, and other documents, to allow for financing of improvements at Grove Arcade. He then reviewed the new structure of the Grove Arcade ownership and management. He also reviewed the current leasing structure of the Grove Arcade, the proposed new structure, and the highlights of the Grove Arcade transition.

In the Spring of 1997, the City acquired the Grove Arcade Building by Quitclaim Deed from the United States Government. The building was built originally as a public market and was so operated until 1942, when the federal government took it over in connection with the country's World War II efforts. The building's exterior windows and doors were bricked up by the federal government, which used the building until 1994.

- Summary of Activities: The conveyance to the City was essentially without consideration, but it was subject to significant restrictions on how the City could dispose of the building and how it could be used. The Grove Arcade Public Market Foundation (herein "GAPMF"), a non-profit corporation, was established for the purpose of rehabilitating Grove Arcade. In August of 1997, the City entered into a long term lease of the Grove Arcade building to GAPMF. The redevelopment proposal calls for the public market to be reestablished on the First Floor and a portion of the Mezzanine and for a combination of office and residential uses on the Third and Fourth Floors. GAPMF, with the permission of the City, subleased the balance of the mezzanine and the upper floors to Skelton Development of Atlanta to develop the office and residential uses.

The City's lease with GAPMF recognized that the financial structure for the rehabilitation was subject to change, depending on the availability of such things as tax credits and possible participation of other financial partners. While GAPMF remains ultimately responsible to the City for the debt service on the Certificates of Participation that were issued to finance the public market part of the renovations, the City has the authority to approve amendments as necessary to accommodate financial arrangements and participation by other developers.

The uniqueness of the Grove Arcade rehabilitation project has made conventional financing difficult to obtain, and construction, has proceeded more slowly than anticipated. Marketing and leasing, however, have gone better than expected. After long negotiations involving GAPMF, Skelton Development, local and national financial institutions, real estate companies, and the United States Government, and after some changes in tax laws, a financial structure has finally been proposed that will: (1) allow GAPMF to take advantage of the significant tax credits available for the historic rehabilitation of the building; and (2) provide for substantial financial participation by another party on both the public market side and the residential/office side of the project.

Since a for-profit (taxpaying) entity was needed to take advantage of the available tax credits, the City Council earlier this year approved the assignment of the lease by GAPMF to Grove Arcade Preservation Inc., (herein "GAP, Inc.") a for-profit subsidiary corporation wholly controlled by GAPMF. This was to permit investments in the project and the utilization of legally available tax credits by a qualified New York Stock Exchange investor.

- Effect of Proposed Amendments: Under the current proposal, the investor will still participate in the project as before, but instead of those tax credits running through one for-profit subsidiary corporation, there will be two for-profit limited liability companies (herein "LLC"):

(a) One of the LLC's will be Grove Arcade Restoration LLC (herein "GAR"), consisting of GAP, Inc. as the managing partner and operating entity, and an investor corporation as a 99% financial participant. GAR will be responsible for developing the first floor, together with portions of the mezzanine and basement, of the Arcade Building as a public market in the same way that GAPMF proposed to do. Through GAP, Inc., GAPMF will still have full control as developer and manager of this part of the project.

(b) The other LLC will be the Historic Grove Arcade LLC (herein "HGA"), consisting of a management company controlled by Skelton Development as the managing partner and an investor corporation as a 99% financial participant. HGA will be responsible for developing the second, third and fourth floors of the Arcade Building, together with portions of the mezzanine and basement, in the same way that Skelton Development had previously been approved to do.

Each LLC will essentially be subject to the same agreements as are currently in place with GAPMF and Skelton Development, and each LLC will be managed and controlled by the entities that are currently developing the building. GAPMF will continue to be financially responsible to the City to the same extent as before. Negotiations between GAPMF and Skelton on the one hand, and the potential investor corporations on the other, for participation in the subsidiary LLC's are not yet finalized, but according to representatives of GAPMF, agreements in principal have been reached, and closing will occur by year's end if the City approves. The extent of the financial participation by the investor corporations is expected to be worth millions of dollars, and should kick the entire project into high gear, such that it will come on line, despite delays in the start of construction, well within the five (5) year provided for in the City's agreement with GAPMF. The proposed amendments will not extend this period.

One feature of the new proposal will involve the City becoming an organizational participant in the Grove Arcade development. In order to preserve the ability to use the rehabilitation tax credits, it is necessary that GAP, Inc., as the managing partner of the for-profit GAR LLC, have 21% participation by an entity that is not controlled by GAPMF. This could be any person or corporation, but GAPMF and its attorneys have suggested that, in order to ensure that the City remains appraised of all activities of GAR, the City would form a wholly-owned subsidiary corporation whose sole purpose is to participate with GAP, Inc. in the ownership structure of GAR. The City's participation would be for ownership purposes only, would be in the nature of a limited partner, would not require any additional financial commitment by the City, and would not expose the City to any additional risk of loss in the event of financial problems. The City's ownership in GAR would be 21% of GAP, Inc.'s 1% interest.

- Non-Disturbance and Attornment Agreement: This is an item required by the investor corporations in order to protect their investment during the tax credit recapture period.

This is an Agreement whereby, if the covenants and restrictions of the Quitclaim Deed from the United States to the City are violated such that title to the Grove Arcade Building could revest in the United States pursuant to the Quitclaim Deed, the United States would continue to honor the existing leases of any party whose use or occupancy was not the cause of the default or violation.

For instance, the Quitclaim Deed prohibits the City from selling the Grove Arcade Building except to another governmental agency that can assure the continued use of the building for historic monument purposes. In the unlikely event that the City were to violate this restriction, its title would revest in the United States, but the Agreement provides that the subleases would not be terminated. Rents under the subleases in this event would be paid to the United States.

Because of the degree of control that the City has over the project by virtue of the Lease Agreement and Preservation Agreement with GAPMF, and because of the working relationship between the City, GAPMF and the responsible federal agencies, the possibility of a default triggering revestment of the title in the United States appears to be remote at best.

One feature of this Non-disturbance and Attornment Agreement is that the United States is expressly agreeing to and approving the Lease, Subleases and Development Agreements, and essentially consenting to the activities described in all of them, and waives any breach of the conditions of the Quitclaim Deed (of which there have been none). This representation by the United States, in addition to protecting the subtenant LLCs, provides sound assurance to the City, by the only party that could enforce the applicable restrictions against it, that the restructuring authorized pursuant to the amendments is not inconsistent with the Quitclaim Deed or the Program of Preservation and Utilization, and that the City's possessory interest is not compromised by the amendments.

It is anticipated that within six years, GAPMF will reacquire its full ownership interest from the investor in GAR, and that Skelton will acquire the ownership interest in HGA. At that point, the ownership structure will revert to its original form.

In order to accomplish all of this, several things must occur:

(1) certain amendments to the Operating Agreement and the Lease between GAPMF and the City must be approved to permit the above described ownership and operating structure. The major features of these amendments include:

    (a) the subleasing to the LLCs GAR and HGA, by GAPMF must be approved;

    (b) the City may not unilaterally terminate the lease with GAPMF for five (5) years (currently, there is no such limitation). This five (5) year non-termination provision is necessary for purposes of the tax credits. In the unlikely event that termination becomes necessary, it will be possible by mutual consent. The City gives up none of its other remedies to enforce the Lease.

(c) the City must agree that the use restrictions in the Quitclaim Deed from the United States are being complied with in the new arrangement; federal officials responsible for oversight have indicated that the new arrangement will not violate the restrictions

(d) the City must agree to the sublessees using their leasehold interest as security to obtain financing (the Lease and Operating Agreement specifically contemplate this);

(e) The City agrees to a starting date for renovation work of 36 months after the date of its Lease to GAPMF (currently, that date is 18 months, and some work has in fact already begun). This will not extend the five (5) year time period for substantial completion of the improvements, which is provided for in the City's Agreement with GAPMF.

(2) the City must agree to a "Non-disturbance and Attornment Agreement," which essentially provides that the United States will honor the subleases to the LLC's if some default occurs that would cause the title to the building to revest in the United States (this is a standard feature of commercial subleasing arrangements);

(3) the City must agree to formation of a corporation to participate with GAP, Inc. in the ownership of the GAR LLC for the public market phase of the projects, or some other arrangement.

- Non termination: Of the changes summarized above, the one that will affect the City most significantly is giving up the right to terminate its lease with GAPMF for a period of five years, beginning at or about the effective date of the amendment, and continuing until early 2004. This five year non-termination period is a requirement of federal tax law, apparently to insure that the investor who is using the tax credits remains financially committed to the historic preservation project long enough to get it done, and does not simply collect the tax credit and move on. The rationale is apparently to guarantee that a historic preservation tax credit actually results in historic preservation.

Currently, the City may terminate its lease with GAPMF upon 180 days written notice for any failure by GAPMF to comply with the terms of the lease or operating agreement, or for any breach of covenants or restrictions applicable to the property. Such a breach would include, among other things:

(a) failure to make any payments provided for in the lease or operating agreement (these payments include assessments and taxes, utilities and operating expenses, and debt service on the certificates of participation);

(b) abandonment of the premises;

(c) failure to maintain adequate insurance

(d) failure to perform the renovations according to approved plans; and

(e) failure to maintain its non-profit status. Any of these failures constitutes an "event of default," which triggers a process that can result in termination of the lease.

If the lease were to be terminated under the current arrangement, then GAPMF would have no obligation to make any further payments thereunder. While the City could proceed against the bonds and insurance maintained by GAPMF to recover some of its loss, the City would still be bound by its preservation agreement with the federal government to rehabilitate the building (failure of which could result in loss of the property), and would still be responsible for the debt service on the COPs. About the only advantage the ability to terminate holds for the City is that if GAPMF does not proceed with the rehabilitation work, the City can step into GAPMF's position or replace GAPMF with another developer. The ability to terminate does not, by itself, accomplish the rehab work or guarantee financing for it.

Under the proposed arrangement, the LLCs must invest in the project and perform the rehab work in accordance with the preservation plan, or the tax credit is lost, together with the value of any improvements that were made. Since the tax credits are used all at once but the improvements are made over time, the loss of the credits, either by failure to complete the work or by abandoning the project before the expiration of five years, is financially catastrophic for the investor. Not only must the value of the credits be repaid to the IRS, with interest and substantial penalties, but the value of any completed work is potentially lost because it becomes the City's property under the lease.

Moreover, if either of the LLC's or GAPMF fails such that GAPMF cannot make its payments on the debt service (which is also an event of default under the current lease), then the investor corporations are bound to the City for 50% of GAPMF's obligations with respect to the debt service on the COP's.

In essence, while the City losses the ability to "punish" an event of non-compliance by unilaterally taking GAPMF out of the project (and in the process assuming responsibility for the rehab work), what is gained is:

(a) strong financial incentive for completing the work as planned;

(b) stronger financial disincentive for not completing the work as planned; and

(c) better security for the City's debt service obligation.

"Punishment" for non-compliance can still occur, but it is now backed up with significant financial leverage besides simply being removed from the project, and will be administered by the IRS. The new arrangement also enables participation by entities whose financial resources are substantial. If the project is successful, the City winds up with a boost to its downtown economy in the form of more consumer traffic, more jobs and a restored structure of national architectural and historic significance.

The new proposed arrangement is not risk free. By authorizing the subleases and giving up its right to terminate the lease with GAPMF, the City creates another layer between it and the developer of the project. Despite the financial consequences, the corporate investors could still pull out of the project, leaving the City with an incomplete building and a debt, as could happen with the current arrangement. If they do pull out, they will lose the millions of dollars they invested in order to claim the tax credits. The loss of direct control will be somewhat made up, at least on the public market side, by the City's participation as a partner in the controlling interest of the GAR LLC. On the whole, while some degree of control over the project is lost it appears that the proposed arrangement significantly improves the financial prospects of the project and involves less risk than the current arrangement, both because there will be more money available to complete the project, and better recourse available to the City if the project is

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not completed. Finally, as noted above, even with the proposed amendment, GAPMF is responsible to the City for compliance with the terms of the lease.

In anticipation of closing, the investor corporations will immediately make a "bridge loan" of several hundred thousand dollars to provide for immediate resumption of work on the building until the loan is closed and funds are disbursed next month. This occurred on Friday, and the contractors are expected to be back at work on Monday.

These arrangements are still being worked out in anticipation that the transaction can close completely by the end of the year. In anticipation of closing, what will be needed from the City is approval to proceed with the items enumerated above, and authority for the Manager and the Mayor to execute appropriate documents. Through its ability to approve subleases, the City will have final approval over the new financial participants in the subsidiary LLCs. If Council agrees to the formation of a subsidiary corporation, the incorporation work will be done by GAPMF's attorneys, or otherwise paid for by GAPMF.

This is a complicated transaction, but this proposed structure is one that is fairly routine among entities that use tax credits to assist in financing expensive construction or rehabilitation projects. The terms of the City's agreements with GAPMF will not be changed in any way that compromises the City's position with respect to GAPMF's financial obligations to the City. Overall, the City's position, both financially and in terms of getting the project completed, appears to be enhanced by the proposed arrangement. If Council wishes to proceed authorize the changes that will effectuate the new arrangement, adoption of the following resolutions is recommended.

- The first resolution authorizes the amendments to the lease and operating agreements;
- The second resolution authorizes the Manager to enter into the non-disturbance and attornment agreement;
- The third resolution authorizes City staff to proceed with formation of a corporation to participate in GAR, in accordance with the limitations noted in this Staff Report; and
- The fourth resolution authorizes conveyance of a facade easement for the Grove Arcade.

Mr. Oast responded to several questions and comments from Council, some being, but are not limited to: what are the limits on the profit-making activity; who pays for the accounting requirements; will the residential units or condominiums built by Skelton Development be in the affordable range; what does the word attornment mean; what remedies would the City have if a breach of the contract occurred; what the effect of electric de-regulation would do to CP&L; what rights does CP&L have if in 2-3 years GAPMF cannot perform their part; is there an annual review process that takes place annually with CP&L; when did the five year date for "substantial completion" of the public market improvements start; can anyone sit on the corporation formed by the City; after the end of the five year period and the GAPMF re-acquires the full ownership of the building, will be GAR LLC be dissolved; and, who will the tenants be paying their rent to.

Councilman Hay was concerned about the project being abandoned with no improvements even being made to the building. He wondered if there was a way to tie the termination to the investment, that is, that we waive our right to terminate as of the time the investors make their commitment to the project.

Mr. Aaron Zaresky, Executive Director of the GAPMF, said that the investor has already committed that upon signing there will be approximately $700,000 in funds transferred immediately and they are anticipated to sign later next week.

Councilman Hay then confirmed that then the expenditure of money is contemporaneous with the waiver of the right to terminate.

Councilwoman Whitmire said that CaroHome is currently participating in two other projects in the community for affordable housing tax credits. So, we have an investor who is committed to our community, not for just five years, but for 30 years. This is a company that believes in Asheville and are committed.

Upon inquiry of Councilwoman Field, Mr. Lou Bissette, attorney for GAPMF, said that the units would be leased for a period of five years and after that time, they would be sold as lease-hold condominiums.

Mr. Bissette said that the GAPMF was formed as a non-profit entity to try to find a way to restore and save this national historic treasure and it has taken a long time and a lot of effort to get to this point, which will close next week. The investor, CP&L, is a North Carolina, reputable company and is in great financial shape. CP&L and Wachovia Bank will be putting something in excess of $10 Million into this project.

Councilwoman Field said that she would vote in favor of this, however, several merchants from existing businesses in downtown asked her the following questions which she would like answered so she can respond back to them: (1) Has the City Council looked into the impact of 70 new businesses on the existing businesses in downtown; (2) The GAPMF has committed to no chain stores. What assurance do we have that this will be true? We have worked hard and for a very long time to make a successful downtown; (3) The GAPMF has committed to not compete with existing businesses within a certain radius of the building. What is to say that this will be adhered to? (4) The failure of the project will be devastating to existing businesses in downtown. The majority of the merchants see this is a lose-lose proposition in that if the Public Market fails, the rest of downtown fails. They believe that the only way it can succeed is if the Public Market competes with other downtown businesses and encourages chain stores, which is exactly what most of the people don't want them to do; (5) Why is the City building 300 parking spaces for a project that is not yet made any contribution to downtown while turning a blind eye and a deaf ear to merchants who have committed to downtown for up to 10-20 years and have been paying taxes for 10-20 years. We need parking right now in the Pack Square and Biltmore quadrant of the City. (6) Why has the GAPMF totally ignored the downtown community while marketing their project based on how much they will do for our downtown?

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and they will not be read.

Councilman Worley moved for the adoption of Resolution No. 99-201. This motion was seconded by Councilwoman Whitmire and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 378

Councilman Hay moved for the adoption of Resolution No. 99-202. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 385

Councilwoman Whitmire moved for the adoption of Resolution No. 99-203. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 386

Councilman Worley moved for the adoption of Resolution No. 99-204. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 387

B. REPORT ON BILTMORE PARK HIGH TECH FLEX BUILDING

Mr. Dale Carroll, President of the Advantage West Regional Commission, said that they are involved in a collaborative project at the Biltmore Park Technology Center for a high tech flex space building. The unique partnership involves the City of Asheville, the non-profit development corporation through Advantage West, and also Biltmore Farms Inc. The need for this project was originated through a study in order to attach high technology companies to Western North Carolina. The 100 Technology Drive building was put in place at the Biltmore Park Technology Center and reported that it has in fact created high tech client traffic for our region. His staff has worked with an environmental technology company from Atlanta, we have worked with a medical technology company from New York, and currently there is a computer technology company that is considering space there. He also reported that Carolina Television Inc. has purchased one-half of the 100 Technology Drive building and is going to be expanding the studios for WLOS-TV. Equally important, they will be increasing their technical infrastructure in the park and at the building with microwave communication ability, with satellite communication ability and by strengthening the fiber optic telecommunication backbone for broad-band technology. All of this will help continue to momentum in the kind of client traffic we are seeing. This would not be possible without this product being available. In this fast-paced business world today, you must have the high tech flex space if you want to target effectively those kinds of companies.

Mr. Jack Cecil, President of Biltmore Farms, thanked City Council and staff for their cooperation in what was, at the time, a fairly unique deal that brought together a public body, a public non-profit, and a private sector.

Councilman Worley said it was nice to hear a success story, but also pointed out that it doesn't happen without some degree of risk. The City took a risk when it approved the investment in this project and Biltmore Farms took an even bigger risk in building the project.

C. PROPOSAL FROM PAUL AND JAMES YOUNG RELATIVE TO ACQUIRING PROPERTY NEAR THE ASHEVILLE REGIONAL AIRPORT TO OPERATE A MOTOR SPEEDWAY

Due to a conflict of interest, Councilman Hay excused Vice-Mayor Cloninger from participating in this matter. This motion was seconded by Councilman Worley and carried unanimously.

City Manager Westbrook said that Paul and James Young are interested in discussing the possibility of either acquiring or leasing property located on the northeast by Airport Road, on the southwest by the French Broad River and on the northwest and southeast by the Buncombe-Henderson County line from the City of Asheville to operate a motor speedway. In order to determine the feasibility of developing a motor speedway on this particular tract, they are requesting access to the property for up to 90 days to conduct certain tests on the property.

Mayor Sitnick said that to set the record straight about letters and comments, the City did not offer the Youngs the subject property at the Airport for possible development of a racetrack.

Mr. Lou Bissette, attorney representing Paul and James Young, said that their only request is for City Council to let the Youngs go onto the subject property for a period of up to 90 days to perform some tests to see if the property might be an adequate location for a new Asheville speedway. He said they are not requesting any commitment from the City in reference to acquiring the property. They realize the Airport, area residents and the Federal Aviation Administration have an interest in that property. But again, they are only requesting that they be allowed to go on the property and do some drillings to see if a racetrack would even work. If the property tests out and everything else falls into place, the Youngs would be interested in discussing the possibility of either acquiring this property from the City or leasing it. They would construct a facility which would be a very nice modern speedway and the investment would be in the several millions of dollars. It would operate basically Friday and Saturday nights for a period of four hours ending at 11:30 p.m. during April through September. There are noise abatement techniques that would be used and there would be a 100-foot buffer dedicated along the French Broad River which could be used for walking trails or greenspaces. He noted that Paul and James Young operated the Asheville Speedway this past final year in a first class manner. While passing out photographs of the property, Mr. Bissette talked about the property and it's history. For the past year the Youngs have been searching for a tract of land which might be suitable for the development of a new Asheville speedway. After months of searching, they have located this tract of property which is owned by the City of Asheville and contains approximately 54 acres. This property has been owned by the City since the 1950's and it is not in the lease of the property from the City of Asheville to the Airport Authority. The area is in the floodplain and located in close proximity to the end of the Airport runway. It would be good for a project such as this because it's located near some very large roads which would accommodate a lot of traffic. Racing has broad support in Asheville, Buncombe County and Western North Carolina, noting that NASCAR racing has more spectators than any other sport in the United States.

Mr. James Young said that they have been searching for a place not only to relocate a speedway but to have a community center noting that they want to have something that involves something more than just motor sports. They would like to participate in projects with the fair, Blue Grass Festival, church revivals, etc. Their plans consist of a driving course which would include a high speed driving course that they would make available to law enforcement agencies of Western North Carolina for training of high performance driving and a drag strip. If this project is completed as they would like, they want a lot of community involvement. They would like to go to 10 area high schools that have automobile mechanic classes and fund up to $5,000 per school, if they wished to participate, and start a program where they can drag cars against each other on a closed course, under supervision, and with proper medical attention close by. Kids now drag race on the streets and it's not safe. This would provide the kids with an opportunity to come to where it's legal to see how fast their cars can go. They would also like to make the track available in the summertime one night a week to have a cruise-in, with patrolmen on duty. They would also like to go to the Buncombe County and Henderson County Sheriff Departments and make a donation of $5,000 each for them to build a drag car and they could have cops and kids drag racing. He felt that anything they can do to promote respect and responsibility for the youth today is great. They are not asking for any tax breaks because it will be totally privately funded. He said that if this is accepted by City Council, then he would be more than happy to meet at the Fletcher Town Hall and answer all their questions.

Mr. Robert E. Turner , Chairman of the Regional Airport Authority, reported on the statistics regarding the Asheville Airport and the benefits of the Airport to our region. He said the Airport Master Plan of August 1993 is the preeminent planning document for the Airport Authority and has been accepted and approved by the Federal Aviation Administration ("FAA") for the 20 year period through 2013 as a guide for future development at the facility. Because the Airport is hemmed in on the east by highways and development, the Master Plan calls for west side development to provide for long range expansion for a variety of future aviation-related uses including a proposed parallel runway of a minimum of 6,800 feet in length designed to air carrier standards, air freight facilities, additional general aviation facilities and air field service facilities. The subject property has clearly been identified and approved by the FAA as suitable and appropriate for future development of aviation facilities, in support Asheville Regional Airport Authority's mission to provide facilities for aviation services meeting the needs of Western North Carolina. In light of this planning, the Regional Airport Authority adopted a resolution on December 20, 1999, which requested that the City of Asheville not permit any non-aviation related activities on such real property and that such real property be reserved and preserved solely for the use of the Asheville Regional Airport.

Upon inquiry of Mr. Richard Lantrip, President of the High Vista Homeowner's Association, City Attorney Oast said that the City can dispose of real property in several ways, but all of the ways that would be applicable with this property would involve the opportunity for upset bids. He said that the City would have to sell it to the highest bidder.

The following residents spoke in opposition to locating a speedway near the Airport on City owned property for several reasons, some being, but are not limited to: extreme noise levels; a race track is not suited for, and would be detrimental to, the congested and high growth corridor between Buncombe and Henderson Counties; the quality of life in the surrounding area will be compromised; major benefits will accrue to the developers of the race track, but will be a significant detriment to the residents of the surrounding area; Henderson County Commissioners took appropriate action to protect groups (not only in Henderson County, but in Buncombe County) from the adverse impact of a race track and they request the City of Asheville take appropriate action as well; property values up to 10 miles away will be decreased ; current development activities underway will be negatively impacted; future residential developments in this area will be negatively impacted; future needs of the Airport must be given priority status; it would be more prudent to consider the proposed land for an upscale industrial park that would benefit both counties; a rack track would add very little to the economic growth of the workforce; a race track would only generate more traffic; Fletcher is highly concerned of any type of development, growth, changes, growing pains that they will be seeing surrounding the communities; there is already a $10 Million race track being built only 11 miles from East Asheville in Canton, N.C.; soil sampling testing is only first step towards acquiring the land; noise from the planes is neither consistent nor a nuisance and the sound for the takeoff of a jet is less than 20 seconds and does not occur frequently - noise from a race would be much louder and for several hours at a time; and Westfelt Park is a resource in the area that enjoys fishing, picnicking, etc., and that character will be destroyed:

Mr. Richard Lantrip , President of the High Vista Homeowner's Association
Mr. Jamie McArthur, President of Wildwood Homeowner's Association
Councilman Byrd, Town of Fletcher
Mr. Bob Chapman, member of Residents Opposition Airport Race Track (presented pictures of the race track being built in Canton, N.C.)
Ms. Hilda Hamilton, member of the River Port Homeowner's Association
Mr. Al Cutter
Mr. Ukiah Morrison
Mr. Charles Swenson, resident in the Wildwood development

The following people spoke in support of allowing soil testing to be performed on the property near the Airport in hopes that it might be suitable for a race track. Reasons include, but are not limited to: the Airport doesn't need to expand; stock car engines are the less polluting engines there are with regard to pollution; the race track will provide a place for young people to go; noise will not be extreme because the area already has the noise of airplanes landing and taking off daily; the request is only for testing on the site; no special privileges are being asked for other than what was done at the Asheville Motor Speedway; noise decibels will not be any higher than they were in West Asheville; progress is being made in finding mufflers to lower the noise decibels even more; the site is in the floodplain and would not be suitable for major commercial development; the topography, two highways and the Agricultural Center are located between the site and the residential communities, thus helping to defuse the noise of the race track; the race track will pay taxes to the City; diversity should be encouraged; an industrial park in a flood plain area is not a wise investment; site is not long enough for a runway; the site can be used as a joint parking lot for patrons of the Asheville Airport and the race track; the testing of the soil will be valuable to the City and save taxpayers money; and the race track will only have a minor impact on traffic because of the major interstate:

Mr. Mike Fryer, member of Speedway '99
Mr. Kermit Tolly, member of Speedway '99
Mr. Drew Weeks
Mr. Don Yelton, No Holds Barred
Mr. Dean Bonessy, area resident

Councilman Peterson preferred to postpone action on this matter until some questions were answered, i.e., asked what exactly is in the floodplain, what can be built on that property, and what exactly does the Airport Authority have planned for that site.

Councilwoman Field understood that this site is about 60 feet below the present one runway and if they do have it in their Master Plan, how they intend to get up that 60 feet. She remembered from an earlier presentation that there is already a second runway planned on properties that the Airport already owns. She wondered why we need another race track if there is already one being built 11 minutes away from Asheville. If a race track is not being built in Canton, she was curious about what was being built on that site. She was strongly supportive of the racing community having a place to race in Asheville.

Councilman Worley's major concern was where does this property fit in with the long-range Airport expansion. If this property legitimately fits into the long-range Airport expansion plans, then he would be very hard-pressed to do something different with it. He would like to see the plans from the Airport Authority in order to see how the Airport has treated that property in the long-range planning that has taken place to date. If it doesn't fit in with those plans, then he would entertain some other use.

Councilman Hay was satisfied by the strong statement by the Airport Authority about whether the Airport needs that land. He felt that by looking at the maps, any expansion plans to the west by the Airport would have to take into account that piece of land. He felt the Youngs did a tremendous job of running the speedway last year and he appreciated the way they have dealt with the City. He doesn't think the City has encouraged the Youngs at any point about this particular piece of property because he thought the City has always seen this as part of the Airport property. He hated to hold up the possibility that something else can happen out there or to offer any encouragement down that line at this point because quite frankly, he didn't think it heads anywhere. The sooner we tell the public that, the sooner the Youngs can be looking for a different site, the sooner the neighborhoods can relax, and the sooner the Airport Authority can go forward with their long-range planning.

Mayor Sitnick said that she was also very supportive of the racing community. She said that there are enough questions from Council at this point to delay taking action at this meeting.

It was the consensus of City Council to bring back this issue at the formal meeting on January 11, 2000, in order to get the Council's questions answered and the additional information requested. The City Clerk will compile a list of the questions posed by Council. The following groups were asked to participate in the dialog at the January 11, 2000, meeting: a representative of the Airport Authority, the petitioner, the developer, a representative of High Vista Homeowner's Association, a representative of Wildwood Homeowner's Association, and a representative from the Resident Opposition Airport Race Track.

At 9:00 p.m. Mayor Sitnick announced a break.

D. BRIEFING ON THE CITY'S Y2K PREPAREDNESS

City Manager Westbrook said that the City is prepared and has tested all of its facilities. He then reviewed the City's operational plan and contingencies for the Y2K event. The following Department Directors and other personnel will be at the Emergency Operations Center, as specified in the plan below: Mark Combs, Public Works Director; Irby Brinson, Parks and Recreation Director; Tom Frederick, Water Resources Director; John Rukavina, Fire Chief; Will Annarino, Police Chief; Terry Summey, Building Safety Director; Bill Schaefer, Finance Director; Jim Westbrook, City Manager; Doug Spell, Assistant City Manager; and Robin Westbrook, Public and Community Information Coordinator. Other Department Directors and key personnel already contacted by the Department Directors will remain on standby during the event period.

The operational plan is as follows:

1. Appropriate City staff and the Communications Center will be placed on operational alert beginning December 22, 1999. Operational alert for the purpose of the Y2K will be defined as a general heightened awareness of the Y2K situation and heightened alert status of individuals involved in normal, routine communications and other services provided by the City. The City of Asheville Emergency Operations Center will be on the Fourth Floor of the Municipal Building.

2. On Monday, December 27, 1999, at 0800 hours, the City will be placed on a Level I alert. A Level I alert is defined as the Communications Center being set up and prepared for any emergency. All operating departments will place appropriate people on standby alert during this period of time. At least Level I alert will be continued through January 5, 2000, at 1800 hours.

3. On December 31, 1999, at 1800 hours, the City will be placed on a Level II alert. Level II is defined as key Department Directors and other staff occupying the Emergency Operations Center and being prepared to manage the Y2K and weather emergency. All other Department Directors and key staff will be on standby and available by pager, cell phone, telephone or other means. The City will terminate the Level II alert when no further action is needed with regard to the Y2K and/or weather event.

4. The Emergency Operations Center will be placed on Level III alert, which is defined as full-scale operational emergency response, at such time as notified by the City Manager, the Assistant City Manager or other appropriate City official in response to large-scale Y2K problems and/or weather emergencies.

Five community centers have been selected as emergency centers. Those five centers are as follows: West Asheville, East Asheville, Montford, Murphy-Oakley and Stephens-Lee. Each community emergency center will be stocked with emergency supplies and have generator capability for electricity.

City facilities, where appropriate, will be locked and secure during a Level II operation of the Emergency Operations Center.

E. MOTION TO CONFIRMING TOM SOBOL'S REAPPOINTMENT TO SERVE AN ADDITIONAL THREE-YEAR TERM ON THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON

City Manager Westbrook said that this is the consideration of a request from Buncombe County to permit Mr. Thomas Sobol to serve an additional three year term on the Water Authority from October 1999 through September 2002.

The Water Agreement between the City of Asheville and Buncombe County prescribes that each member of the Regional Water Authority be appointed for a three year term, and prescribes that the concurrence of the Water Authority, the City Council, and the Buncombe County Commissioners is required for members to serve additional terms.

The Water Authority By-Laws amended in 1986 by the joint concurrence of the City, County, and Authority, provided that a member of the Authority could serve up to two consecutive terms. Under these by-laws, it has been the practice of the Authority that the appointing authority (the City, Buncombe County, or Henderson County) could re-appoint a member to the Water Authority to a second consecutive term but not longer than two consecutive terms. Several re-appointments have been made since 1986 by both the City and County under these By-Laws. One of these was Mr. Tom Sobol, who was appointed to the Water Authority by Buncombe County in 1993 and reappointed in 1996. He completed two consecutive three-year terms in September 1999.

The County Attorney presented a request to the Water Authority in October 1999 to permit Mr. Sobol to serve a third term. At the regular meeting in November, the Water Authority endorsed this request. The Buncombe County Commissioners reappointed Mr. Sobol as a County representative to the Water Authority for a third term at their December 7, 1999, meeting. Under the terms of the Water Agreement, the City Council must concur in the decision to authorize Mr. Sobol another term.

The staff advises that the City Council exercise strong discretion in the review of all requests for Water Authority members to serve additional terms, to avoid setting a broad precedence that the same members can serve unlimited terms. In this particular case, Mr. Sobol has been a member of the County Commissioners since 1984, and has also served the community over a long period of time in the areas of tourism development and economic development. Should Council agree to reappoint Mr. Sobol, it should be clear that the appointment is for one term and is specifically made in view of the unique circumstances and experience of Mr. Sobol.

Councilman Peterson and Councilwoman Whitmire felt that City Council should follow their policy of only serving two full successive terms and not make any exceptions to the policy.

Councilman Worley noted that the City Council rules apply to City Council appointments and this is actually a Buncombe County appointment. He noted that the City Council is only being asked to concur with the recommendation of the Water Authority and the County Commissioners. The County Commissioners want a member of their Board on the Authority and to not reappoint Mr. Sobol would necessitate their reshuffling other Board appointments. He felt that Mr. Sobol has provided good, dedicated service to the Authority and would recommend concurring with the reappointment.

Vice-Mayor Cloninger supported the concurrence as well in that we should allow elected bodies broad discretion as to who they want to serve on their boards and commissions. He felt that if the County Commissioners made a similar request to City Council, City Council would want to honor that request. Also, our boards and commissions policy is not set in stone and City Council has, from time to time, extended a particular re-appointment to a third term for unique circumstances.

Councilwoman Field doesn't agree with the concept of term limits because she feels it is a disservice to the community to take someone off of a board who has performed good service for a number of years.

Upon inquiry of Councilwoman Field about if the City Council can re-appoint Mr. Sobol to serve until his term has ended on the County Commissioners, City Attorney Oast said that since he is a Buncombe County appointment, Council's ability to make the re-appointment for less than a full term is limited.

Councilman Hay said that he would support the concurrence to allow Mr. Sobol to serve an additional term. He agreed with the reasoning of fresh faces and fresh points of views on boards, however, the County Commissioners want a Commissioner on the Authority and it makes sense that it be Mr. Sobol.

Mayor Sitnick agreed with Councilman Hay and stressed that City Council is only being asked to concur with the recommendations of the Water Authority and the County Commissioners.

Councilman Worley moved to confirm Tom Sobol's reappointment to serve an additional three-year term on the Regional Water Authority of Asheville, Buncombe and Henderson due to the unique circumstances and experience of Mr. Sobol. This motion was seconded by Councilwoman Field and carried on a 5-2 vote, with Councilman Peterson and Councilwoman Whitmire voting "no".

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of December 3-16, 1999: Lori Huntley (Water), Evan Beveridge (Water), Carolyn Harwood (Fire), David Peter (Water), Steve Banner (Parks & Recreation), Terry Bencar (Water), Michael Jarvis (Inspections), Kathy Norins (Inspections), Rex Snodgrass (Inspections) and Beverly Reid (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Peter Dawes felt that City Council was setting a precedent in allowing Mr. Tom Sobol to be reappointed to serve an additional three year term on the Regional Water Authority. He felt that perhaps Mr. Sobol should be been appointed as an ex-officio member. He felt that the Authority needed fresh ideas.

Mr. Don Yelton suggested City Council help in any way that they can to help clean up property owned by Mr. Ellis Harold Roberts on 5 Woodlawn Terrace.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:02 p.m.

Magdalen Burleson
City Clerk

Leni Sitnick
Mayor

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Tuesday - January 11, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Peterson gave the invocation.

ADDITIONS TO THE AGENDA

At the request of City Manager Westbrook, City Council added two items (1) report on I-26 Design Forum; and (2) Civic Center appropriation.

At the request of Mayor Sitnick, City Council added and item called "Ukiah Morrison".

I. PROCLAMATIONS:

A. UNITED WAY CAMPAIGN

Mayor Sitnick recognized Mr. David Bailey, Chief Executive Officer of United Way of Asheville and Buncombe County, who outlined the support given to the United Way by employees of the City of Asheville. He said that it appears to have resulted in the largest City employee campaign in our history.

The City of Asheville made significant contributions to United Way's 1999 campaign. City employees were the largest employee group to volunteer for Day of Caring (in fact, nearly half of the firefighters of the Asheville Fire Department volunteered to participate on their own time).

On behalf of City Council, Mayor Sitnick thanked City Campaign Co-Chairs Ms. Corinne Meade, Ms. Dee Black and Fire Department Captain Nancy Tabel who coordinated the Day of Caring) for their hard work on the United Campaign.

B RECOGNITION OF WILLOW KOERBER - WINNER OF THE NATIONAL MOUNTAIN BIKE AWARD

Mayor Sitnick recognized Willow Koerber, student at UNC-Asheville, and her accomplishment of winning the National Mountain Bike Award.

II. CONSENT:

At the request of Councilman Peterson, Item E. was briefly discussed.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 21, 1999

B. RESOLUTION NO. 00-1 - RESOLUTION APPOINTING A MEMBER TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Summary: On December 16, 1997, City Council appointed H. Earl Cobb as the elected representative on the Americans with Disabilities Act Compliance Committee. Due to Councilman Cobb's term ending on City Council, there is a need to appoint a replacement.

On December 14, 1999, City Council instructed the City Clerk to prepare the proper paperwork to appoint Councilman Brian Peterson as the elected representative to the Americans with Disabilities Act Compliance Committee to serve a term according to the length of his Council term of office.

RESOLUTION BOOK NO. 25 - PAGE 388

C. RESOLUTION NO. 00-2 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE CRIME STOPPERS COMMITTEE

Summary: On June 22, 1999, Councilman Tommy Sellers was reappointed as the elected representative on the Asheville-Buncombe Crime Stoppers Board of Directors. Due to Councilman Sellers' term ending on City Council, there is a need to appoint a replacement.

On December 14, 1999, City Council instructed the City Clerk to prepare the proper paperwork to appoint Councilwoman Terry Whitmire to serve the unexpired term of Mr. Sellers, term to expire June 30, 2002, or until her successor has been appointed.

RESOLUTION BOOK NO. 25 - PAGE 389

D. RESOLUTION NO. 00-3 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Summary: On January 23, 1996, City Council appointed Councilman Tommy Sellers as the non-voting City Council member on the Citizens/Police Advisory Committee. Due to Councilman Sellers' term ending on City Council, there is a need to appoint a replacement.

On December 14, 1999, City Council instructed the City Clerk to prepare the proper paperwork to appoint Councilman Brian Peterson as the non-voting City Council member on the Citizens/Police Advisory Committee to serve a term according to the length of his Council term of office.

RESOLUTION BOOK NO. 25 - PAGE 390

E. MOTION SETTING A PUBLIC HEARING ON JANUARY 25, 2000, TO CONSIDER A CONDITIONAL USE PERMIT FOR NETTLEWOOD PROFESSIONAL PARK LOCATED ON HENDERSONVILLE ROAD IN THE VICINITY OF WAL-MART

Councilman Peterson said that after meeting with the developer and reviewing his plans, and after talking with some of the residents, it has come to his attention that the issue of access to the property has not been settled. Since one of the Council's criteria in evaluation a conditional use permit is the impact on traffic, he felt it would be inappropriate to hold the public hearing when that key component has not been worked out.

City Attorney Oast said that it was his understanding that City staff is prepared to go forward with the public hearing. There are questions about access, however, Planning staff feels that the project is ready for Council's consideration.

City Manager Westbrook said that the Traffic Engineer was not in his office today and was unable to review the information, however, a revised staff report will be sent to Council tomorrow with his evaluation of the traffic impact analysis.

Upon inquiry of Mayor Sitnick, City Attorney Oast said that even if the public hearing is set for January 25, City Council can continue the public hearing if City staff has not had adequate time to review the information.

Mr. Scott Shuford, Planning & Development Director, said that there are still some issues that need to be resolved. He has talked with the developer who has indicated a willingness to work towards resolution. If they are unable to get that resolved in time for the Planning staff to have adequate time to analyze it, they would then send a recommendation to continue the public hearing to allow further time for review.

Upon inquiry of Councilman Peterson, Mr. Shuford stated that the developer will have had to pretty well have the issue of his major access settled prior to the public hearing.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR A TELECOMMUNICATIONS TOWER AT 200 TUNNEL ROAD

Mayor Sitnick said that a letter has been received from the petitioner American Tower Corporation requesting a continuance of this public hearing until February 8, 2000. This continuance would allow them time to receive final written approval from US Cellular which would allow them to stack their equipment on top of theirs, thus allowing American Tower to withdraw their application for a conditional use permit.

Vice-Mayor Cloninger moved to continue the public hearing until February 8, 2000. This motion was seconded by Councilman Worley and carried unanimously.

B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING DETACHED GARAGES AS ACCESSORY USES

ORDINANCE NO. 2650 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING DETACHED GARAGES AS ACCESSORY USES

Mayor Sitnick opened the public hearing at 5:25 p.m.

Urban Planner Carl Ownbey said that this is the consideration of an ordinance amending the Unified Development Ordinance regarding detached garages as accessory uses. This public hearing was advertised on December 31, 1999, and January 7, 2000.

The Planning and Development staff has received several requests over the past several months proposing the placement of detached garages in front of the principal structure. Since this placement is not permitted under section 7-16-1.c.2.d of the Unified Development Ordinance, these requests have been taken to the Board of Adjustment for a variance.

This wording amendment will permit the location of a detached garage in front of the principal structure if:

1) the garage is not located in the front setback, and
2) the garage is located and/or designed so that it is clearly subordinate to the principal structure in terms of scale.

Given the topography of the Asheville area and the unusual shapes of some lots in the City, City Council, at their worksession on December 14, 1999, asked that the ordinance be amended to provide reasonable options and flexibility in the location of detached garages. The proposed ordinance before City Council addressed those concerns.

The Planning and Development staff presented the original proposed wording amendment to the Planning and Zoning Commission at their December 1, 1999, regular meeting. After presentation by staff, the Planning and Zoning Commissioners voted 6-1 to recommend to City Council the adoption of the original wording amendment.

When Councilwoman Field asked about the definition of "clearly subordinate" vs. "architectural compatibility", City Attorney Oast said that "architectural compatibility" is a judgment term and "clearly subordinate" can be defined.

Mayor Sitnick closed the public hearing at 5:30 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2650. This motion was seconded by Councilman Hay and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 87

C. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING BANKS AS RESIDENTIAL RELATED COMMERCIAL SERVICES

ORDINANCE NO. 2651 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW BANKS TO BE INCLUDED AS RESIDENTIAL RELATED COMMERCIAL SERVICES IN RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICTS

Mayor Sitnick opened the public hearing at 5:31 p.m.

Urban Planner Stacy Merten said that this is the consideration of an ordinance amending the Unified Development Ordinance to allow banks to be included as residential related commercial services in RM-16 Residential Multi-Family High Density districts. This public hearing was advertised on December 31, 1999, and January 7, 2000.

Currently the Unified Development Ordinance (UDO) limits residential related commercial services to dining halls, beauty shops, barber shops, laundry facilities, food stores, newsstands, drug stores, and flower and gift shops as uses by rights subject to special requirements in the RM-16 zoning district. This amendment will expand the limits to allow banking facilities. This amendment was precipitated by a specific request from the Deerfield Community to locate a small, 423 square foot, banking center in one of their buildings for use only by residents of the community. The amendment also prohibits drive-through facilities for all residential related commercial services and specifies that all of the services shall occupy no more than 25 square feet per dwelling within the residential development. There was no comment at the public hearing

Planning & Development staff presented this wording amendment to the Planning & Zoning Commission at their December 1, 1999, meeting. The Commission voted unanimously to recommend to City Council the adoption of this wording amendment.

Mayor Sitnick closed the public hearing at 5:33 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2651. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 89

D. PUBLIC HEARING RELATIVE TO ZONING HEATHBROOK AT BILTMORE PARK, PHASE II

ORDINANCE NO. 2652 - ORDINANCE ZONING PROPERTY KNOWN AS HEATHBROOK AT BILTMORE PARK, PHASE II

Mayor Sitnick opened the public hearing at 5:34 p.m.

Urban Planner Stacy Merten said that this is the consideration of an ordinance to zone Heathbrook at Biltmore Park, Phase II (Biltmore Park, Annexation Section 13) as RS-8, Residential Single-Family High Density. This public hearing was legally advertised on December 31, 1999, and January 7, 2000.

The Planning and Zoning Commission, at their December 1, 1999, meeting, reviewed and recommended approval to zone the recently annexed property known as Heathbrook at Biltmore Park, Phase II, as RS-8, Residential Single-Family High Density. This is a 4.82 acre tract, consisting of 22 individual parcels, adjacent to Phase I of Heathbrook which is also zoned RS-8. The newly annexed property is currently under development with single family residential housing. The proposed zoning will allow the development to go forward as planned with all of the lots conforming to the proposed zoning. There was no comment at the public hearing.

The Planning and Zoning Commission voted unanimously to recommend approval of the initial zoning as RS-8, Residential Single-Family High Density. The Planning and Development staff recommends approval of the new zoning.

Mayor Sitnick closed the public hearing at 5:35 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2652. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 91

E. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF CONTIGUOUS PROPERTY LOCATED WEST OF OVERLOOK ROAD AND IDENTIFIED AS BRAESIDE SECTION 5 AT BILTMORE PARK

ORDINANCE NO. 2653 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED WEST OF OVERLOOK ROAD AND IDENTIFIED AS BRAESIDE SECTION 5 AT BILTMORE PARK

Mayor Sitnick opened the public hearing at 5:36 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance to annex property located west of Overlook Road and identified as Braeside Section 5 at Biltmore Park. The public hearing was legally advertised on December 31, 1999.

Biltmore Farms, Inc., has submitted an annexation petition for Braeside Section 5 at Biltmore Park. This area is north of and adjacent to Braeside Section 2 has been previously annexed and is within the corporate limits. Biltmore Park is generally located west of Overlook Road and north of Long Shoals Road. This annexation is pursuant to an agreement between Biltmore Farms, Inc. and the City of Asheville.

The area proposed for annexation consists of 10.5 acres and is platted for 4 single-family residential lots and a small reserve area. The area will be accessed by Braeside Circle.

Utilities and streets are being developed by Biltmore Farms, Inc. City services will begin on the effective date of annexation. Biltmore Farms, Inc. has requested that the effective date of annexation be six months from the adoption of the ordinance.

City staff recommends City Council annex property located west of Overlook Road and identified as Braeside Section 5 at Biltmore Park.

Upon inquiry of Mr. Don Yelton, City Attorney Oast said that City taxes begin on the effective date, which is in six months on this annexation.

Mayor Sitnick closed the public hearing at 5:38 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2653. This motion was seconded by Councilman Hay and carried unanimously.

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IV. UNFINISHED BUSINESS:

A. REQUEST BY PAUL AND JAMES YOUNG REGARDING PROPERTY NEAR THE AIRPORT FOR A MOTOR SPEEDWAY

Due to a conflict of interest, Councilman Hay excused Vice-Mayor Cloninger from participating in this matter. This motion was seconded by Councilman Worley and carried unanimously. Vice-Mayor Cloninger then left the room.

Mayor Sitnick said that City Council had invited representatives of the Airport Authority, the Youngs, the High Vista Homeowners' Association, the River Port Homeowners' Association, Residents Opposition to the Airport Racetrack and Wildwood Homeowners' Association to answer questions raised by City Council at the December 21, 1999, meeting. She stated that she has received a letter from the Town of Fletcher as well as a letter from the Henderson County Board of Commissioners. In addition, Planning & Development Director Scott Shuford has provided City Council with their requested additional information from the December 21, 1999, meeting regarding the site near the Asheville Regional Airport proposed for a speedway.

Mr. Robert Turner, Chairman of the Asheville Regional Airport Authority, said that a special meeting was held by the Airport Authority and one of the questions surrounding the property which has been proposed for the racetrack was that of funding for its purchase by the City of Asheville and how that might affect its use. In summary of a letter received from the Federal Aviation Administration (FAA) on January 10, 2000, the property was purchased with Federal Aid for Development of Public Airports. The property is obligated under the grant agreement and may not be disposed of or used for purposes other than shown on the approved airport layout plan without the consent of the FAA. At the special meeting, as a result of the FAA letter, the Chair of the Airport's Buildings and Grounds Committee did not support making soil borings. There was a subsequent motion to allow the borings, however, the motion died for lack of a second. The inaction of the Authority is a reaffirmation of its December 20, 1999, resolution wherein the Authority requests the City to not permit any non-aviation related facilities on such real property and that such property be reserved and preserved solely for the use of the Airport.

Mr. Armour, Airport Director, reviewed with Council the Airport Master Plan process and explained the Airport Improvement Program. Using specific pages out of the Airport Master Plan, Mr. Armour pointed out that in the Airport Development Plan it states "A west side development area is recommended to provide the Airport with long-range expansion potential for a variety of future aviation-related uses. This will maximize the Airport's continued economic and development potential for the Asheville region." He then reviewed the economic impact of the Airport, the Air Space Plan, the Airport Layout Plan and the On-Airport Land Use Plan. He also quoted out of the Technical Report information on the floodplain issue.

Mr. Armour then read the following letter dated January 10, 2000, he received from the FAA from Scott L. Seritt, Manager of the Airports District Office in College Park, Georgia:

"As a follow-up to our meeting on January 6, I want to re-emphasize the Federal Aviation Administration's (FAA) position concerning the use of airport property acquired with federal assistance. The specific issue we discussed concerns the proposed construction of a racetrack at the Asheville Regional Airport.

"1. The property for the Asheville Regional Airport including the land proposed for the racetrack was purchased under Federal Aid for Development of Public Airports (FAAP) Project 9-31-024-5801 This property is obligated under the grant agreements and may not be disposed of or used for purposes other than shown on the approved airport layout plan (ALP) without the consent of the FAA.

"2. The 1993 Airport Master Plan (AMP) Update indicates an aeronautical need for the property proposed for the racetrack and it would not be in the best interest of the airport or the FAA to release the property. Note that a land release would require the airport sponsor to make a determination that the grant acquired land was no longer needed for airport purposes and establish its fair market value (FMV). The portion of the sale proceeds proportionate to the United States share of the acquisition costs would be paid to the Secretary for deposit in the Aviation Trust Fund.

"3. Any lease of grant acquired land must be at the current FMV and any funds generated must remain on the airport.

"4. The FAA may approve an interim use of aeronautical property for non-aviation purposes until such time as it is needed for its primary purpose. This requires a determination that such property will not be needed for any aviation use during the short-term contemplated. Investment by the interim user is at their risk and will not be a factor in considering any renewal of a lease or use agreement. FAA consent would be conditioned on the airport owners' agreement to apply the income from such use to the development, operation and maintenance of airport facilities.

"5. The conversion of any area of airport land to a substantially different use than that shown on the approved ALP could adversely affect the safety, utility or efficiency of the airport and constitute a violation of the grant obligations."

When Councilwoman Field asked how it is decided when it's time to build a new runway, Mr. Armour said that it is only a long-range project at this time. Presently there is approximately 90,000 operations on an annual basis. Even though the need for a new runway is based on a lot of things, one of those is the Airport serving between 150-200,000 operations on an annual basis.

Mr. Armour agreed with Councilwoman Field in that the Airport also wants the land reserved for safety reasons.

In responding to questions from Councilwoman Whitmire, Mr. Armour said that commercial air service only accounts for about 20% of their traffic. About 80% is general aviation and most of that is business and corporate related.

Councilman Peterson asked about the procedure that the City went through with the FAA to release the property which is currently leased to the Agricultural Center. Mr. Armour said that City petitioned the FAA and the FAA said that based on the development and layout of the airfield, the FAA determined the that property was in excess to the aviation needs. Mr. Armour did not know how long the process took in order to get the property released. City Attorney Oast also responded in that the lease with the Agricultural Center property was entered into in 1986 for an initial term of 20 years, renewable for four additional terms of 20 years each. He said the rental was $500,000 one-time one-sum payment that appears to have gone to the City of Asheville.

Mr. Armour noted that because the subject property was purchased by the City with federal funds, the property would have to sold at fair market value. He said the City would be responsible for paying the United States proportionate share which is normally 90%.

When Councilman Peterson asked about what restrictions do the private property owners have that live on the west side of the Airport, Mr. Armour said that the only restrictions that would affect the Airport would be the height of objects that might affect the navigable air space.

Councilman Peterson said that since the Airport Authority and the FAA are concerned with protecting the property surrounding the Airport for compatible uses, he asked what was being done to further protect that property. Mr. Armour said that the only way the property can be protected is through local zoning and comprehensive land use plans.

Mr. Samuel Tucker, retired air controller, said that Asheville does not have the capacity in the immediate future to promote dual or parallel runways.

Mr. Lou Bissette, attorney for the Youngs, said that he was Mayor of the City of Asheville in 1986 when the property was leased to the Agricultural Center. If he recalled correctly, none of that money was required to go the FAA - it went to the City of Asheville. He felt that the Airport is one the most important things to our community from an economic development standpoint. On January 5, 2000, when the Airport Authority met, he said there was a lot of discussion about letting the testing go forward and also some discussion of a short term lease (10-15 year range) that would allow the Youngs to build the racetrack, if they wanted to risk that, and still give the Airport the opportunity to get the property back if indeed they needed a new runway. On January 6, Mr. Armour talked to the FAA, then at the January 10 meeting the FAA letter was received. He said from all news accounts, you would think the FAA letter is something unique that was written that absolutely precludes the use of that property for a racetrack. That is not the case.

Mr. Bissette then responded separately to each paragraph in the letter: Paragraph One: Everyone knew the subject property was acquired with FAA funds and that was no big surprise. The Holiday Inn property, the White Westinghouse property, the WNC Agricultural Center, and the Exxon Station property were all acquired with FAA funds. Paragraph Two: The letter states that the use of the racetrack would have to be approved by the FAA. They've known that from the beginning and that is no surprise either. Paragraph Three: He was not sure where the Holiday Inn lease payments are going and the City just received a report from the City Attorney about the Ag Center lease payment. The information in paragraph three is nothing new. Paragraph Four: Mr. Armour just reported that the Master Plan calls for the runway to be built in the long-term or sometime in the 15-20 year range. This goes right along with the Airport Authority's discussions last week about a lease to the Young in the 10-15 year range, so that if in fact a runway is needed, then there would be a way to get it back and build it. In looking at the plans, with regard to safety, the White Westinghouse property and the Ag Center property appear to be as close to the runway as this property is. Information from the Airport Authority dated December 22, 1999, states that aircraft operations average 208 per day, and annually that would be approximately 76,000 per year - noting that Mr. Armour said that to build another runway would require approximately 150-200,000 operations per year. Because of those figures, a short-term lease is something that the Youngs could very well be able to consider. Paragraph Five: No one would say that anything be built on that property without getting FAA approval.

Mr. Bissette felt that the FAA has sent a similar letter every time to the City when they have explored using some of that property for other purposes. The letter is only a start and just spells out a procedure that has been used time and time again for property owned by the City around the Airport. The Youngs are asking for an orderly process for determining whether or not this new Asheville speedway should be allowed on this property. The process consists of four parts: (1) begins with allowing the Youngs to go onto the property for testing; (2) if the tests prove to be okay, then the Youngs would hire a designer who would design the facility and present to City Council, the Airport Authority and the FAA exactly what the facility would look like; (3) then Airport Authority and FAA approvals would be sought; and (4) then it would come back to the City Council for public input and Council could make the final decision on the transaction. He said that based on facts, no one is getting ready to begin work on a new runway. He urged City Council to allow the Youngs to test the soil.

Councilman Peterson said that the City has a great many needs, particularly recreational programs, parks, sidewalks, etc., and the Youngs have talked about their concern about the greater community. He wondered, if the City did lease the property if they find that some of that property is unsuitable for other uses, if they would consider working with the City to meet some of its other needs. Mr. Bissette said that knowing the Youngs and their interest in youth, he was certain they would be very amenable to working with the City on recreational facilities in that project.

Mayor Sitnick said that the safety feature to her is primary and she knows the Youngs would not want to do anything to create an unsafe situation, nor would the FAA allow that to happen.

When Mayor Sitnick said about how long it would take to build a speedway - beginning with the soil testing to the actual opening of the speedway, Mr. Bissette felt it would possibly take 1-1/2 to 2 years.

Mayor Sitnick asked who would make the determination of a lease termination. Mr. Bissette responded that that matter would be negotiated between the City, the Airport Authority and the Youngs.

Mayor Sitnick asked if a speedway could be enclosed to eliminate the noise concerns. Mr. Young responded that it could not be enclosed because of the fumes and enormous expense. Mr. Bissette also responded that the Youngs have had a noise consultant look at the project and will have a report if testing of the property is approved.

Councilwoman Field asked Mr. Young if he would continue to look for other suitable property if City Council did not approve access to this property. Mr. Young responded that at this point he was unsure if he would pursue other land options or not.

Upon inquiry of Councilman Peterson, Mr. Young said that the lease payment to the City for operation of the Asheville Speedway in 1999 was $75,000.

Mr. Dick Lantrip, speaking on behalf of High Vista Homeowners Association and the Regional Organization Against the Airport Racetrack and resident of Henderson County, clarified that even though land is partially in a floodplain, it can be used for development of other commercial, industrial and residential properties in addition to airport runway expansion, if the ground is properly prepared. He pointed out that in the 1993 the Airport Master Plan it is projected that property will be needed in the 11-20 year timeframe. If you take the 11-20 year projection and bring it to the current date of 2000, you could assume that the planned use of the property is in the 4-13 year range. He explained that there could be no guaranteed lease period for the Youngs because if the FAA or Airport Authority recognized the need for the property, the racetrack would have to give it up. He felt that the focus of the racetrack issue is moving away from the overall impact on the area and more toward the technical aspects of property control. He felt Council was focusing too much on whether the property can be authorized for racetrack use, who has control over that authorization, and under what terms and conditions could it be authorized for racetrack use - completely ignoring the detrimental impact the racetrack would have on that piece of property over the broad area of Buncombe County and Henderson County. He urged Council to refocus on the human elements that would be impacted by a racetrack on that property. He stressed that the racetrack will have a devastating impact on residents in the area. He explained some of the impacts being to the quality of life; decreasing property values; significant noise pollution; high traffic impact; adverse impact on the French Broad River basis; activities and influence that might surround a racetrack; and adverse impact on local churches and schools. He felt the property is prime for economic development in the area which would bring in more traffic to the Airport. However, he felt that to build a racetrack on that property would decrease the growth rate of the Airport. He said they have a letter of opposition signed by representatives of subdivisions, pastors of local churches, and homeowners that live outside subdivisions. He said the boundaries between Buncombe and Henderson Counties were adjusted in 1959 for the express purpose of building an airport. He questioned if there would be a violation of the intent of the land agreements if the City were to sell or lease it to the private industry for personal or financial gain.

When Mr. Lantrip mentioned that there might be other motivations driving the focus of the issue of the racetrack, Mayor Sitnick stressed that even though Mr. Bissette is a former Mayor of Asheville and Representative Martin Nesbitt is on our legal delegation, at no time has there been any conflict of interest or crossing the line of any person in this matter. Both attorneys have handled this matter in the most professional way, never using their positions to influence City Council in any way.

Ms. Hilda Hamilton, representative of the River Port Homeowners Association, spoke in opposition of the racetrack on the property at the Airport due to noise pollution and the significant decrease of property values if the racetrack is built.

Representative Martin Nesbitt, speaking on behalf of the racing community, reiterated what Mr. Bissette said in that there was nothing in the letter from the FAA that they did not know about, and discussed in great detail, before the Airport Authority meeting. They asked the Airport Authority how long they felt it might be before another runway would be built and the Authority anticipated that it would be at least 10 years. Amongst other things discussed at the Authority meeting was the possibility of Winston Cup and Bush teams using our Airport facility and using this racetrack as a test facility. He was of the opinion that if the racetrack was allowed to be built at that site, Winston Cup would fly their drivers in, test their cars and then fly them back out for appearances. They have talked about building buildings on the grounds so they would have a facility there where their crews could get the cars ready. That is economic development for the Airport and industry in that area. He made it clear that in these discussions no one has ever indicated that anything should be permitted on that property that would be adverse to the interests of the Airport. He urged City Council to support the racing community and allow the Youngs to test the soil on the subject property.

Mr. Norman Medford, resident of Haywood County and representative of Citizens for Improving Mountain Living, talked about the major obstacles regarding the proposed racetrack in Canton, citing no comprehensive water or sewer. He said that there is a strong consensus now that it may never be built in a timely manner that everyone is believing. Over 88% of the Canton community has not endorsed it.

Upon inquiry of Councilwoman Field, Ms. Cindy Michael, representing Canton Motor Sports Park, said that they are in the process of getting their permits ready to be applied for. Water and sewer issues have been addressed and they are looking into grants. They have their preliminary artist conceptual drawings and their plans. This will not be just a racetrack, but a family place - campgrounds and a lodge. Regarding the viability of this track, there has been 30 acres cleared. They are working with Canton Alderman Charlie Crawford who have been very helpful and is helping them get things through the political process. There are not as many restrictions in Haywood County as in Buncombe County, but it is private property and that allows them to do some things that you don't on a commercial or public piece of property. She said the access to the racetrack would be from Highway 19-23, which the State already has plans for widening that road.

Councilwoman Field stated that the Airport Master Plan shows that when the parallel runway is built that Fanning Bridge Road will be closed. She questioned what impact would be with the closing of that road. Mr. Armour said that they would have to provide private property owners with another access. But, because this is in the long-range plans, they have not gone into any details.

Upon Mayor Sitnick about the proposed new noise ordinance, City Attorney Oast said that the proposed ordinance does not contain decibel limitations of any kind and there are arguments for and against that. He will ask City Council to consider those arguments at the time he presents the Council with the proposed ordinance. What is generally acceptable in a residential area is ambient noises to the level of 65 decibels in the daytime. To the extent that our noise ordinance addresses decibels at all, that would be the line for a problem in a residential area. If it is a commercial area, the acceptable decibel limits are somewhat higher. He thought that noise levels in and around interstates are about 85-90 decibels.

Upon inquiry of Councilman Worley, Mr. Drew Weeks tried to explain what the decibel levels are at an airport with a jet taking off and what the decibel level of a racetrack would be, noting that they did have hire a noise consultant.

Mr. Stan Moser, resident of Henderson County, pointed out that the noise from loud speakers are intermittent and very irritating.

Upon inquiry of Councilman Peterson, City Attorney Oast said that the Holiday Inn has a lease with the City of Asheville and the City does receive that revenue, which is a percentage of their income.

Councilman Worley also noted that with regard to the Holiday Inn lease, it expires in 2040 and the City refunded the FAA $388,900 to release the property in August of 1989.

Upon inquiry of Councilwoman Field, Planning & Development Director Scott Shuford said that the property is zoned industrial which does not allow speedways. As with all rezonings, at least two public hearings would be held (one with the Planning & Zoning Commission and one with the City Council) and the land could possibly be rezoned to a more regional or highway business district. This would also constitute a Level III site plan consideration as well.

Councilman Hay said that for him personally, this is Airport property and it was acquired by the City for over 40 years for purposes of running the Airport. It is in the Airport Master Plan and it is part of the Airport, as far as he is concerned. The decision about how this should be handled is most properly, in his mind, in the hands of the Airport Authority. They have sent City Council a very clear message in December that they did not want the soil testing to go forward because they didn't see it was leading to anything. He stated in December that if the Airport changed it's position then that would make a big difference to him. They reconsidered their position and once again advised City Council that they don't see any future in this proposal and that they want to reserve the property for Airport uses.

Councilman Worley stated that he is generally supportive of motor sports and impressed with the orderly process the Youngs have outlined. However, he agreed with Councilman Hay that the property was clearly purchased for Airport use. He strongly believes in the long term and doesn't want to see the City or any governmental entity give up property that might be needed down the road because the cost for getting it back is always extraordinarily high. He also felt that the Airport Authority should make the decision on the use of that property because they are the ones charged with the stewardship of the Airport property and the ultimate decision about the long-term of our Airport. The Authority has requested that the City not allow soil testing. If City Council allowed soil testing and it still has to go to the Airport Authority for approval, perhaps that part of the orderly process is reversed. He felt he would have to respect the Airport

Authority's position because they are the ones who are entrusted with the Airport property. Even though he will vote against allowing soil testing at this time, he would reconsider that vote if the Airport Authority comes back at some later time and agrees to allow the testing.

Councilman Peterson stated that he was thinking of potential revenue to the City because there is a lot of demand for additional City services. He was very interested in the possibilities of additional City revenues through either a lease and the possible increases in sales tax. The needs of the Airport Authority is the highest and most important focus, but he was a little skeptical of the immediate need of an additional runway. With our current Airport and it's projected growth, he felt that need is pretty far down the road. He imagined that when those other properties that the City obtained FAA approval to release were first proposed for other uses, the Airport Authority was probably was not interested. However, those seem to have worked out fine. He felt that we should consider the impact on the residents and the economic impact of the area and the desire to be a good regional neighbor. But, also want to take into account the economic impact that racing might have to the benefit of Asheville and Buncombe County, for example some additional recreational facilities. He also agreed with Representative Nesbitt's comments that Buncombe County and Asheville should be a big enough place to have room for a racing community and he would like to support that community.

Upon inquiry of Councilwoman Field, Mr. Turner said there was never a proposal made to them to lease the property.

Mayor Sitnick said there no doubt there will be an impact for the community, but what level that impact will be has not been determined. Industrial or commercial growth in that area will also have an impact for the community. She felt the natives, new-comers, racers, retirees are all important to our community and this community depends on all of them. The Airport is crucial to our future in that it has been a deciding factor on whether corporate CEO's and smaller business owners located here. It was important to her, when she read the comments in the FAA letter, that this potential use may not be in the best interest of the Airport, that it could create a violation of grant obligations, that it could threaten future grant monies to the Airport and that there might be a possible adverse effect of the safety factor. However, there is a great economic impact on the community, on the City of Asheville, and on local business people without a speedway. While it is important for City Council to consider what might or might not be going on in Haywood County, that is not necessarily part of what she is thinking about in making this decision. It was her hope that this is not the only property the Youngs are considering because if the City and the Airport Authority allowed the soil testing, this property might not qualify. If it didn't, it would be her hope that the Youngs would continue in their search. With great conflict, with great compassion for the racing community, with great understanding of the human factor, and with the consideration of the Airport Authority, on two different occasions with the same result, she will abide by the Airport Authority's decision to now allow soil testing, knowing that the decision is theirs - it's their land and it's their need.

Councilman Peterson moved that the City grant permission for the Youngs to conduct soil testing on the City property adjacent to the Asheville Airport. This motion was seconded by Councilwoman Whitmire.

Councilwoman Field also felt this was a decision for the Airport Authority. If City Council approves the soil testing and the Airport denies the soil testing, then the Airport Authority has made the ultimate decision. She felt this issue was inappropriately placed with City Council. She also noted that the Airport Authority never considered the lease of the property, in that their decisions were made based on the City selling the property. Again, she felt the Airport Authority should make the decision.

Mayor Sitnick said that she would be happy at this point to allow soil testing, but the Airport has decided against it twice and she feels that it is the Airport's decision. She felt the City was really being asked to confirm the Airport's existing decision.

The motion made by Councilman Peterson and seconded by Councilwoman Whitmire died on a 3-3 vote with Councilwoman Field, Councilman Peterson and Councilwoman Whitmire voting "yea" and Mayor Sitnick, Councilman Hay and Councilman Worley voting "no".

At 8:40 p.m., Mayor Sitnick announced a short break.

V. NEW BUSINESS:

A. PACK SQUARE PROPOSAL BY THE DOWNTOWN COMMISSION

Ms. Carol King, Chair of the Asheville Downtown Commission, said that the City Public Works Department will shortly begin the repair project for the Pack Square fountain and surrounding area. This event has sparked considerable interest in future improvements to the park, both over the short and longer terms. Short term improvements proposed by the Public Works and Parks and Recreation Departments will result in better operational circumstances for Pack Square, making events there much simpler to conduct.

However, this maintenance work provides the City with an opportunity to examine longer term improvements to the most important public park area in Asheville - the construction activity and barricades will draw considerable public attention to Pack Square and this chance to formulate creative ideas should not be missed. While it is recognized that public funding for such a project is limited and currently not allocated, we are extremely hopeful that private sector support will enable any improvements to be implemented over a short period of time.

In order to attract private donations, a clear idea of the type and extent of the improvements is needed. This can only be determined through a public process involving all interested parties. The Square is a critical public area and the public must determine how it is to be designed and used. In addition to the Square itself, we anticipate the project involving City-County Plaza.

Their proposal is that they would like to initiate a public-private effort to attract a world-class park planning consultant to Asheville to facilitate public discussion of the desired park design and to prepare a concept plan or plans and cost estimates for its future implementation. This effort involves designation of $7,500.00 of funds from both the City of Asheville and Buncombe County, with a minimum match of $15,000.00 raised from the private sector. With these monies, they will hire a consultant and adhere to an ambitious schedule of public involvement with an anticipated May 2000 final conceptual design presented to the Asheville City Council and Buncombe County Board of Commissioners.

With the concept plan in hand, we will initiate a private sector fund-raising effort to procure the money needed for implementation.

She reviewed the following proposal:

Council Involvement - We recognize that City Council involvement is critical to the success of this proposal. We anticipate that each phase of the project will require Council approval. Council involvement will include:

- Selection of the Design Consultant;
- Final Approval of the Design Consultant Contract;
- Consultation Regarding the Public Input Process;
- Regular Reporting of Project Progress at Council Meetings and Worksessions; and
- Final Approval of Project Design.

Project Objectives - Our intention is to develop a community-based design concept in order to generate enthusiasm for the Pack Square/City-County Plaza project, including substantial private donations for its implementation. We recognize that this is an ambitious undertaking, involving funding sources that are far from certain. Consequently, the design concept will be configured as one or more design alternative proposals with individual components that allow phasing of construction as funding becomes available. Our program calls for the retention of a nationally-recognized park design consultant to facilitate and refine public discussion concerning this critical public space. This consultant will develop a design concept based upon this facilitated discussion. Clear direction (as part of the consultant contract) will be given to the consultant regarding project scale and scope, the current unavailability of public sector funding for design implementation, and the consequent need to divide the project into implementable phases. Monitoring arrangements regarding these matters will be worked out with City staff prior to the consultant beginning work. The consultant will not prepare construction drawings and documents. However, the consultant will be responsible for preparing detailed cost estimates for each alternative design and associated phases.

Funding Sources - It is clear that the City of Asheville and Buncombe County cannot make the budgetary commitments necessary to accomplish such an ambitious project over the short term. There are simply too many priorities facing our local governments. As a result, this project anticipates a major private fundraising effort, spearheaded by the City of Asheville Downtown Commission, to raise the monies needed to implement this project in a short period of time. Our City and County have a tradition of achieving great public works through private philanthropy; we fully expect to be able to raise the great majority of funds from the private sector. We will also actively seek grant funding from a variety of sources. If outside funding alternatives do not materialize, we recognize that the project implementation will be delayed or deferred indefinitely.

In summary, we are asking your approval to move forward with this project with the understanding that City Council members will be fully involved in this project and that it will be a fully public process. They asked for a City commitment of funding in the amount of $7,500 for this project, as well as a recognition that some staff time will be needed to accomplish our objectives over the time frame we propose.

Vice-Mayor Cloninger said that this proposal addresses a need that we do re-design that area of the City and it also contains a very reasonable request as to the amount sought by the City to contribute to the project. It also has a major element of public participation in it which could development enthusiasm for the project that could lead to raising private money for it.

Councilwoman Field also spoke in support of this very exciting project. She noted that there is grant money available for urban spaces and for public-private processes.

Upon inquiry of Councilman Hay, Ms. King said that the Commission has used the information accumulated over 15 years ago from the Discovery process to leverage this process. She said they have a lot of information they are building on.

When Councilman Hay asked about how the construction work fits into this, City Manager Westbrook said that this will not impede the repair work in the areas around the foundation.

Councilwoman Field said that she would like to see us at least make that connection to Pritchard Park as well because that is really the corridor when you come off the interstate.

Mayor Sitnick loved the idea but the City has limited funds for everything we would love to do City-wide. She wanted to point out that whatever is planned and designed for this end of downtown takes into account the enormous amount of money that it will require and the time that it will require so that the greater community understands that it's not going to happen next year and that the project is good for the entire City, not just for the downtown area. For instance, with regard to Pritchard Park, it has been talked about for years and nothing has been done. She wanted to make sure that as optimistic as these plans are, that they be put into some kind of practical form so that the greater community understands that it might be done in phases, that money might have to be raised from time to time, and that it was not all coming out of the public funds. In addition, she also wants to make sure that the City had great latitude in the design, the implementation of the design, etc., to make sure that the design concept worked well with the City needs, e.g. traffic. She said that her personal preference on the design should be someone local.

Ms. King said that it was very apparent to them from the off-set that this is a project which will be far more expensive than either municipality can afford. A message will be sent to everyone that the funding will be largely from the private sector, with a 60/40 split (60% from the private sector). A marketing committee has been created so the public can be kept informed every step of the way. All decisions regarding Pack Square rests in the City Council's hands. Regarding the designer, there are approximately 4-5 designers in the country who have the ability to design a project like this. We will intend to offer all of them the opportunity, but will probably require that they partner with a local firm, so we are sure to use local skill as much as possible. The project itself could run from $500,000 to $2.5 million and there will be a lot of people with economic benefit from this project.

Councilman Hay wanted to make sure that people who make private contributions to a City planning process are not doing it with the certain expectation that the City will then immediately implement the plan. We will have to prioritize in terms of money, etc. He wanted to make sure that once the plan is in place, then the City will have to figure out how to pay for it and it may take a while to do that.

Upon inquiry of Mayor Sitnick, Ms. King said that the County Commissioners will consider the allocation of $7,500 at their meeting next week and they have responded as favorably as the City Council has at this point.

Councilwoman Field moved to approve the report which is committing the City to the $7,500, contingent upon the Downtown Commission's securing the rest of the funding. This motion was seconded by Councilman Worley and carried unanimously.

City Manager Westbrook said that the primary contact on this City process will the Planning and Development Director Scott Shuford.

B. RESOLUTION NO. 00-4 - RESOLUTION FORMULATING A CENSUS COMPLETE COUNT COMMITTEE TO DIRECT THE AWARENESS CAMPAIGN FOR THE CENSUS 2000 UPDATE

Urban Planner Carl Ownbey said that this is the consideration of resolution formulating a Census Complete Count Committee to direct the awareness campaign for the Census 2000 Update.

The Census Complete Count Committee will be responsible for the awareness campaign in "getting the word out" to the citizens of the community about the upcoming census count on April 1, 2000. The United States Bureau of the Census has prepared an operations guide to assist the community in the campaign. The Mayor is required to appoint a chairman for the committee and together they must appoint chairmen for the eight subcommittees. These subcommittees, as outlined in the operations guide are:

Government
Religion
Business
Community-Based
Education
Media
Recruiting
Special Housing

A press conference is required announcing the formulating of this committee and the committee must begin work in January of 2000.

The Planning and Development staff recommends the formulating of the Census Complete Count Committee and will provide the committee with staff support during the campaign process.

Ms. Edna Campos, Partnership Specialist, and Mr. Robert Haskins, Manager of the Local Census Office spoke about the importance of data received from the census count.

Councilwoman Field said that it was incredibly important that there be an accurate count because that's how we get our block grant money, how we get certain portions of sales tax, etc.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 00-4. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 391

VI. OTHER BUSINESS:

A. PUBLIC ACCESS CHANNEL COMMISSION

Vice-Mayor Cloninger moved to continue this matter to the January 18, 2000, worksession. This motion was seconded by Councilwoman Field and carried unanimously.

B. I-26 CONNECTOR DESIGN FORUM

Planning & Development Director Scott Shuford, said that he has received a letter from the N.C. Dept. of Transportation and they agree that the design forum for the I-26 Connector Project may be appropriate for this project at this time. They would like to partner with the City in the preparation of this event and to meet with City staff to jointly plan the public meeting. They feel that a meeting such as this will take considerable preparation and probably could not be held until sometime in March, 2000. While this will delay completion of the environmental document and initiation of the preparation of final design drawings, they hope to be able to compress the construction schedule so completion of the project is not affected. Additionally, they feel the benefits of involving the public in this manner are significant.

C. RESOLUTION NO. 00-5 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT OR CONTRACTS TO MEET THE ELECTRICAL POWER NEEDS FOR VARIOUS EVENTS AT THE CIVIC CENTER

ORDINANCE NO. 2654 - BUDGET AMENDMENT TO MEET THE ELECTRICAL POWER NEEDS FOR VARIOUS EVENTS AT THE CIVIC CENTER

Due to a conflict of interest regarding Emory Electric, Councilman Worley excused Vice-Mayor Cloninger for participating in this matter. This motion was seconded by Councilwoman Field and carried unanimously.

Mr. David Pisha, Civic Center Director, said that this is the consideration of a resolution authorizing the City Manager to execute an agreement to meet the electrical power needs for various events at the Asheville Civic Center, and an associated budget amendment, in the amount of $95,000.

Due to the increasing electrical demands of the trade shows that utilize the Civic Center arena, Emory Electrical was engaged to undertake a survey of this matter on behalf of the City. Having completed their report, they have since advised the Center's staff that certain renovations should be undertaken to improve the level of this service and its reliability. In the past, electrical power has been brought up through the arena floor from the Exhibit Hall. With the addition of the ice rink, this procedure has proven much more difficult and time consuming. Coupled with the total amount of electricity being used by events, it has become increasingly problematical for the Center to meet their power needs.

The Civic Center is therefore requesting funding to install a 150 KVA transformer and 400 amp disconnect system in the ceiling of the arena. In addition, electric supply lines will also be needed to distribute the power. In order to expedite the project and take advantage of what is currently available, the staff have proposed using existing structural steel and conduits to the fullest extent possible.

Emory Electrical has stated that by following these recommendations, it will now be possible for the Civic Center to be able to efficiently supply adequate power to trade shows using the arena in the future.

Staff has also discussed the plans with the City's electrical inspector and have received his preliminary approval to proceed to the next step. Furthermore, he agrees with the findings and recommendations of Emory Electrical regarding the need for the overall project.

City staff recommends City Council adopt the resolution and appropriate $95,000 in order to meet the Civic Center's electrical power needs.

Upon inquiry of Councilman Hay, City Manager Westbrook said that Emory Electrical is one out of three or four possible bidders on this project.

Upon inquiry of Councilwoman Whitmire, Mr. Pisha said that this has been a renovation that has been long discussed and it would absolutely work into any future renovations that City Council might consider.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and ordinance and they will not be read.

Councilman Worley moved for the adoption of Resolution No. 00-5. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 392

Councilman Worley moved for the adoption of Ordinance No. 2654 This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 95

D. CLAIMS

The following claims were received by the City of Asheville during the period of December 17, 1999 - January 6, 2000: Thomas Joyce (Police), Eugene D. Jones (Police), Charles McGhee (Inspections), Vera Siminow (Streets), Jerry Birdwell (Water), BellSouth (Water), Wallace C. Pegg (Streets), Bobbie Warren (Streets), Asheville Smoke (Civic Center), David Weeks (Water), Robert Hileman (Water), Catherine Hitesman (Water), Michael Peck (Sanitation) and Sandra Clory (Civic Center).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:47 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday - January 18, 2000 - 3:00 p.m.

Worksession

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	Councilman Brian L. Peterson

CONSENT:

Update on Parking Study Recommendations

Summary: The review of an updated Status Report Spreadsheet used to track the progress of the Parking Study Implementation Team.

The City's Comprehensive Parking Study was adopted by the City Council in December 1998. The Parking Study Implementation Team was formed in June 1999. The study made about 60 recommendations for potential changes that would improve parking issues within the city. In addition, a few other recommendations were made by other groups including the Asheville Downtown Association and the Implementation Team itself. A total of 65 recommendations have been incorporated into a single Status Report Spreadsheet. This spreadsheet is used to track the Implementation Team's progress on evaluating and implementing the recommendations. Beginning in July 1999, the Implementation Team has provided updates to the City Council twice each year; once in July and once in January.

The following summarizes the current status:

- Many operational issues where scheduled to be complete by the Finance Department in July 1999. Many of these items were evaluated and implemented. Others were not implemented during this budget year but will be addressed in subsequent budget years.
- A contract is being finalized for the design of a parking garage in the Battery Park area.
- On-street parking changes for some areas in downtown are being designed for implementation in the next few months.
- The spreadsheet outlines the continuing work being done by employees from several departments to implement many of the remaining recommendations.
    - Two sub-teams have been formed. The first is to be an ongoing team that will work with business owners, downtown employees, downtown residents, and other stakeholders on numerous downtown parking issues.
    - The second sub-team will work on developing way-finding signs for downtown parking garages.

A more detailed description of these sub-teams and their progress can be found in the Status Report.

Staff recommends that Council review the Status Report Spreadsheet and direct staff to continue implementing the Parking Study.

Traffic Engineer Michael Moule reviewed with Council the issues being worked on recently.

Finance Director Bill Schaefer responded to a question from Councilwoman Field about when the railings at the Wall Street Parking Deck would be painted, noting that it is their intent to have a program on a rotational basis for all of the decks.

Grant Application to NC Dept. of Health & Human Services for Senior Center Improvements

Summary: The consideration of a resolution to apply for grants through the North Carolina Department of Health and Human Services to assist with facility improvements and equipment at Harvest House and Senior Opportunity Center.

Funds are available through the North Carolina Department of Health and Human Services, Division on Aging, in the 1999 Senior Center Appropriation to assist with programming and general operation of senior centers. The Harvest House and the Senior Opportunity Center are eligible to receive $6,329 each, and will use the funds to refinish wood floors, purchase tables and chairs, and purchase miscellaneous equipment and improvements.

The Parks and Recreation Department is requesting $12,658 in grant funds from the 1999 Senior Center Appropriation which requires a 10% cash/in-kind match. The in-kind match is available in the Recreation Division and the Public Facilities Division operating budgets.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for grant funds through the 1999 Senior Center Appropriation for improvements and equipment at Harvest House and Senior Opportunity Center.

Grant Applications to NC Dept. of Environment & Natural Resources (Parks & Recreation Trust Fund & National Recreational Trails Fund) for French Broad River Park Phase IV

Summary: The consideration of a resolution to apply for grant funds through the North Carolina Department of Environment and Natural Resources to assist with the construction of the next phase of the French Broad River Park.

Funds are available through the N.C. Department of Environment and Natural Resources, Division of Parks and Recreation in the North Carolina Parks and Recreation Trust Fund, and in the National Recreational Trails Fund to assist with the development of parks and greenways.

The French Broad River Park, Phase IV, represents the City of Asheville's next phase of a major greenway and park system being developed along the French Broad River on Amboy Road. Although the final master plan will not be complete until February, public input requested the park include greenways, bicycle facilities, lawn bowling, soccer and softball fields, restrooms, skateboarding and rollerblading facilities, open space, picnic shelter, parking, and perhaps a welcome center. Phase IV will also connect to a planned N.C. Department of Transportation funded greenway from Hominy Creek on the west, and eventually to the Amboy Road greenway to the east.

The Parks and Recreation Department and RiverLink are in partnership to implement an ambitious fundraising plan to raise approximately $2 million to build the park. RiverLink recently presented a proposal to the Janirve Foundation for $250,000, and has identified an additional $500,000 in funding resources.

The Parks and Recreation Department is requesting $250,000 in grant funds from the North Carolina Parks and Recreation Trust Fund which requires a 50% cash match. The cash match is available through a combination of funds with the Parks and Recreation Department budget, RiverLink, and other sources. In addition, the Parks and Recreation Department is requesting $50,000 from the National Recreational Trails Fund, which requires a 20% cash/in-kind match. The in-kind match is available in the Parks Division budget.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for the grant funds through the North Carolina Parks and Recreation Trust Fund and the National Recreational Trails Fund to assist with the construction of the French Broad River Park Phase IV.

Upon inquiry of Councilwoman Whitmire, Superintendent of Administration for the Parks and Recreation Department Debbie Ivester said that the City is currently working with RiverLink to find out exactly how much they will be able to contribute to the match.

Right-of-Way Agreement with the N. C. Dept. of Transportation

Summary: The consideration of a resolution authorizing the Mayor to execute a right-of-way agreement with the N. C. Department of Transportation (NC DOT) for roadway improvements to Spivey Mountain Road.

The City of Asheville purchased a 3-acre site in 1998 for the Regional Water Authority to construct a new water reservoir as part of the 1994 Master Plan improvements for the water system. The property has approximately 400 feet of frontage on the south end of the property along a gravel road (Spivey Mountain Road) maintained by the NC DOT. This road serves as access to the site and the new water main providing water to and from the reservoir from the valley below is in the shoulder of the road.

The NC DOT is proposing, at its expense, to improve Spivey Mountain Road by widening the road to 18 feet and paving the road. Widening will include minor grading along the shoulder, but there are no improvements to alignment or centerline grade proposed. The NC DOT has been maintaining this road in the past without recorded right-of-way on some properties and is now asking those property owners to formally dedicate right-of-way in advance of the improvements.

The proposed roadway improvements are not in conflict with the water reservoir or the use of the property. Staff has discussed the proposed improvements with the NC DOT and have been assured by NC DOT that the road improvements will not create a conflict which would require relocation of the existing water line anywhere in Spivey Mountain Road. With this understanding, the resolution has been prepared authorizing the Mayor to execute a Right-of-Way Agreement dedicating 22.5 feet of right-of-way from the existing centerline to the NC DOT for roadway improvements.

Staff recommends the City Council adopt the resolution.

Retiree Health Benefits

Summary: The consideration of a resolution adopting changes regarding the eligibility of City employees to participate in the City's Self-Funded Employee Welfare Benefit Plan upon retirement.

In June 1993 Council adopted a resolution setting the terms & conditions for retirees to continue health benefits through the City. Two of the provisions of that resolution (Resolution No 93-74) are considered impediments to employees seeking to retire.

The Human Resources Director believes the recommended changes will encourage employees wanting to retire to do so without the financial consequences of not having affordable health care, and further that employees with spouses working for the City can retire with the same benefits that other retirees enjoy whose spouses do not work for the City. The Risk Management Division concurs with this recommendation.

It is also noted that the recommendation will not require any funding from the City beyond the current budget for fringe benefits, and that the impact on the heath plan will be negligible.

Staff from the Risk Management Division and the Human Resources Department jointly recommend the adoption of this resolution.

Public Hearing Set for February 22, 2000, to Permanently Close Portion of Herman Avenue Extension

Quitclaim for Water Line Easement for Dreamland Partners, LP

Summary: The consideration of a resolution authorizing the Mayor to execute a quitclaim for an existing water line easement over an abandoned water main on the property which is currently the site of the Lowe's superstore at the intersection of South Tunnel Road and Swannanoa River Road.

As part of the construction of a new Lowe's superstore at South Tunnel Road and Swannanoa River Road, the site developer relocated a 24" water transmission main which was part of the Asheville water system in order to use the site for the superstore. The new transmission line has been completed, tested, and accepted in accordance with the policies of the Regional Water Authority and the standards of the City of Asheville, and an appropriate easement has been dedicated to the City of Asheville and recorded at the Buncombe County Registry over the new 24" water transmission line. This new line runs under the parking lot for the new store.

Upon acceptance of the new water line a few months ago, the old water transmission line was disconnected from service and abandoned, and a part of the new Lowe's store is now on top of the abandoned line. The new owners of the property, Dreamland Partners, LP, have requested the City of Asheville quitclaim the easement over the now abandoned line.

Staff recommends the City Council adopt the resolution to quitclaim the easement over the abandoned water line.

Extension of Time to Complete the Audit of City Accounts

Summary: The consideration of a resolution authorizing the Mayor to execute a contract change with Crisp Hughes Evans LLP, Certified Public Accountants, extending the completion date for auditing services for Fiscal Year 1998-99.

N.C. General Statutes sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

During May 1999, the City entered into a contract with Crisp Hughes Evans LLP to conduct the City's annual audit for Fiscal Year 1998-99. The contract called for the audit to be performed and the report of audit submitted by October 31, 1999. Due to delays encountered by City staff in preparing financial statements for the first time using the City's new accounting software and the more extensive audit procedures employed to verify the accuracy of the software's accounting and reporting operations, the report of audit was completed on December 29, 1999. The Local Government Commission requires that any extension of the completion date beyond October 31 must be approved by the City Council. The resolution authorizes the Mayor to execute an amendment to the audit contract to extend the completion date.

City staff recommends Council adopt the resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

DRAFT SUSTAINABLE ECONOMIC DEVELOPMENT STRATEGIC PLAN

Mr. Jack Cecil, Chair of the Sustainable Economic Development Task Force, reviewed with Council the process the Task Force used in developing the Strategic Plan for the sustainable economic development of Asheville.

Mr. David Kolzow, Consultant, outlined three questions to Council on why a strategic plan for Asheville was needed: (1) what do we need to do to get where we want to be using the resources available to us? (2) what can we do to create a sustainable and healthy economy, considering what is happening or is likely to happen in the world, our nation, our region, and our community? and (3) how do we more effectively get the community and its leadership involved in "building a better tomorrow."

Mr. Kolzow reviewed the following key strengths of Asheville: strong medical and health care services; attractive quality of life; availability of higher education and technical training; good telecommunications infrastructure; strong tourism industry; good highway access to community; supportive environment for small business; and vibrant downtown.

He then reviewed the key weaknesses of Asheville: lack of industrial and office sites and buildings; inadequate housing availability and high cost; inadequate graduate-level technical, science, and research programs at institutions of higher education; impediment to development from local permitting and zoning process; cost of water and sewer service; inadequate local streets and traffic problems; lack of quality jobs; and inadequate local environmental protection and cleanliness of community.

Priority development issues include: shortage of diverse and affordable housing within City; lack of developable sites; tight labor supply with shortage of skilled workers; lack of local agreement on type of business and industry the City should try to attract; water supply is inadequate and high cost; lack of prestigious research institutions and technical graduate programs; problems with planning, zoning and permitting processes; lack of cooperation between city and county government; need to revitalize the riverfront; high underemployment; lack of available buildings for manufacturing and distribution; and city's economic development role needs to be more clearly defined.

He said the following are the four key issues for Asheville's sustainable economic development: (1) development process; (2) real estate; (3) workforce/education; and (4) riverfront.

Priority target industries include: health and medical services; Internet-related activity; corporate back offices and higher-pay call centers; film-making; software development; environment technology; tourism; arts and crafts; electronic equipment; and automotive parts.

The vision for economic development include: sustainable and diversified economy; higher level of earnings: broad range of attractive job opportunities; top notch infrastructure; world-class education system; and higher level of community and leadership participation.

Mr. Cecil then reviewed the issues to actions which are: (1) a leadership workshop to determine priorities; (2) strategic action leans to: (a) clarify issues and state as problems to be solved; (b) determine primary causes; (c) develop actions to address the problems more effectively; and (3) four month process of meetings.

Mr. Cecil reviewed the following key goals: (1) Asheville's urban planning, zoning and permitting processes as created and administered by the City facilitates sustained and positive development. (2) the availability of suitable sites within the City meets its business needs into the future; (3) the City's future development balances economic objectives, social goals, and its natural resources to the benefit of present and future generations; (4) the institution of higher education and training in the Asheville area meets the skill needs of the businesses and industries in the community; (5) the local workforce has the basic education, life skills, and technical skills to meet the demands of Asheville's workplace in the future; and (6) Asheville's "total" riverfront is redeveloped to maximize its full potential as both a quality of life amenity and economic development opportunity.

Implementation of the plan includes: creating a nurturing environment for the new economy; more effective communication and coordination among local government agencies and other organizations; developing the Asheville "product" through major projects such as Knowledge Center, Multimedia Center, Riverfront Greenway, and regional business/industrial parks; Implementation Task Force to monitor, evaluate, coordinate, and oversee future strategic actions; and identifying/security sustained and recurring funds to ensure successful implementation of strategic actions.

Upon inquiry of Councilwoman Field, Mr. Cecil said that this plan did incorporate input from 400 citizens which were from a cross section of the community. He also stated that the Task Force was more focused on product development not marketing and recruitment.

Councilman Worley said that City Council can begin implementing the Plan beginning with the little or no cost objectives.

Mr. Cecil said that the Task Force would like to proceed with obtaining additional public comment on the plan. He also suggested that some type of Implementation Task Force be established.

Mayor Sitnick make some comments and suggestions for the plan, one suggestion in particular was for City Council to consider, in the future, setting up a commission on sustainability to act in an advisory capacity to City Council. The Commission would be for in-house and community-wide education on sustainability and economic development that will fit with our community.

On behalf of City Council, Mayor Sitnick thanked Mr. Cecil, Mr. Kolzow, and Economic Development Director Mac Williams for the outstanding work in bringing this draft plan to City Council.

PRESENTATION OF ANNUAL AUDIT REPORT

Finance Director Bill Schaefer said that City Council retained an independent audit firm, Crisp Hughes Evans LLP of Asheville, NC, to perform an audit of the City of Asheville for the fiscal year ended June 30, 1999, as required by North Carolina General Statute sec. 159-34. The auditors gave the City an unqualified audit opinion. (The term "unqualified" means that in the auditor's opinion the financial statements represent fairly the financial position of the City and is not modified by reservations or restrictions).

Mr. Brian Broom, Engagement Manager, briefed City Council on their findings. He then reviewed the Fund Balance in the General Fund, along with General Fund expenditures and revenues. He also pointed out recent developments in local government regulation and legislation.

UDO AMENDMENT REVIEW

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which are scheduled on Tuesday, February 8, 2000. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Fee in Lieu of Sidewalks

Mr. Oliver Gajda, Pedestrian and Bicycle Coordinator, said this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) regarding sidewalk requirements and consideration of an amendment to the Fees and Charges Manual for reimbursement costs.

When the UDO was adopted in 1997, it included requirements for the majority of new developments to install sidewalk as part of the development. More specifically, the requirements are for all new commercial, industrial, single family residential subdivisions greater than 20 units; multi-family residential greater than 10 units to install sidewalks as part of their development; all new commercial, educational and industrial uses; and substantial improvements of commercial, educational and industrial uses greater than 50% improvements. Currently the only way for a developer to avoid these requirements is a waiver by City Council.

The UDO does not currently allow for a "fee in lieu of" for construction of sidewalks. In some cases there may be valid reasons for not requiring the sidewalk be constructed. This may be due to terrain, location, impact, future widening, etc. Developers have requested this option as they feel the sidewalk would be a more benefit in another location, particularly when sidewalk connectivity is needed on other major thoroughfares.

The purpose of the recommended changes in the ordinance are as follows:

- More clearly define what type of developments must install sidewalk as part of their development.
- Develop a mechanism for allowing a "Fee In Lieu" of constructing sidewalk when certain conditions are met.

Proposed guidelines requiring sidewalks would be:

- All additions or expansions where the gross.floor area of the addition or expansion is greater than 50,000 square feet.

- Sidewalk rehabilitation shall be required when the City Engineer has determined the existing sidewalk to be dilapidated, for development that meet new sidewalk construction requirements.

The proposed ordinance requires the City Engineer make the determination as to whether or not a development meets the requirements for a "Fee In Lieu" of constructing a sidewalk. In order to make that determination, the City Engineer will determine that one of several conditions exist:

- The residential area does not have sidewalks and sidewalks would be incompatible with the existing landscaping, architecture, design and/or pedestrian or vehicular traffic patterns;
- Sidewalks are scheduled to be installed as part of a City or State project which has been funded for construction;
- In locations where the District Engineer of the North Carolina Department of Transportation recommends in writing that no sidewalk be constructed; and
- Where a combination of conditions (such as, but not limited to, topography, low pedestrian volume and low vehicular volumes) exist which make it impractical or not feasible to construct a sidewalk, as determined by the City Engineer.

These recommended changes support the Pedestrian Thoroughfare Plan adopted by City Council in 1999. The Plan recommended that a "Fee In Lieu" of constructing sidewalks be implemented in order to provide funding for needed sidewalk linkages.

Staff recommends that the amount of the fee be defined in the City of Asheville Fees and Charges Manual. Staff recommends that the fee be paid based upon the linear foot of sidewalk that would be required at the location requesting the waiver. Staff recommends that the unit costs of the fee be $20 per linear foot for 5' concrete sidewalk, $65 per linear foot for 5' brick sidewalk, $28 per square foot of retaining wall and $11.50 per linear foot of railing. The unit cost were established from a national publication. The publication is R S Means Sitework and Landscape Cost Data 2000, 19th Annual Edition. In addition to the construction costs, staff has included administrative costs necessary to install the sidewalk. Staff takes the approach that this is the fairest way to balance the costs of paying a "Fee In Lieu" of constructing a sidewalk to those developments that are not granted a waiver. All fees shall be accounted for separately from other monies and shall be expended for pedestrian improvements in the same area as they are collected with a five year period.

This recommendation passed the Planning and Zoning Commission on a 4 to 3 vote. Some of the members who voted against the recommendation indicated that they had a concern over the requirement to have a development consisting of three or more single family residences install sidewalk as part of the development. They stated that this requirement could pose a hardship for developers building affordable homes. After further review by staff, we have revised the recommendation for sidewalks for single-family and multi-family structures to stay as it currently is until further analysis is completed.

Staff recommends that City Council approve the recommended changes to the UDO as they relate to sidewalk requirements and adopt an amendment to the Fees and Charges Manual for reimbursement costs.

Councilman Hay felt there were really two issues being considered: (1) fee in lieu of sidewalks; and (2) the minimum sidewalk issue. He wondered if it would be better to consider each issue separately.

Councilwoman Field suggested that the Director for Economic Development review the ordinance. She was concerned about (1) the interior construction requirements; and (2) the definition of 50%. She suggested the City Engineer review the proposed ordinance to see if those concerns could be addressed.

At the suggestion of Councilwoman Whitmire, City Engineer Cathy Ball said that she would put a task force together to work on the affordable housing issue.

Ms. Ball pointed out that the fee in lieu of is the exception, not the rule.

Changes in Definitions of Church, Place of Worship and Sanctuary; and Creating Standards for Places of Worship

Senior Planner Gerald Green said that this is the consideration of two amendments to the Unified Development Ordinance which would establish definitions for place of worship and sanctuary and establish standards for places of worship in residential districts.

The Planning and Zoning Commission, at their January 5, 2000, meeting, reviewed and recommended approval of amendments to the Unified Development Ordinance which would establish definitions for place of worship and sanctuary and establish standards for places of worship located in residential districts. The definitions and standards are the result of several months of work by a committee composed of representatives of neighborhoods and the religious community, the Planning and Zoning Commission, and the Planning and Development staff. The definitions established by the proposed amendment would be applicable throughout the City's jurisdiction; the standards would apply to places of worship located in residential zoning districts only. As proposed, the definition of place of worship would make it clear that schools, day cares, recreational facilities, and other facilities could be developed in conjunction with a place of worship but would have to meet applicable development standards. The proposed standards for places of worship in residential districts establish three categories for places of worship based upon the number of seats in the sanctuary(ies):

- Small - Not more than 300 seats;
- Medium - 301 to 800 seats; and
- Large - More than 800 seats.

Locational requirements, with regard to the functional classification of the abutting street, are established for the three categories. In addition, standards are established which address:

- Lot size;
- Setbacks;
- Access points;
- Parking;
- Landscaping and buffering;
- Impervious surfaces
- Building height;
- Lighting;
- Space devoted to office use;
- Commercial activities;
- Grading; and
- Outdoor speaker systems.

The intent of the proposed standards is to permit the expansion and development of places of worship in residential districts while minimizing their impact on adjacent residential uses.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the wording amendments. The Planning and Development staff recommends approval of the amendments.

Upon inquiry of Councilman Worley, Mr. Green said that amendment to the ordinance would make one or two churches slightly non-conforming because of the size, however they would be grandfathered.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearings on February 8, 2000.

REPORT ON CITY DEVELOPMENT STAFFING AND CENTER CITY PLAN

Planning & Development Director Scott Shuford said that this is the consideration of a motion approving $35,000, already allocated in the Planning and Development Department budget, to be reallocated to the Center City Plan.

In adopting this fiscal year's budget, the City Council postponed a staffing decision regarding the City Development Office for six months to allow the new Planning and Development Director to prepare a recommendation for staffing this key City Division. Working with the Downtown Commission, a list of expected duties for the City Development Division was prepared and is provided below. In analyzing the list of duties, I am recommending the following staffing arrangement: this organizational structure transfers an added staff member to the City Development Office while keeping the overall staffing level for the City Planning and Development Department (of which City Development is a part) at its current level. If the Center City Plan that is under development proposes significant changes to the functions of the City Development Division, this organizational structure will need to be reconsidered.

- Division Head - this Senior Planner position is to be transferred from the Planning Services Division
- Urban Development Specialist - this existing position is currently filled
- Coordinator/Urban Planner I - this existing position is currently vacant and represents a revised position description from Terry Clevenger's Marketing Coordinator position
- Administrative Assistant - this existing position is currently filled
- Senior Secretary - this existing position is currently filled

City Development Division Functions

FUNCTION
Downtown Commission Liaison
Development Advice; Design Standards; Contractor Ombudsman
Infrastructure Support Coordination - Serve as a central conduit for complaints or concerns about parking, cleanliness, utilities, streetscape
Grant Writing/Fundraising - Facilitate efforts by the City's new grant writer position and by the Downtown Commission or other groups in project-based fundraising and grant applications
General Promotion - coordination of efforts in promoting Downtown

Available Space Inventory
Center City Plan Coordination
Festival Coordination - Serve as a conduit for questions or issues about festivals
Project Coordination - Communicate and relay questions and concerns about Downtown projects; participate in project planning and design
Communication (e.g., newsletter, interactive webpage as part of COA webpage, etc.)
Administrative Duties (supervisory and administrative functions)

In addition to postponing the City Development Division staffing decision, City Council decided to wait for a recommendation from the Planning and Development Director regarding what type of plan was needed for downtown Asheville (this plan is referred to as the Center City Plan). Since the adoption of this fiscal year's budget, the Mayor and the Downtown Commission have held numerous public input sessions soliciting concerns and ideas about downtown. These sessions have resulted in considerable agreement about the direction desired for the future of downtown Asheville. Additional planning work has occurred as part of the Pritchard Park and Downtown Parking Study projects, as well as the Main Street Study and Recommendations, and more is anticipated from the Pack Square Project and the Sustainable Economic Development Task Force report.

Given the extent of the planning that has already occurred and is occurring, it appears that all that is lacking is a way to tie this input together in a priority-based plan that would be prepared by City staff with limited technical assistance and with a continued high level of community involvement. There is $35,000 in this year's Planning and Development Department budget that, with City Council approval, can be reallocated to the Center City Plan. This money will allow City staff to obtain the technical assistance needed to complete the plan in-house under the guidance of the Center City Plan Steering Committee that was formed to provide continuing public involvement in Downtown planning efforts. Technical assistance may be needed in the areas of retail analysis, transportation planning, streetscape design, or other areas that may be dictated by the planning process. Use of these current fiscal year monies will enable staff to fully initiate and possibly complete the Center City Plan this budget year.

The consideration of a motion approving $35,000, already allocated in the Planning and Development Department budget, to be reallocated to the Center City Plan.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CONTRACT FOR PROFESSIONAL DESIGN SERVICES FOR THE PARKING DECK IN THE BATTERY PARK AREA

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to sign a contract with Carl Walker, Inc., to design and provide project administration for the Parking Deck in the Battery Park area and an associated budget amendment, in the amount of $570,000, for said project.

In October 1999, City Council directed staff to develop a Request For Proposals (RFP) to select a consultant to design a parking deck in the Battery Park area. The RFP was completed in October 1999. Proposals were received on November 19, 1999. Seven firms submitted proposals. The selection team reviewed the proposals and short-listed two firms: Carl Walker, Inc., and Hayes, Seay, Mattern and Mattern, Inc. (HSMM). The interviews were held on December 20, 1999. The selection team recommended Carl Walker, Inc., based upon qualifications.

Phase I of the contract consists of conceptual and preliminary design plans. Phase II of the contract consists of final construction specifications and design. Phase III consist of project administration during the construction phase of the project. The contractor will be allowed 150 calendar days for the completion of Phase I and II.

The estimated cost of Phase I is $153,000, Phase II is $242,000, and Phase III is $115,000 for a total cost not to exceed $510,000. This amount is approximately 6% of the estimated construction costs of the deck ($8.8 Million). The fee for the project is based on an hourly rate plus allowable expenses, not to exceed $510,000. Staff also requests that City Council approve a budget amendment, in the amount of $570,000, for the cost of the above services, surveying and geotechnical testing, in addition to a 10% contingency to be paid from the issuance of Certificates of Participation.

Carl Walker, Inc., proposes to use five sub-consultants in the project. Three of the five are minority or women owned businesses.

Staff recommends that City Council (1) authorize the City Manager to execute a contract with Carl Walker, Inc., to design and provide project administration for the Parking Deck in the Battery Park area; and (2) adopt a budget amendment, in the amount of $570,000, for said project.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PLAN FOR PRITCHARD PARK PHASE I

Park Planner Alan Glines reviewed with City Council the proposed drawing of Phase One of the Pritchard Park Master Plan.

The Parks and Recreation Department, at the request of City Council, began a public process to determine the future design for Pritchard Park. A task force was developed which represented broad community interests. In the fall of 1998, the City hired the services of Genesis Group to develop a Master Plan for the project. An initial Master Plan was presented in January 1999 and has received broad community support and Council interest. Since then minor changes have been made to the Plan within the framework of the overall proposal.

In conjunction with the Pritchard Park proposal a Downtown Traffic Evaluation was undertaken to determine the feasibility of returning downtown traffic along College Street and Patton Avenue to two-way operation. While the study states that it is feasible to return two way traffic to downtown, financial and other major considerations will preclude any renovation of the traffic network at this time. The Traffic Evaluation Report is currently being studied by the City Engineering Department. There has been on-going interest from the City Council liaison group assisting with the direction of the project, to phase the construction of the park Master Plan. Staff has recommended a phased construction scope for Pritchard Park.

Phase One of the park design and construction will enlarge the park area. The central area of the park will feature a terraced public gathering space, enhanced crosswalks to connect to the surrounding sidewalk areas, planted areas with native trees and shrubs, ornamental lighting, rock work that will display a small water feature, an area for food vendors and opportunities for public art.

In addition to the park expansion, the Phase One construction will include the renovation of the College Street sidewalk area across from the park in an effort to support economic growth and downtown vitality. The sidewalk space will be increased from the current 9 foot width to 18 feet. Other amenities will include trees and tree grates, building access to comply with the American with Disabilities Act, and ornamental street lights. Parallel parking will continue along the sidewalk in front of the buildings on College Street.

The next step for the project will be to complete construction drawings and specifications by the Genesis Group team. Construction is expected to commence in May and be completed by early fall. It is expected that there will be sufficient funds to complete Phase One.

City staff recommends City Council authorize the Parks and Recreation Department to proceed with construction documents and implement Phase One for Pritchard Park.

Councilwoman Field said that the County has indicated that they would look favorably upon waiving the tipping fees.

Councilwoman Field said that when the project gets in the Phase Two stage, City Council may want to discuss were the parade route will be.

Upon inquiry of Vice-Mayor Cloninger, Mr. Glines said that there is substantial greenspace in the park design.

Upon inquiry of Councilwoman Field, Director of Transit Services Bruce Black said that he is looking for potential corporate sponsors for some bus shelters in the downtown area.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

SPECIAL EVENT PARKING

Revenue Manager Deborah Crowder provided information to City Council about: under what circumstances and how often special event fees are in effect; special event fee structure and resulting revenue figures for last year; the impact of special event parking to downtown shoppers, library patrons and monthly parkers; and the possibility of pursuing other options based on the capabilities of the new gate equipment which will be installed over the next several weeks.

Ms. Crowder answered various questions from Council regarding special event parking.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

PUBLIC ACCESS CHANNEL COMMISSION

It was the consensus of City Council to have the City Clerk arrange the following interviews for the Public Access Channel Commission: Wally Bowen, John Hayes, Raphael Peter, Mark Rosenstein, Mary Ellen Brown, James Torpey, Andrew Reed, Marianna Bailey, Lisa Michie, Rebecca Em Campbell, Orpheus Allison, Clifford Davids, Mark Goldstein, Beth Lazer and Allan Goodstadt.

Upon inquiry of Vice-Mayor Cloninger, City Attorney Oast said that if City Council wanted to change the membership of the Commission that it would require an ordinance amendment.

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At the request of Councilwoman Field, it was the consensus of City Council to have the City Attorney prepare the proper paperwork to increase the membership on the Public Art Board to include a seat for the Chairman of the Arts Alliance.

It was the consensus of City Council to appoint Councilman Worley as the liaison to the ABC Board.

Councilwoman Field updated City Council on the MSD retreat.

Mayor Sitnick suggested that in the future a simple chart be prepared showing which entity has control over what policies.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:21 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - January 25, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilwoman Whitmire gave the invocation.

ADDITIONS TO THE AGENDA

City Attorney Oast asked that consideration of a subordination agreement regarding Disposal Parcel 6B be added to the Council's agenda.

At the request of Mayor Sitnick, Vice-Mayor Cloninger moved to appropriate up to $2,000 out of General Fund Contingency into City Council's training and travel line item. This will allow a member of the Film Board to attend a conference in Los Angeles, California, in order to promote to the City of Asheville. This motion was seconded by Councilman Hay and carried unanimously.

I. PROCLAMATIONS:

A. RECOGNITION OF JASON SUMMEY

Mayor Sitnick recognized Jason Summey for his development of the "Be Cool ... Stay in School" Program and praised his work in the community.

B. GIRL SCOUT TROOP 736

Councilwoman Whitmire recognized Ms. Sharon Farmer and representatives of Girl Scout Troop 736 out of Lee Walker Heights.

C. POLICE OFFICER MIKE GODWIN

Mayor Sitnick recognized Police Officer Mike Godwin who was awarded the metal of honor at the Asheville Police Department's Award Banquet.

II. CONSENT:

Councilman Peterson asked that Consent Agenda Items F, I and J be removed from the Consent Agenda for further discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 11, 2000, AND THE WORKSESSION HELD ON JANUARY 18, 2000

B. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 8, 2000, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE REQUIREMENTS FOR CONSTRUCTION OF

SIDEWALKS, TO ESTABLISH REQUIREMENTS FOR REHABILITATION OF SIDEWALKS, AND TO PROVIDE A PROCESS FOR THE PAYMENT OF A FEE IN LIEU OF CONSTRUCTION OR REHABILITATION OF SIDEWALKS

C. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 8, 2000, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE WHICH WOULD DELETE THE DEFINITION OF CHURCH, ADD THE DEFINITIONS FOR A PLACE OF WORSHIP AND SANCTUARY, AND CREATE STANDARDS FOR PLACES OF WORSHIP

D. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 8, 2000, TO CONSIDER A CONDITIONAL USE PERMIT FOR HOME DEPOT LOCATED AT THE INTERSECTION OF ACTON CIRCLE AND MONTE VISTA ROAD

E. RESOLUTION NO. 00-6 - RESOLUTION AUTHORIZING A GRANT APPLICATION TO THE N.C. DEPT. OF HEALTH AND HUMAN SERVICES TO ASSIST WITH FACILITY IMPROVEMENTS AND EQUIPMENT AT HARVEST HOUSE AND SENIOR OPPORTUNITY CENTER

Summary: The consideration of a resolution to apply for grants through the North Carolina Department of Health and Human Services to assist with facility improvements and equipment at Harvest House and Senior Opportunity Center.

Funds are available through the North Carolina Department of Health and Human Services, Division on Aging, in the 1999 Senior Center Appropriation to assist with programming and general operation of senior centers. The Harvest House and the Senior Opportunity Center are eligible to receive $6,329 each, and will use the funds to refinish wood floors, purchase tables and chairs, and purchase miscellaneous equipment and improvements.

The Parks and Recreation Department is requesting $12,658 in grant funds from the 1999 Senior Center Appropriation which requires a 10% cash/in-kind match. The in-kind match is available in the Recreation Division and the Public Facilities Division operating budgets.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for grant funds through the 1999 Senior Center Appropriation for improvements and equipment at Harvest House and Senior Opportunity Center.

RESOLUTION BOOK NO. 25 - PAGE 393

F. RESOLUTION AUTHORIZING GRANT APPLICATIONS TO THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO ASSIST WITH THE DEVELOPMENT OF THE FRENCH BROAD RIVER PARK PHASE IV

This item was removed from the Consent Agenda for further discussion.

G. RESOLUTION NO. 00-7 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A RIGHT-OF-WAY AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR ROADWAY IMPROVEMENTS TO SPIVEY MOUNTAIN ROAD

Summary: The consideration of a resolution authorizing the Mayor to execute a right-of-way agreement with the N. C. Department of Transportation (NC DOT) for roadway improvements to Spivey Mountain Road.

The City of Asheville purchased a 3-acre site in 1998 for the Regional Water Authority to construct a new water reservoir as part of the 1994 Master Plan improvements for the water system. The property has approximately 400 feet of frontage on the south end of the property along a gravel road (Spivey Mountain Road) maintained by the NC DOT. This road serves as access to the site and the new water main providing water to and from the reservoir from the valley below is in the shoulder of the road.

The NC DOT is proposing, at its expense, to improve Spivey Mountain Road by widening the road to 18 feet and paving the road. Widening will include minor grading along the shoulder, but there are no improvements to alignment or centerline grade proposed. The NC DOT has been maintaining this road in the past without recorded right-of-way on some properties and is now asking those property owners to formally dedicate right-of-way in advance of the improvements.

The proposed roadway improvements are not in conflict with the water reservoir or the use of the property. Staff has discussed the proposed improvements with the NC DOT and have been assured by NC DOT that the road improvements will not create a conflict which would require relocation of the existing water line anywhere in Spivey Mountain Road. With this understanding, the resolution has been prepared authorizing the Mayor to execute a Right-of-Way Agreement dedicating 22.5 feet of right-of-way from the existing centerline to the NC DOT for roadway improvements.

Staff recommends the City Council adopt the resolution.

RESOLUTION BOOK NO. 25 - PAGE 394

H. RESOLUTION NO. 00-8 - RESOLUTION ADOPTING CHANGES REGARDING THE ELIGIBILITY OF CITY EMPLOYEES TO PARTICIPATE IN THE CITY'S SELF-FUNDED EMPLOYEE WELFARE BENEFIT PLAN UPON RETIREMENT

Summary: The consideration of a resolution adopting changes regarding the eligibility of City employees to participate in the City's Self-Funded Employee Welfare Benefit Plan upon retirement.

In June 1993 Council adopted a resolution setting the terms & conditions for retirees to continue health benefits through the City. Two of the provisions of that resolution (Resolution No 93-74) are considered impediments to employees seeking to retire.

The Human Resources Director believes the recommended changes will encourage employees wanting to retire to do so without the financial consequences of not having affordable health care, and further that employees with spouses working for the City can retire with the same benefits that other retirees enjoy whose spouses do not work for the City. The Risk Management Division concurs with this recommendation.

It is also noted that the recommendation will not require any funding from the City beyond the current budget for fringe benefits, and that the impact on the heath plan will be negligible.

Staff from the Risk Management Division and the Human Resources Department jointly recommend the adoption of this resolution.

RESOLUTION BOOK NO. 25 - PAGE 395

I. RESOLUTION AUTHORIZING A CONTRACT WITH CARL WALKER INC. TO DESIGN AND PROVIDE CONTRACT ADMINISTRATION FOR A PARKING DECK IN THE BATTERY PARK AREA

This item was removed from the Consent Agenda for further discussion.

J. BUDGET AMENDMENT FOR THE DESIGN AND PROJECT ADMINISTRATION FOR A PARKING DECK IN THE BATTERY PARK AREA

This item was removed from the Consent Agenda for further discussion.

K. RESOLUTION NO. 00-9 - RESOLUTION SETTING A PUBLIC HEARING FOR FEBRUARY 22, 2000, TO CLOSE A PORTION OF HERMAN AVENUE EXTENSION

RESOLUTION BOOK NO. 25 - PAGE 397

L. RESOLUTION NO. 00-10 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT TO QUITCLAIM AN EASEMENT OVER AN ABANDONED WATER TRANSMISSION LINE AT THE SITE OF THE NEW LOWE'S SUPERSTORE AT SOUTH TUNNEL ROAD AND SWANNANOA RIVER ROAD

Summary: The consideration of a resolution authorizing the Mayor to execute a quitclaim for an existing water line easement over an abandoned water main on the property which is currently the site of the Lowe's superstore at the intersection of South Tunnel Road and Swannanoa River Road.

As part of the construction of a new Lowe's superstore at South Tunnel Road and Swannanoa River Road, the site developer relocated a 24" water transmission main which was part of the Asheville water system in order to use the site for the superstore. The new transmission line has been completed, tested, and accepted in accordance with the policies of the Regional Water Authority and the standards of the City of Asheville, and an appropriate easement has been dedicated to the City of Asheville and recorded at the Buncombe County Registry over the new 24" water transmission line. This new line runs under the parking lot for the new store.

Upon acceptance of the new water line a few months ago, the old water transmission line was disconnected from service and abandoned, and a part of the new Lowe's store is now on top of the abandoned line. The new owners of the property, Dreamland Partners, LP, have requested the City of Asheville quitclaim the easement over the now abandoned line.

Staff recommends the City Council adopt the resolution to quitclaim the easement over the abandoned water line.

RESOLUTION BOOK NO. 25 - PAGE 398

M. RESOLUTION NO. 00-11 - RESOLUTION AUTHORIZING STAFF TO PROCEED WITH PHASE ONE OF THE PRITCHARD PARK MASTER PLAN

The Parks and Recreation Department, at the request of City Council, began a public process to determine the future design for Pritchard Park. A task force was developed which represented broad community interests. In the fall of 1998, the City hired the services of Genesis Group to develop a Master Plan for the project. An initial Master Plan was presented in January 1999 and has received broad community support and Council interest. Since then minor changes have been made to the Plan within the framework of the overall proposal.

In conjunction with the Pritchard Park proposal a Downtown Traffic Evaluation was undertaken to determine the feasibility of returning downtown traffic along College Street and Patton Avenue to two-way operation. While the study states that it is feasible to return two way traffic to downtown, financial and other major considerations will preclude any renovation of the traffic network at this time. The Traffic Evaluation Report is currently being studied by the City Engineering Department. There has been on-going interest from the City Council liaison group assisting with the direction of the project, to phase the construction of the park Master Plan. Staff has recommended a phased construction scope for Pritchard Park.

Phase One of the park design and construction will enlarge the park area. The central area of the park will feature a terraced public gathering space, enhanced crosswalks to connect to the surrounding sidewalk areas, planted areas with native trees and shrubs, ornamental lighting, rock work that will display a small water feature, an area for food vendors and opportunities for public art.

In addition to the park expansion, the Phase One construction will include the renovation of the College Street sidewalk area across from the park in an effort to support economic growth and downtown vitality. The sidewalk space will be increased from the current 9 foot width to 18 feet. Other amenities will include trees and tree grates, building access to comply with the American with Disabilities Act, and ornamental street lights. Parallel parking will continue along the sidewalk in front of the buildings on College Street.

The next step for the project will be to complete construction drawings and specifications by the Genesis Group team. Construction is expected to commence in May and be completed by early fall. It is expected that there will be sufficient funds to complete Phase One

City staff recommends City Council authorize the Parks and Recreation Department to proceed with construction documents and implement Phase One for Pritchard Park.

RESOLUTION BOOK NO. 25 - PAGE 399

N. RESOLUTION NO. 00-12 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT AMENDMENT WITH CRISP HUGHES EVANS LLP TO EXTEND THE COMPLETION DATE FOR AUDITING SERVICES FOR FISCAL YEAR 1998-99

Summary: The consideration of a resolution authorizing the Mayor to execute a contract change with Crisp Hughes Evans LLP, Certified Public Accountants, extending the completion date for auditing services for Fiscal Year 1998-99.

N.C. General Statutes sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

During May 1999, the City entered into a contract with Crisp Hughes Evans LLP to conduct the City's annual audit for Fiscal Year 1998-99. The contract called for the audit to be performed and the report of audit submitted by October 31, 1999. Due to delays encountered by City staff in preparing financial statements for the first time using the City's new accounting software and the more extensive audit procedures employed to verify the accuracy of the software's accounting and reporting operations, the report of audit was completed on December 29, 1999. The Local Government Commission requires that any extension of the completion date beyond October 31 must be approved by the City Council. The resolution authorizes the Mayor to execute an amendment to the audit contract to extend the completion date.

City staff recommends Council adopt the resolution.

RESOLUTION BOOK NO. 25 - PAGE 400

O. MOTION APPROVING $35,000, ALREADY BUDGETED IN THE PLANNING & DEVELOPMENT DEPARTMENT BUDGET, TO BE REALLOCATED TO THE CENTER CITY PLAN

Summary: The consideration of a motion approving $35,000, already allocated in the Planning and Development Department budget, to be reallocated to the Center City Plan.

In adopting this fiscal year's budget, the City Council postponed a staffing decision regarding the City Development Office for six months to allow the new Planning and Development Director to prepare a recommendation for staffing this key City Division. Working with the Downtown Commission, a list of expected duties for the City Development Division was prepared and is provided below. In analyzing the list of duties, I am recommending the following staffing arrangement: this organizational structure transfers an added staff member to the City Development Office while keeping the overall staffing level for the City Planning and Development Department (of which City Development is a part) at its current level. If the Center City Plan that is under development proposes significant changes to the functions of the City Development Division, this organizational structure will need to be reconsidered.

- Division Head - this Senior Planner position is to be transferred from the Planning Services Division
- Urban Development Specialist - this existing position is currently filled
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Center City Plan Coordination
Festival Coordination - Serve as a conduit for questions or issues about festivals
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Communication (e.g., newsletter, interactive webpage as part of COA webpage, etc.)
Administrative Duties (supervisory and administrative functions)

In addition to postponing the City Development Division staffing decision, City Council decided to wait for a recommendation from the Planning and Development Director regarding what type of plan was needed for downtown Asheville (this plan is referred to as the Center City Plan). Since the adoption of this fiscal year's budget, the Mayor and the Downtown Commission have held numerous public input sessions soliciting concerns and ideas about downtown. These sessions have resulted in considerable agreement about the direction desired for the future of downtown Asheville. Additional planning work has occurred as part of the Pritchard Park and Downtown Parking Study projects, as well as the Main Street Study and Recommendations, and more is anticipated from the Pack Square Project and the Sustainable Economic Development Task Force report.

Given the extent of the planning that has already occurred and is occurring, it appears that all that is lacking is a way to tie this input together in a priority-based plan that would be prepared by City staff with limited technical assistance and with a continued high level of community involvement. There is $35,000 in this year's Planning and Development Department budget that, with City Council approval, can be reallocated to the Center City Plan. This money will allow City staff to obtain the technical assistance needed to complete the plan in-house under the guidance of the Center City Plan Steering Committee that was formed to provide continuing public involvement in Downtown planning efforts. Technical assistance may be needed in the areas of retail analysis, transportation planning, streetscape design, or other areas that may be dictated by the planning process. Use of these current fiscal year monies will enable staff to fully initiate and possibly complete the Center City Plan this budget year.

The consideration of a motion approving $35,000, already allocated in the Planning and Development Department budget, to be reallocated to the Center City Plan.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION NO. 00-13 - RESOLUTION AUTHORIZING GRANT APPLICATIONS TO THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO ASSIST WITH THE DEVELOPMENT OF THE FRENCH BROAD RIVER PARK PHASE IV

Summary: The consideration of a resolution to apply for grant funds through the North Carolina Department of Environment and Natural Resources to assist with the construction of the next phase of the French Broad River Park.

Funds are available through the N.C. Department of Environment and Natural Resources, Division of Parks and Recreation in the North Carolina Parks and Recreation Trust Fund, and in the National Recreational Trails Fund to assist with the development of parks and greenways.

The French Broad River Park, Phase IV, represents the City of Asheville's next phase of a major greenway and park system being developed along the French Broad River on Amboy Road. Although the final master plan will not be complete until February, public input requested the park include greenways, bicycle facilities, lawn bowling, soccer and softball fields, restrooms, skateboarding and rollerblading facilities, open space, picnic shelter, parking, and perhaps a welcome center. Phase IV will also connect to a planned N.C. Department of Transportation funded greenway from Hominy Creek on the west, and eventually to the Amboy Road greenway to the east.

The Parks and Recreation Department and RiverLink are in partnership to implement an ambitious fundraising plan to raise approximately $2 million to build the park. RiverLink recently presented a proposal to the Janirve Foundation for $250,000, and has identified an additional $500,000 in funding resources.

The Parks and Recreation Department is requesting $250,000 in grant funds from the North Carolina Parks and Recreation Trust Fund which requires a 50% cash match. The cash match is available through a combination of funds with the Parks and Recreation Department budget, RiverLink, and other sources. In addition, the Parks and Recreation Department is requesting $50,000 from the National Recreational Trails Fund, which requires a 20% cash/in-kind match. The in-kind match is available in the Parks Division budget.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for the grant funds through the North Carolina Parks and Recreation Trust Fund and the National Recreational Trails Fund to assist with the construction of the French Broad River Park Phase IV.

Upon inquiry of Councilman Peterson, Parks and Recreation Director Irby Brinson explained the other prior three phases of the project. He explained that the City does have a conceptual master plan that has been developed from community input. He said that they will be meeting with the community again to finalize the plan. He said that the grant application deadline is February 1 and that the grant application does not require exact details in order for the grant to be applied for. The City will not know until May whether or not they have actually received the grant. Mr. Brinson said that at this particular time we are looking to match that money with non-City money from the RiverLink proposal.

Mayor Sitnick was pleased that the City has an opportunity to hire a grants officer who will spend a significant amount of time looking for grants for this kind of a program and other programs.

Mayor Sitnick also noted that the City Council and City staff are doing everything they can recognizing the important history of the Asheville Motor Speedway in our community and to sensitive to that history as we move along in this process.

Councilwoman Field suggested that after the RiverLink Master Plan is finalized, that they be invited to attend a City Council worksession in order to see how their Plan meshes with the City's Parks and Recreation Master Plan.

Mr. Don Yelton pointed out that this property no longer pays property taxes as it did before when it was used for the speedway. He wanted to know the cost for maintaining a 31 acre park in the City. He also asked City staff to check the flood records to see what the cost will be over the next 10-15 years for repairing damage from floods. He felt these additional expenses need to be considered.

Mr. Mike Morgan said that with a city and county that boasts itself on diversity, he was appalled that they didn't take into account the racing fans that are part of the culture in our area.

Mr. Eddie Harwood said that there is not much for families to do in Asheville. He pointed out that the proposed park on the racetrack property is the perfect spot for drug deals to take place. Before long, the City will need full-time law enforcement for the park, resulting in more tax dollars spent.

Mayor Sitnick said that the racetrack was for sale for four years by a private property and it was advertised for sale. No one purchased it. She could not understand why the City, that received the land as a gift, has become bad government. She also wondered what the community would have thought about City Council had they turned down a million dollar gift on behalf of the taxpayers of this community.

Councilman Peterson asked if the City could sell the racetrack property. City Attorney Oast said that the property is subject to some restrictions as to its use and disposition. There are not only deed restrictions, but a conservation easement that covers part of the property as well.

Mr. Eric Gaddy, racing fan, wondered if City Council will be raising taxes to recoup the money lost since the racetrack property will not be paying taxes.

Upon inquiry of Mr. Gaddy about how the City will attract industry since the racetrack is gone, Mayor Sitnick explained that the City has a comprehensive strategic economic development plan for the City of Asheville.

Mr. Gaddy questioned if RiverLink is an entity of the City of Asheville. Mayor Sitnick responded that RiverLink is a private non-profit organization and the only funds they received from the City of Asheville is $18,000 as part of the outside agency request process. Mr. Yelton noted, however, that RiverLink's articles of incorporation spells out that they are an agent of the City and the County.

Councilman Peterson said that even though we will be losing some taxes, we also need to keep in mind that the City needs the ballfields, soccer fields, softball fields, etc. and if we received that property as a donation, that saved the City possibly $1 million that they would have had to spend to buy some property.

Mr. Chad Nesbitt urged City Council to look at the police reports for the French Broad River Park to see how much drug dealing and prostitution goes on in that area. Mr. Brinson said that the City does have a full-time park attendant, as well as a park warden that patrols that area often.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Cloninger moved to approve Resolution No. 99-13. This motion was seconded by Councilman Worley and carried unanimously.

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RESOLUTION NO. 00-14 - RESOLUTION AUTHORIZING A CONTRACT WITH CARL WALKER INC. TO DESIGN AND PROVIDE CONTRACT ADMINISTRATION FOR A PARKING DECK IN THE BATTERY PARK AREA

ORDINANCE NO. 2655 - BUDGET AMENDMENT FOR THE DESIGN AND PROJECT ADMINISTRATION FOR A PARKING DECK IN THE BATTERY PARK AREA

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Carl Walker, Inc., to design and provide project administration for the Parking Deck in the Battery Park area and an associated budget amendment, in the amount of $570,000, for said project.

In October 1999, City Council directed staff to develop a Request For Proposals (RFP) to select a consultant to design a parking deck in the Battery Park area. The RFP was completed in October 1999. Proposals were received on November 19, 1999. Seven firms submitted proposals. The selection team reviewed the proposals and short-listed two firms: Carl Walker, Inc., and Hayes, Seay, Mattern and Mattern, Inc. (HSMM). The interviews were held on December 20, 1999. The selection team recommended Carl Walker, Inc., based upon qualifications.

Phase I of the contract consists of conceptual and preliminary design plans. Phase II of the contract consists of final construction specifications and design. Phase III consist of project administration during the construction phase of the project. The contractor will be allowed 150 calendar days for the completion of Phase I and II.

The estimated cost of Phase I is $153,000, Phase II is $242,000, and Phase III is $115,000 for a total cost not to exceed $510,000. This amount is approximately 6% of the estimated construction costs of the deck ($8.8 Million). The fee for the project is based on an hourly rate plus allowable expenses, not to exceed $510,000. Staff also requests that City Council approve a budget amendment, in the amount of $570,000, for the cost of the above services, surveying and geotechnical testing, in addition to a 10% contingency to be paid from the issuance of Certificates of Participation.

Carl Walker, Inc., proposes to use five sub-consultants in the project. Three of the five are minority or women owned businesses.

Staff recommends that City Council (1) authorize the City Manager to execute a contract with Carl Walker, Inc., to design and provide project administration for the Parking Deck in the Battery Park area; and (2) adopt a budget amendment, in the amount of $570,000, for said project.

Upon inquiry of Councilman Peterson, Finance Director Bill Schaefer said that the $570,000 will be coming from the proceeds of the financing from the Certificates of Participation that the City will be issuing in connection with this project.

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Peterson moved for the adoption of Resolution No. 00-14. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 402

Councilman Peterson moved for the adoption of Ordinance No. 2655. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 97

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE PERMIT FOR NETTLEWOOD PROFESSIONAL PARK LOCATED OFF OF HENDERSONVILLE ROAD IN THE VICINITY OF WAL-MART

Ms. Stacy Merten, Urban Planner, said that this project was reviewed by the Technical Review Committee (TRC) on December 20, 1999. The TRC voted to approved the project with conditions which are outlined in a revised staff report dated January 13, 2000. These conditions included a resolution of an access issue through the Deerwood development and approval of a Traffic Impact Analysis prior to Council consideration. As of January 21, 2000, the applicant has been unable to resolve these critical issues which may affect the technical viability of the project. Consequently staff is recommending that the public hearing for this project be continued. Staff plans to meet with the developer and the Deerwood representatives and will have a better understanding of the time frame involved for resolution at the time of the City Council meeting.

City staff recommends that the public hearing for the conditional use permit for the Nettlewood Professional Park located off of Hendersonville Road in the vicinity of Wal-Mart be continued until February 8, 2000.

Vice-Mayor Cloninger moved to continue the public hearing for the conditional use permit for the Nettlewood Professional Park located off of Hendersonville Road in the vicinity of Wal-Mart to February 8, 2000. This motion was seconded by Councilman Hay and carried unanimously.

Councilman Peterson asked if the City has a policy on how many times a matter can be continued. City Attorney Oast responded that there is not really a policy and that each continuance depends on facts and circumstances surrounding the continuance request.

B. PUBLIC HEARING RELATIVE TO EXTENDING THE CITY'S EXTRATERRITORIAL JURISDICTION OF AN AREA NORTH OF THE CITY'S CORPORATE LIMITS AND THE ZONING OF PROPERTIES WITHIN THE AREA

ORDINANCE NO. 2656 - ORDINANCE TO EXTEND THE CITY'S EXTRATERRITORIAL JURISDICTION OF AN AREA NORTH OF THE CITY'S CORPORATE LIMITS AND THE ZONING OF PROPERTIES WITHIN THE AREA

Vice-Mayor Cloninger asked that he be excused from participating in this matter since the firm, of which he is a partner in, represents the owner of the property on an on-going basis. Therefore, Councilwoman Whitmire moved to excuse Vice-Mayor Cloninger due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

Mayor Sitnick opened the public hearing at 6:03 p.m.

Urban Planner Mike Matteson said that this is the consideration of an ordinance extending the City's Extraterritorial Jurisdiction (ETJ) in an area north of the City's corporate limits and the zoning of properties within the area. This public hearing was legally advertised on January 14 and 21, 2000.

In response to direction from both the Planning and Zoning Commission and City Council, the Planning and Development Department staff is proposing the extension of the City's ETJ in an area north of the City's corporate limits.

The provisions for exercising powers in an area of ETJ are governed by N. C. Gen. Stat. sec. 160A-360. These provisions grant a city the authority to extend ETJ "within a defined area extending not more than one mile beyond its limits". With the approval of the Board of County Commissioners, a city of more than 25,000 population can extend its ETJ up to three miles beyond its corporate limits. Upon the establishment of extraterritorial jurisdiction, property within the ETJ area becomes subject to the City's zoning, subdivision and other land development ordinances.

The area proposed for ETJ extension totals approximately 616 acres and is primarily either undeveloped or developed at a low residential density. The topography of the area is generally steeply sloping and mountainous. The proposed Reynolds Mountain Subdivision, which received preliminary plat approval from the Planning and Zoning Commission in December of 1998, is partially within the area proposed for ETJ extension. Although most all of the property was outside of the City's zoning jurisdiction, it is expected to have an impact on the City, particularly the street system through the Lakeview Park neighborhood. It was felt that by establishing ETJ the City would have a greater ability to plan for and manage future growth in the area.

The proposed boundaries for the ETJ area follow the phase line within the Reynolds Mountain Subdivision (as illustrated on the approved preliminary plat) and otherwise generally follow property lines or streets. At one point, at the northern end of the area, the boundary coincides with the one-mile distance from the City's corporate limits.

The Town of Woodfin is also pursuing the extension of ETJ in the area. Staff from the Planning and Development Department worked with Town of Woodfin officials to determine a line of demarcation separating potential City of Asheville ETJ with potential Town of Woodfin ETJ. This general line of demarcation has been endorsed by the Asheville City Council on August 10, 1999, and the Town of Woodfin Board of Aldermen.

Another issue associated with the ETJ extension is the zoning of the properties within the area. Staff has studied the area and is recommending a combination of RS-2 (residential single-family low density) and RS-4 (residential single family medium density) zoning. RS-2 zoning is recommended for the majority of the area, where current lot sizes are generally large and where steep slopes suggest low densities. RS-4 zoning is recommended in an area which is generally developed with a number of properties which, due to their size (under ½ acre), would be non-conforming within the RS-2 zoning district.

He reviewed a map which shows the area proposed for ETJ extension and another showing the proposed zoning within the area.

Council is asked to take two separate actions regarding this issue. The first action will be to determine whether to extend the City's ETJ in this area. If the determination is to extend the ETJ, the second action will be to zone the properties within the area.

Mr. Michael Goforth, representing Tom Coleman who is one of the owners of Sherwood Heights Inc., R.L. Coleman & Company, said that their property is approximately 160 acres. They object to the City zoning this land residential and forcing them to come before the Planning & Zoning Commission if they want to develop their property. They request their 160 acres not be considered in this action.

Upon inquiry of Mr. Goforth about ETJ representation on the Board of Adjustment or the Planning & Zoning Commission, City Attorney Oast said that the law requires property owners be notified of their opportunity to be appointed on the Planning & Zoning Commission and/or the Board of Adjustment at such time as their property comes within the ETJ, but not before that happens. He explained that if their property is within the ETJ then they are eligible to be appointed by the County Commissioners.

Mr. Clarence Biggs, representing his father an neighbor, stated that their property is located to the north of Beards Cove and if any zoning is designated, the Town of Weaverville should do it, because they receive all their emergency services from the Town of Weaverville.

In response to concerns of Mr. John Cort, area property owner, Mr. Matteson said that one of the issues Mr. Cort raised is the issue of the City's street standards in our subdivision regulations and whether or not properties could be accessed from a common drive. They can under our current ordinance. All lots that are created would have to abut a public street, but a single drive could serve to provide access to a number of those lots. In terms of just the development potential of this area, with a planned unit development, that gives a little more flexibility and allows a little more creativity in the design of new developments. He felt that is particularly true in areas with steep slopes.

Upon inquiry of Councilwoman Whitmire, Mr. Matteson said that this ETJ is not an annexation issue and doesn't affect property taxes at all.

In response to Councilman Peterson, Mr. Matteson said that the property owners in the area are aware of the zoning proposal.

Councilman Worley wondered if it would be difficult to get streets in that area and still comply with our restrictions on maximum street grade. He felt that if it is developable land, it is certainly to our advantage to include it in the ETJ, but not if it creates an inability to develop it. Mr. Matteson didn't think that was the case with this property. He also said that the Engineering Department is currently looking at all of those standards and there may be an opportunity to look at those standards in particular as they relate to steeply sloping areas.

Planning & Development Director Scott Shuford pointed out that we do have a planned unit development provision that would allow some clustering of units on land that was flat over the entire area. Also, one of the difficulties we find ourselves in when we ultimately end up annexing developed property around the City that has been built to either some lesser standard or no standard at all, is how do you overcome the costs associated with bringing those properties up to what the City would consider to be appropriate standard and the legal obligation that we have to do that as part of our annexation efforts. Again, the UDO does have some provisions right now would allow some creativity in lot design that is ideally suited for situations like these steep slopes. He also pointed out that Planning staff will be bringing to City in the near future a conditional use zoning approach that would allow Council to change the zoning of this property and have it developed in accordance with a site plan that would make sense for all parties.

An area property owner questioned why his area is not annexed since it is a fairly self-contained community and fully developed. Mr. Shuford said that in our latest annex study, this property was not considered. However, we have not received anything from our consultant about future phrases and that be an area to be included.

Mayor Sitnick closed the public hearing at 6:33 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Peterson moved for the adoption of Ordinance No. 2656. This motion was seconded by Councilwoman Field and on a 5-1 vote with Councilwoman Whitmire voting "no".

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 00-15 - RESOLUTION DECLARING THE INTENT OF THE CITY OF ASHEVILLE, NORTH CAROLINA, TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE ACQUISITION AND CONSTRUCTION OF A PARKING FACILITY FROM THE PROCEEDS OF CERTAIN TAX-EXEMPT OBLIGATIONS TO BE EXECUTED AND DELIVERED IN THE YEAR 2000

Finance Director Bill Schaefer said that this is the consideration of a resolution declaring the intent of the City to reimburse itself for capital expenditures incurred in connection with the acquisition and construction of a parking facility in the vicinity of Battery Park from the proceeds of financing.

City Council has previously directed staff to initiate action to obtain options to acquire land, retain real property and financial advisors, and contract for the design of a parking deck in the vicinity of Battery Park. City Council has also previously passed budget amendments authorizing expenditures for the project, with the supporting revenues to be provided from the proceeds of a Certificates of Participation (COPs) issue. The current project schedule calls for the COPs to be issued in the summer of 2000. However, project expenses are presently being incurred and the first payment of project expenses was made on January 5, 2000. U.S. Treasury regulations require that, if the City intends to reimburse itself from the proceeds of a tax exempt financing for certain project expenses, which were paid prior to the closing date of the financing, it must adopt a resolution evidencing that intent. The resolution of intent may cover expenses paid by the City during the period beginning sixty days prior to adoption of the resolution of intent and ending on the day of issue of the financing. The resolution indicates the City's intent to reimburse itself accordingly.

City staff recommends Council adopt the resolution.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 00-15. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 403

VI. OTHER BUSINESS:

A. RESOLUTION NO. 00-16 - RESOLUTION AUTHORIZING THE CITY STAFF TO EXECUTE DOCUMENTS RELATING TO THE REDEVELOPMENT OF DISPOSAL PARCEL 6B OF THE HEAD OF MONTFORD REDEVELOPMENT PROJECT

City Attorney Oast said that this is the consideration of a resolution authorizing City staff to execute documents relating to the redevelopment of Disposal Parcel 6B of the Head of Montford Redevelopment Project.

Neighborhood Housing Services of Asheville, Inc.(NHS) has requested from the City a Consent to Transfer and a Loan Subordination Agreement in connection with the proposed redevelopment of Disposal Parcel 6B.

The City conveyed Disposal Parcel 6B to NHS for redevelopment and provided purchase money financing in the amount of $85,000. NHS has secured a loan commitment from the Bank of America to finance the construction of the planned improvements on the property. Part of the project financing will be from the sale of Low-Income Housing tax credits. In order to facilitate the financing for the redevelopment NHS has requested the City to consent to the transfer of title to the property to Montford Gateway, LLC, a wholly owned subsidiary of NHS and to subordinate the purchase money loan to the loan from Bank of America.

Approval of the resolution will authorize the Planning & Development Director or the Community Development Director to execute the necessary documents to consent to the transfer and loan subordination.

Community Development staff recommends adoption of the resolution.

Upon inquiry of Councilman Worley, Mr. Vess said that he had no problem with putting a limit on what we would subordinate to the construction loan, however, he requested that Council give staff the opportunity to discuss the amount with the Bank of American and NHS to see what they think their total need is going to be. Again, he didn't see a problem with putting a limit on what we would subordinate. He asked Council to trust his judgment in that the amount will be somewhere in the range of $400-450,000, noting that they will be looking at the total project to make sure that it is reasonable.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 00-16. This motion was seconded by Councilwoman Whitmire and carried unanimously.

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B. CLAIMS

The following claims were received by the City of Asheville during the period of January 7-13, 2000: Ed Yockey (Civic Center), Daphine Jones (Streets), Mark Parlier (Water), Michael Margolin (Water), Karen Taylor (Parks and Recreation) and Melvin Lilly (Water).

The following claims were received during the period of January 14-20, 2000: Jack Hyder (water), Dale Williams (Civic Center), Gene Marshbanks (Water) and Lauren Rose (Finance).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY MS. SHIRLEY DOZIER

Ms. Shirley Dozier passed out to City Council a letter dated January 25, 2000, and asked that the continuing harassment of the Dozier family by the City of Asheville be stopped.

B. COMMENTS BY MR. DON YELTON

Mr. Don Yelton said that the history of car racing has more roots in Western North Carolina than most people know. Even though car racing does not have glamour, he asked Council to consider (a) putting deed restrictions on a piece of property that will never let racing occur on that piece of property even if a local businessman is willing to buy that piece of property at a substantial profit from the City; (b) letting a businessman spend his time and his money finding a piece of property that the City Council did not know that they owned and refusing to let that businessman do soil borings that would provide valuable information to the City and to the Airport if they ever develop that property; and (c) not having any racing next year. That will definitely hurt the local economy. He pledged his efforts to keep the native culture of car racing alive.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:49 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - February 1, 2000 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Terry M. Whitmire

CITY COUNCIL GOALS AND OBJECTIVES

Mayor Sitnick announced that due to the weather, the City Council goals and objectives portion of the City Council retreat held on January 28, 2000, was rescheduled to this meeting. However, due to absence of Councilwoman Whitmire, that portion of the meeting will need to be rescheduled again. Councilman Worley moved to reschedule the City Council goals and objectives portion of the City Council retreat to Sunday, February 6, 2000, at 3:00 p.m. in the City Hall Building. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

CONSENT:

Grant Application to the Pigeon River Fund for the Broadway Greenway

Summary: The consideration of a resolution to apply for grant funds through the Pigeon River Fund to assist with the clean up of private property along Reed Creek for a donation of approximately 0.5 acre of land, which will be used for the Broadway Greenway.

The Broadway Greenway represents one of the City of Asheville's top greenway priorities in greenway development along Broadway. Funds are available through the Pigeon River Fund to assist with the development of greenways that make a significant impact on water quality. The grant will be used to clean up and restore approximately 540 feet of streambank along Reed Creek located in the Montford neighborhood. The City will retain the corridor amounting to 0.5 acre for use for the Broadway Greenway. The funds will be used to remove overgrowth of kudzu, remove debris, and restore the streambank, which is highly scoured and degraded. The streambank will be replanted with native riparian trees and shrubs.

The Parks and Recreation Department is requesting $19,940 in grant funds from the Pigeon River Fund. The grant does not require matching funds but strongly encourages a cash or in-kind match. The in-kind match of project management is valued at 25% of the request, and is available in the Parks Division operating budget.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for the grant funds through the Pigeon River Fund to assist with the clean up of private property for an easement for the Broadway Greenway.

Grant Application to the Community Foundation of WNC for the Youth Employment Program

Summary: The consideration of a resolution to apply for and enter into an agreement with the Community Foundation of Western North Carolina in the New Horizon Grant Program to assist with the expansion of the Youth Employment Program currently managed by the Parks and Recreation Department.

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The Youth Employment Program represents the City of Asheville's commitment to provide youth with valuable opportunities that have significant impact in their development preparation to be employable members in our community. The expansion of the Youth Employment Program is a result of a recent collaboration between the City of Asheville, the Community Foundation, Job Link, the Asheville Housing Authority, and the Chamber of Commerce. The Parks and Recreation Department is requesting $7,500 in grant funds from the Community Foundation. The grant does not require matching funds.

The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for the grant funds through the Community Foundation of Western North Carolina to assist with expanding the Youth Employment Program.

Grant Applications for Public Art and Heritage Trails Program

Summary: The consideration of a resolution applying for funds through the North Carolina Arts Council, the Community Foundation of Western North Carolina, and AdvantageWest North Carolina to assist with programs that support the arts and provide for tourist related economic development.

The City of Asheville wishes to apply for grant funds to accomplish two objectives: to assist with the development of a Public Art Master Plan and to promote the Asheville Urban Trail as part of its Public Art and Heritage Trails Program.

The first request is to establish a Master Plan for Public Art that will include a five year strategy on how best to provide art in public places. This will include selection criteria, a capital budget, funding sources, and a process for gaining community input. The Plan would be submitted to City Council for approval and be used to guide the activities of the Public Art Board. The plan itself will be prepared by staff and members of the Public Art Board.

The second request reflects the fact that the Asheville Urban Trail is nearing completion and requires additional promotional materials to enable visitors and residents to use the Trail.

Requested grant funds are primarily to assist with the cost of printing and distribution of promotional materials for the Urban Trail and the Master Plan for Public Art, and to obtain community input on and support for the Public Art and Heritage Trails Program .

The Parks and Recreation Department is requesting $6,000 in grant funds from the North Carolina Arts Council which requires a 50% cash and/or in-kind match. It is anticipated that the $3,000 required for the cash match will come from proposed project funds (percent-for-art) for the public art program. The in-kind match is available in the Park Maintenance Operational budget. The Parks and Recreation Department also requests $6,000 from the Community Foundation of Western North Carolina and $5,000 from AdvantageWest North Carolina.

: The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for grant funds through the North Carolina Arts Council, Community Foundation of Western North Carolina, and AdvantageWest North Carolina to assist with the development the Public Art and Heritage Trails Program.

Budget Amendment to Amend Water Capital Project Ordinance - 29 Fund

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 92-17 (29 Fund - Water Bond Capital Improvements Fund) to fund current and expected change orders associated with the Mills River Project.

By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds. In October 1999, the Authority approved a change order with CDM to extend full-time on-site construction management services for the Mills River Water Treatment Plant from August 29, 1999, to November 15, 1999 (79 day delay). This was approved in the amount not to exceed $104,549. Since that time, there has been an additional 39 day delay, but the amount has been negotiated to remain at $104,549. In addition, a change order has been negotiated in the amount of $71,483.05 for necessary additional work required to complete the contract with Metric. There is sufficient funding of $236,307 in the Mills River Project Contingency for these change orders.

In addition to these change orders, there are the following anticipated change orders: approximately $20,000 for a change order with Hays and Lunsford (the electrical contractor) for the Mills River Project and $86,790 with NC DOT for the Mills River Transmission Main. Further, the Director recommends $81,378.61 be set aside to use any part as necessary for legal and engineering services pertaining to the issue of liquidated damages.

There is not enough Mills River Contingency to fund all of these changes, so staff is requesting the transfer of $49,760 from the Brevard Rd/Sand Hill Bridges line item. This was targeted for design and engineering for Sand Hill and Brevard Road Bridges that will have to be postponed until additional funding is available from pay-as-you-go CIP or from a bond issue in Fiscal Year 2000-01. A Budget Amendment will transfer $49,760 from the Brevard Rd/Sand Hill Bridges to Mills River Contingency.

The Water Authority approved an amendment to Capital Project Ordinance 92-17 at the January 18, 2000, meeting to fund current and expected change orders associated with the Mills River Project.

The Regional Water Authority recommends approval of a budget amendment for Capital Project Ordinance 92-17 to reprogram funds to increase the Mills River Contingency in order to fund current and expected change orders associated with the Mills River Project.

Budget Amendment to Accept Grant for Police Department

Summary: The consideration of a budget ordinance amendment, in the amount of $6,500, to appropriate funds to offset expenditures from the Police Department (safety equipment) budget.

In July of 1999, with the approval of the City Manager, the Police Department applied for partial reimbursement for bullet proof vests through the Bureau of Justice Assistance. Total funds expended were approximately $12,000. On October 13, 1999, the Police Department was notified that 50% of the funds it expended for bullet proof vests ($6,537.13) was awarded to them through the Bulletproof Vest Partnership Grant Act of 1998.

Staff recommends adoption of a budget ordinance amendment appropriating $6,500 to the Police Department budget.

Adoption of the Fiscal Year 2000-01 Budget Schedule

Summary: The consideration of a motion approving the Fiscal Year 2000/2001 budget schedule.

The proposed Fiscal Year 2000/2001 budget schedule identifies key dates for completion of all phases of the budget process leading to adoption. Certain administrative phases of the budget process including the distribution of budget materials and instructions have already begun or have been previously approved by City Council (i.e. City Council Retreat). Other key phases include submission of departmental requests, presentation of the proposed budget to City Council, a public hearing and formal adoption. Adoption of the Fiscal Year 2000/2001 budget is scheduled for June 2, 2000.

City staff recommends City Council adopt the Fiscal Year 2000/2001 budget schedule.

Annual Asphalt & Concrete Repair Contract

Summary: The consideration of a resolution confirming the contract award by the Regional Water Authority for a new annual asphalt and concrete repair contract by APAC Carolina Inc. which is an average 5% less than the current contract with APAC.

Bids for unit prices for contracted asphalt and concrete replacement work resulting from utility repair excavations have been received by the City's Engineering Department. The bids were advertised twice and only one bid was received, from APAC Carolina Inc. The bid has been evaluated and is responsive to the Minority Business Plan. Unit prices are on average about 5% lower than the current contract.

The contract establishes the unit prices for all work performed by APAC but does not guarantee any minimum quantity. Generally, the contractor under this agreement has provided asphalt and concrete work on State highways and in the unincorporated areas of the County.

The alternate bid includes unit prices for after hours and weekend work and those prices will only be paid when the work is specifically authorized by the Water Resources Department under an after-hour requirement. Immediate asphalt repair is required by the N. C. Dept. of Transportation on major thoroughfares such as US 19/23, US 25, US 70, etc.

In addition to this contract, the City repairs some utility cuts with in-house crews. In past years, the City of Asheville Street Division has provided the work on City streets, but under a re-engineering proposal, based on a Memorandum of Understanding, the Water Resources Department took direct control over the City crews for utility cut repair on October 1, 1999. The Water Resources Operations Manager will oversee this contract and the City repair crews and will evaluate what repairs are more cost-effective to contract and what repairs are more cost-effective to perform with our crews.

Staff recommends that the City Council approve the execution of a contract with APAC Carolina Inc. for the annual asphalt and concrete repair, which was awarded by the Regional Water Authority on January 18, 2000.

Approval of Engineering Services Contract for Critical Needs State Grant - Phase II

Summary: The consideration of a resolution confirming the contract award of engineering services contracts to McGill Associates and Cavanaugh & Associates, contingent upon the Water Authority receiving selection for a State grant based on an application submitted by the Water Authority on November 23, 1999.

On Friday, January 7, 2000, six proposals were received from consulting engineering firms for engineering services for Contracts 1-4 defined under an application dated November 23, 1999, by the Authority for a $3.0 Million State grant. On Thursday, January 13, 2000, a selection committee approved by the Water Authority's Policies & Priorities Committee and consisting of Ms. Leslie Thornton, Mr. Mike Brookshire, and Mr. Tom Frederick met after reviewing the proposals. The selection committee ranked the proposals based on the following criteria set out in the Request for Proposals (RFP): firm's demonstrated qualifications, ability to meet the design schedule, project approach, financial standing of firm, and the firm's minority business plan. Based on these criteria, the committee selected McGill Associates and Cavanuagh & Associates for this work.

Following the evaluation based on RFP criteria, the committee also reviewed fees for these two firms. The Director was authorized by the Selection Committee to conduct further negotiations with the selected firms and the fees recommended in the resolution are very competitive and within the budget prepared in the grant application.

Other firms submitting proposals include W. K. Dickson, William G. Lapsley & Associates, Mattern & Craig, and Vaughn & Melton.

The staff expects to receive word from the State of North Carolina on grant selections about February 1, 2000. With the adoption of the resolution, staff will complete the final contracts for execution by the engineering firms, but the Chairman will not execute the contracts until a grant award is made by the State. The State requires final engineering design be completed and permitted within 120 days of award to confirm the grant offer, therefore, engineering work must start immediately after an award is confirmed.

On January 18, 2000, the Regional Water Authority unanimously approved the staff recommendation.

Staff recommends the City Council approve the execution of engineering contracts with McGill Associates for $122,500 and with Cavanaugh & Associates for $83,000 contingent upon the Authority's November 23, 1999 application being selected by the State of North Carolina for a grant.

Budget Amendment for the 1999 Senior Center Appropriation

Summary: The consideration of a budget amendment, in the amount of $12,658, for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging to implement facility improvements and purchase equipment for the Senior Opportunity Center and Harvest House.

The City of Asheville applied for funds in January 2000 for the 1999 Senior Center Allocation from the State of North Carolina, Department of Health and Human Services, Division on Aging. The allocation was recently awarded in the amount of $12,658 and designated for facility improvements and purchasing equipment at Senior Opportunity Center and Harvest House.

The Parks and Recreation Department is responsible for the management and operation of two senior centers. The annual allocation from the State of North Carolina will assist the department in implementing facility improvements and purchasing equipment and supplies.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $12,658, to establish a budget for the next phase of improvements at Senior Opportunity Center and Harvest House.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UPDATE BY THE FILM BOARD

Film Board Chairman Pam Turner updated City Council on accomplishments that have been made since the Film Board was created.

The Asheville Film Board was created in September 1998 for the purpose of encouraging film production in the Asheville area. Since this time, the Film Board has accomplished several goals toward this end. An internet web site has been created and education workshops are being developed to educate the community about the film industry.

She said that their mission as established by the Council is to: "Act as liaison to film crews that come to Asheville and to act as ambassadors on behalf of the City to that industry."

They also established an additional mission statement, which is: "To enhance the economic potential of Asheville by providing educational and promotional opportunities towards the growth of the film, TV and print industries."

Six tasks accomplished include:

- Marketing of City of Asheville to the film industry - This past fall after several months of planning we established our own web site (Ashevillefilmboard.com.)
- Do a more aggressive job of recruiting films the City of Asheville - Because we have no official status with the State Film Commission or The WNC Film Commission under the auspices of Advantage West, we have not been able to directly engage in any activities to aggressively recruit films to Asheville other than our website. We will be going to the Location 2000 Trade fair in Los Angeles, California, in March working with Advantage West and thank the City for providing these funds. This is the first step in making the industry aware of our existence and marketing Asheville. Because the Western North Carolina Film Commission represents 23 counties equally and according to Mary Nell Webb, the philosophy of the Commission is to "take it as it comes" we feel it is vitally important that Asheville take the a leading role in recruiting films to this area. In this industry's climate we cannot wait for them to come knocking on our door.
- Help entice a private developer establish a film studio and postproduction facility in our community - At this time we all realize that to make Asheville a film industry center, the City needs to make this a priority. This is a clean industry that can provide jobs for our young people. This is an industry where youth or age is not a disadvantage. We need to make a joint effort with the Advantage West, The Chamber and the City to make this a reality.
- Create a resource guide - The Film Board is very interested in moving ahead with this project. We will need money for printing and mailings as well personnel to compile an up to date guide that would require periodic updates. In the meantime we are collecting areas guides from other to determine what it would take to produce our own.
- Lure a television series here. - Though not an impossibility, we feel at this time without a fulltime paid film recruiter and /or studio the chances are very remote.
- Establish workshops and training - We are proud to announce that on Tuesday, March 28 and March 30 from 7 p.m. to 9 p.m. we will offer two-community education programs at A/B Tech. The first will deal with information for members of the general public interested in becoming involved in the movies. Some of the topics covered will be: Casting (actors and extras), Locations, History of film in Asheville, How to find work. The second night will be devoted to businesses and professionals that want to have access to work when films are located here.

We have discussed with A/B Tech the need for them to create a film curriculum similar to the one at Trident Community College in South Carolina. It's the chicken and egg syndrome. (Slides of Trident curriculum) Until there are jobs for their graduates, they don't want to offer a course. Until we have a trained work force, it is difficult to attract a studio and post-production facility.

The Asheville Film Board is experiencing a level of frustration because there is so much that could be done but there are limited resources with which we can work. If the City wants to attract more films to this area, it needs to hire a full time professional, and we do mean professional, film commissioner, to aggressively recruit new projects, work with them before and while they are here and attract a film studio. Currently there is no one who has the expertise or time to devote to an industry that already is contributing millions to the local economy.

We also would like to request that a budget be established for the Film Board so that we increase our effectiveness. We know that most boards help to establish policy but we feel that we are more of an arm of Economic Development and as such need promotional materials and assistance not normally given to a board.

This is a group of very devoted volunteers who feel that there are great opportunities to increase the film industry in Asheville if the necessary resources are committed to it. This is an investment that will benefit the citizens of the Asheville area with jobs and an enhanced economy.

Ms. Turner answered various questions from Council regarding their status as a board vs. a commission.

Vice-Mayor Cloninger, as did the entire Council, spoke in support of the Film Board and their accomplishments to date. He felt that the Film Board is an extension of economic development and should be considered during the budget deliberations.

It was the consensus of City Council to have the Film Board look into the possibility of creating more of an official status.

Upon inquiry of Mayor Sitnick, Ms. Turner said that the Board is working on a "film friendly policy".

Councilman Peterson wondered if the Board was reorganized into something like the "Asheville-Buncombe Film Commission" if the Buncombe County Commissioners and/or the Tourism Development Authority would be interested in helping fund some of the needs.

TRAFFIC CALMING POLICY

City Traffic Engineer Michael Moule said that this is the consideration of a resolution adopting the Traffic Calming Policy for the City of Asheville.

Citizens have previously expressed concerns about speeding traffic in Asheville neighborhoods. The City Council has shown their commitment to traffic calming by including a budget for traffic calming measures in the 1999-2000 budget. With input from other City departments and the general public, the Engineering Department has drafted a Neighborhood Traffic Calming Policy. This policy is intended to guide city staff and inform residents about the processes and procedures for implementing traffic calming on residential streets. Under the policy, the Traffic Engineering Division will work with residents to identify traffic problems in their neighborhoods and seek appropriate solutions.

Staff recommends that City Council adopt the Neighborhood Traffic Calming Policy in order to provide the methodology for implementing traffic calming on residential streets in the City.

Mr. Moule then reviewed the purpose of the policy, what streets are addressed by the policy, the process (in steps 1-11) which will be followed in the policy, along with the rating criteria.

Mr. Moule and City Engineer Cathy Ball responded to several questions and comments from Council; some being, but are not limited to: how is this policy different from an earlier City policy; what is the average cost of instituting traffic calming on a street; what kind of data will the crash history contain; and is the percentage too high for the necessary petition support and what areas are included for that percentage.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BUDGET AMENDMENT REGARDING ANIMAL CONTROL SERVICES

Mr. Alan Hyder, Support Services Manager for the Police Department, said that this is the consideration of a budget ordinance amendment, in the amount of $34,000, to appropriate funds to the Police Department budget to fund the Fiscal Year 1999 - 2000 animal control contract for animal control services within the City.

The City contracts with Buncombe County Friends for Animals (BCFFA) for the provision of animal control services. The Fiscal Year 1999/2000 contract is in the amount of $135,000. This is $34,000 over what was budgeted. An appropriation from the City contingency fund, 110-0601-414-5097, to the Police Department budget, 110-3503-421-3010, Professional Services, in the amount of $34,000 is requested.

The increase is necessary because the initial contract for animal control services was underfunded to provide the required services. The $135,000 more closely matches the required funding for the services received. This information was not brought to the City's attention at a time when it could have been included in the Fiscal Year 2000 budget proposal.

Staff recommends adoption of a budget ordinance amendment appropriating $34,000 to the Police Department budget.

Upon inquiry of Vice-Mayor Cloninger, Mr. Hyder explained that if the City were to resume handling animal control in-house, their estimate for start-up for the first year would be $308,000. The second and subsequent years would be approximately $190,000 annually.

Mr. Hyder responded to questions from Council regarding from the number of animal control officers BCFFA employs, how officers are professional trained, and how many officers are assigned to the City.

Upon inquiry of Councilwoman Field, City Attorney Oast said that in our animal control ordinance certain laws are required to be complied with.

The Executive Director of BCFFA explained some of the services City residents receive. In addition, he summarized a letter from Buncombe County Commissioner Chairman Tom Sobol which stated that the County performed an audit for Fiscal Year 1998-99 and found that BCFFA's financial records demonstrate that they have administered public funds in compliance with their contract. He suggested that the City might want to investigate changing the civil penalties from $10 to perhaps $50 for the first offense and language that would allow them to intervene at an earlier stage with regard to cruelty to animals.

City Attorney Oast was instructed to look into strengthening the civil penalties and other provisions that would allow early intervention under the current law.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

NEXT COMMUNITY MEETING

It was the consensus of City Council to hold it's next community meeting at the Shiloh Community Center area on Tuesday, February 29, 2000, beginning at 7:00 p.m.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RECYCLING INITIATIVES

Ms. Karen Rankin, Waste Management Coordinator, reviewed with Council several options to improve recycling participation and increase recovery rates. Options and benefits reviewed were (1) weekly curbside recycling program; (2) biweekly collection with the addition of mixed paper; (3) weekly collection with the addition of mixed paper; and (4) remain at current levels.

It was the consensus of City Council instruct the City Manager to bring back the appropriate paperwork at the February 22, 2000, meeting to begin implementation as soon as possible of biweekly collection, with the addition of mixed paper to the collection stream (at a proposed price of $2.06 per household per month).

OTHER BUSINESS

Vice-Mayor Cloninger updated City Council on a meeting he had with the League of Women Voters regarding the public access channel.

It was the consensus of City Council to have the City Attorney prepare the proper paperwork to increase the membership on the Public Access Channel Commission from five to nine members.

Due to a National League of Cities Congressional Conference, it was the consensus of City Council to reschedule the Tuesday, March 14, 2000, City Council formal meeting until Wednesday, March 15, 2000, beginning at 5:00 p.m. in the Council Chamber, City Hall Building.

Mayor Sitnick made the following liaison appointments: (1) Terry Whitmire to the Educational Access Channel Commission; and (2) Vice-Mayor Cloninger (along with Councilman Peterson) to the Public Access Channel Commission.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:15 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - February 8, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley (participated by speaker phone); Assistant City Attorney S. Patterson Brison Meldrum; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Hay gave the invocation.

ADDITIONS TO THE AGENDA

City Manager Westbrook asked that a resolution setting a public hearing date for February 22, 2000, for the voluntary annexation of property identified as Oakbrook, Phase 1 at Biltmore Park be added to the Consent Agenda.

Mayor Sitnick asked that a disclosure statement regarding Councilwoman Whitmire be entered into the minutes under "Other Business."

City Manager Westbrook asked that the approval of City Council goals be added to the agenda under "Other Business."

I. PROCLAMATIONS:

A. RESOLUTION NO. 00-17 - RESOLUTION IN MEMORY OF OSBORNE M. HART

Councilwoman Whitmire read the resolution in memory of Mr. Osborne M. Hart. She then presented the resolution to Mr. Hart's wife Louise, and his son Darryl J. Hart.

Resolution No. 00-17 was adopted by acclamation.

RESOLUTION BOOK NO. 25 - PAGE 406

B. RESOLUTION NO. 00-18 - RESOLUTION IN MEMORY OF JAMES E. McCRACKEN III

Mayor Sitnick read the resolution in memory of Mr. James E. McCracken III. She stated that the resolution will be sent to Mr. McCracken's wife Marilyn.

Resolution No. 00-18 was adopted by acclamation.

RESOLUTION BOOK NO. 25 - PAGE 407

C. PROCLAMATION PROCLAIMING FEBRUARY 2000 AS "BLACK HISTORY MONTH"

Mayor Sitnick read the proclamation proclaiming February 2000 as "Black History Month" in the City of Asheville. She presented the proclamation to Mr. John Hayes.

II. CONSENT AGENDA:

Councilwoman Whitmire asked that Item A (minutes of the January 25, 2000, City Council meeting) be removed from the Consent Agenda for further discussion.

Mayor Sitnick asked that Item E be removed from the Consent Agenda for further discussion.

At the request of Councilman Worley, Items I and J were removed from the Consent Agenda for further discussion.

Councilman Hay requested Item N be removed from the Consent Agenda for further discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 25, 2000, AND THE WORKSESSION HELD ON FEBRUARY 1, 2000

This item was removed from the agenda for further discussion.

B. RESOLUTION NO. 00-19 - RESOLUTION AUTHORIZING THE APPLICATION FOR A GRANT WITH THE PIGEON RIVER FUND TO ASSIST WITH THE CLEANUP OF PRIVATE PROPERTY ALONG REED CREEK FOR A DONATION OF 0.5 ACRE OF LAND WHICH WILL BE USED FOR THE BROADWAY GREENWAY

Summary: The consideration of a resolution to apply for grant funds through the Pigeon River Fund to assist with the clean up of private property along Reed Creek for a donation of approximately 0.5 acre of land, which will be used for the Broadway Greenway.

The Broadway Greenway represents one of the City of Asheville's top greenway priorities in greenway development along Broadway. Funds are available through the Pigeon River Fund to assist with the development of greenways that make a significant impact on water quality. The grant will be used to clean up and restore approximately 540 feet of streambank along Reed Creek located in the Montford neighborhood. The City will retain the corridor amounting to 0.5 acre for use for the Broadway Greenway. The funds will be used to remove overgrowth of kudzu, remove debris, and restore the streambank, which is highly scoured and degraded. The streambank will be replanted with native riparian trees and shrubs.

The Parks and Recreation Department is requesting $19,940 in grant funds from the Pigeon River Fund. The grant does not require matching funds but strongly encourages a cash or in-kind match. The in-kind match of project management is valued at 25% of the request, and is available in the Parks Division operating budget.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for the grant funds through the Pigeon River Fund to assist with the clean up of private property for an easement for the Broadway Greenway.

RESOLUTION BOOK NO. 25 - PAGE 408

C. RESOLUTION NO. 00-20 - RESOLUTION AUTHORIZING THE APPLICATION FOR A GRANT WITH THE COMMUNITY FOUNDATION OF WNC TO ASSIST WITH THE EXPANSION OF THE YOUTH EMPLOYMENT PROGRAM

Summary: The consideration of a resolution to apply for and enter into an agreement with the Community Foundation of Western North Carolina in the New Horizon Grant Program to assist with the expansion of the Youth Employment Program currently managed by the Parks and Recreation Department.

The Youth Employment Program represents the City of Asheville's commitment to provide youth with valuable opportunities that have significant impact in their development preparation to be employable members in our community. The expansion of the Youth Employment Program is a result of a recent collaboration between the City of Asheville, the Community Foundation, Job Link, the Asheville Housing Authority, and the Chamber of Commerce. The Parks and Recreation Department is requesting $7,500 in grant funds from the Community Foundation. The grant does not require matching funds.

The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for the grant funds through the Community Foundation of Western North Carolina to assist with expanding the Youth Employment Program.

RESOLUTION BOOK NO. 25 - PAGE 409

D. RESOLUTION NO. 00-21 - RESOLUTION AUTHORIZING GRANT APPLICATIONS FROM THE N.C. ARTS COUNCIL, THE COMMUNITY FOUNDATION OF WNC, AND ADVANTAGEWEST NORTH CAROLINA TO ASSIST WITH PUBLIC ART AND HERITAGE TRAIL PROGRAMS

Summary: The consideration of a resolution applying for funds through the North Carolina Arts Council, the Community Foundation of Western North Carolina, and AdvantageWest North Carolina to assist with programs that support the arts and provide for tourist related economic development.

The City of Asheville wishes to apply for grant funds to accomplish two objectives: to assist with the development of a Public Art Master Plan and to promote the Asheville Urban Trail as part of its Public Art and Heritage Trails Program.

The first request is to establish a Master Plan for Public Art that will include a five year strategy on how best to provide art in public places. This will include selection criteria, a capital budget, funding sources, and a process for gaining community input. The Plan would be submitted to City Council for approval and be used to guide the activities of the Public Art Board. The plan itself will be prepared by staff and members of the Public Art Board.

The second request reflects the fact that the Asheville Urban Trail is nearing completion and requires additional promotional materials to enable visitors and residents to use the Trail.

Requested grant funds are primarily to assist with the cost of printing and distribution of promotional materials for the Urban Trail and the Master Plan for Public Art, and to obtain community input on and support for the Public Art and Heritage Trails Program .

The Parks and Recreation Department is requesting $6,000 in grant funds from the North Carolina Arts Council which requires a 50% cash and/or in-kind match. It is anticipated that the $3,000 required for the cash match will come from proposed project funds (percent-for-art) for the public art program. The in-kind match is available in the Park Maintenance Operational budget. The Parks and Recreation Department also requests $6,000 from the Community Foundation of Western North Carolina and $5,000 from AdvantageWest North Carolina.

: The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for grant funds through the North Carolina Arts Council, Community Foundation of Western North Carolina, and AdvantageWest North Carolina to assist with the development the Public Art and Heritage Trails Program.

RESOLUTION BOOK NO. 25 - PAGE 410

E. BUDGET AMENDMENT TO FUND THE 1999-2000 ANIMAL CONTROL CONTRACT FOR ANIMAL CONTROL SERVICES WITHIN THE CITY

This item was removed from the Consent Agenda for further discussion.

F. ORDINANCE NO. 2657 - BUDGET AMENDMENT TO AMEND THE WATER CAPITAL PROJECT ORDINANCE NO. 92-17 (29 FUND) TO FUND CURRENT AND EXPECTED CHANGE ORDERS ASSOCIATED WITH THE MILLS RIVER PROJECT

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 92-17 (29 Fund - Water Bond Capital Improvements Fund) to fund current and expected change orders associated with the Mills River Project.

By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds. In October 1999, the Authority approved a change order with CDM to extend full-time on-site construction management services for the Mills River Water Treatment Plant from August 29, 1999, to November 15, 1999 (79 day delay). This was approved in the amount not to exceed $104,549. Since that time, there has been an additional 39 day delay, but the amount has been negotiated to remain at $104,549. In addition, a change order has been negotiated in the amount of $71,483.05 for necessary additional work required to complete the contract with Metric. There is sufficient funding of $236,307 in the Mills River Project Contingency for these change orders.

In addition to these change orders, there are the following anticipated change orders: approximately $20,000 for a change order with Hays and Lunsford (the electrical contractor) for the Mills River Project and $86,790 with NC DOT for the Mills River Transmission Main. Further, the Director recommends $81,378.61 be set aside to use any part as necessary for legal and engineering services pertaining to the issue of liquidated damages.

There is not enough Mills River Contingency to fund all of these changes, so staff is requesting the transfer of $49,760 from the Brevard Rd/Sand Hill Bridges line item. This was targeted for design and engineering for Sand Hill and Brevard Road Bridges that will have to be postponed until additional funding is available from pay-as-you-go CIP or from a bond issue in Fiscal Year 2000-01. A Budget Amendment will transfer $49,760 from the Brevard Rd/Sand Hill Bridges to Mills River Contingency.

The Water Authority approved an amendment to Capital Project Ordinance 92-17 at the January 18, 2000, meeting to fund current and expected change orders associated with the Mills River Project.

The Regional Water Authority recommends approval of a budget amendment for Capital Project Ordinance 92-17 to reprogram funds to increase the Mills River Contingency in order to fund current and expected change orders associated with the Mills River Project.

ORDINANCE BOOK NO. 18 - PAGE 105

G. ORDINANCE NO. 2658 - BUDGET AMENDMENT TO APPROPRIATE FEDERAL GRANT FUNDS TO THE POLICE DEPARTMENT BUDGET

Summary: The consideration of a budget ordinance amendment, in the amount of $6,500, to appropriate funds to offset expenditures from the Police Department (safety equipment) budget.

In July of 1999, with the approval of the City Manager, the Police Department applied for partial reimbursement for bullet proof vests through the Bureau of Justice Assistance. Total funds expended were approximately $12,000. On October 13, 1999, the Police Department was notified that 50% of the funds it expended for bullet proof vests ($6,537.13) was awarded to them through the Bulletproof Vest Partnership Grant Act of 1998.

Staff recommends adoption of a budget ordinance amendment appropriating $6,500 to the Police Department budget.

ORDINANCE BOOK NO. 18 - PAGE 107

H. RESOLUTION NO. 00-22 - RESOLUTION SETTING A PUBLIC HEARING ON FEBRUARY 22, 2000, TO CONSIDER THE VOLUNTARY ANNEXATION OF 65 AND 67 LONG SHOALS ROAD

RESOLUTION BOOK NO. 25 - PAGE 411

I. RESOLUTION CONFIRMING THE CONTRACT AWARD BY THE REGIONAL WATER AUTHORITY FOR A NEW ANNUAL ASPHALT AND CONCRETE REPAIR CONTRACT BY APAC CAROLINA INC.

This item was removed from the Consent Agenda for further discussion.

J. RESOLUTION CONFIRMING THE CONTRACT AWARD BY THE REGIONAL WATER AUTHORITY OF CONTRACTS TO McGILL ASSOCIATES AND CAVANAUGH & ASSOCIATES P.A. TO FURNISH ENGINEERING SERVICES FOR $3 MILLION CRITICAL NEEDS/INFRASTRUCTURE STATE GRANT

This item was removed from the Consent Agenda for further discussion.

K. ORDINANCE NO. 2659 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF HEALTH AND HUMAN SERVICES TO IMPLEMENT FACILITY IMPROVEMENTS AND PURCHASE EQUIPMENT FOR THE SENIOR OPPORTUNITY CENTER AND HARVEST HOUSE

Summary: The consideration of a budget amendment, in the amount of $12,658, for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging to implement facility improvements and purchase equipment for the Senior Opportunity Center and Harvest House.

The City of Asheville applied for funds in January 2000 for the 1999 Senior Center Allocation from the State of North Carolina, Department of Health and Human Services, Division on Aging. The allocation was recently awarded in the amount of $12,658 and designated for facility improvements and purchasing equipment at Senior Opportunity Center and Harvest House.

The Parks and Recreation Department is responsible for the management and operation of two senior centers. The annual allocation from the State of North Carolina will assist the department in implementing facility improvements and purchasing equipment and supplies.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $12,658, to establish a budget for the next phase of improvements at Senior Opportunity Center and Harvest House.

ORDINANCE BOOK NO. 18 - PAGE 109

L. RESOLUTION NO. 00-23 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE TO (1) SCHEDULE A CITY COUNCIL COMMUNITY MEETING ON TUESDAY, FEBRUARY 29, 2000, BEGINNING AT 7:00 P.M. AT THE SHILOH COMMUNITY CENTER LOCATED AT 121 SHILOH ROAD, ASHEVILLE, N.C. ; AND (2) RESCHEDULE THE TUESDAY, MARCH 14, 2000, CITY COUNCIL FORMAL MEETING, UNTIL WEDNESDAY, MARCH 15, 2000, BEGINNING AT 5:00 P.M. IN THE COUNCIL CHAMBER, CITY HALL BUILDING

RESOLUTION BOOK NO. 25 - PAGE 413

M. MOTION APPROVING THE FISCAL YEAR 2000-01 BUDGET SCHEDULE

Summary: The consideration of a motion approving the Fiscal Year 2000/2001 budget schedule.

The proposed Fiscal Year 2000/2001 budget schedule identifies key dates for completion of all phases of the budget process leading to adoption. Certain administrative phases of the budget process including the distribution of budget materials and instructions have already begun or have been previously approved by City Council (i.e. City Council Retreat). Other key phases include submission of departmental requests, presentation of the proposed budget to City Council, a public hearing and formal adoption. Adoption of the Fiscal Year 2000/2001 budget is scheduled for June 2, 2000.

City staff recommends City Council adopt the Fiscal Year 2000/2001 budget schedule.

N. ORDINANCE EXPANDING THE MEMBERSHIP OF THE PUBLIC ACCESS CHANNEL COMMISSION FROM FIVE TO NINE MEMBERS

This item was removed from the Consent Agenda for further discussion.

~~**ORDINANCE BOOK NO. 18 - PAGE**~~

O. MOTION SETTING A PUBLIC HEARING ON FEBRUARY 22, 2000, TO ZONE INITIALLY VOLUNTARY ANNEXATION AREAS IN BILTMORE PARK AS FOLLOWS: BILTMORE PARK COMMON AREA AS RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AND SCHENCK PARKWAY, 100

TECHNOLOGY DRIVE AND THE VOLVO BUILDING PROPERTY AS CI COMMERCIAL INDUSTRIAL DISTRICT

P. **MOTION SETTING A PUBLIC HEARING ON FEBRUARY 22, 2000, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO INCLUDE A PARKS AND OPEN SPACE DISTRICT**

Q. **MOTION SETTING A PUBLIC HEARING ON FEBRUARY 22, 2000, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO INCLUDE CONDITIONAL USE ZONING**

R. **RESOLUTION NO. 00-24 - RESOLUTION SETTING A PUBLIC HEARING ON FEBRUARY 22, 2000, TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED NORTH OF LONG SHOALS ROAD KNOWN AS OAKBROOK, PHASE I AT BILTMORE PARK**

RESOLUTION BOOK NO. 25 - PAGE 414

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Hay and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 25, 2000, AND THE WORKSESSION HELD ON FEBRUARY 1, 2000

This matter was pulled off of the Consent Agenda to make certain that the cross reference to Consent Items were correct. They were correct. Councilman Hay moved to approve the minutes of the formal meeting held on January 25, 2000, and the worksession held on February 1, 2000. This motion was seconded by Councilwoman Whitmire and carried unanimously.

ORDINANCE NO. 2660 - BUDGET AMENDMENT TO FUND THE 1999-2000 ANIMAL CONTROL CONTRACT FOR ANIMAL CONTROL SERVICES WITHIN THE CITY

Summary: The consideration of a budget ordinance amendment, in the amount of $34,000, to appropriate funds to the Police Department budget to fund the Fiscal Year 1999 - 2000 animal control contract for animal control services within the City.

The City contracts with Buncombe County Friends for Animals (BCFFA) for the provision of animal control services. The Fiscal Year 1999/2000 contract is in the amount of $135,000. This is $34,000 over what was budgeted. An appropriation from the City contingency fund, 110-0601-414-5097, to the Police Department budget, 110-3503-421-3010, Professional Services, in the amount of $34,000 is requested.

The increase is necessary because the initial contract for animal control services was underfunded to provide the required services. The $135,000 more closely matches the required funding for the services received. This information was not brought to the City's attention at a time when it could have been included in the Fiscal Year 2000 budget proposal.

Staff recommends adoption of a budget ordinance amendment appropriating $34,000 to the Police Department budget.

Upon inquiry of Mayor Sitnick, City Manager Westbrook said that this is part of the City's general contract with BCFFA and is a part of the Police Department's budget, however, it is in turn paid to BCFFA for services rendered.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved to adopt Ordinance No. 2660. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 111

RESOLUTION CONFIRMING THE CONTRACT AWARD BY THE REGIONAL WATER AUTHORITY FOR A NEW ANNUAL ASPHALT AND CONCRETE REPAIR CONTRACT BY APAC CAROLINA INC.

Summary: The consideration of a resolution confirming the contract award by the Regional Water Authority for a new annual asphalt and concrete repair contract by APAC Carolina Inc. which is an average 5% less than the current contract with APAC.

Bids for unit prices for contracted asphalt and concrete replacement work resulting from utility repair excavations have been received by the City's Engineering Department. The bids were advertised twice and only one bid was received, from APAC Carolina Inc. The bid has been evaluated and is responsive to the Minority Business Plan. Unit prices are on average about 5% lower than the current contract.

The contract establishes the unit prices for all work performed by APAC but does not guarantee any minimum quantity. Generally, the contractor under this agreement has provided asphalt and concrete work on State highways and in the unincorporated areas of the County.

The alternate bid includes unit prices for after hours and weekend work and those prices will only be paid when the work is specifically authorized by the Water Resources Department under an after-hour requirement. Immediate asphalt repair is required by the N. C. Dept. of Transportation on major thoroughfares such as US 19/23, US 25, US 70, etc.

In addition to this contract, the City repairs some utility cuts with in-house crews. In past years, the City of Asheville Street Division has provided the work on City streets, but under a re-engineering proposal, based on a Memorandum of Understanding, the Water Resources Department took direct control over the City crews for utility cut repair on October 1, 1999. The Water Resources Operations Manager will oversee this contract and the City repair crews and will evaluate what repairs are more cost-effective to contract and what repairs are more cost-effective to perform with our crews.

Staff recommends that the City Council approve the execution of a contract with APAC Carolina Inc. for the annual asphalt and concrete repair, which was awarded by the Regional Water Authority on January 18, 2000.

Councilman Worley explained that under the terms of the Water Agreement the Regional Water Authority has the ability to award it's own contracts and they do not need City Council approval. He suggested that no action be taken on this item.

City Manager Westbrook said that this item has been brought before City Council because the contract is written so that other public utilities, such as CP&L, MSD and Public Service Natural Gas, can also avail themselves of the contract price with this particular vendor. In addition, the concrete and asphalt will be used on City streets. Out of an over abundance of caution, staff recommended City Council concur in the Water Authority's award. He did state that if City Council did not concur, it would have no affect.

Councilwoman Whitmire said that she had no problem in taking no action on this item, however, she did want to be kept apprised of repairs on City streets.

Assistant City Attorney Meldrum said that City Council approval would be necessary on a contract for construction on City property. However, since this doesn't relate to ownership of property or construction of improvements on City property, it was her opinion that City Council action was not necessary.

Councilman Worley moved that this matter be removed from City Council consideration and that no action be taken on it. This motion was seconded by Vice-Mayor Cloninger and carried on a 4-3 vote, with Mayor Sitnick, Councilman Peterson and Councilwoman Whitmire voting "no".

RESOLUTION NO. 00-25 - RESOLUTION CONFIRMING THE CONTRACT AWARD BY THE REGIONAL WATER AUTHORITY OF CONTRACTS TO McGILL ASSOCIATES AND CAVANAUGH & ASSOCIATES P.A. TO FURNISH ENGINEERING SERVICES FOR $3 MILLION CRITICAL NEEDS/INFRASTRUCTURE STATE GRANT

Due to a conflict of interest and at the request of Vice-Mayor Cloninger, Councilwoman Whitmire moved to excuse Vice-Mayor Cloninger from participating in the matter. This motion was seconded by Councilman Worley and carried unanimously.

Summary: The consideration of a resolution confirming the contract award of engineering services contracts to McGill Associates and Cavanaugh & Associates, contingent upon the Water Authority receiving selection for a State grant based on an application submitted by the Water Authority on November 23, 1999.

On Friday, January 7, 2000, six proposals were received from consulting engineering firms for engineering services for Contracts 1-4 defined under an application dated November 23, 1999, by the Authority for a $3.0 Million State grant. On Thursday, January 13, 2000, a selection committee approved by the Water Authority's Policies & Priorities Committee and consisting of Ms. Leslie Thornton, Mr. Mike Brookshire, and Mr. Tom Frederick met after reviewing the proposals. The selection committee ranked the proposals based on the following criteria set out in the Request for Proposals (RFP): firm's demonstrated qualifications, ability to meet the design schedule, project approach, financial standing of firm, and the firm's minority business plan. Based on these criteria, the committee selected McGill Associates and Cavanuagh & Associates for this work.

Following the evaluation based on RFP criteria, the committee also reviewed fees for these two firms. The Director was authorized by the Selection Committee to conduct further negotiations with the selected firms and the fees recommended in the resolution are very competitive and within the budget prepared in the grant application.

Other firms submitting proposals include W. K. Dickson, William G. Lapsley & Associates, Mattern & Craig, and Vaughn & Melton.

The staff expects to receive word from the State of North Carolina on grant selections about February 1, 2000. With the adoption of the resolution, staff will complete the final contracts for execution by the engineering firms, but the Chairman will not execute the contracts until a grant award is made by the State. The State requires final engineering design be completed and permitted within 120 days of award to confirm the grant offer, therefore, engineering work must start immediately after an award is confirmed.

On January 18, 2000, the Regional Water Authority unanimously approved the staff recommendation.

Staff recommends the City Council approve the execution of engineering contracts with McGill Associates for $122,500 and with Cavanaugh & Associates for $83,000 contingent upon the Authority's November 23, 1999 application being selected by the State of North Carolina for a grant.

Councilman Worley explained that under the terms of the Water Agreement the Regional Water Authority has the ability to award it's own contracts and they do not need City Council approval. He suggested that no action be taken on this item.

Assistant City Attorney Meldrum said that since this is approval of an engineering services contract for a critical needs infrastructure grant, it was her opinion that City Council action was not necessary.

City Manager Westbrook said that out of an over abundance of caution, staff recommended City Council concur in the Water Authority's award. He noted that the infrastructure that the grant would create will be turned over to the City and will become City property once it is in the ground. In addition, our accounting system is going to have to administer those grants and since the City does approve receipt of the grant we feel we should approve requests of them as well.

Councilman Worley moved that this matter be removed from City Council consideration and that no action be taken on it. This motion was seconded by Councilwoman Field and failed on a 2-4 vote, with Mayor Sitnick, Councilmen Hay and Peterson and Councilwoman Whitmire voting "no".

Councilman Hay moved to approve Resolution No. 00-25. This motion was seconded by Councilman Peterson and carried unanimously.

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ORDINANCE NO. 2661- ORDINANCE EXPANDING THE MEMBERSHIP OF THE PUBLIC ACCESS CHANNEL COMMISSION FROM FIVE TO NINE MEMBERS

Councilman Hay moved to expand the membership of the Public Access Channel Commission from five to nine members. The Commission shall serve three year staggered terms, with five of the first appointees serving three year terms and four of the first appointees serving two year terms so that the terms may be staggered. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 113

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR A TELECOMMUNICATIONS TOWER AT 200 TUNNEL ROAD

Mayor Sitnick said that a letter has been received by the petitioner American Tower Company requesting that the public hearing be continued until March 15, 2000. They are still working with Crown Castle regarding the potential co-location on the adjacent tower. City staff, however, has requested that the hearing be continued until March 28, 2000, in order to avoid further continuances. Therefore, Vice-Mayor Cloninger moved to continue the public hearing until March 28, 2000. This motion was seconded by Councilwoman Field and carried unanimously.

B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR HOME DEPOT LOCATED AT THE INTERSECTION OF ACTON CIRCLE AND MONTE VISTA ROAD

Vice-Mayor Cloninger said that his law firm represents the petitioner and asked to be excused due to a conflict of interest. Councilman Worley moved to excuse Vice-Mayor Cloninger due to conflict of interest. This motion was seconded by Councilwoman Whitmire and carried unanimously. Vice-Mayor Cloninger then left the room.

Assistant City Attorney Meldrum reviewed with Council the conditional use permit process by stating that City Council will first hear from staff who will describe the proposal and provide some background information. Then the applicant may make a presentation and then comments from the public will be taken. She said that there will be an opportunity for questions and rebuttal comments, as necessary. Following the hearing, Council will then debate the proposal and will take action on the request. It has been Council's practice to have two separate votes, one today to either grant or denial of the request. At the next formal meeting, staff would prepare a written Order summarizing the finding and conclusions either granting or denying issuance of the permit and there would be a separate vote on that written Order.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:54 p.m.

Upon inquiry of Councilman Peterson, Assistant City Attorney Meldrum said that City Council are elected officials and that members of the public and applicants expect that they will be able to contact them on matters, not withstanding whether or not they are a legislative or a quasi-judicial matter. That alone is not taken into consideration where a Council member has to be excused from voting because they have previously been contacted. It's where a member has previously made up their mind based on facts outside of the hearing, either by yourself, without disclosing it, or if you stated publicly that you have looked into this matter and decided how to vote, without considering what you heard at the hearing. As far as disclosing if you have seen site, there is no problem with that. If you want to disclose that you have attended meetings, that certainly can be done on the record on that particular item. She would then ask if the Council member can consider the issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

Mr. Scott Shuford, Planning & Development Director, said that this is the first case involving the new large retail structure point-based ordinance Council recently adopted.

Basically what that does is allow Council the opportunity to use the conditional use permit process to establish special standards for parking lot location, buffering requirements, site lighting, the design and materials used in the building facade, accommodation of transit, the provision of sidewalks, etc. The intent is to have a higher quality development and site design and we are expecting better compatibility with surrounding uses as a result. Traffic is not really a part of that ordinance but is part of the conditional use process in the Traffic Impact Analysis (TIA).

Mr. Dan Baechtold, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certificate of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report received by City Council on January 25, 2000).

Mr. Baechtold said that this is the consideration of a Conditional Use approval and permit as outlined in the Unified Development Ordinance (UDO) to construct a new Home Depot store at the intersection of Acton Circle and Monte Vista Road.

He said that on December 6, 1999, The Home Depot Company submitted development plans for Level III site plan review. The proposal is to construct a Home Depot store on a 22 acre parcel of land on the northwest corner of the intersection of Acton Circle and Monte Vista Road. Using a location map (attached to City Exhibit 3) Mr. Baechtold described the property and its location. The property is zoned Highway Business. The Technical Review Committee (TRC) reviewed the plans on December 20, 1999, and took action to approve with conditions. On January 19, 2000, the applicant submitted revised site plans to the Planning and Development Department. The revised plans satisfy all of the conditions of the TRC.

The parcel of land for the proposed Home Depot is mostly undeveloped and partially wooded. The parcel is a "second-tier" parcel behind the "first tier" of commercial development to the east which fronts on US Highway 19/23 (McDonald's, Shoney's, and the Ramada Inn). The property is bordered by Interstate 40 to the North. Across Interstate 40 is a large undeveloped commercially-zoned piece of land. To the West is existing residentially-used, but commercially-zoned property. To the south is a mix of residential and commercial uses. Most of the property to the south is zoned Residential Multi-Family Low Density District (RM-6).

City Exhibit 4 (overview of site plan) was used in explaining that the proposed Home Depot store is approximately 108,000 square feet plus a garden center of approximately 22,000 square feet. The proposed orientation of the store is facing Acton Circle and US 19/23. The plan proposes 490 parking spaces in front of the store. Two driveway connections are proposed – one on Acton Circle and one on Monte Vista Road.

The proposed Home Depot store, parking lot, and driveways occupy approximately 18 acres of the 22 acre site. The plan identifies three remaining tracts to be used as potential outparcels for future development – a parcel of 2.04 acres behind the Home Depot Store; a parcel of .83 acres at the corner of Acton and Monte Vista; and a parcel of .75 acres in front of the store near the curve in Acton Circle.

This project meets all of the technical standards set forth in the UDO and other applicable codes. In addition, the project is the first to undergo a new review procedure for large retail structures. The Planning and Development staff reviewed the project using the administrative guidelines titled "Supplemental Development Standards for Large Retail Structures" as set forth by the ordinance which establishes large retail structures as conditional uses. These guidelines are based on a point system in which developers may choose among elements of improved site design and building design in order to achieve an overall design that meets the intent of the ordinance. The Home Depot proposal exceeds the target point total for bulk retail facilities. By complying with these standards, the Home Depot is afforded, and is taking advantage of, a structure size bonus of 50%. The baseline structure size limit in the Highway Business District is 75,000 square feet. By complying with the standards for large-scale retail, the Home Depot proposes to build a store of 108,000 square feet. He pointed out that under the current zoning someone could subdivide the property and put two structures of 75,000 square feet, if the site would accommodate that, but this allows a single structure to be larger than 75,000 square feet.

The Home Depot chose the following design elements to achieve the required number of points and meet the standards for large retail structures (City Exhibit 5 - copy of landscape plan) and (City Exhibit 6 - copy of front half of landscape plan):

- The parking area is buffered from the street with a landscaped buffer with a minimum width of fifty (50) feet which incorporates 150% of the plantings called for in a "D" buffer.
- Parking and loading areas are buffered from residential areas with a landscaped buffer with a minimum width of fifty (50) feet which incorporates 150% of the plantings called for in a "D" buffer.
- The buffer areas preserve existing trees where possible.
- Building facades facing the street have at least three distinct massing elements including changes in roof line height, changes in building color and pattern, and recessed entrances with columns.
- Predominant exterior building materials on the visible facades of the structure are brick and stucco.
- Facade colors are low-reflectance, subtle, neutral, or earth-tone colors.
- Parking lot landscaping is provided at the ratio of one tree and two shrubs for every 1500 square feet of impervious surface area. Half of these trees are planted in interior islands in the parking lot.
- The height of light fixtures will not exceed thirty (30) feet. All lights will be shielded and directed away from residential areas.
- The development provides an internal transit stop which includes a shelter and will be provided at the developer's expense to City transit specifications.
- The roof incorporates parapets concealing flat roofs and rooftop equipment from public view.
- Sidewalks are provided along the full length of the building along the facade providing customer entrances and abutting the parking area.
- Beds are provided for landscaping along the foundation of the building (south facing).
- Parking lot design and parking space orientation are consistent.
- The front entrance to the building is connected to a public sidewalk and public transit stop by a handicapped accessible sidewalk and crosswalk.
- Sidewalks are provided along all sides of the property which abut a public street.
- The building has multiple entrances facing the street spaced at intervals averaging 135 feet.

The above provisions exceed the ordinary requirements of the UDO. The landscaping provisions mentioned above are in addition to requirements for street trees and other landscaping required by the UDO.

Mr. Baechtold then outlined some of the features from an elevated view of the building. In reviewing the project, City staff assigns points for each of the items and based on the review of the Home Depot, they achieved the target number of points that the guidelines require.

Acton Circle and Monte Vista Road are both maintained by the North Carolina Department of Transportation and are classified as Secondary Roads. Acton Circle is a two-lane facility that is eighteen (18) feet wide. Monte Vista Road is a two-lane facility that is twenty (20) feet wide. The intersection of Acton Circle and Monte Vista Road is offset slightly and is not signalized. The intersection is controlled by a four-way stop. Acton Circle terminates at US

19/23 at both ends. Monte Vista Road turns into Sand Hill Road to the east. To the West, Monte Vista Road provides access to a number of single-family neighborhoods.

The TIA is prepared by an independent engineer and paid for by the developer. The report is reviewed by the City's Traffic Engineer and by the N. C. Dept. of Transportation (NC DOT). The TIA looks at existing traffic levels projects additional traffic from the development onto the roadway system. These projections also take into account background traffic, which will increase over time. The TIA identified existing roadway congestion problems - some in the morning and some in the evening peak travel times. The existing traffic problems are evident primarily at the intersection of Monte Vista Road and Acton Circle and also at the intersection of Acton Circle and US 19-23 next to McDonalds. The developer is proposing to construct a number of roadway improvements to accommodate the traffic generated by the Home Depot and to alleviate some of the existing problems. (City Exhibit 7)

- Widening Acton Circle to three lanes along the portion next to McDonald's to provide an additional exit lane from Acton Circle onto US 19/23.
- Widening Acton Circle to provide a right turn lane into the front entrance of the Home Depot.
- Widening Acton Circle to provide a right turn lane on to Monte Vista Road at the intersection.
- Widening the remaining portion of Acton Circle that borders the property by six feet and installing curb and gutter in order to meet the appropriate NCDOT standard for a two lane road.
- Widening Monte Vista Road to provide a right turn lane onto Acton Circle at the intersection.
- Widening the remaining portion of Monte Vista Road along the property by five feet and installing curb and gutter in order to meet the appropriate NC DOT standard for a two lane road.
- Providing signal changes to the traffic signal at the intersection of Acton Circle and US 19/23 to accommodate the additional turn lane.
- Providing additional signal system changes along the US 19/23 corridor.

All of these improvements are the responsibility of the developer. However, the signal system changes will likely be completed by the NC DOT. Costs to the NC DOT could be reimbursed by the developer. Before implementation of these signal improvements can take place, the Signals Division of NC DOT in Raleigh will review the TIA and perform additional analyses. The Signals Division will then make a recommendation to the Division office in Asheville for signal timing changes. According to the Division office, a time-based coordination system for several of the intersections on US 19/23 is likely to be installed for implementation of the recommendations of the TIA.

The Planning and Development staff has received input on the traffic issue from residents in the area surrounding the proposed development. Some area residents are concerned about the existing traffic problems that they experience during daily travel. The calls and letters express concern about existing problems during the morning and evening travel times; an increase in traffic levels from Home Depot; potential safety hazards posed by the Home Depot traffic exiting the driveways; the impact of trucks and heavy vehicle traffic; and the impact of increased traffic on the area schools.

Upon inquiry of Councilman Hay about how Home Depot will be involved with the signal system changes, Mr. Baechtold explained that Home Depot will be involved basically by cost participation in upgrading those signals to accommodate the additional turn lane and also in coordinating the signals.

Using Applicant's Exhibit 1 (proposed Home Depot site prepared by Kimley-Horn & Associates Inc.), Mr. Baechtold explained the proposed traffic improvements.

Mayor Sitnick requested that in the future with regard to public hearings, two drawings of each exhibit be furnished in presentations to City Council (especially in conditional use permit public hearings) - one for City Council to view and one for the audience to view.

Mr. Baechtold said that according to the TIA for this site, the proposed changes will produce improvements in traffic flow that will allow all of the intersections to operate at acceptable levels of service and accommodate the additional traffic generated by the Home Depot. The City's Traffic Engineer will review his findings with Council which conclude that he is in agreement with the assumptions and conclusions in the TIA. The traffic issue is one that City staff has taken very seriously and they have made every effort to ask the applicant to do some additional analyses at different times of day. The City's Traffic Engineer has worked closely with the Traffic Engineer for the applicant to review the data in detail and analyze the traffic issue.

In addition to the development standards for the zoning district in which they are located, conditional uses must meet certain general conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare. The general conditions, which apply to all conditional uses, can be found in Section 7-16-2(c) of the Unified Development Ordinance. City Council must make seven findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case. The findings are listed below. Following each finding is technical information from staff to assist Council in making these findings.

(1) That the proposed use or development of the land will not materially endanger the public health or safety;

The project received technical approval from the Water Resources Department, the Fire Department, MSD, Engineering, and other City Departments. The project is required meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards which protect the public health and safety.

(2) That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or the region;

The project is a large-scale retail facility serving a regional market.

(3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;

The size of the tract of land allows room for adequate buffering to alleviate impacts of noise and lighting on adjacent properties. Traffic impacts are an important consideration and will be discussed separately. The impact of a future development on property values is difficult to quantify.

(4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;

The property is zoned Highway Business, which allows single-tenant structures up to 75,000 square feet and multiple-tenant retail structures up to 200,000 square feet with floor area bonuses available upon conditional use approval by the City Council. Some of the neighboring developed property is zoned Highway Business and is commercially developed. There are also large tracts of essentially undeveloped land bordering the property. The 22 acre size of the tract allows the coverage of the property to remain at a reasonable scale.

(5) That the proposed use or development of the land will generally conform with the comprehensive plan and other official plans adopted by the City;

The City's Comprehensive Plan, Asheville City Plan 2010, was adopted in 1987. This area was outside the City's zoning jurisdiction at that time. The proposed development is consistent with the zoning assigned to this location.

(6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities;

The project received technical approval from the Technical Review Committee which includes representatives of the Water Resources Department, MSD, Engineering, the Fire Department, and Public Works. The adequacy of the transportation facilities are addressed in a Traffic Impact Analysis conducted by the developer.

(7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The developer submitted a Traffic Impact Analysis (TIA) as required by the UDO. The TIA considered the impact of this development and other projected traffic on the transportation system. The TIA proposes several improvements to the transportation system to alleviate traffic problems. The developer is offering to construct these improvements.

In issuing conditional use permits, City Council has the discretion to impose conditions on a particular development to ensure that the design, operation, and configuration are compatible with the surrounding area and ensure the health, safety, and general welfare. If City Council chooses to approve the conditional use permit for the Home Depot, staff is recommending several additional conditions for approval. These recommended conditions appear in draft form below. The final wording of any conditions imposed by City Council shall be determined at the time of writing the Ordinance Granting a Conditional Use Permit. The draft recommended conditions are as follows:

1. All proposed on-site and off-site improvements and amenities shown on the revised development plans dated January 17, 2000, and indicated in the Traffic Impact Analysis shall be the responsibility of the developer. These improvements include, but are not limited to: roadway improvements, sidewalk improvements, and construction of a transit shelter.
2. Any required changes to the traffic signal system resulting from changes to the roadway system shall be the responsibility of the developer. This includes changes to the coordinated traffic signal system on US 19-23.
3. In addition to the proposed sidewalk shown on the development plans, the developer shall construct a sidewalk built to City standards along the widened portion of Acton Circle.
4. Detailed roadway construction plans for all proposed roadway improvements shall be reviewed and approved by NC DOT and the City Traffic Engineer.
5. Future driveway access for the three sites identified as potential outparcels shall be limited as follows: The outparcel of 2.04 acres behind the Home Depot store shall be limited to one driveway on Monte Vista Road. The outparcel of .83 acres at the intersection of Acton Circle and Monte Vista Road shall not be allowed driveway access to the public streets. The outparcel of .75 acres on Acton Circle in front of the Home Depot shall be limited to one driveway on Acton Circle.
6. A revised Traffic Impact Analysis shall be required at the time of development of any of the sites identified as future outparcels.

7. The following development standards shall be imposed upon the outparcels: parking shall be provided at the side or rear of structures and not closer to the street than the edge of the structure. Buildings shall be oriented to face the street and shall have customer entrance(s) on the street facing wall.

Mayor Sitnick asked if this project is approved could City Council prohibit variances. Assistant City Attorney Meldrum said that since that authority has already been given to the Board of Adjustment in the City Code, she felt it would be best to keep that procedure separate.

Mr. Baechtold responded to a question from Councilman Peterson about buffer requirements if the outparcels are developed. He said the site plan the developers have submitted for this development for those buffer areas on the outparcels show they are to remain undisturbed. Additional language in the form of a condition can be added that ensures that the out-parcels also preserve those buffers. It is staff's understanding that approval of this site plan which shows those buffers would require that those buffers would run with the land and any subsequent development on the parcel.

Mr. Baechtold also responded to questions from Councilman Peterson regarding buffering requirements in the Highway Business District and what are the developers doing in addition to that to earn the points. He said they can meet the intent of the guidelines by fronting the street with a building facade that meets our design standards, rather than a 50-foot landscape buffer. However, if it's the preference of Council to maintain a 50-foot buffer along the entire front of the property, we could also incorporate that into the conditions.

Councilman Peterson wondered what could be built in the outparcel of .83 acres at the intersection of Acton Circle and Monte Vista Road since no driveway access is allowed to the public streets and they have to maintain the buffering along the parking lot. Assistant City Attorney Meldrum said that a condition might be included that whenever that outparcel is developed that interior access be permitted through the parking lot of the Home Depot project and give some further condition for replacement of the buffering that is taken out when that driveway is put in to be located somewhere else on the site.

Mr. Michael Moule, City Traffic Engineer, summarized the traffic analysis (City Exhibit 8 -A). Based on nationally accepted guidelines, the traffic consultant estimated that the Home Depot store will generate 2,310 vehicles entering and 2,310 vehicles exiting the site on a typical weekday. He estimated approximately the same values using Trip Generation software.

The traffic consultant estimated the distribution of the site-generated traffic throughout the surrounding area. He agreed that this distribution is a reasonable estimate of how drivers will access the site. However, based on neighbors' concerns and the potential for a different distribution in reality, he asked the traffic consultant to analyze an alternate trip distribution for one intersection.

The other factors used by the consultant to project traffic volumes to full build-out are reasonable as well. These include:

- Turning movement counts at five intersections near the project;
- No recently approved developments in the area;
- 3% per year historical growth factor to project traffic from 1999 to 2001.

(City Exhibit 8) The nationally recognized resource for traffic analysis is the *Highway Capacity Manual* (HCM). According to the HCM, in order to estimate the operating characteristics of a road segment or intersection, a Level of Service (LOS) should be calculated. LOS is a qualitative measure that describes operational conditions and the perceptions of motorists in a traffic stream. The HCM defines six levels of service, LOS A (best) through LOS F (unacceptable). For both signalized and unsignalized intersections, LOS is defined in terms of the delay experienced by motorists. LOS can be defined for individual movements or for an entire intersection. The following chart displays the relationship between LOS and delay for signalized and unsignalized intersections.

Level of Service (LOS)	Signalized Intersections Average Stopped Delay (seconds per vehicle)	Unsignalized Intersections Average Total Delay (seconds per vehicle)
A	<5	<5
B	>5 and <15	>5 and <10
C	>15 and <25	>10 and <20
D	>25 and <40	>20 and <30
E	>40 and <60	>30 and <45
F	>60	>45

From the 1994 *Highway Capacity Manual* (TRB Special Report 209, 1994)

In the original TIA, the following intersections were analyzed during the PM peak hour.

- Acton Circle South and US 19/23
- Acton Circle and Monte Vista Road
- Acton Circle North/I-40 Eastbound Ramps and US 19/23
- I-40 Westbound Ramps and US 19/23
- Old Haywood Road and US 19/23
- Site Driveway and Acton Circle
- Site Driveway and Monte Vista Road

Only the PM peak hour was analyzed because a development like Home Depot generates significantly more traffic in the afternoon than in the morning. During the Technical Review Committee (TRC) meeting, residents expressed a concern about morning traffic at the intersection of Acton Circle and Monte Vista Road and the intersection of Acton Circle North/1-40 Eastbound Ramps and US 19/23. Consequently, the intersection of Acton Circle and Monte Vista Road was analyzed during the AM Peak.

Acton Circle South and US 19/23 (City Exhibit 8-E)

As shown in the TIA, this signalized intersection currently operates at LOS B, which is very favorable. The study shows an LOS of A after build-out of the site. The improved LOS is due to signal timing changes including an increased cycle length. This intersection will likely continue to operate favorably during the PM peak hour whether or not the signal timing is changed. It should be noted that while the proposed increased cycle length improves the LOS for the entire intersection, it degrades the LOS for movements from Acton Circle. Based on the analyses in the TIA and their own analyses, the NC DOT will ultimately decide whether to implement these signal changes at this intersection.

Acton Circle and Monte Vista Road (City Exhibit 8-F - page 1) (City Exhibit 8-F - page 2)

This is currently a 4-way stop-controlled intersection with two-lane roads on all approaches. The developer has proposed to add eastbound and southbound right turn lanes at this intersection. As discussed above, this intersection was analyzed during both the AM and PM peak hours. In addition the consultant performed additional analyses for an alternate trip distribution. According to the Technical Memo, this intersection currently operates at LOS D during the AM peak hour and LOS C during the PM peak hour. Under both the original trip distribution and the alternate distribution, at full build-out and with the proposed roadway improvements this intersection has been estimated to operate at LOS C for both the AM and PM peak hours. It is important to note that during the AM peak hour, without this development and the proposed roadway improvements, this intersection is estimated to operate at an unacceptable level (LOS E) in 2001. In other words, the developer is proposing to help solve a traffic problem that already exists.

At the TRC meeting, citizens also expressed a concern that traffic in this vicinity is worse on Fridays than other days of the week. Traffic analyses normally address a "typical" weekday and the counts reported in the original TIA were collected mid-week on Wednesday, October 6, 1999. In order to address the concerns of the citizens, counts were collected during the afternoon of Friday, January 14, 2000. During the PM peak hour on this Friday, the number of vehicles entering this intersection was 101 less than the volumes analyzed in the original TIA.

Acton Circle North/I-40 Eastbound Ramps and US 19/23 (City Exhibit 8-G)

The developer has proposed to add an additional approach lane on Acton Circle at this intersection, and to coordinate this signal with others on the 19/23 corridor. During the PM peak hour, this intersection currently operates at LOS C. At full build-out, with the proposed improvements, this intersection is estimated to operate at LOS C, but with a slightly increased overall delay. It should be noted that movements from Acton Circle and from the I-40 ramps currently operate at LOS E and F. With the development and the improvements, these same movements are estimated to continue operate at LOS E and F, but again with a slightly increased delay.

Residents in the vicinity were concerned about this intersection during the AM peak hour. Traffic counts and analyses are not available for this intersection during the AM peak. However, based on the PM analysis and the fact that Home Depot generates significantly less traffic in the AM, it is reasonable to assume that the proposed added approach lane at this intersection will result in better operating conditions at full build-out during the AM peak.

The proposed eastbound right turn lane at the intersection of Acton Circle and Monte Vista Road will allow drivers to more easily access the intersection of South Acton Circle and US 19/23. This will likely reduce the traffic using the North Acton Circle intersection, further improving the Level of Service. (City Exhibit 3 - location map)

I-40 Westbound Ramps and US 19/23 (City Exhibit 8-H) (City Exhibit 8-B)

Using the Highway Capacity Software, which analyzes intersections as isolated intersections, the consultant estimated that during the PM peak hour, this signalized intersection currently operates at LOS C and will operate at LOS C at full build-out. However, anecdotal evidence from citizens and the NC DOT indicate that traffic frequently backs up on the westbound off-ramp to the I-40 bridge. The consultant conducted an additional analysis using different computer software that allowed all four intersections on US 19/23 to be analyzed together. Based on this analysis, the consultant recommended the coordinated signal system discussed earlier in this report. This alternative analysis method resulted in LOS C for this intersection. In addition, the analysis shows that if the coordinated signal system is installed, there will be sufficient storage on the I-40 westbound off-ramp.

Old Haywood Road and US 19/23 (City Exhibit 8-H)

The TIA shows that this signalized intersection currently operates at LOS C and will continue to operate at LOS C at full build-out.

Mr. Moule said that after reviewing the TIA and the Technical Memo from the developer's traffic consultant, he concurred with the conclusions presented in those documents.

Mr. Moule responded to various questions from Council regarding the proposed roadway improvements.

Mr. W. Louis Bissette, attorney for the petitioner, explained how this project fits into the strategic plan for the sustainable economic development for the City of Asheville. He explained how residential property owners are paying too large a share of the ad valorem taxes required to operate the City. Prior to adoption of the UDO in May of 1997, this property was zoned Commercial Highway and has not been residential in many, many years. The current tax rate on this property as it now exists is approximately $200 a year to the City in ad valorem tax revenues. This same property, if developed by Home Depot, will generate ad valorem taxes in the range of $75,000 per year and that does not include the sales taxes which will be generated by this proposed store. This store will employ 150 people. (Applicant's Exhibit 2) Mr. Bissette pointed out that the surrounding land uses are commercial and that the use is permitted on that property. Home Depot has complied with everything it has been asked to do under the UDO. It has met all the conditions prescribed by the TRC and its design exceeds the point scale under the new design standards. (Applicant's Exhibit 3) (Applicant's Exhibit 4) Mr. Bissette explained that this proposed building design is drastically different from the standard Home Depot project in that it is designed to be in character of with the City of Asheville and the surrounding area (Applicant's Exhibit 5). (Applicant's Exhibit 7 - TIA dated 11-99) (Applicant's Exhibit 8 - TIA dated 1-24-00) He then described the road improvements proposed by Home Depot which is a substantial expenditure. He reviewed each of the conditional use requirements and how the project would be able to meet those standards. He believed that the development of this project will increase the value of adjoining properties. Home Depot is an excellent corporate citizen of the City and State as seen in Applicant's Exhibit 6 - 1998 Social Responsibility Report. The project will provide jobs, increase tax base and actually improve traffic conditions on US 19-23, Acton Circle and Monte Vista Road. Although there will be a few residences affected by this project, he urged Council to look at the big picture and what it will do for the City and the great majority of it's citizens. (Applicant's Exhibit 9 - TRC letter dated 12-20-99)

Mr. Chuck Tessier, Tessier & Associates, commented briefly on the impact of this project on the surrounding land values and urged City Council to proceed with this project.

Mr. Steve Blakely, Kimley-Horn & Associates, traffic engineers for the petitioner, summarized the road improvements and the benefits of those improvements. (Applicant's Exhibit 1) Home Depot is committed to ensure that any impacts that they have are more than mitigated as a result of these improvements.

When Mayor Sitnick asked if the applicant has any questions of staff members before they conclude this part of their presentation, Mr. Bissette replied that they had no questions.

The following individuals spoke in opposition of the Home Depot project for several reasons, some being, but are not limited to: within a half-mile radius, there are three similar businesses (84 Lumber company, Moore's Building Supplies and Lumber and a new Lowe's Mega-Store); increased traffic problems; no police presence in the area now; need for traffic calming measures to slow down speeding traffic on Monte Vista Road; property values will decrease; stormwater run-off problems; no one has addressed the projected growth rate; exiting onto Acton Circle and Monte Vista Road from the proposed Home Depot has not been addressed in that there will be no traffic light to aid them from entering onto those roads; what will happen to the natural stream that runs alongside Acton Circle if road improvements are made; what will happen from the run-off from the project onto Acton Circle; tractor trailers will not be able to negotiate the curve on Acton Circle; need for competitive wages for our residents, not minimum wages; Sand Hill School Road traffic; erosion control problems on Sand Hurst Drive; a 50-foot buffer is not adequate; noise concerns; a smaller structure with a higher pay scale would be preferred on the property; and, the need for some kind of retention pond or wetland areas to filter water run-off:

Mr. Jerry Jones, Candler resident
Mr. Larry Rockman, Candler resident
Mr. Chris Jordan, resident on Monte Vista Road
Ms. Judy Jones, resident on Monte Vista Road
Ms. Julie Fisher, neighborhood resident
Ms. Connie Jones, resident on Sand Hurst Drive (Public Exhibit 1)
Ms. Helen Saunders, neighborhood resident
Ms. Carrie Becker, neighborhood resident (Public Exhibit 2)
A resident on Sand Hill Road

Mr. Paul Young, owner of Shoney's land and building, felt that Home Depot is going out of their way to be a good neighbor in addition to all their road improvements.

Upon inquiry of Councilwoman Field, Mr. Baechtold said the property is zoned Highway Business which allows a wide range of retail and commercial uses. He explained what type of projects would be required to come before City Council for a conditional use permit (Level III projects). He also explained that on Level II projects, which are only required to be approved by the TRC, City Council has no authority to improve additional conditions as they can on Level III projects.

When Councilwoman Field asked if City staff considered the traffic from the proposed soccer complex, Mr. Moule said that the complex will mainly generate traffic on weekends and that the TIA did not analyze Saturday. He explained why there was no need to analyze the Saturday traffic.

Mr. Ken Putnam, Division Traffic Engineer for the NC DOT, explained the traffic signal upgrades in the area and Home Depot's willingness to pay for the improvements to change out their equipment. Presently NC DOT staff in Raleigh is analyzing the TIA to come up with a timing plan. With Home Depot willing to pay for it, they will be able to implement the changes and they will try to coordinate all of this in conjunction with when the proposed store opens.

Mr. Charles Tremel, Real Estate Manager for Home Depot Corporation, explained the difference between the three retail businesses in the home improvement type lumber business. 84 Lumber and Moore's strictly tend to work more with the professional builders than does a Lowe's or a Home Depot. Their demographic studies show that they can well support a store in this market.

Mr. Will Buie, engineer with Lapsley & Associates, said that this site plan does include providing a stormwater detention pond and they will meet all City and State requirements for sedimentation and erosion control and stormwater detention.

When Councilman Hay asked if the City can impose a condition to require Home Depot pay to upgrade the traffic signals, Mr. Moule responded that City Council can make that a condition. Mr. Moule was satisfied that the NC DOT will do something with the amount of money that Home Depot is willing to pay to coordinate the traffic signals because it is to their benefit.

Councilman Hay asked if tractor trailer traffic on Acton Circle was considered. Mr. Moule replied that it was taken into account. One of the conditions that staff has recommended is that the NC DOT and the City of Asheville review all the final design plans for the roadway improvements. That review could include truck turning and possibly that should be added to the condition for the review - in making sure that trucks can turn at intersections or around the curve on Acton Circle without encroaching on opposing traffic lanes. He recommended modifying that condition in that fashion.

Councilwoman Whitmire agreed that the tractor trailer traffic on Acton Circle needed to be considered. She also stressed that if there is, in fact, no police presence in that area that that issue be addressed as well.

When Councilwoman Whitmire asked if the City could initiate some traffic calming measures on Acton Circle and Monte Vista Road, Mr. Moule said that they are state maintained roads but that he would ask the NC DOT to evaluate the speed.

Upon inquiry of Councilman Worley, Mr. Baechtold explained how a TIA would be triggered if staggered developed occurred on a piece of property.

When Councilman Worley asked how much tractor trailer traffic would be generated, Mr. Hughes Thompson, representing Greenberg Farrow Architects & Engineers, said he expected this store to have a range of 8 to 12 trips a day - 3 or 4 of those trucks delivery about 5 a.m. or 6 a.m. and the remaining trips would be spread out during the day.

Councilman Peterson was concerned about what conditions can be placed on the outparcels once they are developed and whether any TIA's took into account the traffic the outparcels might generate once they are developed. Mr. Shuford said the extent to which the outparcels can be developed may actually be constrained by future traffic patterns. Mr. Moule said that there hasn't been any analysis yet of how the outparcels will affect the traffic in the vicinity. However, in Condition No. 6 states that a revised TIA shall be required at the time of development of any of the sites identified as future outparcels.

Upon inquiry of Councilman Peterson, Mr. Shuford suggested adding a condition no. 8 "Landscaped areas shown on the landscape plan shall not be altered or removed except to the minimum extent necessary to accommodate the requirements of condition no. 5 above, as determined by the City Traffic Engineer. That replacement landscaping shall be provided to an equal or greater extent than the landscaping that is removed elsewhere on the individual site or sites as applicable, as determined by the Planning & Development Director."

In response to Councilman Peterson, Mr. Shuford said that if this property was subdivided into three or more parcels and they remained under one ownership, they would have to be treated as one development and we would retain control over issues such as access. But, if they were sold after the subdivision, then that control would be lost.

Upon inquiry of Councilwoman Field, Mr. Shuford said that approximately 700 residential units could be built on this site and approximately 6-7,000 one way trips per day would be generated. The proposed Home Depot is expected to generate 4,600 one way trips per day.

Mayor Sitnick closed the public hearing at 9:02 p.m.

Assistant City Attorney Meldrum said that City Council will need a motion to either approve the permit or to deny the permit. If Council approves it, they will need to list the conditions they would like included in the written order. If Council denies it, they should state the reasons for that denial. Then, Council will need to direct the City Attorney's Office to come back in two weeks on February 22, 2000, with a written order including the findings and conditions that they have set out based on approval or denial.

Councilwoman Whitmire said that she is satisfied that Home Depot has met the seven standards in addition to the eighth one suggested by Mr. Shuford, However, she did want to see the issues of the widening the curve on Acton Circle and traffic calming measures for Acton Circle and Monte Vista Road be addressed.

Councilman Peterson was concerned with Standard No. 4, however, considering how large the parcel is, he felt he could give the developer the benefit of the doubt. He did not think that Condition No. 7 has been met. He explained his concern about the traffic in the area and without further improvements along that stretch of Acton Circle, he felt there is clearly going to be a traffic hazard that will need to be addressed in a couple of years.

Councilwoman Field moved to approve the conditional use permit with (1) the conditions suggested by City staff, (2) Condition No. 8 as suggested by Mr. Shuford; and (3) some type of condition regarding improvements to the curve on Acton Circle. This motion was seconded by Councilwoman Whitmire.

Councilman Hay said that Council has never imposed conditions on developers that go as far as this one does. The 22 acres will definitely be developed, if not now, then in the future. At this time we have an opportunity to not only address the traffic congestion that this will cause, but also to improve the situation in the area if our traffic studies are correct. He does feel that the traffic conditions will be improved with these various improvements. He would like to add in the additional condition Mr. Moule said that he wanted to work up that had to do with tractor trailer traffic on the curve on Monte Vista Road.

Councilwoman Field said that she intended to add into her motion the condition Mr. Moule was going to work up dealing with tractor trailer traffic on the curve on Acton Circle.

Councilwoman Whitmire said that the motion did not mention the traffic calming issues she wanted addressed.

Councilman Worley stated that he was satisfied that the roadway improvements will improve the traffic congestion in the area.

Mayor Sitnick said the major concern here is the traffic and she felt that whatever Council can do to the curve on Acton Circle, traffic calming measures in the area are all very important. She has a special concern about the back-up of traffic onto I-40 mainly because of the speeds people travel on I-40. She reviewed some of the other uses permitted in the Highway Business District. She felt that Home Depot has gone beyond what we have required of them and she would like to see the NC DOT do something about the back-up on I-40 that presently occurs. Considering the potential uses for that property, this is probably the best kind of development we could get for that acreage. With the additional conditional provisions for traffic calming, doing something better with Acton Circle and the curve and having the NC DOT try to alleviate the back-up of traffic onto I-40, she would vote in favor of the project.

Assistant City Attorney Meldrum reviewed the conditions to be included in the written order: (1) conditions recommends by staff; (2) Condition No. 8 as suggested by Mr. Shuford; and (3) some type of condition regarding improvements to the curve on Acton Circle. She asked for clarification of other conditions suggested by Council: (1) condition addressing tractor trailer traffic; (2) traffic calming on Monte Vista Road; and (3) NC DOT addressing the backing up of traffic on the exit ramp off of I-40.

Councilwoman Field said that we can only request NC DOT to address the backing up of traffic on the exit ramp off of I-40 and not make it a condition of Home Depot's conditional use permit.

City Manager Westbrook felt that traffic calming is something that needs to take place after traffic patterns are well established and you go through a very well fine routine to determine what traffic calming is needed. Councilwoman Whitmire asked if the residents will have to go through the petition process after that traffic pattern is established. City Manager Westbrook responded that the process can be City initiated or community initiated but there does need to be a problem and it does need to come with help from the community to explain the problem as they experience it. Mr. Moule felt that the City's traffic calming policy does not necessarily address this type of road because it's residential on one side and commercial on the other side.

Councilman Hay did point out that Mr. Moule said that he would get with Mr. Putnam and review at least speed limits on Acton Circle in particular. Mr. Moule said that a condition could be that we would begin looking at the speeds now and then after Home Depot is built, evaluate the speed to see if there are some appropriate traffic calming measures that would fit.

In response to a concern of Councilwoman Whitmire, City Manager Westbrook said that the Asheville Police Department does patrol that area and he would be happy to provide documented information to Mr. Jordan.

Assistant City Attorney Meldrum stated that the condition Mr. Moule suggested about reducing the speed limit and future traffic calming measures should not be a condition of this project because changing the speed limit is a legislative decision that Council needs to take up separately.

The motion made by Councilwoman Field and seconded by Councilwoman Whitmire carried on a 5-1 vote, with Councilman Peterson voting "no".

Assistant City Attorney Meldrum said that the written order granting the conditional use permit will be voted on February 22, 2000.

At 9:25 p.m., Mayor Sitnick announced a short break.

C. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE PERMIT FOR NETTLEWOOD PROFESSIONAL PARK LOCATED OFF OF HENDERSONVILLE ROAD IN THE VICINITY OF WAL-MART

Assistant City Attorney Meldrum reviewed with Council the conditional use permit process by stating that City Council will first hear from staff who will describe the proposal and provide some background information. Then the applicant may make a presentation and then comments from the public will be taken. She said that there will be an opportunity for questions and rebuttal comments, as necessary. Following the hearing, Council will then debate the proposal and will take action on the request. It has been Council's practice to have two separate votes, one today to either grant or denial of the request. At the next formal meeting, staff would prepare a written Order summarizing the finding and conclusions either granting or denying issuance of the permit and there would be a separate vote on that written Order.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 9:25 p.m.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

Ms. Stacy Merten, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); City Exhibit 3 (Staff Report dated 1/11/00); City Exhibit 4 (Staff Report revised on 1/13/00); City Exhibit 5 (Staff Report dated 1/25/00); and City Exhibit 6 (Staff Report revised on 2/3/00).

She said that that this is the consideration of a conditional use permit as outlined in the Unified Development Ordinance (UDO) for the Nettlewood Professional Park located off of Hendersonville Road in the vicinity of Wal-Mart.

Nettlewood Associates, LLC, has submitted development plans for Level III site plan review. The project is a new 180,600 sq. ft. office development to be located on four parcels with a total of 28.09 acres. The property is split zoned with Highway Business and Institutional and is currently undeveloped. (City Exhibit 7) The developer has asked that the Master Plan be reviewed at this time to confirm the City's approval to proceed with the development. As each building site is specifically identified a more detailed plan will be submitted for staff review. The Tree Commission has urged the developer to protect as much of the mature tree population on site as possible in order to enhance the effectiveness of the buffer and to minimize soil erosion and storm water runoff. Access to the site is proposed to be from Deerlake Drive with additional access points at the Wal-Mart Shopping Center and the Hollywood Cinemas parking lot through easements through those areas. Most of the concerns raised by the residents have to do with access to the site.

City Council must take formal action as set forth in section 7-5-5(e) of the UDO, and must make the following findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]:

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed development is a new office park to be located on a total of 28.09 acres. Extensive grading of the site will not be necessary to accommodate the proposed development. All open space requirements as well as all requirements for storm water and erosion control must be met. If any wetlands are disturbed, permits will be required by the Army Corp of Engineers.

2. That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region.

   The proposed development will enhance the successful operation of the surrounding community in its basic function by providing needed office space and facilities for new business to locate or existing business to expand or relocate.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   Residential uses border the proposed development on two sides, the Deerwood condominium development to the north and the Carson Creek apartments to the south. Mixed commercial development borders the property to the west. The plans show a buffer that will need to be enhanced in order to meet the landscaping requirements of the UDO. In the area where a fence is proposed to reduce the buffer width, more space should be allowed on the outside of the fence. This will mitigate any possible negative impacts of the new development on the surrounding properties.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The site is split zoned, with three parcels zoned Highway Business and one zoned Institutional. This project conforms to the existing zoning. Most of the proposed development on the site will be concentrated behind the existing commercial uses that will minimize any impact on the neighboring residential uses.

5. That the proposed use or development of the land will generally conform to the Comprehensive Plan and other official plans adopted by the City.

   The proposed development is in conformance with the Asheville City Plan 2010 which indicates commercial development for this area.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   The proposed development is located in an existing developed area. The project received technical approval from the Water Resources Department, the Fire Department, MSD, Engineering and Public Works.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The UDO requires that a Traffic Impact Analysis (TIA) be prepared for this development. A TIA, which assesses the impact of this development, was submitted for this site and the City's Traffic engineer has reviewed the TIA and concurs with the findings.

The Technical Review Committee (TRC) reviewed the plans at their meeting on December 20, 1999, and took action to approve with the conditions outlined below.

- Parking exceeds maximum. This must be reduced or pervious paving and additional landscaping must be provided. Parking calculations must be provided.
- Square footage notes must match sq. footage of buildings shown.
- Zoning boundaries must be shown on the site plan as the property is split zoned.
- Indicate neighboring uses on site plan.
- Show required setbacks on site plan.
- No activity can occur in the bufferyard. Part of a parking lot and road are located within the required bufferyard on north side of property. If this is necessary due to physical constraints, then a request for alternative compliance may be submitted.
- A 30 ft., type 'D' buffer is required which can be reduced to 15 feet with the construction of a fence. The buffer size shown on the plans is adequate, however the notes are incorrect.
- Street trees and sidewalks are required along all public streets and must be shown on the site plans.
- A railroad encroachment agreement is required from Norfolk Southern Railroad.
- Open space calculations must be provided and areas indicated on the site plan.
- Any access to the development through residentially zoned property must be via a public street. Sufficient right of way of 50 ft. must be obtained along Deerlake Dr before the City will accept as a public street. If the site is redesigned the Traffic Impact Analysis must reflect these changes.
- Additional information is needed for the proposed street, including a profile, cross sections, typical section prior to approving the project.
- Curb & gutter, 5' planting strip and 5' sidewalk required along the proposed street.
- NCDOT encroachment agreement required prior to cutting Hendersonville Highway.

- Street lighting and signage is required prior to the City accepting the street for maintenance. Designs of these features must be approved by the City's Traffic Engineer prior to installation.
- Plans need to clarify how Peach Tree Road and/or the Wal-Mart property connects to the project. If Peach Tree Road is used as an access point, road improvements may be necessary prior to full build out of the project.
- A driveway permit from the NCDOT and the City of Asheville must be obtained for any new or modified connections to Hendersonville Road. A driveway permit from the City of Asheville must be obtained for any connections to Peach Tree Road.
- The Traffic Impact Analysis must be reviewed and approved by the City of Asheville and the NCDOT prior to approval of this development. Any new traffic signals proposed for this project must have warrant analyses completed and approved by the NCDOT. If a signal is proposed at or near the existing intersection of Deerlake Drive and Hendersonville Road, Valley Springs Road must be reconstructed to connect into this signal.
- Please submit a copy of the plat entitled "Property of Charles W. McCrary and wife, Ruth Fern McCrary" dated August 19, 1971.
- Please submit a survey plat for the right-of-way deed recorded in Deed Book 1765, Page 070 and the deed referred to in that document recorded in Deed Book 1737, Page 335.
- Please submit a copy of the plat recorded in plat Book 53 at Page 128 (the Grantor's Parcel) referred to in the easement agreement recorded in Book 2012, Page 348.

Most of the conditions identified by TRC have been met with a few minor exceptions. Staff recommends that the outstanding conditions as recommended by TRC in addition to the others identified below be attached to the approval of the conditional use permit:

1. The typographical error on the plans which indicate a type B buffer where a type D is required should be corrected.
2. A driveway permit from the NCDOT and the City of Asheville must be obtained for any new or modified connections to Hendersonville Road. A driveway permit from the City of Asheville must be obtained for any connections to Peach Tree Road.
3. Street lighting and signage is required prior to the City accepting any streets for maintenance. Designs of these features must be approved by the City's Traffic Engineer prior to installation.
4. TRC also recommended that the following items be addressed when detailed plans are submitted for building construction and occupancy:
    - A location for bicycle parking must be shown on the site plans.
    - Handicapped parking spaces must be shown on the site plans.
    - Dimension lot aisle widths and parking spaces, including handicapped spaces.
    - Detailed drawings of the proposed fence for bufferyard reduction must be provided.
    - Plant materials and landscaping details must be provided.
    - Location of streetlights needs to be shown on the plans.
    - If dumpsters are to be used, locations and screening should be shown.
    - Details for sidewalks, ADA ramps, and drive entrances should be included in the plans.
    - Submitted are missing almost all the items required for storm water management and erosion control approval. Appendix J under section 10 in the Asheville Standard Specifications and Details Manual, as well as Appendix 7-A in the UDO, contain itemized checklists exclusively for storm water management and soil erosion/sedimentation control for design professionals to reflect on in the preparation of their submittals. Verify compliance with sub-section 7-12-2 f.4. applicability of sub-section 7-12-2 e.2. in regards to slope stability as well as sub-section 7-12-2 q.3. in terms of plan submittal sequence-all of which are contained in the UDO.

5. A buffer is required to protect the residential uses on Peachtree Road and should be shown on the Master Plan.
6. Where a fence is to be constructed to allow a buffer reduction, the fence should be set back 10 feet from the property line. This will give the buffer plantings more room to grow and enhance the effectiveness of the buffer.
7. There are wetlands on the site. If any disturbance is necessary in these areas then a permit will be required from the Army Corp of Engineers.
8. Staff level approval will allow minor revisions to roadways, buildings and parking lot locations.
9. The Planning Director has made the interpretation that access to the site via Deerlake Drive at the northern end of the property should be permitted only upon the occurrence of one of the following options:

   (1) Nettlewood Associates, LLC, uses only that thirty foot strip of property which fronts on Hendersonville Road, which is a portion of the property known as the "McCrary Property" and which is owned by Nettlewood in fee simple, for access as a private driveway to the McCrary Property and the other properties which constitute Nettlewood Business Park, provided access is maintained for property owners in the Deerwood Condominiums development over a single driveway entrance off of Hendersonville Road; or

   (2) Nettlewood Associates, LLC, uses that thirty foot strip of property, which fronts on Hendersonville Road, which is a portion of the property known as the "McCrary Property" and which Nettlewood owns in fee simple, and the right-of-way granted to McCrary in that right-of-way agreement recorded in Deed Book 1275 at Page 171 in the Office of the Register of Deeds for Buncombe County for a private driveway from Hendersonville Road to only that portion of Nettlewood Business Park which is included within the McCrary Property, provided that the site plan is revised to show and the recorded plat of Nettlewood Business Park shows clearly that legal access is so limited and that access is maintained for property owners in he Deerwood Condominiums development over a single driveway entrance off of Hendersonville Road; or

   (3) Nettlewood Associates, LLC, enters into agreement with Deerwood Homeowners Association, to use the right-of-way granted to McCrary and the thirty foot strip on the McCrary Property as either a private driveway or as a dedicated public street to serve both Nettlewood Business Park and the Deerwood Condominiums development.

   Further, that if any of the access options used creates a change of circumstances from those contemplated by the Traffic Impact Analysis, a revised Traffic Impact Analysis be prepared and the developer comply with any and all requirements of a revised Traffic Impact Analysis.

Planning & Development Director Scott Shuford said that this item has been continued in order to address basically the access issue of Condition No. 9. The question is how do you handle the legal issues associated with access that pertain to both the Deerwood development and the proposed Nettlewood development. Staff has had numerous meetings with the developer and the Deerwood community to try to determine how the access issue could be resolved. Using a hand-drawn map (City Exhibit 8), Mr. Shuford explained the access concerns. Mr. Shuford then summarized the options for Condition No. 9 as follows (City Exhibit 9): (1) Relocate the Deerlake access road to the Nettlewood property, allowing access to entire Nettlewood site so long as Deerwood is also allowed access; or (2) Keep the road as is and access only the "McCrary portion" of the Nettlewood property from Deerlake; or (3) Both parties agree to work out an access arrangement.

Councilman Hay asked if it would not take an agreement from Deerwood to relocate the Deerwood access road. Assistant City Attorney Meldrum said that is the reason the option is stated as Nettlewood uses only that 30-foot strip on their property and provided that they maintain access to Deerwood. It doesn't tell them how to do it, or how to reach the agreement, but it only says it's one option of being able to achieve access.

At the request of Councilman Hay, Assistant City Attorney Meldrum explained the difference between Option No. 1 and Option No. 3.

Upon inquiry of Councilwoman Whitmire, Assistant City Attorney Meldrum said that the McCrarys initially owned more than this four acre tract. They owned the front part of the Deerwood tract and then an additional tract in the back part which is also part of Deerwood now. The McCrarys sold off to a predecessor in interest of Deerwood the front part of Deerwood that fronts on Hendersonville Road and then later the back part was sold. At the time the front part was sold, a right-of-way agreement was entered into to provide access across a 40-foot wide strip to the McCrary property. That is one of the options to getting on the Nettlewood property, but that was only to serve the McCrary property (the Nettlewood property consists of other properties that wrap back around behind Wal-Mart, the Cinemas and back down to Hendersonville Road). That's why one option is to use that 40-foot right-of-way only for the McCrary portion. And then one option is using only the 30-foot strip to serve the McCrary tract and the rest of the properties. The third option is if the two parties can reach an agreement to use all of that 40-foot strip either as a private driveway or dedicate it as a public street.

Mr. Jerry Grant, partner of Nettlewood Associates, said that Nettlewood Associates is trying to develop an office park where residential, office, retail, entertainment, and restaurants can all be accessed in a walking community. Nettlewood is the last key to a pod in this area. The office park will have sidewalks that will allow people to walk to whatever services they might need that are available in the park. He said the taxes now are less than $14,000 a year on this 28-acre property. When this project is complete, the difference in what the taxes would be is that you can hire five new teachers for a year every year. He said they have met with Deerwood formally on five occasions and they will continue to make efforts to work with them. He noted this is not their only access and he would not want to see this project judged on whether or not there is a legal definition that all the attorneys can agree on.

Mr. Thomas Pugh, resident of 142 Deerlake Drive and former president of the Board of Directors of Deerwood, said that he is currently serving on an ad hoc committee to study the impact of this proposal on Deerwood. They are not protesting an office park in their backyard. However, they are concerned about the impact of the inordinate amount of traffic proposed for their private entryway. Their current road was constructed by Deerwood to fulfill a deed contract with the McCrary family to prevent the McCrary property from becoming land-locked. The contract was executed in 1981 and is still in force to 3-4 acres of McCrary property. The current Nettlewood design would attempt to extend the contract to an additional 25 acres of office park traffic. It is true that for some reason, that the actual road is located slightly off the mutual right-of-way and part of it is on Deerwood's private property but the McCrary's have never been denied use of the roadway - which was the intent of the road. He then gave some statistics about the Deerwood community and noted that they have been a big contributor to the beauty of the City and on their own initiative they have provided their residents with a lot of services that the City would normally be expected to provide. If their entranceway is commercialized by becoming part of the Nettlewood Office Park, the quality of life and the property values of Deerwood will be severely diminished. It has been conservatively estimated that this loss in property values could be a minimum $1.7 Million. At a meeting with some Board members, Mr. Grant said that the traffic impact study indicated the amount of traffic out of Nettlewood would only have a slight impact. He challenged that study and wondered how long it will take to get out of Deerwood with 10-12 cars from Nettlewood blocking their entry onto the highway. As far as the possibility of a traffic signal, the current assessment of the City's Traffic Engineer is that projected traffic from Deerwood and Nettlewood alone would not warrant a traffic signal. They are protesting the attempt to tie their private contract roadway into a commercial endeavor. They are not blocking the entry into the professional park because Deerlake Drive is not the only entry into the proposed park. There are at least four other entryways and they believe the plans should be re-submitted to utilize one or more of those other entryways as their main entrance into the professional park. They feel that there are too many other conditions which should be resolved before approval of the conditional use permit by City Council. Another concern is they feel there should be a unified stormwater runoff system, however, they really want to focus on the entryway concern.

Mr. Robert Dungan, attorney representing Deerwood, addressed Condition No. 9. He explained their positions on all three options. Their position is that Option No. 1 ultimately would be found to be illegal and that the Council should not consider it. He felt that the law is clear and that the scope of an expressed easement is controlled by the terms of the conveyance, if the conveyance is precise. This conveyance is precise. (Applicant Exhibit 1 - Easement recorded in Deed Book 1274 at page 171) The easement states that the McCrarys and the predecessor in interest or developer of Deerwood agreed that this entryway would be a private roadway for ingress, egress, and regress to those properties hereinabove described - thus being only the three tracts and not including the 24 acres that are in addition to the four acre tract. Private must be construed here as not open or accessible to the general public. (Attachment to City Exhibit 5 - Master Development Plan - Grading, Stormwater Drainage and Landscape Plan) He pointed out that there are other entrances, but to traverse that tract, he believe would violate the easement. In addition, since the road is private, he felt the stop sign which will be necessary at the "Y" will face the people on Deerlake so they will have to wait for the traffic from the office park.

Mr. Dungan addressed Councilman's Hay question about the difference of Option No. 3. He said the declaration of covenants, conditions and restrictions of Deerwood as initially recorded in 1982 (Applicant Exhibit 2) and as restated and amended in 1993 (Applicant Exhibit 3) require that if there is any dedication of common area, which is what the City street would require, then it must be approved by 2/3 of the owners at Deerwood. He said the same attorney that drafted the easement, drafted the original covenants. He also pointed out that Nettlewood does not own the McCrary tract at this time - they have contract to purchase it. (Applicant Exhibit 4 - Survey prepared for Nettlewood which shows the current easement and entryway) (Applicant Exhibit 5 - Copy of Plat for Deerwood in Plat Book 48 at page 133)

The following residents spoke in opposition of the proposed access at the north entrance for several reasons, some being, but are not limited to: Deerwood is already a walkable neighborhood; speeding on Hendersonville Road; more traffic turning into the proposed office park will create a safety hazard; two or three other entrances can be used for this project and the Deerwood residents do not want their entranceway destroyed; Deerwood residents take a lot of pride in their community and they don't want any more foot or car traffic; Deerwood has rights with respect to the entranceway; Nettlewood's primary objective is to make a profit; Nettlewood wants Deerwood to join with them in asking the City to take over the maintenance into Deerwood and into the McCrary property and accept it and the remainder of Nettlewood streets as City streets - you cannot use public funds for private purpose (and it may be a matter of just compensation for the taking away of that right) and it would impair the obligation of contract that Deerwood has with the McCrarys and its assigns; can the 30 feet become a City street and where will the other 20 feet come from if it is proposed to be a 50-foot street; if Nettlewood does not own the McCrary property, why this is before City Council; and another option has been proposed:

A resident of Deerwood
Mr. Harry Martin
Mr. Russell Burns, resident of Deerwood
Ms. Patricia Pugh

Mr. Peter Best, attorney representing Nettlewood, briefly described the history of this property. He pointed out that when Deerwood was being developed and his client went to the McCrarys, the McCrarys owned that piece of property in fee. What happened was that Valley Springs Property, in developing Deerwood, discovered that with the location of the 30-foot strip owned by McCrary and the lake did not have enough room to put in the road they wanted to put in. They entered into this agreement with the McCrarys whereby several things were agreed. The McCrarys continued to own their 30 feet, but their access was expanded by 10 feet so that they have the 30 feet of land they own, plus a 10-foot wide right-of-way across the Deerwood property for as much distance as it takes to get into the remainder of their property. There were some other parts of that, one of which was that Deerwood did agree in perpetuity to maintain that right-of-way. Deerwood was given a right of first refusal to buy the McCrary property and they have turned down that right. The McCrarys were simply expanding what they already had - they owned 30 feet of land which fronted on Hendersonville Road and extended to the property in the rear. If you take Option No. 1 (which is really the only one that needs to be discussed), they are simply saying that Nettlewood (when it is the owner of the McCrary property) will have a right to go over its property and access any other property that it wants to. There can be no overburdening argument and no argument that you are overwhelming the use of the easement that has been contemplated by that agreement when Nettlewood is staying on its own property. Option No. 1 is the simplest because it says to let Nettlewood stay on the 30 feet of land that is included in the McCrary property and let Nettlewood relocate the roadway. One of the things the agreement says is that the road would be built within the 40 foot area that was described and it was not. So historically they say they have the right to relocate the roadway onto their property, still maintaining access for Deerwood. If that cannot be worked out, Nettlewood can live with a 30 foot private roadway to access the McCrary property and the other property that Nettlewood owns. All of the discussion of the public road is unnecessary because that depends on an agreement with Deerwood.

When Councilman Worley asked how cut-through traffic would be prevented, Mr. Best said a lot of what would have to do with the design of the office park and the way the traffic pattern is designed.

When Councilman Hay asked about Option No. 1, Mr. Best said that since they can only have one road and part of that road is on the McCrary property, they would simply have to relocate the roadway to the south to put it completely on the McCrary property and Deerwood would be provided continuous access through that whole process.

Upon inquiry of Councilwoman Field, Mr. Best said that this north entrance is the only egress and ingress into Deerwood's property.

Discussion occurred regarding the possible relocation of the roadway.

Councilwoman Field felt that this whole access issue is not a zoning issue - more of a legal question - and she didn't see how this is an issue City Council can resolve since Council can't direct someone to do something on private property.

Assistant City Attorney Meldrum said that is why the option is worded the way this it is. It says that they would use the 30 foot strip - it's not saying that the road should be relocated and it's not declaring either party's rights with regard to the 1981 right-of-way agreement. The parties still may have to go to court to resolve their issues, but one of the options is to be able to use their own property for access. Now if there are other issues that are unrelated to this matter about the use of that property, then they have to solve that outside of this hearing.

Mr. Best explained that Nettlewood is requesting a conditional use permit granted which would recognize Nettlewood's right to access it's property over it's 30 foot strip. If they have issues that are contractual in nature with Deerwood, then that is certainly their problem and they are not asking the City to solve that problem. But they are simply saying that there is no reason to limit the access into their property and the right to add other properties to it so long as Nettlewood uses only Nettlewood property.

Upon inquiry of Councilwoman Whitmire, Mr. Shuford said that the access issue would still be there, regardless of whether they were developing the property with residential, retail or office.

It was Vice-Mayor Cloninger's understand that the Planning staff is not saying that whether we approve a conditional use permit for use of this property for an office complex should be contingent upon access being provided through this particular area. Even if Council decides not to allow access through the north entrance, Council can still approve the project given there are other access areas. He understood that if Council decides to grant access through the north entrance, they should do it by way of the three options.

Mr. Shuford said that staff thinks access through the north entrance is very important because the property is second tier property. Staff's point is that there appear to be at least three different options for access to occur at this point and because it deals with a contractual issue between two different parties and they can't come to an agreement, then staff is at the point saying let's leave these three options open to the Nettlewood development and see how it turns out as it goes through the further process. He'd like to see a public street built by the Nettlewood development to public street standards that would allow access to Deerwood as well loop the entire road through the project and maximize the potential for there to be a light at this location, but that doesn't seem to be an agreement that can be reached.

Vice-Mayor Cloninger asked what would happen if Council passed the conditional use permit including the three options and then it turned out that none of the three options panned out. He asked what would staff's position be then - should the project still go forward or should that be the determining factor that prevents that project from being built. Mr. Shuford said if that northern access is not provided, since it is a key one from the standpoint of emergency vehicle access and general automotive access and their TIA is based upon having that access, then staff would come back to Council and ask the developer to provide a revised site plan that would address the concerns of not being able to access that spot.

Councilman Hay understands that the permit could be granted without any northern access at all - that having the northern access is not a condition. But Mr. Shuford feels like northern access is a condition of approval. Mr. Shuford responded that they think that's an important access for this property and obviously the developer does as well. Councilman Hay then wondered if the language should read that one of the conditions be that there be northern access.

Vice-Mayor Cloninger felt if there was a way to approve the conditional use permit so that the developer could go forward regardless of where he ultimately was able to gain access at the north entrance, that would facilitate things, rather than if the parties have to wait for a lawsuit that may take 2-3 years. He wondered if Council could approve the conditional use permit in such a way that even if they don't get access at the north entrance they can go forward with the project. Mr. Shuford responded that if Council were to do that, then in effect Council would be approving the Master Development Plan that would allow a certain intensity of office development to occur at this site with some proposed accesses. But, if access at the north entrance cannot be achieved, then there would be substantial internal changes to the circulation pattern that would be handled by staff to work out. The revised site plan would then have to come back to City Council for review.

Mr. Steve Barden, attorney representing Nettlewood, stated that no one disputes the fact that Nettlewood, pursuant to their contract with McCrary, will own a fee simple title to the 30-foot strip of property that will give them full legal access to the entire project. The only question presented was the overburdening of the 10 feet just to the north of that, that if they were to expand, the question is can they use that 10 feet to access the rest of the property behind the McCrary property. It's Nettlewood's position that they don't care to use that additional 10 feet, therefore, there is really no legal question, because they have that 30 foot access to all of their property.

Vice-Mayor Cloninger asked if Nettlewood has the absolute right to use that 30 foot strip as an access point to Hendersonville Road regardless of what Council does, or does Council have the authority to prevent access to Hendersonville Road through that 30-foot strip. Assistant City Attorney Meldrum said that she couldn't say they have an absolute right to use that because that is not for City Council to decide here. As far as a zoning matter and whether or not they can access their property via the frontage that they have, yes they would. The other limitation that Council could make is to limit the accesses to properties.

Mayor Sitnick felt that this should never should have come to City Council until the access issue was resolved. She felt we are trying to determine a legal question that should have been determined initially. We are being asked to approve a conditional use project and clearly Council is stymied in doing that because this issue hasn't been resolved.

Councilman Peterson felt City Council cannot apply the seven standards when the access issue is so undecided.

Assistant City Attorney Meldrum explained what the problems would be with this site plan if the northern access through some option is not approved. The technical standards of the Fire Department require a turn-around for fire trucks and the site plan would have to be revised to have some turn-around before you get out to what would be the northern entrance near Deerwood. The other thing is the TIA would have to be revised to show that the northern access is not being used. Generally for major revisions, she recommends the revised site plan come back through the process. However, if Council wanted to authorize staff review, then she felt Council do that. Through the conditions, Council can require that if no northern access can be achieved, then the site plan and the TIA be revised to take out that access and that all other required standards be met and if the revised TIA requires any other measures that they be complied with as well.

Mayor Sitnick closed the public hearing at 11:31 p.m.

Vice-Mayor Cloninger wanted to get back to the point of whether it is feasible to go ahead and approve the project with the conditions recommended by staff in such a way that the project could go forward if it turns out there are only two access points rather than three - and not decide anything on the north entrance because it sounds like it needs to be determined by the courts or the parties have to agree. He'd hate to see the project held up completely just on that one issue.

Councilmen Hay and Worley agreed with Vice-Mayor Cloninger.

Councilman Peterson felt that one project was evaluated (the proposal with the northern access) and now Council is being asked to approve another project. Mr. Shuford said that this project was analyzed with this access arrangement before Council now. However, he doesn't think that it's infeasible for other access arrangements to be considered because it's just a matter of moving where some of the traffic goes. It's entirely feasible that a new TIA would be favorable to the development of this property because the first one didn't show any major traffic impacts. Staff had suggested earlier the possibility of allowing the project to go forward and if the northern access proves infeasible, then Council would authorize staff by Council's approval to go ahead and take it through the technical process to see if the other accesses would work. In the event they do not, then perhaps City staff will come back to Council with something radically different, of course that would be at the developer's option. He felt Council could approve this with the details to be worked out with staff since the main features of the site is not in dispute. He said that there are technically feasible ways the project can work without the Deerlake access.

Mayor Sitnick said that there are internal traffic controls that may be applied. She felt that maybe a majority of the traffic using the businesses in the office park could be directed out a different way to eliminate a major percentage of traffic on Deerlake Drive.

Vice-Mayor Cloninger hoped to see the project approved with or without that northern access. Mr. Shuford suggested leaving the three potential access options in Condition No. 9 and add a fourth option. That option would indicate that if none of the other three options can be accommodated, then the item would be referred back to the Technical Review Committee with a requirement that a TIA be performed for the revisions. If it turns out pretty much the same way, then that would be the alternative that could be pursued. That way it doesn't hold up the project but still leaves open the other three options.

Assistant City Attorney Meldrum said that part of the problem is the way the plan is drawn. It shows it using the 40 feet and so the City wants to make it clear that Council is not approving a plan that allows using all of that 40 feet to access the whole property.

Councilman Peterson felt that what is submitted with all the conditions is impossible to apply the seven standards City Council legally has to find that the project meets.

Councilman Hay liked the proposal that approves the project with the additional provision that in the event northern access doesn't work that staff is to review revised plans and if they meet all standards, that it can go forward with approval. If Mr. Shuford runs into a problem that he feels is beyond his scope of authority, he can bring it back to City Council.

Vice-Mayor Cloninger said that it could take 2-3 years in order for it to be determined whether northern access is feasible. He would like to see staff work with the developer to develop a plan that they can approve with or without northern access. If it's ultimately determined in the courts that the developer is entitled to northern access, he can put it in because it's already been approved. If it's determined that he doesn't have it, in the meantime he can go ahead with the project.

Assistant City Attorney Meldrum clarified Vice-Mayor Cloninger's proposal - the project would be approved with the other accesses and not the northern access, but if they are able to secure it, then that would also be approved.

Because Mayor Sitnick wanted to ask Mr. Grant a question, Vice-Mayor Cloninger moved to re-open the public hearing at 11:44 p.m. This motion was seconded by Councilwoman Whitmire and carried on a 6-1 vote with Councilwoman Whitmire voting "no."

Upon inquiry of Mayor Sitnick, Mr. Grant said that without northern access, the proposed office park becomes economically unfeasible and they would have to sell the property for whatever use they could.

Mayor Sitnick closed the public hearing at 11:46 p.m.

Upon inquiry of Councilwoman Whitmire, Assistant City Attorney said that the other conditions would stay in place. Two options have been discussed. One is to include the eight conditions set out in the staff report with the ninth condition with the three options that have been discussed and a further provision that if northern access can't be achieved that the project be approved with the other accesses shown on the site plan, provided that the site plan and TIA be revised and the City staff, through the Technical Review Committee, ensure compliance with other Code provisions. The other option is that the project be approved without the northern entrance and if the northern entrance could be achieved through some means then the project be approved with the addition of that northern entrance. She said that if the site plan has to be revised through either one of these processes, all eight conditions would stay in effect because the only condition that would be impacted by the change would be the ninth condition.

Assistant City Attorney Meldrum felt that either option could work with our processes. If Council's approval includes the northern entrance, then she recommended that it be subject to certain options because the options haven't been worked out yet for that northern entrance. The three options in Condition No. 9 are what the City Attorney's Office and the Planning & Development Department staff have been able to come up with for the northern entrance. If Council takes out the northern entrance, then Council wouldn't have any of the three options. She suggested that if the developer wants to maintain the northern entrance possibility as part of the approval, then to include some options which the developer would chose from and it would be subject to whatever rights there are outside of our process being determined. The Council needs to stay focused on the site plan showing a northern entrance and how can that be allowed with the other questions. Staff has tried to say that there are some options where it could be allowed just relating to land use questions and not relating to the separate legal issues outside of it. We are not telling the developer which one of these options to choose and we are not deciding the rights of the two parties with regard to the right-of-way agreement from 1981.

Vice-Mayor Cloninger moved to approve the conditional use permit along with Condition No. 9 and it's three options and the fourth option suggested by Mr. Shuford. This motion was seconded by Councilman Worley.

Again Councilman Peterson felt that what is submitted with all the conditions is impossible to apply the seven standards City Council legally has to find that the project meets.

The motion made by Vice-Mayor Cloninger and seconded by Councilman Worley passed on a 5-2 vote, with Councilman Peterson and Councilwoman Whitmire voting "no".

Mayor Sitnick announced at short break at 12:07 a.m.

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE WHICH WOULD DELETE THE DEFINITION OF CHURCH, ADD THE DEFINITIONS FOR A PLACE OF WORSHIP AND SANCTUARY, AND CREATE STANDARDS FOR PLACES OF WORSHIP

ORDINANCE NO. 2662 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE WHICH WOULD DELETE THE DEFINITION OF CHURCH, ADD THE DEFINITIONS FOR A PLACE OF WORSHIP AND SANCTUARY

ORDINANCE NO. 2663 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE STANDARDS FOR PLACES OF WORSHIP

Mayor Sitnick opened the public hearing at 12:15 a.m.

Senior Planner Gerald Green said that this is the consideration of two amendments to the Unified Development Ordinance which would establish definitions for place of worship and sanctuary and establish standards for places of worship in residential districts. This public hearing was legally advertised on January 28 and February 4, 2000.

The Planning and Zoning Commission, at their January 5, 2000, meeting, reviewed and recommended approval of amendments to the Unified Development Ordinance which would establish definitions for place of worship and sanctuary and establish standards for places of worship located in residential districts. The definitions and standards are the result of several months of work by a committee composed of representatives of neighborhoods and the religious community, the Planning and Zoning Commission, and the Planning and Development staff. The definitions established by the proposed amendment would be applicable throughout the City's jurisdiction; the standards would apply to places of worship located in residential zoning districts only. As proposed, the definition of place of worship would make it clear that schools, day cares, recreational facilities, and other facilities could be developed in conjunction with a place of worship but would have to meet applicable development standards. The proposed standards for places of worship in residential districts establish three categories for places of worship based upon the number of seats in the sanctuary(ies):

- Small - Not more than 300 seats;
- Medium - 301 to 800 seats; and
- Large - More than 800 seats.

Locational requirements, with regard to the functional classification of the abutting street, are established for the three categories. In addition, standards are established which address:

- Lot size;
- Setbacks;
- Access points;
- Parking;
- Landscaping and buffering;
- Impervious surfaces
- Building height;
- Lighting;
- Space devoted to office use;
- Commercial activities;
- Grading; and
- Outdoor speaker systems.

The intent of the proposed standards is to permit the expansion and development of places of worship in residential districts while minimizing their impact on adjacent residential uses.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the wording amendments. The Planning and Development staff recommends approval of the amendments.

Councilman Peterson clarified that the grandfather clause was not considered by the church committee. Mr. Green said that was correct, that it was a Planning & Zoning Commission recommendation.

Councilman Peterson asked if there are other provisions in the UDO that give other uses similar sort of exceptions? Mr. Green said there is a general grandfather clause with regard to non-conforming uses and non-conforming structures, but none that he was aware of that would allow an existing building to expand beyond a limit otherwise established if they own the land or the property on which they wish to expand at a certain time.

Upon inquiry of Councilman Peterson, Assistant City Attorney Meldrum said that there is a definition of major and minor thoroughfares in the UDO. Mr. Green also said that staff is looking at revised definitions for major and minor thoroughfares and for residential collector streets.

Vice-Mayor Cloninger clarified that there is no limit of the size of new churches on minor thoroughfares.

In response to Vice-Mayor Cloninger, Mr. Green said that if the church wanted to do other things, like a school, they would have to meet the standards established elsewhere in the ordinance - regardless of whether it's a church or a private enterprise.

Ms. Betty Garofano, member of the Church Committee, said that they did not discuss the grandfather clause. She asked which churches fit into the category which fit the criteria of the grandfather clause. She also asked if the grandfather clause added to allow Trinity Baptist Church to build it's commercial development in the RM-6 low density residential neighborhood.

Mr. Green responded that he doesn't know how many churches fit into the category for the grandfather clause. Regarding Ms. Garofano's second question, Mr. Green said that Planning & Zoning Commissioner Koon (who made the recommendation for the grandfather clause) never mentioned Trinity Baptist Church.

Ms. Jessie Corpening, resident on Shelburne Road, urged Council to put a limit or a cap on the size of a church that can be built in residential areas. She used Trinity Baptist Church as an example of what kind of negative impact to the neighborhood can occur.

Ms. Ann Anderson, resident on Shelburne Road, said that large churches have to be located on major thoroughfares in other places and the City should postpone this issue until they have had sufficient time within which to research what other cities have done.

Mr. Green responded to Ms. Anderson in that a general survey of other cities in North Carolina was conducted and the information was given to the Planning & Zoning Commission prior to their recommendation.

Mr. Robert C. McCarthy, representing the Carrier Heights Neighborhood Association, talked about the Trinity Baptist Church project and how they proceeded without prior approval. He noted that the standards state that a large place of worship shall be located on property which abuts a major or minor thoroughfare. He felt it strange that the standards for a medium place of worship shall be located on property which abuts a major or minor thoroughfare or on a residential collector street provided that the property (if located on a residential collector street) is located within 1,000 feet of a major or minor thoroughfare if that part of the collector street passes through an area with only non-residential. He urged City Council to vote against the proposed ordinance.

Mr. Bill Sizemore felt that the proposed ordinances are fair for all churches.

Ms. Carol Collins, representing the Community Council for Biblical Values, said that the Planning & Zoning Commission did an outstanding and thorough job in their research and discussion on this topic. She felt the Commission had a sense of closure as seen by their unanimous vote on the standards. She urged Council to adopt the ordinances in their entirety. With regard to the grandfathering, Commissioner Koon did a study of 39 churches (out of 120 churches that were sent the questionnaire) which responded to a questionnaire. Of the 39 churches, Commissioner Koon said that based upon street location, other standard requirements based on that location, number of pew seats, and number of parking spaces, that nearly 89% of the responding churches were out of compliance with the UDO as the Planning & Zoning Commission was discussing it at the time (what is basically before City Council now). She said that if the grandfather clause is withdrawn from the ordinance, nearly 90% of the churches will be out of compliance with the UDO. It was her understanding that the grandfathering clause covers every church in the City.

Rev. Jerry Grant, Trinity Baptist Church, spoke in support of the two proposed ordinances and felt they were fair for both the churches and neighborhoods.

Discussion surrounded the grandfathering clause.

Mayor Sitnick closed the public hearing at 1:07 a.m.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinances and they would not be read.

Councilwoman Field moved to adopt Ordinance No. 2662. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 115

Councilwoman Field moved to adopt Ordinance No. 2663. This motion was seconded by Councilman Hay.

Councilman Hay felt this is the end of a long process that has resulted in a collaborative effort.

Vice-Mayor Cloninger appreciated the hard work that has gone into this ordinance, however, he would vote against this ordinance. He is concerned about the grandfathering issue and also the fact that large churches are allowed on minor thoroughfares.

Councilman Peterson moved to amend Councilwoman Field's motion to delete "or minor" from 10 33 d. 3 so that it would read " Large places of worship shall be located on property which abut a major thoroughfare, as identified in the City of Asheville's Thoroughfare Plan." This motion was seconded by Vice-Mayor Cloninger and carried on a 4-3 vote, with Councilwomen Field and Whitmire and Councilman Hay voting "no".

Councilman Peterson moved to amend Councilwoman Field's motion to delete the grandfather clause from the ordinance. This motion was seconded by Vice-Mayor Cloninger and failed on a 2-5 vote with Mayor Sitnick, Councilwomen Field and Whitmire and Councilmen Hay and Worley voting "no".

The original motion, as amended by Councilman Peterson, carried on a 5-2 vote, with Vice-Mayor Cloninger and Councilman Peterson voting "no".

ORDINANCE BOOK NO. 18 - PAGE 117

E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH A PROCESS FOR THE PAYMENT OF A FEE IN LIEU OF CONSTRUCTION OR REHABILITATION OF SIDEWALKS

ORDINANCE NO. 2664 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH A PROCESS FOR THE PAYMENT OF A FEE IN LIEU OF CONSTRUCTION OR REHABILITATION OF SIDEWALKS

RESOLUTION NO. 00-26 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL

Mayor Sitnick opened the public hearing at 1:30 a.m.

Ms. Cathy Ball, City Engineer, said City staff is requesting that the amendment to the Unified Development Ordinance (UDO) to revise requirements for construction of sidewalks and to establish requirements for the rehabilitation of sidewalks be removed from City Council's consideration at this time. She said that since the City Council worksession on January 18, 2000, staff has met with both the development community and affordable housing advocates and both of those groups are very interested in working with City staff to try to come up with a better resolution for the requirements for sidewalks. For that reason, they requested the City move forward only with the process for the payment of a fee in lieu of construction or rehabilitation of sidewalks. This public hearing was legally advertised on January 28 and February 5, 2000.

The only exception to the fee in lieu of process is the affordable housing advocates did ask that they be exempt from paying that fee in the event they were developing over 10 units or over 20 single-family units and for some reason City staff did not require a sidewalk to be installed at that time. Staff, however, felt that in keeping in line with what the City is doing with permit fees, is if the developer builds the units and they end up selling them or renting them as affordable housing, the City would reimburse them 50% of the cost.

Councilwoman Whitmire and Vice-Mayor Cloninger both felt the fee should be waived completely for affordable housing.

Councilwoman Field asked how long do the units have to stay affordable and when would the City refund the fee? Community Development Director Charlotte Caplan responded that for single-family housing there is a definition that is based on the sales price. For rental housing, City staff has accepted only rental housing where there are affordability restrictions on rents for other reasons and typically it is about 20-30 years when it has that sort of funding in it.

When Mayor Sitnick asked why the City just doesn't charge the fee instead of refunding the fee, Ms. Caplan said that in the case of single family homes, you don't know until they sell what they are going to sell for.

Upon inquiry of Mayor Sitnick, Ms. Ball said that if the affordable home needs a sidewalk, it will be put in at the time of the development. This doesn't do anything that would not require a sidewalk be installed. She felt that it will be unusual to find a situation where we would allow a fee in lieu of for that many units.

Councilman Worley said that he hasn't had time to think about the effect of this and would prefer City Council continue the public hearing.

Councilwoman Field had no problem with waiving the fee 100% but was concerned about how we guarantee that particular property, especially rental property, will stay affordable for a period of time.

Ms. Ball suggested if Council wants staff to look at the "guarantee that the property stays affordable" issue, in addition to the requirements for sidewalks, staff can revisit this item again and report back to Council when staff makes their presentation on the sidewalk requirements.

Assistant City Attorney Meldrum said that the City has a policy of not including fees or charges in the Code of Ordinances. Therefore, she recommended any language in the ordinance regarding fees be deleted. Then the Code provision can be adopted. The Fees and Charges Manual can be adopted at this time and then later amended with regard to whatever Council decides in the future about these fees.

Mayor Sitnick closed the public hearing at 1:40 a.m.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and resolution and they would not be read.

Councilman Hay moved to adopt Ordinance No. 2664 with the deletion of two paragraphs on page 3 regarding fees. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 129

Councilman Worley moved to adopt Resolution No. 00-26, which will set fees other than affordable housing. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 418

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

Due to the lateness of the hour, Councilman Worley moved to (1) reschedule the Resolution Adopting the Neighborhood Traffic Calming Policy and the Approval of the City Council Goals to the February 22, 2000, formal meeting; and (2) reschedule the Resolution appointing members to the Public Access Channel Commission to the February 15, 2000, worksession. This motion was seconded by Councilwoman Whitmire and carried unanimously.

VI. OTHER BUSINESS:

A. DISCLOSURE STATEMENT

Assistant City Attorney Meldrum read the following option from the Department of Housing and Urban Development into the minutes:

"Under North Carolina law, all Council members are precluded from voting on matters in which they have financial interest or that affects their own official conduct. They are also prohibited from contracting with the City. Under State law, all that is required is that a Council member not participate in certain votes where his or her interest may be questioned.

"Where an employee of an agency that receives funds from the U.S. Department of Housing and Urban Development becomes a member of a unit of local government that makes decisions regarding those funds, federal regulations require the additional step of reporting the situation to HUD, and requesting an opinion as to whether that employee's governmental service is consistent with the intent of the regulations. Such opinions are routinely requested and routinely given.

"Council member Terry Whitmire is an employee of Mountain Housing Opportunities. Although she is not directly involved in any HUD-funded activities, her election to Council has resulted in the application of this regulation. Our review -- including analysis of the regulation, conversations with HUD officials, Ms. Whitmire and other officials at MHO -- has indicated that Ms. Whitmire, because of the nature of her job, is not in a position to benefit directly from the receipt of HUD funds by MHO. Even so, as a Council member, State law would preclude her from voting on any matters that directly affected MHO.

"On the advice of HUD officials, we propose to write to HUD to request an opinion as to the application of the regulation to Ms. Whitmire and, depending on that opinion, request an exception or some other action by HUD that will permit Ms. Whitmire to serve on Council while working at MHO.

"This is brought to your attention now because public disclosure is one of the prerequisites of requesting the opinion from HUD. Unless Council has questions or an objection, the City Attorney's office will send out the appropriate correspondence this week."

B. CLAIMS

The following claims were received by the City of Asheville during the period of January 21-27, 2000: Jeanette Jones (Water), Wesley Gray (Streets), Gregg Darity (Streets), Thomas E. Merrill (Water), Terry Miller (Water), Jack Casey (Water) and Barbara Aanonsen (Civic Center).

The following claims were received during the period of January 28-February 3, 2000: Robert McElrath (Sanitation), Carol Winter (Water), John Long (Water), Enterprise (Streets), Clay Property Management (Inspections) and Tom Jones (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

511

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 1:45 a.m.

Magdalen Burleson
CITY CLERK

Loni Sitnick
MAYOR

CITY OF ASHEVILLE

CITY COUNCIL

BOARD MINUTES

Volume: 71

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City Council Annual Retreat

Friday - January 28, 2000 - 1:00 p.m. -
Saturday - January 29, 1999 - 12:40 a.m.
Highland Lake Inn, Flat Rock, N.C.

Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Friday, January 28, 2000

Fiscal Year 1999/00 Strategic Plan - City Council was updated on the Fiscal Year 1999-00 Strategic Plan goals and objectives.

Assessment of Street Conditions and Future Funding - City Council heard a review from staff involving street conditions and the recent rating of streets by ITRE. Mark Combs' recommendation was for increasing funding for increased maintenance and preventive maintenance in the sum of $800,000 per year. The Council discussed the issue in depth. Staff advised the only practical funding that would yield this much money for this type of infrastructure maintenance was a property tax rate increase of approximately $.02. Council agreed with and approved of the plan for increased maintenance and preventive maintenance, and deferred to a later time the issue of funding.

Assessment of Transit System Services and Funding - Council received a briefing on staff's recommended direction for future funding and operations of the transit system including alternative fuel, vehicles, smaller vehicles for custom routes and amenities such as park benches, signage and shelters. Also discussed was the need to establish a reserve fund for the future purchase of replacement buses. Potential sources of funding for the transit system plan were property taxes and a special $5.00 vehicle license fee assessment. The City of Asheville has been given authority by the General Assembly for Council to levy the $5.00 fee specifically for transit system improvements noted by Interim Transit Services Director Bruce Black in his presentation. The consensus of Council was that the improvements discussed by Bruce during the briefing were what was needed to have the kind of transit system that would be more responsive to the public's needs yet more efficient and effective through the use of alternate fuels and smaller vehicles, where appropriate. Council also favored levying the $5.00 vehicle license fee for the upgrades to the transit system as a funding source, although no approvals were sought or received by staff on the funding source.

Streamlining and Improving the Development Process - City Council was briefed on improvements made in the permitting portion of the development review process by Director of Building Safety Terry Summey and an outlook for additional improvements the City is working on at the current time. Planning & Development Director Scott Shuford presented some initial concepts for Council's review in working with the Unified Development Ordinance and the new urbanism concepts of urban planning. The Council was enthusiastically supportive of both reports and asked staff to pursue those directions.

Diversity in the Workplace - Human Resources Director Jeff Richardson briefed Council on our diversity efforts. The change in Civil Service Law really allowed the City to initiate a tremendous diversity program because we no longer had the Rule of Three to contend with. Although the increased emphasis on diversity just started in August 1999, changes are already seen, particularly in the number of minority applicants for City positions.

Traffic Signal Feasibility Study/DOT - City Engineer Cathy Ball briefed Council on the possibility of computerizing all the traffic signals within the City so that signalization City-wide would be coordinated. This would be a joint project with the N. C. Dept. of Transportation; the approximate cost would be $1 million. The City's financial responsibility would be for $200,000 based on 20% of the project cost. This program is not scheduled for the upcoming budget but would be scheduled for Fiscal Year 2001-2002. Council agreed with the direction staff was taking and gave initial approval to carry forward with the planning process to place this issue in the Fiscal Year 2001-2002 budget.

Fire Protection at Biltmore Square Area - Fire Chief John Rukavina updated City Council on the City's efforts to provide additional fire coverage to the area near the Biltmore Square Mall which is rapidly developing. Basically, the City needs to build an additional fire station, equip it with fire apparatus and personnel to provide fire service to that area. We need to start on this project prior to 2002 since Insurance Services Office will conduct its next evaluation during that year. After hearing the briefing, Council gave general direction to proceed with plans to build a station in that area understanding that this will be multi-year planning and budget commitment to do so. The Fire Chief estimated the total project cost to be $1.2 million for the fire station, $215,000 for the apparatus, and $485,000 annually for 14.5 full-time equivalent firefighters.

Legislative Issues - City Attorney Bob Oast reviewed the past year's legislative successes in the General Assembly and discussed the current issue we have before the General Assembly which is non-betterment costs of the N. C. Dept. of Transportation projects. (This is a Water Resources Department and Water Authority issue which the City is leading.) Since this is a short session, controversial issues are not normally brought to the General Assembly for action.

Saturday, January 20, 2000

Budget Outlook:

Fund Balance Position - Finance Director Bill Schaefer reported the City's fund balance has gradually declined over the past five years. The City's fund balance as a percentage of operating expenditures, however, remains sufficiently above the legal limit.

Current Budget - Budget Director Ben Durant reviewed the City's current budget with Council, and in particular the following two issues that impact the current budget and, therefore, future fund balances: (1) Change in sales tax distribution from the County - As City staff updated City Council, Buncombe County made an error in its calculation of sales tax distribution to the City which meant we received approximately $700,000 less than was projected; and (2) Reimbursements to MSD - As Assistant City Attorney Doug Spell briefed Council, the City owes MSD approximately $223,000 which represents the portion of the Enka-Candler Water and Sewer District annexed by the City in 1994. Our portion on an annual basis is approximately $37,000. Currently we owe MSD approximately $260,000 for years since 1994 and the current year. After being briefed on this particular issue, Council requested that staff work with MSD to see if we could receive an extended length of time to make this payment since MSD has not requested it prior to this time.

Budget Forecast - Budget Director Ben Durant said that based on anticipated revenue growth of 2.5 percent and expenditure growth of 3.02 percent, he presented his budget projections for next year showing that expenditures for maintaining existing services are currently outpacing revenue growth. As a part of those projections, we presented areas where we see unfunded needs, in addition to the street conditions and transit system needs which were already presented.

Unfunded Priorities:

Lake Craig Recreation/Beneficial Fill Facility - Council received a briefing on staff actions to date which were based on Council approvals. Council gave direction for staff to proceed with the current planning in order to purchase the land in the future based on the option which we currently have. Although funding is not available in the budget to develop the property fully, purchase of the property will give the City control and secure the valuable flat area for recreational and beneficial purposes in the future.

Battery Park Parking Deck - City Engineer Cathy Ball updated Council on the current status of the Battery Park parking deck issue including the most recent Council action involving approval for engineering and design services. Council also received from Finance Director Bill Schaefer a recommendation for funding the difference between parking deck revenues generated and the debt service needed for the Certificates of Participation by the annual increase in the sales tax.

Civic Center Improvements - Civic Center Director David Pisha briefed Council on Civic Center improvements that are needed. There have been many numbers used recently and staff wanted to present Council with the factual numbers as we know them at the current time. Council discussed the problems associated with the Civic Center and the need to receive the consultant's report, and for the Task Force to make recommendations to Council.

Due to weather conditions, it was the consensus of City Council to continue the City Council goal setting process and the recycling initiative to it's worksession on February 1, 2000.

Tuesday, February 1, 2000

Waste Management Coordinator Karen Rankin briefed Council on providing an upgraded service by including mixed paper in our recycling program. The impact of including mixed paper in our recycling program would be to increase the recycling tonnage by 27% based on a biweekly collection schedule. The cost for our current service is $1.59 per month. The cost for adding mixed paper is $2.06 per month, or a $.47 per month increase. The Council approved of the change in the recycling program and directed staff to bring the program back to Council on February 22, 2000, for approval and implementation as soon as possible. Staff's original recommendation was implementation on July 1, 2000.

Because of the absence of Councilwoman Whitmire, it was the consensus of City Council to move their goal setting process to Sunday, February 6, 2000.

Sunday, February 6, 2000

City Council tentatively agreed upon the following Fiscal Year 2000-01 Goals:

1) Aggressively implement the Sustainable Economic Development Strategic Plan.

2) Adopt policies and ordinances that promote "Smart" growth:

- Continue to review the UDO and make changes consistent with greater utilization of the property tax base and the concept of new urbanism.
- Continue to implement the Housing Action Plan.
- Expand recycling program in accordance with staff proposals.
- Review and adopt recommendations of the Waste Reduction Plan.
- Maintain and expand Asheville's quality of life.
- Work with MSD and Regional Water Authority to promote cooperative growth policies.
- Increase diversity on boards and commissions and City work-force.
- Communicate effectively with the Citizens of Asheville.

3) Improve all transportation systems through innovative and cost effective planning.

- Adopt and implement the Transit Improvement Program.
- Approve an additional five dollar motor vehicle tax dedicated to the transit system capital improvement program.
- Improve traffic flow by updating the traffic signalization system.
- Continue to install traffic calming devices in residential areas.

4) Provide new resources to increase street and sidewalk maintenance and repair so as to address the needs identified in the ITRE study.

5) Improve the quality of life for Asheville residents through identification of resources to fund parks and recreation capital needs.

6) Develop a multi-year operational and capital improvement program designed to provide adequate capital funding for the Civic Center as an interim approach pending a decision about the future direction of the Civic Center.

It was the consensus of City Council to review and approve the goals at their February 8, 2000, formal meeting.

Tuesday, February 8, 2000

Due to the length of the City Council meeting held on February 8, 2000, a motion was made and carried unanimously to review and approve the City Council's goals at their meeting on February 15, 2000.

Tuesday, February 22, 2000

Councilwoman Field reviewed with Council a re-worded set of goals as follows:

1) Create opportunities for Sustainable Economic Development

- Aggressively implement the Sustainable Economic Development Strategic Plan.
- Develop an interim multi-year operational and capital improvement program designed to provide adequate funding for the Civic Center pending decisions on the long-term future of the Civic Center.
- Continue Downtown initiatives that support the strong private sector revitalization effort.

2) Adopt policies and ordinances that promote “Smart Growth”

- Define “Smart Growth” for the City of Asheville.
- Maintain and expand Asheville's quality of life.
- Review the UDO and make changes consistent with the concept of “new urbanism” and greater utilization of the property tax base.
- Implement the Housing Action Plan.
- Expand the recycling program in accordance with staff proposals.
- Review and adopt recommendations of the Waste Reduction Plan.
- Work with MSD and the Regional Water Authority to promote cooperative growth policies.

3) Improve all transportation systems through innovative and cost effective planning.

- Adopt and implement the Transit Improvement Program.
- Approve an additional five-dollar motor vehicle tax dedicated to the transit system capital improvement program.
- Update the traffic signalization system to improve traffic flow.
- Install traffic calming devices in residential areas based on the Traffic Calming Policy.

4) Provide new resources to increase street and sidewalk maintenance and repair.

- Address the needs identified in the ITRE study.
- Implement the Pedestrian Thoroughfare Plan as funds become available.

5) Develop resources to fund parks and recreation needs that improve the quality of life for Asheville residents.

- Implement the Greenway Master Plan as funding becomes available.
- Construct phase I of Pritchard Park.
- Develop the Lake Craig property per the staff's recommendations.
- Build the Skateboard Park.

6) Work towards common sense governance.

- Communicate more effectively with the Citizens of Asheville.
- Work to find better and meaningful participation processes.
- Increase diversity in the City workforce and in City Council appointments.
- Resolve conflicts between new ordinances and existing local, state or federal regulations.
- Adopt new ordinances and resolutions only when there are resources to implement them.
- Examine and revise the "Conditions Use" process, implement the Planning Director's recommendations presented to us at the 2000 retreat.

Councilman Worley moved to adopt the revised goals as presented by Councilwoman Field. This motion was seconded by Councilwoman Field and carried unanimously.

Budget Director Ben Durant confirmed with Council that the adopted goals would provide direction to staff during the budget process. Council further indicated that staff would have the discretion to recommend alternative strategies to achieve those goals.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

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Tuesday - February 15, 2000 - 3:00 p.m.

Worksession

Present: Vice-Mayor M. Charles Cloninger, Presiding; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; Assistant City Attorney S. Patterson Brison Meldrum; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Leni Sitnick

CONSENT:

Budget Amendment for Facility Maintenance

Summary: The consideration of a budget amendment, in the amount of $250,000, to appropriate additional funds for necessary repairs to various City facilities.

The Parks and Recreation Department has been working for several months on identifying urgent needs to existing City-owned facilities. In the current budget, $250,000 was appropriated for maintenance repair to over 100 facilities currently under City ownership. Due to a number of emergency situations which included preparation for Y2K emergency shelter service, new HVAC system for Senior Opportunity Center, renovations to the Murphy-Oakley Resource Center, and replacement of the sewer line in City Hall, the current budget has been depleted. The costs associated with those emergency situations total approximately $160,000.

In addition, staff has identified that Fire Stations #2 and #5 are in desperate need of roof replacement. Both facilities cannot continue to be patched and a complete roof replacement is necessary in order to continue occupancy of these facilities. In addition, the boiler at Murphy-Oakley Resource Center needs to be replaced. The estimated costs for the above work represents approximately $106,200. Staff is requesting a budget amendment of $250,000 in order to implement and supplement the above mentioned improvements.

The Parks and Recreation Department is requesting City Council approval of the budget amendment in the amount of $250,000.

Festivals and Special Events for 2000

Summary: The consideration of a motion to approve the Parks and Recreation Department's 2000 festival and special events schedule.

In March of 1995, the Asheville City Council adopted a "Festivals Policy." A segment of that policy requires that City Council approve the list of festivals on an annual basis. Therefore the Parks and Recreation Department is recommending the approval of the following festivals and special events (Please note 3 new events applying for co-sponsorship this year include: Bike for the Bell, Come-Unity Asheville and Earth Day 2000 Festival): Special Olympics; Holiday Luncheon; Buncombe County Appreciation Day; Movies in the Park; Very Special Arts Festival; Youth 5K Run; Martin Luther King Peace Walk; Unity in Diversity; Earth Day 2000; Festival; Easter Eggstravaganza; Walk America; Come-Unity Asheville; Senior Games; Friends for Animals Anti-Cruelty Animal Walk; Bike for the Bell/Strive Not to Drive; Hershey's Track n' Field; Symphony on the Block; 3rd Annual "Biltmore Estate 15K Classic" Foot Race; Moonlight over Downtown; Sunday in the Park; RiverLink Triathlon; Honda Hoot Wall Street Policy; Honda Hoot Downtown After Five; Shindig on the Green; Downtown After Five; French Broad River

Wildlife Art & Craft Show; Burton Street Gospel Jubilee; Goombay Festival; 4th Annual "Brew Grass Festival"; La Fiesta Latina; Asheville Greek Festival; Walk Into History (Urban Trail); Westfest; Asheville Merchants Corporation Christmas Parade; Light Up Your Holidays; and 2000 Arby's Reindeer Romp.

The Parks and Recreation Department recommends approval of the above festivals and special events for 2000.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UDO AMENDMENT REVIEW

Assistant City Attorney Meldrum said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which are scheduled on Tuesday, February 22, 2000. She advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Parks and Open Space District

Urban Planner Carl Ownbey said that this is the consideration of an ordinance amendment to the Unified Development Ordinance to establish a new zoning district entitled "Parks and Open Space."

After direction from City Council to establish a new parks and open space zoning district, the Planning and Development staff met several times with staff from the Parks and Recreation Department and the Public Works Department to compile guidelines and development standards for the new zoning district. In addition to City staff review, the draft of the ordinance was given to the Greenway Commission and RiverLink for their input.

During the Planning & Zoning Commission's public hearing, the Commissioners discussed at great length the need to add to the Parks and Open Space District a provision that only the property owner or their authorized agent be permitted to file a request to have their parcel of land rezoned.

The Commissioners raised issues concerning: the grandfathering of uses on the property, creating non-conforming uses, changing the economic benefit of the property, possible government "takings claim," and fairness to the property owner. The main concern seemed to be that any City Council could change the zoning on a parcel of land to this classification against the wishes of the property owner; thereby eliminating the economic benefit of the land to the landowner.

The Commissioners voted to recommend that this zoning district incorporate specific wording to permit only the property owner or their authorized agent to request the rezoning of a parcel of land to this particular zoning classification.

The Planning and Development staff presented this new zoning district to the Planning and Zoning Commission at their February 2, 2000, regular meeting. After presentation by staff and the lengthy discussion, the Commissioners voted 5 to 1 to recommend to City Council the adoption of this new zoning district with the additional wording regarding the initiation of an amendment.

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However, the Planning staff feels strongly that the inclusion of this particular wording to this one zoning district limits the ability of the City Council to apply this zoning classification at its discretion. Staff recommends the adoption of the ordinance without the additional wording.

City Council discussed the issue regarding whether to permit only the property owner or their authorized agent to request the rezoning vs. City Council rezoning the property against the property owner's wishes.

Councilman Peterson requested that in the future City staff present City Council with what the Planning & Zoning Commission recommended and if staff disagrees with the Commission, a version of the proposed ordinance as recommended by staff.

Conditional Use District Zoning

Senior Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) which would establish a Conditional Use District.

The Planning and Zoning Commission, at their February 2, 2000, meeting, reviewed and recommended approval of an amendment to the UDO which would establish Section 7-9-9 to create a Conditional Use District. This district will provide a level of flexibility in the rezoning process which is not available with the existing zoning districts. The new district could be applied anywhere within the City and its jurisdiction. Unlike conventional rezoning, a rezoning to a Conditional Use District would permit review and approval of detailed site plans, building designs and elevations, and floor plans as well as identification of specific uses. Conditions could be attached to the rezoning to further mitigate impacts on surrounding properties. Upon application by the property owner or authorized representative, the Conditional Use District zoning request would be subject to a review process involving the following steps:

- Review and recommendation by the Technical Review Committee (with public notification);
- Review and recommendation by the Planning and Zoning Commission (public hearing); and
- Review and action by City Council (public hearing).

In acting upon the Conditional Use District zoning request, the City Council would be charged with changing the zoning of the site to a conditional use zoning and issuing a conditional use permit for the proposed development. The City Council may attach conditions to ensure that the proposed development does not adversely impact the surrounding properties. Any violation of the conditional use permit or other failure to comply with the conditions imposed would be treated as a violation of the City's Zoning Ordinance.

The Planning and Zoning Commission voted 6 to 0 to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the amendment.

Upon inquiry of Councilman Peterson, Mr. Green said that the protest petition standards would apply to this district.

Assistant City Attorney Meldrum responded to questions from Councilman Peterson relative to the questions of spot zoning.

Councilwoman Field wanted to make sure that this district would be available to all segments of the population.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearings on February 22, 2000.

RESOLUTIONS OF INTENT TO ANNEX

Planning & Development Director Scott Shuford said that this is the consideration of adoption of resolutions of intent so as to begin the process to annex six areas which are first priority areas.

In 1998 the City entered into an agreement with Benchmark, Inc., to develop a Five Year Annexation Plan. The first phase of this project consisted of the consultant identifying first priority areas and Council authorized staff to proceed with formulating plans to annex those areas. Six areas have been identified as qualifying for annexation under Part 3, Article 4A, Chapter 160-A of the North Carolina General Statutes. Adoption of the resolutions of intent sets forth a process that will result in the annexation of the six areas effective June 30, 2001. Steps in the process are proposed according to the following schedule:

Adoption of the Resolutions of Intent	February 22, 2000
Approval of Plans of Services	March 15, 2000
Public Information Meeting	May 2, 2000
Public Hearing(s)	May 23, 2000
Adoption of Annexation Ordinances	June 13, 2000
Effective date of Annexations	June 30, 2001

Staff recommends that the resolutions of intent be adopted by City Council to set in motion the process of consideration of annexation of the six areas.

Mr. Richard Flowe, President of Benchmark Inc., reviewed with City Council the proposed six areas for annexation stating that they are to clean up some inequity issues, service boundary issues and economic based diversity issues. He reviewed the procedural and technical phases with regard to these annexations. After briefly reviewing some annexation area data for each of the six areas, he proceeded to review the areas as follows: Area 01-A is generally located east of Chunns Cove Road and including properties abutting Piney Mountain Road and I-240; Area 01-B is generally located north of US 70 east of Riceville Road and west of Lower Grassy Branch Road, including properties on both sides of Arnold Road and Park Vista Drive; Area 01-C is generally located east of I-26 surround Lake Julian including properties located both north and south of Long Shoals Road, west of Hendersonville Road and north of Glen Bridge Road; Area 01-D generally consists of the Ridgefield Business Center and surrounding properties east and west of Brevard Road; Area 01-E generally consists of properties located on the east side of New Leicester Highway south of Westwood Drive; and Area 01-F generally consists of properties located on the north and south side of Rocky Ridge Road and the west side of Wedgefield Drive 1000 or less feet west of Brevard Road. He explained that alternations and deletions of the proposed areas can occur, but no areas can be expanded once the process is in place. He then reviewed the following financial plan for the annexation areas: Ad Valorem Property Tax Revenues, North Carolina Utilities Franchise Tax, Sales and Use Tax and Powell Bill allocation.

Councilman Peterson asked that the new Lowe's on Smokey Park Highway be included in the Phase 2 annexation process. He also wanted to make sure that any water and sewer districts that apply to any of these areas is taken into account.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

PACK SQUARE CONCEPTUAL PLAN CONSULTANT

Ms. Carol King, Chair of the Pack Square Task Force, said that this is the consideration of a resolution to approve the execution of a contract for the Pack Square conceptual design and associated budget amendment.

The Pack Square Task Force has sent requests for qualifications (RFQs) to a number of design firms for the Pack Square Renaissance Project. Based upon their qualifications, past projects and other criteria, one firm will be selected to work with the Task Force and community to develop a conceptual design for Pack Square/City-County Plaza. The RFQ packets were sent to the following firms:

Urban Design Associates (Pittsburgh)
Olin Partnership (Philadelphia)
Design Workshop, Inc. (Aspen)
Cooper, Robertson & Partner (New York)
Streetworks (Alexandria)
Wallace, Roberts & Todd (Philadelphia)
Duany, Plater-Zyberk & Co. (Charlotte)

The list of firms selected to receive the RFQ was established based upon recommendations from members of the Design Subcommittee of the Pack Square Task Force (which includes several architects). It was felt that there are a limited number of firms nationally with the ability to provide this type of design assistance.

Responses to the RFQ are due on Monday, February 14, 2000. At this point, it is anticipated that at least four firms will respond to the RFQ. On Friday, February 18, 2000, the Downtown Commission will meet jointly with the Pack Square Task Force to select the firm for recommendation to Council. On February 22, 2000, City Council will be asked to approve the execution of a contract for this conceptual design.

The Task Force is in the process of raising $40,000 for this design process, which will include significant public participation in the form of a public forum on the design of public spaces as well as two public design workshops. Fifteen thousand dollars has been provided from the public sector ($7,500 from both the City and the County). The remaining $25,000 will come from private sector fundraising. A list of private sector contributors will be furnished to Council at the February 22, 2000, City Council meeting.

A special account has been established within the Planning and Development Department budget for this project. In addition to approval of the contract execution, Council will be asked to approve a budget amendment, which is necessary in order to receive and disperse funds through this account.

City staff recommends City Council adopt a resolution to approve the execution of a contract for the Pack Square conceptual design and associated budget amendment.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PUBLIC ACCESS CHANNEL

Ms. Robin Nix, Public and Community Information Coordinator, said that this is the consideration of a proposal received from the League of Women Voters to operate the public access channel.

The Cable Franchise Agreement adopted by City Council designates three initial access channels to be used for public, educational and/or government programming. In November 1998, the Asheville City Council directed staff to prepare a Request For Proposal (RFP) to solicit non-profit organizations who were interested in managing the public access channel. The City of Asheville sent out this RFP in August 1999 after receiving input from staff and the community on the document.

On January 26, 2000, a proposal was received from the League of Women Voters (LWV) indicating interest in managing the channel and providing a timeline for activities. In their letter they stated "it is with much regret that we advise that we are unable to present a technical response to your RFP. There are multiple reasons. Not the least of these is our concern as to financing the endeavor so long as the City refuses to assume any responsibility for operating expenses" Although they did submit a response, it was not the technical response that the City requested in the RFP. This was the only proposal received by the City.

Mr. Talmadge Neece, representing the LWV, passed out a statement and stressed that the LWV is eager to add their effort to bring to our community a well-designed and sound operational public access operation. He reviewed the following key issues where the LWV can be effective: community acceptance, community commitment and community involvement. He said that the LWV " stands ready to aid the Commission in developing community awareness of the potential of public access television to facilitate dialog within our community and with the Commission which should lead to a sound plan of operation supported by the broader community. This should provide strong support for timely development and implementation of an operational philosophy. There should then be an easy and prompt transition to an operating entity that will ensure a successful community supported public access station for all the people of our city."

Vice-Mayor Cloninger said that in a meeting held earlier in the day regarding the response received by the LWV. Since no complete RFP was received, the LWV did respond by expressing an interest in assisting the City of Asheville with developing a method for establishing the public access channel. It was determined that the LWV could provide advice and assistance to the Public Access Channel Commission in order to facilitate the establishment and management of a public access channel on the cablevision system. It was recommended that the LWV be appointed to act as an advisory group to the Public Access Channel Commission. It was also recommended that the membership of the Public Access Channel Commission be expanded to include a position for a representative of the LWV as a non-voting, ex-officio member.

Discussion surrounding allowing the LWV a seat on the Commission when there may be other non-profits that would like to have a seat as well.

Further discussion surrounding a potential conflict of interest for the LWV if another RFP were developed. Mr. Neece said that the LWV would absent themselves from that process.

It was the consensus of City Council that if the ordinance is expanded to include a seat for the LWV that a sunset provision be included in that the LWV appointment would terminate after the City Council has entered into a contract with a third party to operate the public access channel.

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Councilwoman Whitmire asked that the funding for the Educational Access Channel be a future worksession item.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

Councilman Worley moved to suspend the rules and take formal action on the following two items: (1) resolution appointing members to the Public Access Channel Commission; and (2) approval of City Council goals. This motion was seconded by Councilman Peterson and carried unanimously.

RESOLUTION NO. 00-27 - RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ACCESS CHANNEL COMMISSION

Vice-Mayor Cloninger said that on January 25, 2000, City Council interviewed Raphael Peter, Jim Torpey, Wally Bowen, Andrew Reed, Lisa Michie, Orpheus Allison, Mark Rosenstein, John Hayes, Beth Lazer, Rebecca Em Campbell, Allan Goodstadt, Marianna Bailey, Clifford Davids, Mark Goldstein and Mary Ellen Brown.

Jim Torpey received 6 votes; John Hayes received 6 votes; Mary Ellen Brown received 6 votes; Beth Lazer received 5 votes; Mark Goldstein received 5 votes; Mark Rosenstein received 5 votes; Raphael Peter received 4 votes; Andrew Reed received 4 votes; Orpheus Allison received 3 votes; Marianna Bailey received 3 votes; Allan Goodstadt received 3 votes; Wally Bowen received 2 votes; Rebecca Em Campbell received 1 vote; Clifford Davids received 1 vote; and Lisa Michie received 0 votes. Therefore, a resolution will be prepared (1) appointing Jim Torpey, John Hayes, Mary Ellen Brown, Beth Lazer and Mark Goldstein to each serve a three year term respectively, terms beginning on March 1, 2000, and expiring on March 1, 2003, or until their successors have been appointed, and (2) appointing Mark Rosenstein, Raphael Peter and Andrew Reed to each serve a two year term respectively, terms beginning on March 1, 2000, and expiring on March 1, 2002, or until their successors have been appointed.

Because of a tie vote, City Council voted again. Orpheus Allison received 2 votes; Allen Goodstadt received 2 votes; and Marianna Bailey received 2 votes.

Because of the remaining tie vote for the ninth seat, it was the consensus of City Council to place the names of Orpheus Allison, Allan Goodstadt and Marianna Bailey on the City Council agenda for February 22, 2000, for consideration of appointment to the remaining seat on the Public Access Channel Commission.

RESOLUTION BOOK NO. 25 - PAGE 420

APPROVAL OF CITY COUNCIL GOALS

Budget Director Ben Durant presented City Council with the following proposed goals:

1) Aggressively implement the Sustainable Economic Development Strategic Plan.

2) Adopt policies and ordinances that promote "Smart" growth:

   - Continue to review the UDO and make changes consistent with greater utilization of the property tax base and the concept of new urbanism.
   - Continue to implement the Housing Action Plan.

- Expand recycling program in accordance with staff proposals.
- Review and adopt recommendations of the Waste Reduction Plan.
- Maintain and expand Asheville's quality of life.
- Work with MSD and Regional Water Authority to promote cooperative growth policies.
- Increase diversity on boards and commissions and City work-force.
- Communicate effectively with the Citizens of Asheville.

3) Improve all transportation systems through innovative and cost effective planning.

- Adopt and implement the Transit Improvement Program.
- Approve an additional five dollar motor vehicle tax dedicated to the transit system capital improvement program.
- Improve traffic flow by updating the traffic signalization system.
- Continue to install traffic calming devices in residential areas.

4) Provide new resources to increase street and sidewalk maintenance and repair so as to address the needs identified in the ITRE study.

5) Improve the quality of life for Asheville residents through identification of resources to fund parks and recreation capital needs.

6) Develop a multi-year operational and capital improvement program designed to provide adequate capital funding for the Civic Center as an interim approach pending a decision about the future direction of the Civic Center.

Councilwoman Field said that she re-worded some of the proposed goals as follows:

1) Create opportunities for Sustainable Economic Development

- Aggressively implement the Sustainable Economic Development Strategic Plan.
- Develop an interim multi-year operational and capital improvement program designed to provide adequate funding for the Civic Center pending decisions on the long-term future of the Civic Center.
- Continue Downtown initiatives that support the strong private sector revitalization effort.

2) Adopt policies and ordinances that promote "Smart Growth"

- Define "Smart Growth" for the City of Asheville.
- Maintain and expand Asheville's quality of life.
- Review the UDO and make changes consistent with the concept of "new urbanism" and greater utilization of the property tax base.
- Implement the Housing Action Plan.
- Expand the recycling program in accordance with staff proposals.
- Review and adopt recommendations of the Waste Reduction Plan.
- Work with MSD and the Regional Water Authority to promote cooperative growth policies.

3) Improve all transportation systems through innovative and cost effective planning.

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- Adopt and implement the Transit Improvement Program.
- Approve an additional five-dollar motor vehicle tax dedicated to the transit system capital improvement program.
- Update the traffic signalization system to improve traffic flow.
- Install traffic calming devices in residential areas based on the Traffic Calming Policy.

4) Provide new resources to increase street and sidewalk maintenance and repair.

- Address the needs identified in the ITRE study.
- Implement the Pedestrian Thoroughfare Plan as funds become available.

5) Develop resources to fund parks and recreation needs that improve the quality of life for Asheville residents.

- Implement the Greenway Master Plan as funding becomes available.
- Construct phase I of Pritchard Park.
- Develop the Lake Craig property per the staff's recommendations.
- Build the Skateboard Park.

6) Work towards common sense governance.

- Communicate more effectively with the Citizens of Asheville.
- Work to find better and meaningful participation processes.
- Increase diversity in the City workforce and in City Council appointments.
- Resolve conflicts between new ordinances and existing local, state or federal regulations.
- Adopt new ordinances and resolutions only when there are resources to implement them.
- Examine and revise the "Conditions Use" process, implement the Planning Director's recommendations presented to us at the 2000 retreat.

With regard to the Housing Action Plan, Councilwoman Whitmire felt that if a plan is funded and implemented by the City, that the City should not rely on outside agencies to do the work for us.

Councilman Worley moved to adopt the revised goals as presented by Councilwoman Field. This motion was seconded by Councilwoman Field and carried unanimously.

Budget Director Ben Durant confirmed with Council that the adopted goals would provide direction to staff during the budget process. Council further indicated that staff would have the discretion to recommend alternative strategies to achieve those goals.

OTHER BUSINESS

School Buses

At the request of Councilwoman Whitmire, Interim Transit Services Director Bruce Black updated City Council on the school bus operation. She asked that she be kept abreast of what happens to the buses.

Civic Center

Councilmen Hay and Worley briefly updated City Council on the consultant's report with regard to the future of the Civic Center. Councilman Hay said that the Future of the Civic Center Task Force will be making a formal report to City Council in the near future.

Some discussion occurred about the location of an arena and the need for it to remain in downtown Asheville.

Councilman Peterson hoped that the City can look for some private funding for not only the convention center, but the arena as well.

Length of City Council Meetings

In response to the February 8, 2000, City Council meeting which was nine hours, City Council briefly discussed the length of City Council meetings. It was the consensus of City Council that since Mayor Sitnick was not present at this meeting that discussion would continue on this matter on the April 4, 2000, worksession.

Councilman Worley proposed a policy that when the City Council meeting reaches 10:00 p.m., that Council finish the item they are considering and continue the remainder of the meeting to perhaps the following Wednesday or Thursday. He also pointed out that if Council did not want to have a policy regarding the length of Council meetings, that at some appropriate time (around 10:00 p.m.) a motion could just be made to continue the meeting to a time, place and date specific.

Councilwoman Whitmire asked City staff to explore ways to improve their staff reports so information presented to them is concise.

Councilman Peterson suggested that conditional use permits be reviewed by the Planning & Zoning Commission prior to their being brought before City Council.

Councilwoman Field also suggested that if the formal meeting runs past 10:00 p.m. that perhaps the meeting can be continued to the following Tuesday. Assistant City Attorney Meldrum noted that if Council does intend to take formal action at a worksession, that a motion suspending the rules will be necessary.

City Council also instructed the City Manager to suggest ideas to streamline the Council meetings.

Council discussed tools for City staff to use when presenting their reports to Council, e.g., in-house training, review the video tape of the meeting.

Mayor's Absence

Vice-Mayor Cloninger said that he has been advised by the City Attorney's Office that there are some documents that need to be executed and he needs to be authorized to sign them in the Mayor's absence.

Councilman Worley moved to suspend the rules and take formal action at this meeting. This motion was seconded by Councilwoman Field and carried unanimously.

Due to Mayor Sitnick being out of town, Councilwoman Field moved to temporarily confer the powers of the Mayor to Vice-Mayor Cloninger. This motion was seconded by Councilman Worley and carried unanimously.

Boards & Commissions

It was the consensus of City Council to instruct the City Clerk to arrange interviews (1) with Scott Fowler, Tom Tarrant and Headlee Howard for vacancies for an alternate position on the Board of Adjustment; and (2) with Judith Hamill, Crystal Pace and Phyllis Stiles for a vacancy on the Greenway Commission.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Robert Jackson to serve on the Tree Commission, term to expire December 31, 2000, or until his successor has been appointed.

ADJOURNMENT:

Vice-Mayor Cloninger adjourned the meeting at 6:45 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - February 22, 2000 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor M. Charles Cloninger, Presiding; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Leni Sitnick

INVOCATION

Councilman Worley gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE WEEK OF FEBRUARY 20-26, 2000, AS "NATIONAL SURVEYOR'S WEEK"

Vice-Mayor Cloninger proclaimed February 20-26, 2000, as "National Surveyor's Week" in the City of Asheville. He presented the proclamation to Mr. Jeff Powell.

II. CONSENT:

It was the consensus of City Council to remove Consent Item G. from the Consent Agenda. The vacancy on the Tree Commission will be pooled in the next quarterly appointment process.

A. APPROVAL OF THE MINUTES OF THE CITY COUNCIL RETREAT HELD ON JANUARY 28, 2000, THE FORMAL MEETING HELD ON FEBRUARY 8, 2000, AND THE WORKSESSION HELD ON FEBRUARY 15, 2000

B. ORDINANCE NO. 2665 - BUDGET AMENDMENT FOR FACILITY MAINTENANCE

Summary: The consideration of a budget amendment, in the amount of $250,000, to appropriate additional funds for necessary repairs to various City facilities.

The Parks and Recreation Department has been working for several months on identifying urgent needs to existing City-owned facilities. In the current budget, $250,000 was appropriated for maintenance repair to over 100 facilities currently under City ownership. Due to a number of emergency situations which included preparation for Y2K emergency shelter service, new HVAC system for Senior Opportunity Center, renovations to the Murphy-Oakley Resource Center, and replacement of the sewer line in City Hall, the current budget has been depleted. The costs associated with those emergency situations total approximately $160,000.

In addition, staff has identified that Fire Stations #2 and #5 are in desperate need of roof replacement. Both facilities cannot continue to be patched and a complete roof replacement is necessary in order to continue occupancy of these facilities. In addition, the boiler at Murphy-Oakley Resource Center needs to be replaced. The estimated costs for the above work represents approximately $106,200. Staff is requesting a budget amendment of $250,000 in order to implement and supplement the above mentioned improvements.

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The Parks and Recreation Department is requesting City Council approval of the budget amendment in the amount of $250,000.

ORDINANCE BOOK NO. 18 - PAGE 135

C. RESOLUTION NO. 00-28 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL FOR BI-WEEKLY MIXED RECYCLING PICK-UP

Summary: The consideration of a resolution amending the Fees & Charges Manual and a resolution amending the recycling contract with Curbside Management in order to expand the curbside recycling program to include mixed paper.

At the City Council work session on February 1, 2000, staff was instructed to further investigate the option to add mixed paper to the curbside recycling program. Mixed paper includes items such as magazines, paperboard, catalogs, and junk mail. The benefits of this expansion include a significant increase in the overall amount of recyclables collected and an associated reduction in the amount of trash landfilled by the City. The inclusion of mixed paper is also the most frequently requested program change and will bring the City of Asheville's recycling program up to par with other large cities in North Carolina.

After negotiations with Curbside Management, the proposed per household monthly recycling fee charged to residents via their water bill would increase from $1.54 to $2.00. As part of the negotiated contract price ($2.00 per customer), staff has agreed to adjust the trash and recycling day of approximately 300 customers in order to equalize route size and maximize current and new equipment necessary for the implementation of this new service. In addition, the City would extend the contract with Curbside Management to July, 2005. The current contract is set to expire in January, 2002. Consistent with the initial delivery of bins to the residents, the City will pay the delivery costs of an additional bin to hold mixed paper. This cost is estimated to be approximately $10,000.

Staff recommends approval of the resolution to amend the Fees and Charges Manual to reflect the cost increase for added recycling services beginning July, 2000, and the resolution authorizing amendments to the curbside recycling contract with Curbside Management, Inc.

RESOLUTION BOOK NO. 25 - PAGE 421

D. RESOLUTION NO. 00-29 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS TO IMPLEMENT THE BI-WEEKLY MIXED RECYCLING PICK-UP

Summary: See Consent Agenda Item "E" above.

RESOLUTION BOOK NO. 25 - PAGE 422

E. MOTION SETTING A PUBLIC HEARING ON WEDNESDAY, MARCH 15, 2000, TO CONSIDER A CONDITIONAL USE PERMIT FOR THE MEADOWS, PHASE III, LOCATED OFF OF ASCENSION DRIVE IN WEST ASHEVILLE

F. MOTION APPROVING THE FESTIVALS AND SPECIAL EVENTS FOR 2000

Summary: The consideration of a motion to approve the Parks and Recreation Department's 2000 festival and special events schedule.

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In March of 1995, the Asheville City Council adopted a "Festivals Policy." A segment of that policy requires that City Council approve the list of festivals on an annual basis. Therefore the Parks and Recreation Department is recommending the approval of the following festivals and special events (Please note 3 new events applying for co-sponsorship this year include: Bike for the Bell, Come-Unity Asheville and Earth Day 2000 Festival): Special Olympics; Holiday Luncheon; Buncombe County Appreciation Day; Movies in the Park; Very Special Arts Festival; Youth 5K Run; Martin Luther King Peace Walk; Unity in Diversity; Earth Day 2000; Festival; Easter Eggstravaganza; Walk America; Come-Unity Asheville; Senior Games; Friends for Animals Anti-Cruelty Animal Walk; Bike for the Bell/Strive Not to Drive; Hershey's Track n' Field; Symphony on the Block; 3rd Annual "Biltmore Estate 15K Classic" Foot Race; Moonlight over Downtown; Sunday in the Park; RiverLink Triathlon; Honda Hoot Wall Street Policy; Honda Hoot Downtown After Five; Shindig on the Green; Downtown After Five; French Broad River Wildlife Art & Craft Show; Burton Street Gospel Jubilee; Goombay Festival; 4th Annual "Brew Grass Festival"; La Fiesta Latina; Asheville Greek Festival; Walk Into History (Urban Trail); Westfest; Asheville Merchants Corporation Christmas Parade; Light Up Your Holidays; and 2000 Arby's Reindeer Romp.

The Parks and Recreation Department recommends approval of the above festivals and special events for 2000.

G. RESOLUTION APPOINTING A MEMBER TO THE TREE COMMISSION

This item was removed from the consent agenda to be considered at a later date.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO CLOSING AN UNOPENED PORTION OF HERMAN AVENUE EXTENSION

RESOLUTION NO. 00-30 - RESOLUTION CLOSING AN UNOPENED PORTION OF HERMAN AVENUE EXTENSION

Vice-Mayor Cloninger opened the public hearing at 5:06 p.m.

Public Works Director Mark Combs said that a petition has been received from Winston W. Pulliam and Kasey Properties, LLC, which includes an affidavit from Winston W. Pulliam, owner of parcel 9655.17-11-6883 and 9655.17-12-6013 and Gerald J. Kasey, Manager of Kasey Properties, LLC, owner of parcel 9655.17-11-4814. The above mentioned property owners are requesting the permanent closure of the northern portion of a 20 foot right-of-way which is the unfinished portion of Herman Avenue Extension.

The City has no plans to utilize this unopened right-of-way. All utility companies will be contacted, the resolution of intent to close the unopened portion of Herman Avenue Extension was advertised in a local paper, and the location was posted with the resolution of intent to close.

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Public Works Department staff recommends the resolution of intent to permanently close the unopened portion of Herman Avenue Extension adjacent to PIN No. 9655.17-11-6883, 9655.17-12-6013, and 9655.17-11-4814 be adopted.

Vice-Mayor Cloninger closed the public hearing at 5:08 p.m.

Vice-Mayor Cloninger said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 00-30. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 423

B. PUBLIC HEARING RELATIVE TO THE VOLUNTARY ANNEXATION OF 65 AND 67 LONG SHOALS ROAD

ORDINANCE NO. 2666 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO 65 AND 67 LONG SHOALS ROAD

Vice-Mayor Cloninger asked to be excused from voting because the firm in which he is a partner in represents the petitioners. Therefore, Councilman Worley moved to excuse Vice-Mayor Cloninger due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously. Vice-Mayor Cloninger then turned the meeting over to Councilman Hay to preside during this item.

Councilman Hay opened the public hearing at 5:09 p.m.

Mr. Paul Benson, Urban Planner, said that this is the consideration of an ordinance extending the corporate limits to include two lots located south of Long Shoals Road and identified as 65 & 67 Long Shoals Road. This public hearing was legally advertised on February 11, 2000.

Floy E. Mattos owner of property located at 65 Long Shoals Road, and Sara B. Austin, owner of property located at 67 Long Shoals Road have submitted an annexation petition for these properties which are adjacent to each other. These properties front on, and lie to the south of Long Shoals Road. They are adjacent to the existing city limits which follows the centerline of Long Shoals Road.

The area proposed for annexation consists of a total of 2.13 acres and currently developed with two single-family residences.

City staff recommends City Council annex property located south of Long Shoals Road and identified as 65 & 67 Long Shoals Road.

When Councilman Hay wondered why the applicants are petitioning for voluntary annexation, Mr. Benson said that it was his understanding that the applicant applied for commercial rezoning from the Limestone Township zoning ordinance and were denied. The applicants had an indication that perhaps they could get a commercial rezoning through the City of Asheville. Mr. Benson said that no one in the City has promised the applicants that the property would be zoned commercial. He said that if the property is annexed, the next step is that the recommended zoning will go through the Planning & Zoning Commission with a recommendation to City Council.

Ms. Francis Briggs, member of the Limestone Community Council, said that they have not been petitioned for this property to be rezoned.

Mr. Doug Thigpen, attorney representing the petitioners, asked that City Council consider the voluntary annexation petition.

Councilman Hay closed the public hearing at 5:14 p.m.

Councilman Hay said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2666. This motion was seconded by Councilwoman Whitmire and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 137

C. PUBLIC HEARING RELATIVE TO THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED NORTH OF LONG SHOALS ROAD AND IDENTIFIED AS OAKBROOK, PHASE 1 AT BILTMORE PARK

ORDINANCE NO. 2667 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED NORTH OF LONG SHOALS ROAD AND IDENTIFIED AS OAKBROOK, PHASE 1 AT BILTMORE PARK

Vice-Mayor Cloninger opened the public hearing at 5:15 p.m.

Urban Planner Paul Benson said that this is consideration of an ordinance to extend the corporate limits of the City of Asheville to include property located north of Long Shoals Road and identified as Oakbrook, Phase 1 at Biltmore Park. This public hearing was legally advertised on February 11, 2000.

Biltmore Farms, Inc. has submitted an annexation petition for Oakbrook, Phase 1 at Biltmore Park. This area will be adjacent to the current city limits, being located east of and adjacent to Schenck Parkway which will be annexed effective 2/8/2000. Biltmore Park is generally located west of Overlook Road, east of Interstate 26 and north of Long Shoals Road. This annexation is pursuant to an agreement between Biltmore Farms, Inc. and the City of Asheville.

The area proposed for annexation consists of 12.8 acres and is platted for 22 single-family residential lots along with rights-of-way for White Ash Drive and Rosebay Lane. The area will be accessed by Schenck Parkway from Long Shoals Road.

Utilities and streets are being developed by Biltmore Farms Inc. City services will begin on the effective date of annexation. Biltmore Farms, Inc. has requested that the effective date of annexation be six months from the adoption of the ordinance, which would be August 22, 2000.

City staff recommends City Council adopt an ordinance extending the corporate limits to include the annexation of property located north of Long Shoals Road and identified as Oakbrook, Phase 1 at Biltmore Park.

Vice-Mayor Cloninger closed the public hearing at 5:17 p.m.

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Vice-Mayor Cloninger said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2667. This motion was seconded by Councilwoman Whitmire and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 139

D. PUBLIC HEARING TO ZONE INITIALLY VOLUNTARY ANNEXATION AREAS IN BILTMORE PARK AS FOLLOWS: THE BILTMORE PARK COMMON AREA AS RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AND SCHENCK PARKWAY, 100 TECHNOLOGY DRIVE AND THE VOLVO BUILDING PROPERTY AS CI COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 2668 - ORDINANCE TO ZONE INITIALLY VOLUNTARY ANNEXATION AREAS IN BILTMORE PARK AS FOLLOWS: THE BILTMORE PARK COMMON AREA AS RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AND SCHENCK PARKWAY, 100 TECHNOLOGY DRIVE AND THE VOLVO BUILDING PROPERTY AS CI COMMERCIAL INDUSTRIAL DISTRICT

Vice-Mayor Cloninger opened the public hearing at 5:18 p.m.

Ms. Stacy Merten, Urban Planner, said that this is the consideration of an ordinance to initially zone the Biltmore Park Common Area as RS-8 Residential Single-Family High Density District and Schenck Parkway, 100 Technology Drive and the Volvo Building property as CI Commercial Industrial District. This public hearing was legally advertised on February 11 and February 18, 2000.

The Planning and Zoning Commission, at their February 2, 2000, meeting, reviewed and recommended approval to zone the recently voluntarily annexed 37.3 acre tract comprised of the Volvo Building property, 100 Technology Drive and Schenck Parkway as CI Commercial Industrial District and the Biltmore Park Common Area as RS-8 Residential Single-Family High Density District. The Volvo site and 100 Technology Drive are currently developed with flexible industrial/office type facilities. Schenck Parkway has been constructed and will be taken over by the City as a public street. The portion identified as Common Area is intended as open space for the Biltmore Park community. The development on the tract conforms to the recommended zoning. There was no public comment received at the public hearing.

The Planning and Zoning Commission voted unanimously to recommend approval of the initial zoning as CI Commercial Industrial District and RS-8 Residential Single-Family High Density District. The Planning and Development staff recommends approval of the new zoning.

Vice-Mayor Cloninger closed the public hearing at 5:20 p.m.

Vice-Mayor Cloninger said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2668. This motion was seconded by Councilwoman Whitmire and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 141

E. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO INCLUDE A PARKS AND OPEN SPACE DISTRICT

Vice-Mayor Cloninger opened the public hearing at 5:21 p.m.

Urban Planner Carl Ownbey said that this is the consideration of an ordinance amendment to the Unified Development Ordinance (UDO) to establish a new zoning district entitled "Parks and Open Space." This public hearing was legally advertised on February 11 and 18, 2000.

After direction from City Council to establish a new parks and open space zoning district, the Planning and Development staff met several times with staff from the Parks and Recreation Department and the Public Works Department to compile guidelines and development standards for the new zoning district. In addition to City staff review, the draft of the ordinance was given to the Greenway Commission and RiverLink for their input.

During the Planning & Zoning Commission's public hearing, the Commissioners discussed at great length the need to add to the Parks and Open Space District a provision that only the property owner or their authorized agent be permitted to file a request to have their parcel of land rezoned.

The Commissioners raised issues concerning: the grandfathering of uses on the property, creating non-conforming uses, changing the economic benefit of the property, possible government "takings claim," and fairness to the property owner. The main concern seemed to be that any City Council could change the zoning on a parcel of land to this classification against the wishes of the property owner; thereby eliminating the economic benefit of the land to the landowner.

The Commissioners voted to recommend that this zoning district incorporate specific wording to permit only the property owner or their authorized agent to request the rezoning of a parcel of land to this particular zoning classification.

The Planning and Development staff presented this new zoning district to the Planning and Zoning Commission at their February 2, 2000, regular meeting. After presentation by staff and the lengthy discussion, the Commissioners voted 5 to 1 to recommend to City Council the adoption of this new zoning district with the additional wording regarding the initiation of an amendment.

However, the Planning staff feels strongly that the inclusion of this particular wording ("any proposed zoning map amendment must be initiated by the property owner or their authorized agent") to this one zoning district limits the ability of the City Council to apply the Parks and Open Space zoning classification at its discretion. Staff recommends the adoption of the ordinance without the additional wording.

Upon inquiry of Councilman Hay, Mr. Ownbey said that the minimum lot size standard for lots in this proposed district shall be 15 acres, however, City Council has the discretion to consider smaller lots.

Upon inquiry of Councilman Peterson, Mr. Ownbey said that accessory structures or accessory uses have to relate to the recreational activity that would be permitted in that zoning district.

Entered into the record was a statement via phone call from Mayor Sitnick to City Manager Westbrook on February 22, 2000: "Having lobbied for this for a number of years, I am 100% supportive of a Parks and Open Space District inclusion in the Unified Development Ordinance and would like to thank staff for bringing it forward."

Mr. Karl Koon and Mr. Jan Davis, members of the Planning and Zoning Commission, explained the Commissioner's reasons for recommending that only the property owner or their authorized agent be permitted to request the rezoning of a parcel of land to this particular zoning classification.

Upon inquiry of Councilwoman Whitmire, City Attorney Oast said that parks are permitted uses in every zoning district in the UDO, except Industrial and Highway Business. In those two districts, they are permitted, however, they are limited to passive parks or arboretums.

Upon inquiry of Mr. Don Yelton, City Attorney Oast said that you cannot have an accessory structure that is not tied to a principle use.

Mr. Mel Thomason hoped that City Council would not consider changing the zoning on a parcel of land to this classification against the wishes of the property owner. He said that when park land is contiguous to residential land, there are certain conflicts. One form of conflict has to do with the lights. He understands that the lights in a parking area are required to be shielded, but there is not a similar requirement for lighting which illuminates the activity area of the park. He urged Council to consider some type of shielding of the lights on the playing field. He also requested that the outdoor loudspeaker system be turned off at 10:00 p.m. (instead of 11:00 p.m.)

Parks and Recreation Director Irby Brinson said that there may be an occasion where because of the topography the lights on the playing field may not be able to be shielded. He had no problem with the request that the outdoor loudspeaker system being turned off at 10:00 p.m.

Vice-Mayor Cloninger closed the public hearing at 5:38 p.m.

Councilman Peterson was concerned that the City might use a portion of park property (in particular the Azalea Road project) for something that is not compatible with the residential area. Mr. Brinson responded that if the City proceeded with the Azalea Road project, he would prefer that a storage building be built on the property for storage of equipment because of the cost of transferring it back and forth. He felt that a maintenance facility would be an accessory structure.

Councilman Peterson also questioned the maximum height of structures in the proposed district being 80 feet. Mr. Brinson said that if Council is looking at eventually building a new arena on park or public property, to reduce the height might be a restriction. City Attorney Oast also noted that since these concerns are being addressed about City-owned property, Council can control that with respect to each specific park.

Councilman Worley spoke in opposition to adoption of the ordinance. He felt nothing is gained by adding this district to the UDO. We currently permit parks and open space in every zoning district in the City, except two and in those two, only passive parks and arboretums are allowed. He felt it would be better to impose upon parks the same standards in the zoning districts that we locate them in. We do that by keeping what we have right now and not adding this new district. By creating this district, he felt we are actually taking a step backwards from mixed uses. By including the parks in the existing districts as we do now, that furthers the mixed use goal. He felt that the concept is a good idea, but it really only adds one more ordinance that we really don't need. He certain wants to preserve parks, open space and promote recreation, and certainly doesn't want to see our parks and greenway spaces developed or sold, but adoption of this ordinance does not make good commons sense.

Upon inquiry of Councilwoman Field, Senior Planner Gerald Green said that in all other zoning districts, the ability to initiate a rezoning is given to the property owners, the property owner's representative, the Planning & Zoning Commission or the City Council. This would be the only district in which the City Council would not have the authority to initiate the rezoning of a piece of property.

In response to Councilwoman Field, Mr. Green said that if City Council did want to initiate the rezoning of someone's property, he felt that the City Council would be very sensitive of the property owner's rights and that the property owner would have several avenues of opposing the rezoning of their property to Parks and Open Space.

Vice-Mayor Cloninger very much hoped that Council would adopt the proposed ordinance with the recommendation from the Planning & Zoning Commission and an amendment to the ordinance that the outdoor loud speakers be turned off at 10:00 p.m. He felt the Planning & Zoning Commission's recommendation more accurately reflects what Mayor Sitnick and he proposed to begin with. He doesn't think it would be fair to include in the ordinance a provision that private property could be involuntarily zoned as a park. He did think we should adopt the ordinance as to City-owned property and private property where the property owner voluntarily requests the rezoning. He felt it was very important that we send a message to the community that we have a deep commitment to preserve dwindling open spaces within our City limits. He also felt adoption of this ordinance will send a message to neighborhoods that we are serious about not using our City-owned property in a way that is inconsistent with the surrounding neighborhood. While designating City-owned property as park space will not preclude the City Councils in the future from changing the zoning designation and making some other uses of it, it might make it a lot harder for the City to change that use. In addition to designating our City-owned public spaces as parks, he hoped City Council would take the next step and also grant conservation easements as to those properties so that it really will preclude the City from making any other use of the property.

Upon inquiry of Councilman Peterson, Mr. Ownbey said that if a piece of City-owned property was zoned Parks and Open Space, the standards with regard to a protest petition would still apply.

Vice-Mayor Cloninger said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Peterson moved to amend the UDO to include a Parks and Open Space District as recommended by the Planning & Zoning Commission and with an amendment to the ordinance that the outdoor loud speakers be turned off at 10:00 p.m. This motion was seconded by Councilman Hay.

Councilwoman Field said that with the Planning & Zoning Commission recommendation she would have to vote against the ordinance because she believes that City staff is trying to get some consistency through all of their zoning classifications. During the entire UDO process, we were trying to have less, rather than more, zoning classifications and she felt we could fairly quickly do some conservation easements on the City's property that we wish to remain parks. She felt we should definitely move on the conservation easements, but she was not comfortable voting for the ordinance in its present form.

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Councilwoman Whitmire felt it is clear in our current process that if an owner wants to get their property rezoned they can petition the City to get that to happen. I think that if an owner wants to designate their property as Parks and Open Space, it would be a pleasurable thing for Council to do that. We've heard from staff in the past couple of months about decreasing the number of zoning districts and to add this new district is not consistent with that. We are looking at ways to streamline processes and make it easier for people to do business with the City and for Council to increase the number of districts, the perception might be that it will be harder to do business in the City. She did not think the district is necessary or essential. If this ordinance does not pass, she hoped that the outdoor loud speakers in parks will be turned off at 10:00 p.m.

The motion made by Councilman Peterson and seconded by Councilman Hay failed on a 3-3 vote, with Vice-Mayor Cloninger and Councilmen Hay and Peterson voting "yes" and Councilwomen Field and Whitmire and Councilman Worley voting "no".

F. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO INCLUDE CONDITIONAL USE ZONING

ORDINANCE NO. 2669 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO INCLUDE CONDITIONAL USE ZONING

Vice-Mayor Cloninger opened the public hearing at 6:04 p.m.

Senior Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) which would establish a Conditional Use District. This public hearing was legally advertised on February 11 and 18, 2000.

The Planning and Zoning Commission, at their February 2, 2000, meeting, reviewed and recommended approval of an amendment to the UDO which would establish Section 7-9-9 to create a Conditional Use District. This district will provide a level of flexibility in the rezoning process which is not available with the existing zoning districts. The new district could be applied anywhere within the City and its jurisdiction. Unlike conventional rezoning, a rezoning to a Conditional Use District would permit review and approval of detailed site plans, building designs and elevations, and floor plans as well as identification of specific uses. Conditions could be attached to the rezoning to further mitigate impacts on surrounding properties. Upon application by the property owner or authorized representative, the Conditional Use District zoning request would be subject to a review process involving the following steps:

- Review and recommendation by the Technical Review Committee (with public notification);
- Review and recommendation by the Planning and Zoning Commission (public hearing); and
- Review and action by City Council (public hearing).

In acting upon the Conditional Use District zoning request, the City Council would be charged with changing the zoning of the site to a conditional use zoning and issuing a Conditional Use Permit for the proposed development. The City Council may attach conditions to ensure that the proposed development does not adversely impact the surrounding properties. Any violation of the Conditional Use Permit or other failure to comply with the conditions imposed would be treated as a violation of the City's Zoning Ordinance.

The Planning and Zoning Commission voted 6 to 0 to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the amendment.

Mr. Green suggested two changes to the ordinance which Council has before them: (1) Amend Section 7-9-9 (b) 10 to read 'If, subsequent to the development of the use for which the Conditional Use Permit was approved, the use is abandoned for more than one hundred eighty days (180) days, the provisions of Section 7-17 of this Chapter shall apply." and (2) Amend Section 7-9-9 (c) 4 to read "Upon receipt of the recommendations from the Planning and Zoning Commission, the City Council shall hold a public hearing on the requests for Conditional Use District zoning and a public hearing to consider the issuance of a Conditional Use Permit. The public hearing to consider the request for Conditional Use District zoning shall be held in accordance with the provisions set forth in Section 7-5-20 of this chapter. The public hearing to consider the issuance of the Conditional Use Permit for the Conditional Use District shall be held in accordance with the provisions set forth in Sections 7-5-5 (f) and 7-5-20 of this chapter. The City Council shall take separate actions on consideration of the zoning request and the Conditional use Permit request. Consideration of the Conditional use District zoning request shall be handled in accordance with procedures set forth in Section 7-7-5 of this chapter. The issuance of the Conditional Use Permit for the Conditional Use District shall be considered in accordance with the procedures set forth in this subsection."

Upon inquiry of Councilwoman Field, City Attorney Oast said that this is not a conditional use overlay because in the typical overlay scheme, you retain the underlying zoning classification - with the conditional use zoning, the zoning classification itself changes.

With regard to a question from Councilman Worley regarding spot zoning, City Attorney Oast said that the conditional use zoning concept has created some problems for the courts when it has been subjected to a spot zoning challenge. He thought the general rule is, yes, spot zoning prohibition does apply, but because of the nature of conditional use zoning, the standards are somewhat less stringent. In fact, some people have referred to conditional use zoning as legal spot zoning.

Vice-Mayor Cloninger hoped that Council would adopt this ordinance because it is a great tool what will allow us to encourage mixed use in a way that will be compatible with the surrounding area.

Vice-Mayor Cloninger closed the public hearing at 6:24 p.m.

Vice-Mayor Cloninger said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2669, with the two amendments outlined by Mr. Green above. This motion was seconded by Councilwoman Whitmire and carried on a 5-1 vote, with Councilman Peterson voting "no".

ORDINANCE BOOK NO. 18 - PAGE 143

IV. UNFINISHED BUSINESS:

A. CONSIDERATION OF THE INITIAL ZONING OF THE ROYAL PINES POOL AND PARK PROPERTIES LOCATED ON SWEETEN CREEK ROAD AND PEACH TREE STREET

ORDINANCE NO. 2670 - ORDINANCE AMENDING ZONING FOR PROPERTY IDENTIFIED AS THE ROYAL PINES POOL AND PARK PROPERTIES LOCATED ON SWEETEN CREEK ROAD AND PEACH TREE STREET TO BE ZONED RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

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The Asheville City Council, at their October 27, 1999, meeting, reviewed the initial zoning consideration for the Royal Pines Pool and Park Properties located on Sweeten Creek Road and Peach Tree Street to RS-4 Residential Single-Family Medium Density District. Four properties with a total area of 5.5 acres were included as part of the zoning proposal. This was a private pool and park serving the local community and will now be managed by the Parks and Recreation Department of the City of Asheville. There are currently no definitive plans for the property but it is anticipated that it will continue as a recreational use. The Planning & Zoning Commission voted unanimously and City staff recommended the property be zoned as RS-4, as there was no specific zoning district for Parks and Open Space.

Several community residents expressed their concern that the residential zoning meant that the parcel could become a housing development. Consequently, City Council instructed staff to establish an open space zoning classification to be included in the Unified Development Ordinance (UDO). Staff has completed the preparation of a wording amendment to the UDO that will add a Parks and Open Space classification. The new classification was considered by City Council on February 22, 2000, and the motion to include the new classification failed.

Vice-Mayor Cloninger said that this public hearing was opened and closed on October 27, 1999, and continued until this date to allow time for the open space zoning classification to be adopted into the Unified Development Ordinance (UDO). However, because the UDO was not amended to include a Parks and Open Space District, he suggested City Council zone the property RS-4 Residential Single-Family Medium Density District and direct staff to begin exploring the feasibility of granting conservation easements on our City-owned park property. He also suggested staff explore the possibility of whether it might be feasible for the City to sell those conservation easements to private parties for tax purposes. He explained the process the Grove Arcade used. If this is feasible, we can still protect our property forever by way of a conservation easement, and at the same time create some revenue by selling the deductions that the City would otherwise have to private parties.

City Attorney Oast said that City Council can rezone the property to RS-4. He said that he would be glad to initiate an investigation to see whether the City can sell the tax credits to private entities for revenue purposes.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved (1) for the adoption of Ordinance No. 2670 to rezone the property to RS-4; (2) to direct staff to begin exploring the feasibility of granting conservation easements on all of our City-owned property; and (3) to direct staff to explore the possibility of selling any potential tax credits to private parties. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 148

B. ORDINANCE NO. 2671 - ORDINANCE TO APPROVE A CONDITIONAL USE PERMIT FOR HOME DEPOT LOCATED AT THE INTERSECTION OF ACTON CIRCLE AND MONTE VISTA ROAD

Vice-Mayor Cloninger asked to be excused from voting because the firm in which he is a partner in represents the petitioners. Therefore, Councilman Hay moved to excuse Vice-Mayor Cloninger due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously. Vice-Mayor Cloninger then turned the meeting over to Councilman Hay to preside during this item.

Urban Planner Dan Baechtold said that the public hearing on this matter was held on February 8, 2000. He said this is the consideration of an ordinance adopting an order making findings and conclusions, and establishing conditions, for a Conditional Use Permit for The Home Depot.

On February 8, 2000, the City Council held a public hearing and voted 5 to 1 (Vice Mayor Cloninger having been excused from voting) to issue a Conditional Use Permit for the Level III project of The Home Depot. The City Attorney's Office was directed to prepare an order granting the Conditional Use Permit. He reviewed the draft ordinance and order containing the findings and conclusions and granting the issuance of the permit . The order is in draft form and may be modified by the City Council prior to voting on it.

Once the order issuing the Conditional Use Permit is in satisfactory form, the City Council should vote to adopt it.

Mr. Baechtold explained that staff is recommending one change to Condition No. 3. It currently reads that "In addition to the proposed sidewalk shown on the site plans, the applicant shall construct a sidewalk built to City standards along the widened portion of Acton Circle." He said that with the engineering that is being done out there and the amount of right-of-way that exists there, it may not be physically possible to get a sidewalk on both sides. That is still the City's preference to have a sidewalk on both sides, and there is an existing sidewalk on the McDonald's side that will remain. There are right-of-way constraints and also a creek which has some physical constraints and so staff would like to add the flexibility to have the City Engineer work with the developer's engineer to provide the best solution for pedestrian circulation there. He suggested the following amendment to Condition No. 3: "In addition to the proposed sidewalk shown on the site plans, the widened portion of Acton Circle shall provide facilities to accommodate pedestrian movements from US 19-23 to the proposed Home Depot. The design and location of these facilities shall be determined by the City Engineer."

Councilman Worley also suggested the following non-substantive wording change in Finding No. 14: "The applicant provided the sworn testimony of real estate agent, Chuck Tessier, of Tessier Associates, that property values of adjacent property would increase in value as commercial property and that with respect to residential areas located further away from the Project would have less impact on their property values."

Councilman Hay said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2671, with the two amendments outlined above by Mr. Baechtold and Councilman Worley. This motion was seconded by Councilwoman Field and carried on a 4-1 vote with Councilman Peterson voting "no".

ORDINANCE BOOK NO. 18 - PAGE 150

C. ORDINANCE NO. 2672 - ORDINANCE TO APPROVE A CONDITIONAL USE PERMIT FOR NETTLEWOOD PROFESSIONAL PARK LOCATED ON HENDERSONVILLE ROAD IN THE VICINITY OF WAL-MART

Urban Planner Stacy Merten said that the public hearing on this matter was held on February 8, 2000. He said this is the consideration of an ordinance adopting an order making findings and conclusions, and establishing conditions, for a Conditional Use Permit for Nettlewood Professional Park.

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On February 8, 2000, the City Council held a public hearing and voted 5 to 2 to issue a Conditional Use Permit for the Level III project of Nettlewood Professional Park. The City Attorney's Office was directed to prepare an order granting the Conditional Use Permit. He reviewed the draft ordinance and order containing the findings and conclusions and granting the issuance of the permit. The order is in draft form and may be modified by the City Council prior to voting on it.

Once the order issuing the Conditional Use Permit is in satisfactory form, the City Council should vote to adopt it.

Mr. Tom Pugh, representing Deerwood Homeowners Association, wanted to make sure that the Order reflects that there are four entrances available, even without the Deerwood entrance.

Planning & Development Director Scott Shuford said that the developer's site plan shows three accesses, other than the Deerwood access. This is what is in the draft Order. He does not show access off of Peach Tree and he believes Mr. Pugh's point is that that is a potential access.

Ms. Merten said that the developer at one time showed an access into one parking lot from Peach Tree, but on the revised plans that were reviewed at the public hearing, he did not have that access.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2672. This motion was seconded by Councilman Worley.

Councilman Peterson confirmed that if the developer is unable to access at the Deerwood entrance he would not have to begin the process all over again. Ms. Merten said that the developer would have to go back before the Technical Review Committee, but it would not come back before City Council unless there were substantial changes.

The motion made by Councilwoman Field and seconded by Councilman Worley carried on a 5-1 vote, with Councilman Peterson voting "no".

ORDINANCE BOOK NO. 18 - PAGE 158

D. RESOLUTION NO. 00-31 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ACCESS CHANNEL COMMISSION

Vice-Mayor Hay said that this is the consideration of appointing a member to the Public Access Channel Commission.

On September 14, 1999, Ordinance No. 2612 established a Public Access Channel Commission to consist of five members appointed by City Council. On February 8, 2000, Ordinance No. 2661 expanded the membership of the Commission to nine members and amend the terms from four year staggered terms to three year staggered terms.

On January 25, 2000, City Council interviewed Raphael Peter, Jim Torpey, Wally Bowen, Andrew Reed, Lisa Michie, Orpheus Allison, Mark Rosenstein, John Hayes, Beth Lazer, Rebecca Em Campbell, Allan Goodstadt, Marianna Bailey, Clifford Davids, Mark Goldstein and Mary Ellen Brown.

On February 15, 2000, City Council (1) appointed Jim Torpey, John Hayes, Mary Ellen Brown, Beth Lazer and Mark Goldstein to each serve a three year term respectively, terms beginning on March 1, 2000, and expiring on March 1, 2003, or until their successors have been appointed; and (2) appointed Mark Rosenstein, Raphael Peter and Andrew Reed to each serve a two year term respectively, terms beginning on March 1, 2000, and expiring on March 1, 2002, or until their successors have been appointed.

Because of a three way tie vote amongst Marianna Bailey, Orpheus Allison and Allan Goodstadt, City Council instructed the City Clerk to place the remaining vacant seat on the February 22, 2000, City Council agenda for consideration.

Marianna Bailey received 4 votes; Allen Goodstadt received 2 votes; and Orpheus Allison received 0 votes. Therefore, Marianna Bailey was appointed as a member of the Public Access Channel to serve a two year term, term to begin March 1, 2000, and expire on March 1, 2002, or until her successor has been appointed.

RESOLUTION BOOK NO. 25 - PAGE 424

V. NEW BUSINESS:

A. RESOLUTION NO. 00-32- RESOLUTION STATING THE INTENT OF THE CITY OF ASHEVILLE TO CONSIDER ANNEXATION OF THE AREA KNOWN AS CHUNNS COVE ROAD/PINEY MOUNTAIN ROAD AREA (ALSO KNOWN AS AREA 2001-A) AND DESCRIBED HEREIN AND FIXING THE DATE OF THE PUBLIC INFORMATIONAL MEETING AND THE PUBLIC HEARING ON THE QUESTION OF ANNEXATION

B. RESOLUTION NO. 00-33 - RESOLUTION STATING THE INTENT OF THE CITY OF ASHEVILLE TO CONSIDER ANNEXATION OF THE AREA LOCATED NORTH OF U.S. HIGHWAY 70 BETWEEN RICEVILLE ROAD AND LOWER GRASSY BRANCH ROAD (ALSO KNOWN AS AREA 2001-B) AND DESCRIBED HEREIN AND FIXING THE DATE OF THE PUBLIC INFORMATIONAL MEETING AND THE PUBLIC HEARING ON THE QUESTION OF ANNEXATION

C. RESOLUTION NO. 00-34 - RESOLUTION STATING THE INTENT OF THE CITY OF ASHEVILLE TO CONSIDER ANNEXATION OF THE AREA LOCATED NORTH AND SOUTH OF LONG SHOALS ROAD BETWEEN I-26 AND HENDERSONVILLE ROAD (ALSO KNOWN AS AREA 2001-C) AND DESCRIBED HEREIN AND FIXING THE DATE OF THE PUBLIC INFORMATIONAL MEETING AND THE PUBLIC HEARING ON THE QUESTION OF ANNEXATION

D. RESOLUTION NO. 00-35 - RESOLUTION STATING THE INTENT OF THE CITY OF ASHEVILLE TO CONSIDER ANNEXATION OF THE AREA KNOWN AS RIDGEFIELD BOULEVARD AND OAK TERRACE AREA (ALSO KNOWN AS AREA 2001-D) AND DESCRIBED HEREIN AND FIXING THE DATE OF THE PUBLIC INFORMATIONAL MEETING AND THE PUBLIC HEARING ON THE QUESTION OF ANNEXATION

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E. **RESOLUTION NO. 00-36- RESOLUTION STATING THE INTENT OF THE CITY OF ASHEVILLE TO CONSIDER ANNEXATION OF THE AREA KNOWN AS NEW LEICESTER HIGHWAY AREA (ALSO KNOWN AS AREA 2001-E) AND DESCRIBED HEREIN AND FIXING THE DATE OF THE PUBLIC INFORMATIONAL MEETING AND THE PUBLIC HEARING ON THE QUESTION OF ANNEXATION**

F. **RESOLUTION NO. 00-37 - RESOLUTION STATING THE INTENT OF THE CITY OF ASHEVILLE TO CONSIDER ANNEXATION OF THE AREA KNOWN AS THE ROCKY RIDGE ROAD/WEDGEFIELD DRIVE AREA (ALSO KNOWN AS AREA 2001-F) AND DESCRIBED HEREIN AND FIXING THE DATE OF THE PUBLIC INFORMATIONAL MEETING AND THE PUBLIC HEARING ON THE QUESTION OF ANNEXATION**

Planning & Development Director Scott Shuford said that this is the consideration of adoption of resolutions of intent so as to begin the process to annex six areas which are first priority areas.

In 1998 the City entered into an agreement with Benchmark, Inc., to develop a Five Year Annexation Plan. The first phase of this project consisted of the consultant identifying first priority areas and Council authorized staff to proceed with formulating plans to annex those areas. Six areas have been identified as qualifying for annexation under Part 3, Article 4A, Chapter 160-A of the North Carolina General Statutes. Adoption of the resolutions of intent sets forth a process that will result in the annexation of the six areas effective June 30, 2001. Steps in the process are proposed according to the following schedule:

Adoption of the Resolutions of Intent	February 22, 2000
Approval of Plans of Services	March 15, 2000
Public Information Meeting	May 2, 2000
Public Hearing(s)	May 23, 2000
Adoption of Annexation Ordinances	June 13, 2000
Effective date of Annexations	June 30, 2001

Staff recommends that the resolutions of intent be adopted by City Council to set in motion the process of consideration of annexation of the six areas outlined on the maps.

City Attorney Oast suggested that the consultant give the presentation on the overall annexation process. He then suggested that City Council consider each resolution separately with the consultant describing the characteristics of the area, City Council taking public comment and then consider the resolution of intent.

Mr. Richard Flowe, President of Benchmark Inc., passed out a locator map of the City of Asheville and reviewed with Council the procedural and technical phases of the annexation process. He said that the resolutions of intent do three things (1) identify the area proposed to be annexed; (2) sets a public informational meeting on May 2, 2000, and City Council public hearing on May 23, 2000; and (3) starts the procedural clock ticking. He said the Plan for Services consideration on March 15, 2000, and the public information meeting on May 2, 2000, will be a combination of all six areas but reviewed separately in detail. The public hearing on May 23, 2000, and the adoption of the annexation ordinances on June 13, 2000, will be separate actions.

City-wide data includes the following:

Current Land Area	39.41 square miles (primary)	1.73 square miles (satellite)
Proposed Annexation Area	3.08 square miles (primary)	
Satellites Made Contiguous	1.21 square miles	
Remaining Satellite Area		0.52 square miles (satellite)
Proposed Land Area	43.70 square miles (primary)	0.52 square miles (satellite)
Current Population	68,294 persons	(31,115 dwellings)
Estimated Annexation Population	1,950	(819 dwellings)
Proposed Estimated Population	70,244	(31,934 dwellings)

Vice-Mayor Cloninger said that members of Council have been furnished with copies of the resolutions and they would not be read.

Mr. Flowe then reviewed Area 2001-A (Chunns Cove Road/Piney Mountain Road area). Area A is just off I-240 at Chunns Cove Road. The area is 55.85 acres, 0.087 square miles, no population, no dwellings, 2 establishments, 0.10 in street mileage and the assessed value is $1,467,900.

Councilman Worley moved to adopt Resolution No. 00-32, the resolution of intent to consider annexation of the area known as Chunns Cove Road/Piney Mountain Road area, also known as Area 2001-A, and fixing the date of the public information meeting for May 2, 2000, and the City Council public hearing on the question of annexation on May 23, 2000. This motion was seconded by Councilwoman Field and carried unanimously.

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Mr. Flowe then reviewed Area 2001-B (Arnold Road/Ranger Drive area). Area B is located north of U.S. Highway 70 between Riceville Road and Lower Grassy Branch Road. It includes the VA Hospital and some other properties in that area. The area is 195.15 acres, 0.305 square miles, 689 population, 242 dwellings, 6 establishments, 1.60 in street mileage and assessed value is $11,977,400.

Councilwoman Field moved to adopt Resolution No. 00-33, the resolution of intent to consider annexation of the area located north of U.S. Highway 70 between Riceville Road and Lower Grassy Branch Road, also known as Area 2001-B, and fixing the date of the public information meeting for May 2, 2000, and the City Council public hearing on the question of annexation on May 23, 2000. This motion was seconded by Councilman Hay and carried unanimously.

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Councilman Worley asked if he had a conflict of interest since he has ownership of property in this area. City Attorney Oast said that he did not see a conflict of interest for Councilman Worley.

Mr. Flowe then reviewed Area 2001-C (Lake Julian area). Area C is on the southernmost end of the City of Asheville. It is located north and south of Long Shoals Road between I-26 and Hendersonville Road. The area is 1,500.14 acres, 2.344 square miles, 1,245 population, 571 dwellings, 31 establishments, 4.61 in street mileage and assessed value is $142,072,700.

Councilman Hay moved to adopt Resolution No. 00-34, the resolution of intent to consider annexation of the area located north and south of Long Shoals Road between I-26 and Hendersonville Road, also known as Area 2001-C, and fixing the date of the public information meeting for May 2, 2000, and the City Council public hearing on the question of annexation on May 23, 2000. This motion was seconded by Councilwoman Field and carried unanimously.

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Mr. Flowe then reviewed Area 2001-D (Ridgefield Boulevard area). Area D is located off of Brevard Road west of I-26 near the intersection of Sardis Road. The area is 205.65 acres, 0.321 square miles, 13 population, 5 dwellings, 18 establishments, 1.87 in street mileage and assessed value is $39,729,100.

Councilwoman Field moved to adopt Resolution No. 00-35, the resolution of intent to consider annexation of the area known as Ridgefield Boulevard and Oak Terrace area, also known as Area 2001-D, and fixing the date of the public information meeting for May 2, 2000, and the City Council public hearing on the question of annexation on May 23, 2000. This motion was seconded by Councilwoman Whitmire and carried unanimously.

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Mr. Flowe then reviewed Area 2001-E (New Leicester Highway area). Area E is located off of New Leicester Highway. The area is 9.03 acres, 0.014 square miles, 3 population, 1 dwellings, 3 establishments, no street mileage and assessed value is $932,300.

Councilman Peterson moved to adopt Resolution No. 00-36, the resolution of intent to consider annexation of the area known as New Leicester Highway, also known as Area 2001-E, and fixing the date of the public information meeting for May 2, 2000, and the City Council public hearing on the question of annexation on May 23, 2000. This motion was seconded by Councilwoman Worley and carried unanimously.

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Mr. Flowe then reviewed Area 2001-F (Wedgefield Road area). Area F is located in the Brevard Road and I-26 area. The area is 7.08 acres, 0.011 square miles, no population, no dwellings, 3 establishments, 0.12 in street mileage and assessed value is $6,846,900.

Councilman Worley moved to adopt Resolution No. 00-37, the resolution of intent to consider annexation of the area known as the Rocky Ridge Road/Wedgefield Drive area, also known as Area 2001-F, and fixing the date of the public information meeting for May 2, 2000, and the City Council public hearing on the question of annexation on May 23, 2000. This motion was seconded by Councilwoman Field and carried unanimously.

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B. RESOLUTION NO. 00-38 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH URBAN DESIGN ASSOCIATES FOR THE PACK SQUARE CONCEPTUAL PLAN

ORDINANCE NO. 2673 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR THE PACK SQUARE CONCEPTUAL PLAN

Mr. Mike Matteson, Director of City Development, said that this is the consideration of a resolution to approve the execution of a contract with Urban Design Associates for the Pack Square conceptual design and associated budget amendment.

The Pack Square Task Force sent requests for qualifications (RFQs) to a number of design firms for the Pack Square Renaissance Project. The RFQ packets were sent to the following firms:

Urban Design Associates (Pittsburgh)
Olin Partnership (Philadelphia)
Design Workshop, Inc. (Aspen)
Cooper, Robertson & Partner (New York)
Streetworks (Alexandria)
Wallace, Roberts & Todd (Philadelphia)
Duany, Plater-Zyberk & Co. (Charlotte)

The list of firms selected to receive the RFQ was established based upon recommendations from members of the Design Subcommittee of the Pack Square Task Force (which includes several architects). It was felt that there are a limited number of firms nationally with the ability to provide this type of design assistance.

Based upon their qualifications, past projects and other criteria, the Pack Square Task Force, as well as the Downtown Commission, have selected Urban Design Associates to work with the Task Force and community to develop this conceptual design for Pack Square/City-County Plaza.

The Task Force is in the process of raising $40,000 for this design process, which will include significant public participation in the form of a public forum on the design of public spaces as well as two public design workshops. Fifteen thousand dollars has been provided from the public sector ($7,500 from both the City and the County). The remaining $25,000 will come from private sector fundraising. The following is a list of contributors as of February 18, 2000:

City of Asheville
Buncombe County
John Cram
Julian Price
Jim Samsel
Asheville Downtown Association
Biltmore Company
PBL Investments, LLC
Mast General Store
Carol L. King & Associates
Market Connections
Russ Martin
Tower Associates
Coach USA
Pat McGuire
Sluder Furniture Co.

A special account has been established within the Planning and Development Department budget for this project. In addition to approval of the contract execution, Council will be asked to approve a budget amendment which is necessary in order to receive and disperse funds through this account.

City staff recommends City Council adopt a resolution to approve the execution of a contract for the Pack Square conceptual design and associated budget amendment.

Upon inquiry of Councilman Hay, Mr. Matteson explained some past projects that Urban Design Associates have designed.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the resolution and ordinance and they will not be read.

Councilwoman Field moved for the adoption of Resolution No 00-38. This motion was seconded by Councilman Worley and carried unanimously.

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Councilman Worley moved for the adoption of Ordinance No. 2673. This motion was seconded by Councilwoman Field and carried unanimously.

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C. RESOLUTION NO. 00-39 - RESOLUTION ADOPTING THE NEIGHBORHOOD TRAFFIC CALMING POLICY

Mr. Michael Moule, Traffic Engineer, said that this is the consideration of a resolution adopting the Traffic Calming Policy for the City of Asheville.

Citizens have previously expressed concerns about speeding traffic in Asheville neighborhoods. The City Council has shown their commitment to traffic calming by including a budget for traffic calming measures in the 1999-2000 budget. With input from other City departments and the general public, the Engineering Department has drafted a Neighborhood Traffic Calming Policy. This policy is intended to guide city staff and inform residents about the processes and procedures for implementing traffic calming on residential streets. Under the policy, the Traffic Engineering Division will work with residents to identify traffic problems in their neighborhoods and seek appropriate solutions.

Staff recommends that City Council adopt the Neighborhood Traffic Calming Policy in order to provide the methodology for implementing traffic calming on residential streets in the City.

Mr. Moule reviewed some minor changes to the policy since the worksession on February 1, 2000. With regard to thresholds, he did more research based on comments at the worksession and also from public comment. In the proposed plan, the current threshold to start the project development is 50% and the current threshold for the final approval of the plan is 70%. After research, he suggested lowering the threshold to start the project development to 40% and lowering the threshold for the final approval of the plan threshold to 60%.

Councilwoman Field suggested that we start with the thresholds that Mr. Moule suggests and see how it works. She felt that the community working within the community is a good idea.

Upon inquiry of Councilwoman Field, Mr. Moule said about 3-4 traffic calming projects can be completed in one year.

Councilman Peterson presented City Council with letters of support from the Kenilworth Residents Association, Mr. Terry Albrecht, Mr. Robert Maddix, Lottie and Luke Carpenter, and Ms. Betty Jean Martin. The Kenilworth Residents Association also requested City Council to increase the funding for the traffic calming projects in the amount of $150,000 in the upcoming budget.

Councilman Peterson explained some suggested amendments to the policy. He suggested that in the project initiation section, the following additional sentence in the first paragraph be added: "If City staff determines that an area under consideration has a high proportion of residents who are either low-income, elderly, or non-English speaking, or if there is not an existing neighborhood association, City staff will provide additional assistance to distribute and gather the petitions." He suggested the second sentence in the second paragraph of the project initiation section be amended as follows: "In order to move on to the next phase of project development, signatures must be gathered from at least 30 percent of the households (owners and renters) within the petition area."

Councilman Peterson also suggested that in the final approval process section, the third sentence in the first paragraph be amended to read "Signatures are required that represent at least 51% of the households in the petition area. However, if 20% of the households in the petition area sign a petition opposed to the proposed traffic calming measures, that at least 70% of the households in the petition area must sign a petition in support of the proposed measures." In addition, he suggested adding the following sentence after the first paragraph: "If City staff determines that an area under consideration has a high proportion of residents who are either low-income, elderly, or non-English speaking, or if there is not an existing neighborhood association, City staff will provide additional assistance to distribute and gather the petitions."

Vice-Mayor Cloninger said that Councilman Peterson's suggestion regarding the "low-income, elderly, or non-English speaking" residents is well-intentioned, however, he was not sure how staff would make those determinations.

City Attorney Oast explained that nothing in this policy would preclude staff from installing traffic calming devices in situations where they thought they were warranted. Since there are neighborhoods that are not well-enough organized to get these kind of petition drives going, staff may identify areas that need some sort of traffic calming assistance and it certainly would not be out of line to allow for staff to make that determination on its own.

Mr. Moule said that the policy does contain language that a study can be initiated by either requests from citizens, the City Council, the Technical Review Committee, the Planning & Zoning Commission, or staff, if it feels necessary to study it. Staff's goal at that point would be to put it back into the process and try to get the neighborhood involved.

City Engineer Cathy Ball said that if there is a safety issue where speeding is such a problem that we think someone would be in danger, City staff is responsible for taking action on that, regardless of this policy. There in nothing in this policy that would prohibit that. Also, since this is just the beginning of the policy, staff understands what the intent of Council is and if they run some items that might need to be changed, the will bring those back to Council. They will plan to review the policy at least semi-annually to make sure that it is in line with what we are trying to do in the community.

Councilman Peterson said that he would be willing to compromise with the lowering of the thresholds.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 00-39, with the threshold . to start the project development be lowered from 50% to 40% and the threshold for the final approval of the plan be lowered from 70% to 60%. This motion was seconded by Councilman Peterson and carried unanimously.

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D. ORDINANCE NO. 2674 - ORDINANCE EXPANDING THE MEMBERSHIP OF THE PUBLIC ACCESS CHANNEL COMMISSION TO INCLUDE A POSITION FOR A REPRESENTATIVE OF THE LEAGUE OF WOMEN VOTERS AS A NON-VOTING, EX-OFFICIO MEMBER

Vice-Mayor Cloninger said that this is the consideration of an ordinance expanding the membership of the Public Access Channel Commission to include a position for a representative of the Asheville-Buncombe League of Women Voters as a non-voting, ex-officio member.

The City Council has established a Public Access Channel Commission to facilitate the establishment and management of the public access channel authorized pursuant to the City's renegotiated cable television franchise agreement. It was the consensus of City Council to add a non-voting, ex-officio member to the Commission which shall be a representative of the Asheville-Buncombe County League of Women Voters. Their term will commence upon appointment and shall terminate three months after the City Council has entered into a contract with a third party to operate the public access channel.

Mr. Talmadge Neece, representing the Asheville-Buncombe County League of Women Voters, thanked City Council for this challenge.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2674. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

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E. RESOLUTION NO. 00-40 - RESOLUTION APPOINTING THE ASHEVILLE-BUNCOMBE LEAGUE OF WOMEN VOTERS TO ACT AS AN ADVISORY GROUP TO THE PUBLIC ACCESS CHANNEL COMMISSION

Vice-Mayor Cloninger said that this is the consideration of a resolution appointing the Asheville-Buncombe League of Women Voters to act as an advisory group to the Public Access Channel Commission

The City of Asheville has established a Public Access Channel Commission as set forth in Division 12 of Article III of Chapter 2 of the Code of Ordinances of the City of Asheville to facilitate the establishment and management of a public access channel on the cablevision system. The City requested proposals from third parties to operate, program and manage the public access channel. No complete responses for proposals were received, but the Asheville-Buncombe League of Women Voters responded by expressing an interest in assisting the City of Asheville with developing a method for establishing the public access channel. The City Council has determined that the Asheville-Buncombe League of Women Voters could provide advice and assistance to the Public Access Channel Commission in order to facilitate the establishment and management of a public access channel on the cablevision system.

Councilwoman Whitmire said that she did talk with some other organizations who stated that they would attend the Commission meetings. They said that if they have any concerns they would voice them at that meeting, instead of asking for an ex-officio, non-voting seat on the Commission.

Councilman Peterson encouraged other organizations to take an active role in this process and felt that if an organization would commit the time and energy, then perhaps City Council should consider appointing other ex-officio, non-voting members.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 00-40. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of February 4-10, 2000: Jesse Davis (Water), BellSouth (Water), Nancy Indriso (Fire), Shera Thurman (Police) and Lewis Haight (Water).

The following claims were received during the period of February 11-17, 2000: Theodore Smith (Fire), B. C. Banks (Sanitation), Bellsouth (Water) and Karen Youket (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Vice-Mayor Cloninger adjourned the meeting at 7:57 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - February 29, 2000
Shiloh Community Center
121 Shiloh Road

7:00 p.m. - Community Meeting

Present: Mayor Leni Sitnick, Presiding; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor M. Charles Cloninger

The following topics were raised by residents and addressed by City Council and City staff: drugs in area and the need for the community and Police Department to work together to beat the drug problem; fumes and noise from Rice's Towing; need for speed limit signs on Shiloh Road; request for more police presence, foot patrols and undercover officers in the area to deter selling and buying of drugs; cars parked on Taft Avenue and Jeffries Avenue in wrong direction and too close to stop signs at intersections; need to reduce 35 mph speed on Taft Avenue and Jeffries Avenue; complaints that sign on Masonic Lodge at 35 Booker Street and sign for the Faith Tabernacle Christian Center at 200 Brooklyn Road had to be removed when there are other signs in different areas that are allowed to remain; suggestion of more lighting in areas targeted for drugs; need for enforcement of noise ordinance with regard to loud car stereos; no swimming pool in the community for children; need for more opportunities for children in the area; Faith Tabernacle Christian Center's application for a permit to expand was denied but Trinity Baptist Church's renovations were approved - request that if adjustments are made for one, they should be made for all; need to have automobile repair areas on Carver Court, Caribou Road and corner of Brooklyn and Shiloh Road investigated to see if they are operating legally; abandoned house at 131-1/2 Wyatt Street and 14 West Chapel Road; concern that residents in area might be forced to sell in order to allow for commercial encroachment; concern that water or sewer pipes in area are being upgraded to allow further commercial expansion in area; are large barrels at Chammie's Car Wash allowed to remain in that area; need to have Chammie's Car Wash keep water on their own property in the winter because when it flows onto the street, it freezes and causes a safety hazard; need for neighborhood to be aware of developments in their community to possibly voice objections prior to the buildings being built; speeding and drag racing on Brooklyn Road; litter in the area; and request for "children playing" signs in neighborhood.

Mayor Sitnick adjourned the meeting at 8:50 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - March 7, 2000 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger (participated by speaker phone); Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Grant Application with Community Foundation of WNC for Summer Outdoor Adventure Program

Summary: The consideration of a resolution to apply for and enter into an agreement with the Community Foundation of Western North Carolina for a grant to implement outdoor adventure activities for youth in conjunction with the Summer Playground Program.

Outdoor adventure is designed to provide outdoor recreation activities for youth ages 8-11 during the summer in conjunction with the Summer Playground Program. The program will serve up to 100 youth with outdoor activities including overnight camping and whitewater rafting.

The Parks and Recreation Department is requesting $1,995 in grant funds. The grant does not require matching funds.

The Parks and Recreation Department recommends the approval of the application for the grant funds through the Community Foundation of Western North Carolina through the Summertime Kids 2000 program.

Grant Application with Asheville Merchants Association for First Night

Summary: The consideration of a resolution to apply for and enter into an agreement with the Asheville Merchants Foundation to assist with funding the Cultural Program Plan for First Night Asheville 2000.

First Night Asheville is an alcohol-free New Year's Eve celebration of the arts that specifically targets families. First Night's mission is to broaden and deepen the public's appreciation of visual and performing arts through an innovative, diverse, and high quality New Year's Eve program which offers the community a shared cultural experience accessible and affordable to all. The Cultural Program Plan encompasses all of the cultural programming that will be presented at First Night including cultural performers, visual and demonstration artists and traveling exhibits, and production cost and supplies.

The Parks and Recreation Department is requesting $20,000 in grant funds from the Asheville Merchants Foundation. The grant does not require matching funds.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for the grant funds through the Asheville Merchants Foundation to assist with funding the Cultural Program Plan for First Night Asheville 2000.

Budget Amendment to the 35 Fund - Water Bond Capital Improvements Fund

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 82-25 (35 Fund - Water Bond Capital Improvements Fund) to reprogram funds and set up funding for the Fiscal Year 1999/00 Water Distribution System Improvements in order to fund various projects.

By Resolution 82-25 dated October 5, 1982, the Regional Water Authority authorized and budgeted for various capital projects to be funded by Contribution From Other Funds and Appropriated Fund Balance.

There are excess funds of $53,911 available in the following projects: Annexation I - Blackberry, CDM Mills Master Plan, North Fork/Bee Tree Dams, Reservoir Tunnel Repairs and NC DOT Projects for Haw Creek US 70/74. There are also funds of $99,998 available in the Fiscal Year 1998/99 Distribution System Improvements as a result of transferring this project to the 30 Fund to be completed by our newly formed construction crew.

By reprogramming these funds and transferring the contribution to capital from the 30 Fund of $568,081, the funding for the following projects can be increased or set up: additional engineering costs associated with the Bee Tree Dam Renovations; additional funding for NC DOT Projects including the second payment for the US 70/74 Haw Creek Project, the first payment for the Sweeten Creek Phase I Project, and an allotment for engineering charges associated with future NC DOT Projects; additional matching funds for the Critical Needs Projects; and the addition of the Fiscal Year 1999/00 Distribution System Improvements to include the Bond Administration and Feasibility Study and Water Line Oversizing Projects.

The Regional Water Authority approved an amendment to Capital Project Ordinance 82-25 at the February 15, 2000, meeting to reprogram funds and reflect the transfer from the 30 Fund (Operating Budget) to fund the following: Bee Tree Dam Renovations Project, the NC DOT Projects, the Critical Needs Contracts to include Matching Funds, and the Fiscal Year 1999/2000 Distribution System Improvements.

The Regional Water Authority recommends approval of a budget amendment for Capital Project Ordinance 82-25 to reprogram funds and set up funding for the Fiscal Year 1999/00 Water Distribution System Improvements in order to fund the various projects described above.

Non-Warranty Deed for Strip of Land at 1 Park Avenue North

Summary: The consideration of a resolution authorizing the execution of a non-warranty deed to Mr. Whit Rylee for property located at 1 Park Avenue North, Asheville, N.C.

A request was received from Mr. Whit Rylee on October 6, 1999, requesting that the City execute a non-warranty deed to him, quit claiming all government interest in the portion of his property that encroaches onto City right-of-way. According to the Buncombe County tax records, the building built on PIN No. 9638-08-98-8871 is a one story block and frame building that was constructed in 1949. The building encroaches into the right-of-way approximately two feet. The date of the dedication of the right-of-way in this area is undetermined.

The Public Works Department staff recommends City Council execute a non-warranty deed, quit claiming all government interest in the portion of the property where the encroachment lies.

At the request of Councilman Worley, City Attorney Oast said that he would make sure that the deed gives them just enough right-of-way to get the building off the public right-of-away.

NC DOT Agreement for Bruce Road Railroad Crossing

Summary: The consideration of a resolution authorizing the Mayor to enter into a Supplemental Municipal Agreement with the North Carolina Department of Transportation (NCDOT) for the installation of a railroad-crossing signal at Bruce Road and associated budget amendment, in the amount of $10,460, for the City's portion of the cost of the installation of the railroad crossing signal.

Each year the NCDOT reviews railroad crossings to determine their safety. The Federal Government funds these projects in priority order determined by NCDOT. The funding is a 90%: 10% match, with the Federal Government paying 90% of the costs and the City paying 10% of the costs.

In 1997, NCDOT recommended that a railroad-crossing signal be placed at the Bruce Road railroad crossing for safety reasons. A municipal agreement was approved by City Council on November 11, 1997, related to this project. Following the completion of the design, it was determined that it would be necessary to relocate the railroad crossing stop bars, repaint railroad advance warning pavement markings, install/replace railroad advance warning signs, add fill in the northeast quadrant and add fill and extend pipe in the southwest quadrant. Due to these changes the cost has increased from approximately $90,000 to $104,600. The increased cost for the City of Asheville will be from $9,000 to $10,460.

Additionally, the City will need to acquire a construction easement for the property off the right-of-way. City staff will be required to perform the work off of the right-of-way. This work will consist of installing a pipe and adding fill. This work will be performed by the Public Works Department.

In addition to the $10,460 required for the installation of the railroad-crossing signal, the City will be required to pay half of the maintenance of the railroad crossing each year. The City's portion of the maintenance cost is approximately $1,300 per year. This cost will be budgeted as a part of the Engineering Department's operating budget.

Staff recommends that City Council authorize (1) the Mayor to sign a Supplemental Municipal Agreement with NCDOT to allow a railroad-crossing signal on Bruce Road; and (2) a budget amendment, in the amount of $10,460, for the cost of the installation of the railroad-crossing signal.

Financing Purchase of Ice Floor Equipment for Civic Center

Summary: The consideration of a resolution authorizing the installment financing of an ice floor and related hockey and ice skating equipment for the Civic Center.

By Resolution No. 99-143 dated September 14, 1999, the City Council previously approved the purchase, from Asheville Professional Hockey Ltd., of the ice floor and related hockey and ice skating equipment for the Civic Center.

The Finance Department has sought proposals from 16 firms to finance the purchase of the equipment. Five proposals were received, the best of which was submitted by Banc One Leasing Corporation - - 5.4192% for four years.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and Banc One Leasing Corporation for the purchase and authorizes the City Manager, Finance Director and City Clerk to execute and deliver any and all necessary documents.

Council adopt the resolution and enabling budget amendment.

Setting a public hearing on March 28, 2000, to consider an Ordinance Designating the Patton/Parker House located at 95 Charlotte Street as a Local Historic Landmark

Fees & Charges Manual Amendment to Allow a $2.50/Month Fee for One Additional Roll-Out Container

Summary: The consideration of a resolution amending the Fees and Charges Manual to reflect the addition of an automated container fee for citizens/businesses who request one additional automated roll out container.

The Sanitation Division will be implementing the Automated Side Loader Pilot Program on April 3, 2000.

Automated collection equipment must use proprietary containers for maximum efficiency. Also, non-standard containers may be damaged or unserviceable by the equipment with subsequent liability to the City. As a part of the pilot program, citizens will be supplied one (1) 96-gallon roll-out container (at a cost to the City of $40 each) which is equivalent to three (3) standard sized garbage cans. Only City authorized containers will be serviced.

In cases where a resident or business requests more than one (1) container, the City proposes to supply up to one (1) additional container at a cost to the resident of $2.50 per month. Billing can be processed through the customers bi-monthly water bill.

Staff will encourage utilization of the recycling program to reduce refuse volumes. One (1) 96-gallon container will be one-half of the current limit of six (6) standard garbage containers; however, forthcoming proposed changes to Chapter 15 of the Code of Ordinances will reflect recycling and changes in service volumes (standard of 1 rollout, limit of 2 per household plus rental fee).

The proposed fee of $2.50 per month will cover capital costs of supplying the container plus additional operational costs. The Sanitation Division will handle container requests and administration.

Staff recommends approval of the resolution to amend the fees and charges manual to allow a monthly fee of $2.50 per month for one (1) additional 96-gallon roll-out container as requested by citizens with said fees to be added to customer water bills.

Upon inquiry of Vice-Mayor Cloninger, Mr. Richard Grant, Solid Waste Manager, explained the reasoning of charging $2.50 per month indefinitely for the one additional container. He said that the one container (supplied to residents at no cost) will be sufficient for most customers and they are trying to encourage people to recycle. He also said that there are operational costs included in adding a second container. He did state that the program will be monitored and if adjustments are needed, they will bring those back to City Council.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

DRAFT PLAN FOR SERVICES

Planning & Development Director Scott Shuford said that this is the consideration of approving the City of Asheville Plan for Services report for areas proposed for annexation.

On February 22, 2000, City Council adopted six resolutions of intent beginning the annexation process. Due to an error made by the consultant regarding dates, the resolutions of intent will need to be brought back to City Council again at their formal meeting on March 15, 2000, for adoption. The Plan of Services required by state statutes has been prepared by our consultant and a copy has been provided to City Council. Upon review and approval by City Council, the Plan will be made available for public review. The following steps will complete the process:

Approval of Resolutions of Intent	March 15, 2000
Approval of Plan of Services	March 15, 2000
Public Information Meeting	May 2, 2000
Public Hearing(s)	May 23, 2000
Adoption of Annexation Ordinances	June 13, 2000
Effective Date of Annexations	June 30, 2001

Staff recommends the Plan of Services be approved and made available for public inspection.

Mr. F. Richard Flowe, President of Benchmark, Inc., passed out a revised Plan of Services. He then reviewed the following sections with Council: annexation area data; statutory standard requirements for each of the six areas proposed for annexation; plan for extension of services into annexed areas: (1) police protection, (2) fire protection, (3) solid waste collection, (4) street maintenance services, (5) water distribution, (6) sewer collection, (7) street lighting services, (8) recreation facilities and services, and (9) administration and miscellaneous services; financing plan for annexation areas: (1) revenue estimates, (2) revenue/expenditure analysis; (3) capital expenditures; and (4) methods of financing; and statement of impact for annexation areas: (1) financial impact on rural fire departments; (2) impact on fire protection; and (3) impact on insurance rates. He stated that the following items are also included in the Plan: (1) statutory standards statement data and contiguity test maps; (2) 1990 census tract information; (3) property owner listing; (4) property inventories for each area; (5) project schedule; (6) General Statutes governing annexation for cities of 5,000 persons or more; and (7) annexation agreement. He stated that land use pattern maps for each area is located in the Plan as well.

Mr. Flowe responded to several questions and comments from City Council, some being, but are not limited to: making sure that the highest level of service is provided to the newly annexed areas and what provisions are being made to areas that are not currently being served by sewer lines.

With regard to the on-site septic system maintenance and repair service for the parcels that are not being served by sewer lines, Councilwoman Field stated that she would not vote for an annexation that does not provide full services. City Manager Westbrook said that he would be happy to meet with Councilwoman Field and explain the sewer issue, noting that the septic maintenance and repair service is proactive and environmental safe.

Councilman Hay was assured by Mr. Flowe that what Council will be asked to adopt at it's formal meeting on March 15, 2000, is the Plan for Services in order that it be made available for public inspection, with the understanding that City Council is not satisfied with the Plan and can make changes to it after public comment and prior to the adoption of the annexation ordinances on June 13, 2000.

Councilwoman Whitmire asked for a report on the cost analysis of the septic system maintenance and repair service vs. Metropolitan Sewerage District placing sewer lines in those areas.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

SUMMER YOUTH EMPLOYMENT

Parks & Recreation Director Irby Brinson said that this is the consideration of a budget amendment, in the amount of $100,000, to fund the YES! 2000 (formerly the Summer Youth Employment Program).

The YES! 2000 represents the City of Asheville's ongoing commitment to provide youth with valuable summer employment opportunities that have significant impact in their development and preparation to be employable members in our community. The Parks and Recreation Department is working in collaboration with the Community Foundation of Western North Carolina (Community Foundation), Job Link, Chamber of Commerce, Housing Authority, and community volunteers to provide employment and training opportunities for 50 youth, ages 14 to 19, during June-August 2000. The Parks and Recreation Department hopes to expand the program to serve 25 additional youth pending participation by the private sector, and a grant from the Community Foundation.

Staff has been working in conjunction with the above agencies since September 1999 to work collectively to enhance the program for 2000. The collaboration has resulted in a new focus for the program to provide necessary life experiences for youth as they prepare to face future responsibility and pressure. It is the desire of the group to use a portion of the City's contribution, and the Community Foundation grant for program administration, with additional resources for job placement coming from the private sector.

The Parks and Recreation Department is responsible for the management and operation of the program. Each year City Council has generously funded the program's operating budget.

The Parks and Recreation Department recommends City Council appropriate $100,000 to establish an operating budget for Youth Employment Services 2000.

Upon inquiry of Councilman Peterson, City Manager Westbrook said this $100,000 will come from the unappropriated fund balance.

Mayor Sitnick hoped that private business owners will see this program as an opportunity to invest in our City and give young people the feeling of self-worth and self-investment, which will prevent some of the social despair that comes later.

Upon inquiry of Councilwoman Whitmire, Mr. Brinson said that approximately 98% of the $100,000 budget goes to pay the young people and that he would provide her with a breakdown of the costs for last year's program.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UPDATE OF ENVIRONMENTAL SUSTAINABILITY PROJECT

Ms. Karen Rankin, Waste Management Coordinator, and Mr. Terry Albrecht, representing the Land-of-Sky Regional Council, said that over the past several months, the City of Asheville partnered with the Land-of-Sky Regional Council's Waste Reduction Partners (WRP) and the NC Division of Pollution Prevention and Environmental Assistance (DPPEA) to conduct environmental assessments of several city facilities which assessments have revealed several opportunity areas with the potential to improve efficiency and reduce waste in internal operations.

The Waste Reduction Partners team has conducted four assessments of city facilities: the City Hall building, the Print Shop, Fleet Management, and the North Fork Reservoir. These assessments included analysis of such things as the facilities' water use, energy efficiency, and waste production. The North Fork reservoir report has not yet been received by the City.

Based on the results of the efficiency assessments, staff has undertaken the following actions:

- Added a dumpster for cardboard recycling at the Fleet Management facility;
- Provided new recycling receptacles for white and mixed paper in the Print Shop;
- Replaced one parts washer in Fleet Management to extend the life of the solvent used in the cleaning process;
- Began replacing existing light fixtures with ones that use electronic ballasts and T-8 light tubes.

The reports highlighted some needs that will require additional funding in order to implement. Funding for the following recommendations will be included in departmental budget requests for FY 2000/01:

- Purchase of an antifreeze-recycling unit for Fleet Management;
- Purchase of three additional parts washers and large washing cabinet to improve solvent management in Fleet Management;
- Replacement of the work bay lighting in Fleet Management;
- Replacement of light fixtures in City facilities.

In addition, staff is currently collecting additional information on the following recommendations:

- Attempting to locate a vendor to recycle used oil filters;
- Developing an employee suggestion and education program;
- Determining costs and vendors for use of pump bottles instead of aerosol cans in Fleet Management;
- Developing a pilot project to test the use of bypass oil filters in some City vehicles;
- Developing a multi-agency team in cooperation with Land-of-Sky Regional Council to investigate the use of alternatively fueled vehicles;
- Investigating soy based ink options and higher recycled content paper products for use in the City Print Shop.

Further investigation and implementation of these and other assessment findings will continue over the next several months.

Mayor Sitnick suggested that this report be presented at a formal meeting in order to show the public that the City of Asheville is improving efficiency and reducing waste in it's internal operations.

This report is being presented for informational purposes only and no Council action is required.

UPDATE ON THE WNC REGIONAL AIR POLLUTION CONTROL BOARD

Ms. Nelda Holder, Chair of the WNC Regional Air Pollution Control Board ("Board"), and Mr. Arlis Queen, City's appointee on the Board, said that since that Haywood County has withdrawn from the organization, they urged City Council to work with Buncombe County to draw up a new agreement and not to dissolve the agency. Ms. Holder passed out information showing the advantages of continuing the agency vs. allowing the State's Division of Air Quality to assume responsibility. She stated that an agreement needs to be approved by July 1, 2000, by the Environmental Management Commission.

Vice-Mayor Cloninger hoped that the City will do everything they can to support the Board in order that they remain in existence. He felt the State does not have adequate resources to cover our area.

Mr. Paul Muller, Regional Supervisor of the NC Division of Air Quality, said that there will be no change in monitoring. He also passed out some information on his Asheville office staff as well as 1999 activity information on the Asheville Regional Office.

Mayor Sitnick said that City Manager Westbrook is discussing this issue with the County Manager.

Discussion surrounded why Haywood County pulled out of the agreement, what happens to the assets of the agency is it is disbanded, what sub-committees have been established and what are their missions, can the City of Asheville operate the agency itself, is it possible for the City to discuss including other municipalities within Buncombe County in the agreement, what is the status of the audit of the Board, does the State have a citizens advisory group that they work with, and does the local agency supply City Council with their meeting minutes.

Mayor Sitnick stressed that the City Council's first concern is public health.

Mayor Sitnick then appointed a fact finding committee of herself, Vice-Mayor Cloninger, Councilwoman Whitmire and Councilman Peterson to meet with representatives of the Land-of-Sky Regional Council, Buncombe County, NC Division of Air Quality, the City's appointees to the WNC Regional Air Pollution Control Board, the City Manager, the City Attorney and others as appropriate to review the entire issue and report back to City Council. Some information which will be requested will be a response from the State to the information passed out by Ms. Holder regarding the advantages of keeping the local agency, a list of staff and their positions for the local agency, a list of the local agency's 1999 activities, and a list of members of the local agency's new advisory council.

City Manage Westbrook said that he would put the information requested by City Council in writing to Ms. Holder and Mr. Muller.

REPORTS ON BOARDS AND COMMISSIONS

Councilman Hay updated City Council on the Future of the Civic Center Task Force's meetings stating that the Task Force will be compiling a report which they will bring to City Council in the near future.

Councilwoman Field reported that she has been appointed as Co-Chair (with Mr. Mike Sobol) on a sub-committee of the Metropolitan Sewerage District Board that is looking at extending it's boundaries, and if it does, where the boundaries would be extended.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:45 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Wednesday - March 15, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger (participated by speaker phone at 5:50 p.m.); Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Hay gave the invocation.

ADDITIONS TO THE AGENDA

Mayor Sitnick stated that she would like to make a statement relative to the proposed zoning designation of a Parks and Open Space District.

Mayor Sitnick announced that the N.C. Dept. of Transportation is sponsoring their annual litter sweep and spring roadside cleanup on April 7-20, 2000. She encouraged everyone to keep in mind the impact of litter on our streets and highways and to not litter.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 22, 2000, THE COMMUNITY MEETING HELD ON FEBRUARY 29, 2000, AND THE WORKSESSION HELD ON MARCH 7, 2000

B. RESOLUTION NO. 00-41 - RESOLUTION AUTHORIZING A GRANT APPLICATION WITH THE COMMUNITY FOUNDATION OF WESTERN NORTH CAROLINA FOR THE OUTDOOR ADVENTURE PROGRAM

Summary: The consideration of a resolution to apply for and enter into an agreement with the Community Foundation of Western North Carolina for a grant to implement outdoor adventure activities for youth in conjunction with the Summer Playground Program.

Outdoor adventure is designed to provide outdoor recreation activities for youth ages 8-11 during the summer in conjunction with the Summer Playground Program. The program will serve up to 100 youth with outdoor activities including overnight camping and whitewater rafting.

The Parks and Recreation Department is requesting $1,995 in grant funds. The grant does not require matching funds.

The Parks and Recreation Department recommends the approval of the application for the grant funds through the Community Foundation of Western North Carolina through the Summertime Kids 2000 program.

RESOLUTION BOOK NO. 25 – PAGE 456

C. RESOLUTION NO. 00-42 - RESOLUTION AUTHORIZING A GRANT APPLICATION WITH THE ASHEVILLE MERCHANTS ASSOCIATION TO ASSIST WITH FUNDING FOR THE CULTURAL PROGRAM PLAN FOR FIRST NIGHT ASHEVILLE 2000

Summary: The consideration of a resolution to apply for and enter into an agreement with the Asheville Merchants Foundation to assist with funding the Cultural Program Plan for First Night Asheville 2000.

First Night Asheville is an alcohol-free New Year's Eve celebration of the arts that specifically targets families. First Night's mission is to broaden and deepen the public's appreciation of visual and performing arts through an innovative, diverse, and high quality New Year's Eve program which offers the community a shared cultural experience accessible and affordable to all. The Cultural Program Plan encompasses all of the cultural programming that will be presented at First Night including cultural performers, visual and demonstration artists and traveling exhibits, and production cost and supplies.

The Parks and Recreation Department is requesting $20,000 in grant funds from the Asheville Merchants Foundation. The grant does not require matching funds.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for the grant funds through the Asheville Merchants Foundation to assist with funding the Cultural Program Plan for First Night Asheville 2000.

RESOLUTION BOOK NO. 25 – PAGE 457

D. ORDINANCE NO. 2675 - BUDGET AMENDMENT TO AMEND THE WATER BOND CAPITAL IMPROVEMENTS FUND (35 FUND)

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 82-25 (35 Fund - Water Bond Capital Improvements Fund) to reprogram funds and set up funding for the Fiscal Year 1999/00 Water Distribution System Improvements in order to fund various projects.

By Resolution 82-25 dated October 5, 1982, the Regional Water Authority authorized and budgeted for various capital projects to be funded by Contribution From Other Funds and Appropriated Fund Balance.

There are excess funds of $53,911 available in the following projects: Annexation I - Blackberry, CDM Mills Master Plan, North Fork/Bee Tree Dams, Reservoir Tunnel Repairs and NC DOT Projects for Haw Creek US 70/74. There are also funds of $99,998 available in the Fiscal Year 1998/99 Distribution System Improvements as a result of transferring this project to the 30 Fund to be completed by our newly formed construction crew.

By reprogramming these funds and transferring the contribution to capital from the 30 Fund of $568,081, the funding for the following projects can be increased or set up: additional engineering costs associated with the Bee Tree Dam Renovations; additional funding for NC DOT Projects including the second payment for the US 70/74 Haw Creek Project, the first payment for the Sweeten Creek Phase I Project, and an allotment for engineering charges associated with future NC DOT Projects; additional matching funds for the Critical Needs Projects; and the addition of the Fiscal Year 1999/00 Distribution System Improvements to include the Bond Administration and Feasibility Study and Water Line Oversizing Projects.

The Regional Water Authority approved an amendment to Capital Project Ordinance 82-25 at the February 15, 2000, meeting to reprogram funds and reflect the transfer from the 30 Fund (Operating Budget) to fund the following: Bee Tree Dam Renovations Project, the NC DOT Projects, the Critical Needs Contracts to include Matching Funds, and the Fiscal Year 1999/2000 Distribution System Improvements.

The Regional Water Authority recommends approval of a budget amendment for Capital Project Ordinance 82-25 to reprogram funds and set up funding for the Fiscal Year 1999/00 Water Distribution System Improvements in order to fund the various projects described above.

ORDINANCE BOOK NO. 18 – PAGE 171

E. RESOLUTION NO. 00-43 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY A NON-WARRANTY DEED FOR A STRIP OF LAND AT 1 PARK AVENUE NORTH

Summary: The consideration of a resolution authorizing the execution of a non-warranty deed to Mr. Whit Rylee for property located at 1 Park Avenue North, Asheville, N.C.

A request was received from Mr. Whit Rylee on October 6, 1999, requesting that the City execute a non-warranty deed to him, quit claiming all government interest in the portion of his property that encroaches onto City right-of-way. According to the Buncombe County tax records, the building built on PIN No. 9638-08-98-8871 is a one story block and frame building that was constructed in 1949. The building encroaches into the right-of-way approximately two feet. The date of the dedication of the right-of-way in this area is undetermined.

The Public Works Department staff recommends City Council execute a non-warranty deed, quit claiming all government interest in the portion of the property where the encroachment lies.

RESOLUTION BOOK NO. 25 – PAGE 458

F. RESOLUTION NO. 00-44 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE BRUCE ROAD RAILROAD CROSSING

Summary: The consideration of a resolution authorizing the Mayor to enter into a Supplemental Municipal Agreement with the North Carolina Department of Transportation (NCDOT) for the installation of a railroad-crossing signal at Bruce Road and associated budget amendment, in the amount of $10,460, for the City's portion of the cost of the installation of the railroad crossing signal.

Each year the NCDOT reviews railroad crossings to determine their safety. The Federal Government funds these projects in priority order determined by NCDOT. The funding is a 90%: 10% match, with the Federal Government paying 90% of the costs and the City paying 10% of the costs.

In 1997, NCDOT recommended that a railroad-crossing signal be placed at the Bruce Road railroad crossing for safety reasons. A municipal agreement was approved by City Council on November 11, 1997, related to this project. Following the completion of the design, it was determined that it would be necessary to relocate the railroad crossing stop bars, repaint railroad advance warning pavement markings, install/replace railroad advance warning signs, add fill in the northeast quadrant and add fill and extend pipe in the southwest quadrant. Due to these changes the cost has increased from approximately $90,000 to $104,600. The increased cost for the City of Asheville will be from $9,000 to $10,460.

Additionally, the City will need to acquire a construction easement for the property off the right-of-way. City staff will be required to perform the work off of the right-of-way. This work will consist of installing a pipe and adding fill. This work will be performed by the Public Works Department.

In addition to the $10,460 required for the installation of the railroad-crossing signal, the City will be required to pay half of the maintenance of the railroad crossing each year. The City's portion of the maintenance cost is approximately $1,300 per year. This cost will be budgeted as a part of the Engineering Department's operating budget.

Staff recommends that City Council authorize (1) the Mayor to sign a Supplemental Municipal Agreement with NCDOT to allow a railroad-crossing signal on Bruce Road; and (2) a budget amendment, in the amount of $10,460, for the cost of the installation of the railroad-crossing signal.

RESOLUTION BOOK NO. 25 – PAGE 460

G. ORDINANCE NO. 2676 - BUDGET AMENDMENT TO INSTALL A RAILROAD CROSSING ON BRUCE ROAD

Summary: See Consent Agenda Item "F" above.

ORDINANCE BOOK NO. 18 - 174

H. RESOLUTION NO. 00-45 - RESOLUTION APPOINTING A MEMBER ON THE EDUCATIONAL ACCESS CHANNEL COMMISSION

Summary: Ordinance No. 2554 adopted on March 9, 1999, established an Educational Access Channel Commission. On May 25, 1999, members to the Commission were appointed.

On February 10, 2000, Susan C. Fisher, School Board Chair, requested that Dr. Patti Cutspec, Director of Community Relations/Development, be appointed as one of the representatives of City Schools to replace Ms. Carolyn Moore. Dr. Cutspec will be filling the unexpired term of Ms. Moore, whose term will expire on June 1, 2001, or until her successor is appointed.

Staff recommends City Council adopt the resolution appointing Dr. Patti Cutspec to the Educational Access Channel Commission.

RESOLUTION BOOK NO. 25 – PAGE 461

I. RESOLUTION NO. 00-46 - RESOLUTION AUTHORIZING THE INSTALLMENT FINANCING OF AN ICE FLOOR AND RELATED HOCKEY AND ICE SKATING EQUIPMENT FOR THE CIVIC CENTER

Summary: The consideration of a resolution authorizing the installment financing of an ice floor and related hockey and ice skating equipment for the Civic Center.

By Resolution No. 99-143 dated September 14, 1999, the City Council previously approved the purchase, from Asheville Professional Hockey Ltd., of the ice floor and related hockey and ice skating equipment for the Civic Center.

The Finance Department has sought proposals from 16 firms to finance the purchase of the equipment. Five proposals were received, the best of which was submitted by Banc One Leasing Corporation - - 5.4192% for four years.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and Banc One Leasing Corporation for the purchase and authorizes the City Manager, Finance Director and City Clerk to execute and deliver any and all necessary documents.

Council adopt the resolution and enabling budget amendment.

RESOLUTION BOOK NO. 25 – PAGE 462

J. ORDINANCE NO. 2677 - BUDGET AMENDMENT RELATIVE TO FINANCING OF AN ICE FLOOR AND RELATED HOCKEY AND ICE SKATING EQUIPMENT FOR THE CIVIC CENTER

Summary: See Consent Agenda Item "I" above.

ORDINANCE BOOK NO. 18 – PAGE 176

K. MOTION SETTING A PUBLIC HEARING FOR MARCH 28, 2000, TO CONSIDER THE LOCAL HISTORIC LANDMARK DESIGNATION FOR THE PATTON/PARKER HOUSE LOCATED AT 95 CHARLOTTE STREET, ASHEVILLE, N.C.

L. RESOLUTION NO. 00-47 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL TO REFLECT THE ADDITION OF AN AUTOMATED CONTAINER FEE FOR CITIZENS/BUSINESSES WHO REQUEST ONE ADDITIONAL AUTOMATED CONTAINER

Summary: The consideration of a resolution amending the Fees and Charges Manual to reflect the addition of an automated container fee for citizens/businesses who request one additional automated roll out container.

The Sanitation Division will be implementing the Automated Side Loader Pilot Program on April 3, 2000.

Automated collection equipment must use proprietary containers for maximum efficiency. Also, non-standard containers may be damaged or unserviceable by the equipment with subsequent liability to the City. As a part of the pilot program, citizens will be supplied one (1) 96-gallon roll-out container (at a cost to the City of $40 each) which is equivalent to three (3) standard sized garbage cans. Only City authorized containers will be serviced.

In cases where a resident or business requests more than one (1) container, the City proposes to supply up to one (1) additional container at a cost to the resident of $2.50 per month. Billing can be processed through the customers bi-monthly water bill.

Staff will encourage utilization of the recycling program to reduce refuse volumes. One (1) 96-gallon container will be one-half of the current limit of six (6) standard garbage containers;

however, forthcoming proposed changes to Chapter 15 of the Code of Ordinances will reflect recycling and changes in service volumes (standard of 1 rollout, limit of 2 per household plus rental fee).

The proposed fee of $2.50 per month will cover capital costs of supplying the container plus additional operational costs. The Sanitation Division will handle container requests and administration.

Staff recommends approval of the resolution to amend the fees and charges manual to allow a monthly fee of $2.50 per month for one (1) additional 96-gallon roll-out container as requested by citizens with said fees to be added to customer water bills.

RESOLUTION BOOK NO. 25 – PAGE 464

M. MOTION SETTING A PUBLIC HEARING ON MARCH 28, 2000, TO REZONE FIVE LOTS ON GLENDALE AVENUE FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO APPROVING A CONDITIONAL USE PERMIT TO CONSTRUCT A THIRD PHASE OF THE MEADOWS APARTMENT COMPLEX LOCATED OFF OF ASCENSION DRIVE IN WEST ASHEVILLE

City Attorney Oast reviewed with Council the conditional use permit process by stating that City Council will first hear from staff who will describe the proposal and provide some background information. Then the applicant may make a presentation and then comments from the public will be taken. He said that there will be an opportunity for questions and rebuttal comments, as necessary. Following the hearing, Council will then debate the proposal and will take action on the request. It has been Council's practice to have two separate votes, one today to either grant or denial of the request. At the next formal meeting, staff would prepare a written Order summarizing the finding and conclusions either granting or denying issuance of the permit and there would be a separate vote on that written Order.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:12 p.m.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

Mr. Dan Baechtold, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certificate of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report received by City Council on February 18, 2000).

Mr. Baechtold said that this is the consideration of a motion approving a Conditional Use approval and permit as outlined in the Unified Development Ordinance (UDO) to construct a third phase of The Meadows apartment complex located off of Ascension Drive in West Asheville.

On December 16, 1999, Meridia Inc. submitted development plans for The Meadows Phase III, which is a 48 unit expansion of an existing apartment complex on property zoned RM-16 (City Exhibit 4). The project consists of two new apartment buildings of 24 units each (City Exhibit 5). The expanded parking area will provide a total of 81 parking spaces for the expansion.

On January 19, 2000, the Technical Review Committee (TRC) reviewed the plans and took action to approve with conditions. On January 24, 2000, the applicant submitted revised plans that satisfy the TRC requirements. This development is subject to conditional use review by City Council because it is an expansion of a previously approved Level III project. This project meets all of the City's development standards.

Staff recommends approval of the Conditional Use Permit for The Meadows Phase III with three additional conditions. When the Meadows Phase II was approved, a gate was required at the Ector Street entrance to the apartment complex from Evelake Drive. At that time, specific requirements were not determined for operation of the gate. The details were to be worked out later with the City's Traffic Engineer. At this time, the Traffic Engineer recommends installation of a gate that will open automatically for traffic exiting the apartment complex. The gate will be exit-only. The first condition addresses this gate. The other two conditions address landscaping and transit. The recommended conditions are as follows:

1. The Developer shall install a gate at the Ector Street entrance to the apartment complex from Evelake Drive. The gate shall open on demand for exiting traffic. At all other times the gate shall remain closed. The gate must be placed on property under the control of the developer. In addition, a "Do Not Enter" sign meeting the standards of the Manual on Uniform Traffic Control Devices must be installed facing Evelake Drive at this entrance to the apartment complex. The gate shall be installed before any Certificates of Occupancy are issued for the Phase III expansion.
2. The Developer shall complete the landscaping required for previous development phases. The landscaping must be approved by inspection of the Planning and Development Department before a zoning permit will be issued for Phase III. Landscaping must contain, at a minimum, the correct number and species of plantings required by the UDO.
3. The developer shall purchase and install a transit shelter to be located within the apartment complex meeting the specifications of the Asheville Transit Authority. The Transit Services Director shall approve the design and location of the transit shelter. The shelter shall be installed before any Certificates of Occupancy are issued for the Phase III expansion. All costs associated with installation of the transit shelter shall be borne by the developer.

Mr. Baechtold asked that Condition No. 3 be amended as a result of discussions with the City's Transit Services Director and the developer:

3. The developer shall work with the Transit Services Director to determine if there is a suitable location for a transit shelter on property owned by the developer. If a suitable location is determined, the developer shall participate in the cost of installation of the shelter at a share proportionate to the number of units in Phases II and III of the Meadows Apartment Complex.

In order to approve a conditional use permit, City Council must make seven (7) findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case. The findings are listed below and are found in Section 7-16-2(c) of the Unified Development Ordinance.

(1) That the proposed use or development of the land will not materially endanger the public health or safety;

The project received technical approval from the Water Resources Department, the Fire Department, MSD, Engineering, and other City Departments. The project is required to meet the technical standards set forth in the UDO, the Asheville Standard Specifications Manual, the North Carolina Building Code and other applicable laws and standards which protect the public health and safety.

(2) That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or the region;

(3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;

The site plan shows a buffer meeting the technical requirements for landscaping and buffering in the UDO.

(4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;

The property is zoned RM-16 which allows high density residential development. Adequate buffering and screening are necessary to separate this use from neighboring single-family residential development. The site plan shows a buffer meeting the technical requirements for landscaping and buffering in the UDO.

(5) That the proposed use or development of the land will generally conform with the comprehensive plan and other official plans adopted by the City;

The City's Comprehensive Plan and the Asheville City Plan 2010 identify this area for higher density residential uses. The proposed development is consistent with the zoning assigned to this location.

(6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities;

The project received technical approval from the Technical Review Committee which includes representatives of the Water Resources Department, MSD, Engineering Department, the Fire Department, and Public Works Department.

(7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The project received technical approval from the City Traffic Engineer. A Traffic Impact Analysis is not required.

Planning and Development staff recommends approval of an ordinance granting a conditional use permit to Meridia, Inc. to construct a 48 unit expansion of The Meadows apartment complex, with the conditions outlined.

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Councilman Peterson questioned the reasoning behind the gate in Condition No. 1. Mr. Baechtold said that when The Meadows Phase II was approved, a gate was required at the Ector Street entrance to the apartment complex from Evelake Drive. At that time, there were no specific requirements determined for how the gate would operate and the details were to be worked out later with the City's Traffic Engineer. At this time, our Traffic Engineer is requiring the installation of the gate at the Ector Street entrance which would be an automatic exit only gate.

Upon inquiry of Councilman Hay about the Condition No. 2 landscaping requirement, Mr. Baechtold said that the landscaping for Phase II was not completed to the satisfaction of the Planning & Development Department. However, he believes that Condition No. 2 has been resolved recently. He did, however, recommend that City Council leave Condition No. 2 in because the City needs to do their final inspection of it to make sure that it does meet all the requirements.

Councilwoman Field felt that gated communities, as well as cul-de-sac communities, are not smart growth and questioned the rationale behind the gate. City Traffic Engineer Michael Moule said that it is his understanding of the previous conditional use permit is that the gate was required in order to reduce the amount of traffic coming from the apartment complex onto Evelake Drive. At that time it was not specified exactly how the gate would operate. He looked at the site and reviewed the Traffic Impact Analysis that was done during the Phase II development, which also included the traffic for Phase III. The compromise that he came up with was to have the gate be exiting traffic only.

Mr. John Crabtree, owner of Meridia Inc. (developer of the project), explained the delay in landscaping for Phase II and noted that he had a letter dated March 8, 2000, from Urban Planner Carl Ownbey confirming that all landscaping requirements have been met with respect to this specific project. He did note that they purchased the Phase II property and developed 168 apartments on it. They would like to develop another 48 units in two buildings similar in nature to the Phase II project.

Mr. Terry Simmons, 31 Evelake Drive, had a concern about water runoff onto his property and that of his neighbor's at 29 Evelake Drive. He said that they are getting water now which they didn't before the construction of Phase II took place. He passed out photographs (Public's Exhibit 1) which showed the runoff problems before he built a "dike" to hold the water out of a utility building on his property. He has talked with the City Engineer on this issue and he also said that Mr. Crabtree has agreed to meet with him next week regarding this concern.

City Engineer Cathy Ball said that she has reviewed the calculations in the site plan that were submitted and determined that the minimum requirements were met from what we have in our ordinance. They relayed that information to Mr. Simmons but told him that they would work with him to see if anything could be done additionally to lessen his problem of water runoff. On March 10, 2000, a meeting was held out in the field with Mr. Crabtree and some of his employees to get the issue resolved. It is her understanding now from talking with Mr. Crabtree that while he is not in violation of any requirement that the City has (because his plan does comply with our minimum requirements) he has stated that he would try to work with the property owners to try to at least reduce their problem. Our ordinance requires that the rate of runoff be controlled, not the volume.

Upon inquiry of Councilman Hay, Ms. Ball said that the water runoff from Phase III will not run to this location – it will run basically in the opposite direction of the Phase II development. She further explained other possibilities that have been discussed with regard to the water runoff concerns. In addition, she said that about a year ago they met on site with the developer and he did put in additional rip-rap along the ditch line in between the detention pond and the property owners to try to slow the water down. The detention pond now is grassed, stable and in good condition.

Councilman Peterson asked if Council can take into consideration the problems with Phase II on this phase. City Attorney Oast responded that there has to be some degree of connectiveness between the problem and the development. Since Phase III is not built, that is not causing the problem. To the extent that it might exacerbate the problem, he felt that Council could require appropriate conditions.

Mr. Crabtree said that Phase III will drain in the opposite direction from Mr. Simmons' property. He did state that they installed, at their expense, some remedial measures which Mr. Ernie Hewitt from the City Engineer's Department suggested which would hopefully alleviate the runoff problems. Since that time they had not heard anything else until a couple of weeks ago. Mr. Hewitt said that system was working fine and he could not find where their development was contributing at all to Mr. Simmons' runoff problem. He has agreed to meet with Mr. Simmons and try to come up with something to help them, however, he is not convinced at all that the water that is causing their problem is coming off of his property. (Vice-Mayor Cloninger has just come on line on the speaker phone at this time.) He did state that there is a building in Phase I, which is not part of his property, which is contributing to some of Mr. Simmons' problem.

Councilman Hay suggested a Condition No. 4 be added as follows: "The Developer be required to show to the satisfaction of the City Engineer that he has taken whatever steps necessary to ameliorate runoff problems caused by Phase II development for the residents on Evelake Drive."

Upon inquiry of Councilwoman Field, Ms. Ball felt that the runoff problem is caused by both Phase I and Phase II. She feels very comfortable with the additional condition suggested by Councilman Hay because the developer has already shown that he is willing to look into the problem. She didn't feel comfortable in telling them that he has to, because some of the things that he may have to do may require an easement, or things that property owners might not want to give him.

Vice-Mayor Cloninger stated that since he did not hear the entire public hearing on this issue, he would prefer not vote on this issue. City Council concurred.

Mayor Sitnick closed the public hearing at 6:11 p.m.

Councilman Hay moved to instruct City staff to prepare an order approving the conditional use permit to construct a third phase of The Meadows, subject to Condition No. 1, Condition No. 2, the amended Condition No. 3 and the addition of Condition No. 4, with said Order being brought back to City Council for approval on March 28, 2000.. This motion was seconded by Councilman Worley and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 2678 - BUDGET AMENDMENT TO FUND THE YES! 2000 (FORMERLY THE SUMMER YOUTH EMPLOYMENT PROGRAM

Mr. Irby Brinson said that this is the consideration of a budget amendment, in the amount of $100,000, to fund the YES! 2000 (formerly the Summer Youth Employment Program).

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The YES! 2000 represents the City of Asheville's ongoing commitment to provide youth with valuable summer employment opportunities that have significant impact in their development and preparation to be employable members in our community. The Parks and Recreation Department is working in collaboration with the Community Foundation of Western North Carolina (Community Foundation), Job Link, Chamber of Commerce, Housing Authority, and community volunteers to provide employment and training opportunities for 50 youth, ages 14 to 19, during June-August 2000. The Parks and Recreation Department hopes to expand the program to serve 25 additional youth pending participation by the private sector, and a grant from the Community Foundation.

Staff has been working in conjunction with the above agencies since September 1999 to work collectively to enhance the program for 2000. The collaboration has resulted in a new focus for the program to provide necessary life experiences for youth as they prepare to face future responsibility and pressure. It is the desire of the group to use a portion of the City's contribution, and the Community Foundation grant for program administration, with additional resources for job placement coming from the private sector.

The Parks and Recreation Department is responsible for the management and operation of the program. Each year City Council has generously funded the program's operating budget.

The Parks and Recreation Department recommends City Council appropriate $100,000 to establish an operating budget for Youth Employment Services 2000.

Mr. Marshall Logan explained how the summer youth program has evolved and explained his vision for this program in the future.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Hay moved for the adoption of Ordinance No. 2678. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 178

B. RESOLUTION NO. 00-48- RESOLUTION STATING THE INTENT OF THE CITY OF ASHEVILLE TO CONSIDER ANNEXATION OF THE AREA KNOWN AS CHUNNS COVE ROAD/PINEY MOUNTAIN ROAD AREA (ALSO KNOWN AS AREA 2001-A) AND DESCRIBED HEREIN AND FIXING THE DATE OF THE PUBLIC INFORMATIONAL MEETING AND THE PUBLIC HEARING ON THE QUESTION OF ANNEXATION

RESOLUTION NO. 00-49 - RESOLUTION STATING THE INTENT OF THE CITY OF ASHEVILLE TO CONSIDER ANNEXATION OF THE AREA LOCATED NORTH OF U.S. HIGHWAY 70 BETWEEN RICEVILLE ROAD AND LOWER GRASSY BRANCH ROAD (ALSO KNOWN AS AREA 2001-B) AND DESCRIBED HEREIN AND FIXING THE DATE OF THE PUBLIC INFORMATIONAL MEETING AND THE PUBLIC HEARING ON THE QUESTION OF ANNEXATION

RESOLUTION NO. 00-50 - RESOLUTION STATING THE INTENT OF THE CITY OF ASHEVILLE TO CONSIDER ANNEXATION OF THE AREA LOCATED NORTH AND SOUTH OF LONG SHOALS ROAD BETWEEN I-26 AND HENDERSONVILLE ROAD (ALSO KNOWN AS AREA 2001-C) AND

DESCRIBED HEREIN AND FIXING THE DATE OF THE PUBLIC INFORMATIONAL MEETING AND THE PUBLIC HEARING ON THE QUESTION OF ANNEXATION

RESOLUTION NO. 00-51- RESOLUTION STATING THE INTENT OF THE CITY OF ASHEVILLE TO CONSIDER ANNEXATION OF THE AREA KNOWN AS RIDGEFIELD BOULEVARD AND OAK TERRACE AREA (ALSO KNOWN AS AREA 2001-D) AND DESCRIBED HEREIN AND FIXING THE DATE OF THE PUBLIC INFORMATIONAL MEETING AND THE PUBLIC HEARING ON THE QUESTION OF ANNEXATION

RESOLUTION NO. 00-52 - RESOLUTION STATING THE INTENT OF THE CITY OF ASHEVILLE TO CONSIDER ANNEXATION OF THE AREA KNOWN AS NEW LEICESTER HIGHWAY AREA (ALSO KNOWN AS AREA 2001-E) AND DESCRIBED HEREIN AND FIXING THE DATE OF THE PUBLIC INFORMATIONAL MEETING AND THE PUBLIC HEARING ON THE QUESTION OF ANNEXATION

RESOLUTION NO. 00-53 - RESOLUTION STATING THE INTENT OF THE CITY OF ASHEVILLE TO CONSIDER ANNEXATION OF THE AREA KNOWN AS THE ROCKY RIDGE ROAD/WEDGEFIELD DRIVE AREA (ALSO KNOWN AS AREA 2001-F) AND DESCRIBED HEREIN AND FIXING THE DATE OF THE PUBLIC INFORMATIONAL MEETING AND THE PUBLIC HEARING ON THE QUESTION OF ANNEXATION

Planning & Development Director Scott Shuford said that on February 22, 2000, City Council adopted six Resolutions of Intent for the Phase I annexation areas. The Resolutions of Intent represent the first formal step in the City-initiated annexation process. After review of the statutory requirements, City staff found that the adoption date of the Resolutions of Intent was too early based on State law which sets specific time periods between the Resolutions of Intent and the public information meeting and the public hearing.

The dates used were provided by our consultant who acknowledges the mistake. Fortunately, this is a correctable error that, once it has been fixed, has no consequences regarding the effective date of annexation or any other critical issues associated with the Phase I annexation process. The "cure" for this problem is to simply adopt new Resolutions of Intent for each of the six annexation areas.

City Attorney Oast said that language will be included in each ordinance that states that this resolution shall supersede and replace the appropriate resolution of the same title adopted on February 22, 2000.

Staff recommends the six Resolutions of Intent be adopted by City Council.

Mayor Sitnick said that members of Council have been furnished with copies of the resolutions and they would not be read.

Councilman Worley moved to adopt Resolution No. 00-48, the resolution of intent to consider annexation of the area known as Chunns Cove Road/Piney Mountain Road area, also known as Area 2001-A, and fixing the date of the public information meeting for May 2, 2000, and the City Council public hearing on the question of annexation on May 23, 2000. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 466

Councilman Hay moved to adopt Resolution No. 00-49, the resolution of intent to consider annexation of the area located north of U.S. Highway 70 between Riceville Road and Lower Grassy Branch Road, also known as Area 2001-B, and fixing the date of the public information meeting for May 2, 2000, and the City Council public hearing on the question of annexation on May 23, 2000. This motion was seconded by Councilwoman Whitmire and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 470

Councilwoman Whitmire moved to adopt Resolution No. 00-50, the resolution of intent to consider annexation of the area located north and south of Long Shoals Road between I-26 and Hendersonville Road, also known as Area 2001-C, and fixing the date of the public information meeting for May 2, 2000, and the City Council public hearing on the question of annexation on May 23, 2000. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 474

Councilman Worley moved to adopt Resolution No. 00-51, the resolution of intent to consider annexation of the area known as Ridgefield Boulevard and Oak Terrace area, also known as Area 2001-D, and fixing the date of the public information meeting for May 2, 2000, and the City Council public hearing on the question of annexation on May 23, 2000. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 481

Councilman Peterson moved to adopt Resolution No. 00-52, the resolution of intent to consider annexation of the area known as New Leicester Highway, also known as Area 2001-E, and fixing the date of the public information meeting for May 2, 2000, and the City Council public hearing on the question of annexation on May 23, 2000. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 486

Councilman Hay moved to adopt Resolution No. 00-53, the resolution of intent to consider annexation of the area known as the Rocky Ridge Road/Wedgefield Drive area, also known as Area 2001-F, and fixing the date of the public information meeting for May 2, 2000, and the City Council public hearing on the question of annexation on May 23, 2000. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 490

C. RESOLUTION NO. 00-54 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA KNOWN AS CHUNNS COVE ROAD/PINEY MOUNTAIN ROAD AREA (ALSO KNOWN AS AREA 2001-A) AND DESCRIBED HEREIN

RESOLUTION NO. 00-55 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA LOCATED NORTH OF U.S. HIGHWAY 70 BETWEEN RICEVILLE ROAD AND LOWER GRASSY BRANCH ROAD (ALSO KNOWN AS AREA 2001-B) AND DESCRIBED HEREIN

RESOLUTION NO. 00-56 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA LOCATED NORTH AND SOUTH OF LONG SHOALS ROAD BETWEEN I-26 AND HENDERSONVILLE ROAD (ALSO KNOWN AS AREA 2001-C) AND DESCRIBED HEREIN

RESOLUTION NO. 00-57 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA KNOWN AS RIDGEFIELD BOULEVARD AND OAK TERRACE AREA (ALSO KNOWN AS AREA 2001-D) AND DESCRIBED HEREIN

RESOLUTION NO. 00-58 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA KNOWN AS NEW LEICESTER HIGHWAY AREA (ALSO KNOWN AS AREA 2001-E) AND DESCRIBED HEREIN

RESOLUTION NO. 00-59 - RESOLUTION APPROVING THE REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE AREA KNOWN AS THE ROCKY RIDGE ROAD/WEDGEFIELD DRIVE AREA (ALSO KNOWN AS AREA 2001-F) AND DESCRIBED HEREIN

Planning & Development Director Scott Shuford said that this is the consideration of approving the City of Asheville Plan for Services report for areas proposed for annexation.

The report setting forth the plans were reviewed at City Council's worksession on March 7, 2000.

Staff recommends the Plan of Services be approved and made available for public inspection.

Mayor Sitnick said that the these are resolutions approving a plan to provide services to the six areas proposed for annexation. She stated that annexations and the services provided in those annexations are based upon the policy of the sitting Council at the time that annexation takes place. And there have been times in our history when the annexation policy was not terrific. This Council has made it our benchmark to make sure that staff knows that if we are going to annex an area, that we make sure that we give the best service to that annexed area that any other area in the City is getting. Our policy for annexation in those areas that will be annexed by this Council will receive all of the services that can benefit an area during an annexation.

Mayor Sitnick said that members of Council have been previously furnished with a copies of the resolutions and they would not be read.

Councilman Worley moved to adopt Resolution No. 00-54, the resolution approving the report setting forth plans to provide services to the area known as Chunns Cove Road/Piney Mountain Road area, also known as Area 2001-A. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 494

Councilwoman Whitmire moved to adopt Resolution No. 00-55, the resolution approving the report setting forth plans to provide services to the area located north of U.S. Highway 70 between Riceville Road and Lower Grassy Branch Road, also known as Area 2001-B. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 496

Councilwoman Field stated that she still had concerns regarding providing sewer service in Area 2001-C. She understands that the action today is making the report of plans available for public inspection and would not vote against it at this point, but would reserve the right to have serious considerations after public input on what some of our options are. At an MSD Board meeting today, this particular piece around Lake Julian, was discussed as an area that needs some work by MSD. She thinks that there is some possibilities here that we haven't really looked at. She will meet with Mr. Shuford and some members of MSD to review this. She is not opposed to the annexation, but she is opposed to not providing sewer service but taking over the septic systems that are there.

City Attorney Oast said that state laws says that you are required to provide services in the annexed area to the same degree that you provide them in the rest of the City. City Manager Westbrook pointed out that technically we don't have to provide that service because we are not the service provider in that area.

Councilwoman Whitmire said that Mr. Shuford's memo reads that state law allows the option of providing sewer service through a septic tank maintenance program and our consultant has recommended using that option.

Mr. Shuford stated that City staff is committed to carrying out Council's policy in this area in that the Council wants to provide the absolute top level of service that is feasible. They will also continue to pursue the issue with MSD that Councilwoman Field raised.

Upon inquiry of Councilman Peterson, Mr. Richard Flowe, President of Benchmark Inc., said that City Council can reduce the areas in size, provided that the subsequent area still meets and satisfies the qualifications to annex on an analytical basis. You can also revise the services report through two different mechanisms. One is an actual amendment of the report itself, or, at the time of the consideration of the annexation ordinance in June, there are provisions in that ordinance to make any amendments to the plan that you desire.

City Manager Jim Westbrook responded to a concern from Mr. Fred English, 17 Pressley Road, about his sewer system.

Councilman Hay moved to adopt Resolution No. 00-56, the resolution approving the report setting forth plans to provide services to the area located north and south of Long Shoals Road between I-26 and Hendersonville Road, also known as Area 2001-C. This motion was seconded by Councilman Peterson and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 498

Councilwoman Field moved to adopt Resolution No. 00-57, the resolution approving the report setting forth plans to provide services to the area known as Ridgefield Boulevard and Oak Terrace area, also known as Area 2001-D. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 500

Councilman Peterson moved to adopt Resolution No. 00-58, the resolution approving the report setting forth plans to provide services to the area known as New Leicester Highway, also known as Area 2001-E. This motion was seconded by Councilwoman Whitmire and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 502

Councilwoman Field moved to adopt Resolution No. 00-59, the resolution approving the report setting forth plans to provide services to the area known as the Rocky Ridge Road/Wedgefield Drive area, also known as Area 2001-F. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 504

D. RESOLUTION NO. 00-60 - RESOLUTION APPOINTING TWO ALTERNATES TO THE BOARD OF ADJUSTMENT

Vice-Mayor Cloninger said that on February 22, 2000, City Council interviewed Tom Tarrant, Scott Fowler and Headlee Howard for two alternate positions on the Board of Adjustment.

Scott Fowler received seven votes, Headlee Howard received five votes and Tom Tarrant received two votes. Therefore, Councilman Worley moved to appoint Headlee Howard as an alternate to the Board of Adjustment to serve an unexpired term, term to expire January 21, 2001; and Scott Fowler as an alternate to the Board of Adjustment to serve a three year term, term to expire January 21, 2003. Both respective appointments are until their successors have been appointed. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 506

D. RESOLUTION APPOINTING A MEMBER TO THE GREENWAY COMMISSION

Vice-Mayor Cloninger said that on February 22, 2000, City Council interviewed Crystal Pace and Phyllis Stiles for a vacancy on the Greenway Commission. Ms. Judith Hamill was very interested in the position but was out of town on the date scheduled for interviews. It was the consensus of City Council to instruct the City Clerk to arrange for an interview for Ms. Hamill and bring this matter back to City Council at their March 28, 2000, meeting.

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of February 18-24, 2000: Gene Davis (Civic Center) and Neal Owen (Water).

The following claims were received during the period of February 25 - March 2, 2000: Jerry Buckner (Water), Joel Belz (Water) and Tina Watson (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUIT

The City has received the following Complaint on February 16, 2000: Matter: Joanne Baker and Kenneth Baker v. City of Asheville, Asheville Transit Authority, Asheville Transit Commission, CCL Management Inc., Asheville Coach Lines Inc. and Sandra Imes. The nature of the proceeding is a complaint alleging bodily injury and expenses incurred.

The City Attorney has recommended that this matter be handled by an attorney outside the City Attorney's Office and he recommended Fred Barbour.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. PARKS AND OPEN SPACE DISTRICT

Mayor Sitnick said that when the Unified Development Ordinance was being discussed two years ago, her initial concept was to create a Parks and Open Space District. Her initial idea was never to zone a designation of parks and open space for private property. Her only consideration was to ascribe that zoning designation to City-owned property because City-owned parks are zoned according to the land use around them. We have a zoning designation for just about everything in this community and we accommodate just about everything in this community. She couldn't think of any designation that would preserve our park lands for our generations to come, especially since our Parks and Recreation Bond failed. She felt that it was important that at least the existing parks be preserved as parks or open space and not take a chance that some council in the future, if they find themselves in a financial crunch, as municipalities do when we get federally unfunded mandates, etc., to give a future council the thought that we could sell off our parks lands. We need our parks for our children to provide them with open space to have recreational opportunities. Again, she never intended for this to apply to private property. We gave away our sewer, we gave away our water and she didn't want to see us give away our park lands. She appreciates the idea of conservation easements and would certainly support that if it accomplishes the same thing.

B. NATIONAL LEAGUE OF CITIES

Councilman Worley said that four Council members traveled to Washington, D.C., to attend the National League of Cities Conference. He stated that the conference was very beneficial and would be providing a more comprehensive report in the future.

C. ASHEVILLE MOTOR SPEEDWAY

Councilwoman Whitmire passed out a form stating that she wanted an idea of who attended this portion of the meeting and asked audience members to write down their names and addresses.

Mr. Mike Morgan said his vision was of a community united together and healing wounds. Wounds caused unknowingly by the City of Asheville. As a new race fan, he was not capable of understanding the love for one sport, not until he began to understand the family atmosphere of auto racing. When, and only when, he began to talk to these people, these people are more than fans of a sport – they are a people of great diversity. A people who love one another as a large family. This large family that loves auto racing are perplexed and still in a state of shock that their sport is no longer a part of the City of Asheville and Buncombe County. A sport that originated here in these beautiful mountains that they call home. He does not believe that the City Council deliberately tried to target one group of people or show favoritism to another group of people, but this give of $1 Million, this value of the property, is not true. The land can only be worth $1 Million with the racing facility in operation. This land is in a floodplain and would be at its best worth $4,500 an acre. But he was not here tonight to debate or argue this point. He is asking Council to take a leadership role. He knows that Council made an agreement but Council also made a larger agreement with this racing family and to the citizens of the City of Asheville. You represent us all. It is time tonight for park lovers and the racing family to come together. The racing family is asking for nothing more than to race at the new Asheville Speedway until another track is built. Some members of Council have said to be patient and to wait until the new track is built in Haywood County in two years. He has a question. What made any of you think that a track could be built in one year and why one year. It is Council's obligation to do for a community of people, a family of people who do not have the power to do themselves. We will not escape the history of your decision. The decision to unite or divide is yours. We are not asking for more than you can give. We are asking for a motion from one City Council person who can heal our community. A motion to continue racing at the new Asheville Speedway until a new track is built. Who would make this motion and let this healing process begin. The property is the property of the taxpayers of the City of Asheville. It is these taxpayers who have elected you. We are exercising our first amendment right. The right of the people to peacefully assemble, to address our local government with our grievances, and the freedom of speech. We have the Bill of Rights which protect the person's right to life, liberty and the pursuit of happiness. He respectfully ask that this City Council help this racing family achieve the happiness that they so deserve. Make that motion tonight. The healing of our community is in your hands.

Mr. Don Yelton, speaking on behalf of Racing 2000 and Beyond, said that "you have been asked to heal the wounds. You have been asked to take a leadership role and encourage the support ... The race cars and bicycles can exist together for two years. Everyone wins. All kinds of rumors have been flying around. John Huffman offered more for the track than they paid for it. The Biltmore Company wanted to offer to move the track - lock, stock and barrel. Roger Gregg wanted the deal the ... tax write-off. The property has asbestos on it. There once was a deed that stated only racing could occur at the site. The Airport caused problems in the past when Dr. Owens had it. The previous Mayor started the deal and the current City Council inherited the problem. Roger Gregg broke a verbal contract with the drivers by telling them to go out and spend $60,000 on a different type of car. Add to these rumors the following facts. The local paper spelled out how to file an injunction on the track. The time has run out on that. The previous park donated by the City by RiverLink was a site for storage of electrical transformers with possible PVC contamination. The previous park required and donated to the City by RiverLink has required the addition of two full-time park wardens to make the park so that it could be used by the average person. The race track paid taxes while the park will cost money. The track paid over $20,000 in property taxes alone, I believe. The racing season put over $9 Million in the economy by building 150 cars at $60,000 a piece. That's equal to $500,000 at 6% sales tax. The taxpayers will have to support the park while the race track funded itself. If you look at the take at the gate of that track, it's about $1.2 Million a year and an economic analysis says that multiplied by 10 by the time that money is passed through the community. So we are looking at an economic impact of the gate alone of $12-15 Million plus the $9 Million equals a $24 Million impact on this community. Yes, you can sit there and pretend that the public doesn't care about racing and you may not want the noise and some people tell me this will hurt me in my run for Chairman of the Buncombe County Board of Commissioners, by being for the race fans. And you may feel that racing is a red-neck sport. I don't know and you don't know, but look at the Council now how it has changed based on this past decision. Remember that everyone in the City understands tax dollars and we are just going to say no to millions of dollars in revenue. The City doesn't keep all that money, but a percentage of it does go to you. But I guess that you feel an annexation will give you the funds to keep up the park. With every annexation will come more irate voters that will observe your every decision. Think this through. You will take away a sport of 40 years. You will take away a site of family recreation. You will take away a place that produced revenue. You have an attitude that you are surprised at how irate race fans are, but yet you tell them to go away and play with themselves for two years while the track in Haywood is built. I'm surprised that these folks think that you can do something. But you can do something. You can shut it down, so if you can shut it down, you can open it up. Right now you can make a move or a motion to work your fanny off in the next two weeks to let racing occur at the track to give the neighboring county time to build the track. You always say that so goes Asheville, goes the rest of the western North Carolina counties. You always say you're asked to provide services such as the Civic Center that nobody pays for. Does the Asheville City Council have the ability to show the leadership and persuade the givers of this Trojan horse to let my friends, the racing community, pay this $500,000 in taxes for the next two years. That's a cool million, folks, and guess what they will pay the City. Another $200,000 just to use the track and you can even work with the promoter to work other functions in, such as bike races, go-cart races, so that the park could be phased in while making money on the track. If the gift-giver really cares about Asheville, they would go along with this plan. But you have analyzed the votes, and I've been told that you have looked at those 17,000 petitions that were signed and only 6% were registered to vote – well, I'm going to tell you right now. The racing community is here tonight and they will vote. We signed up over a dozen people today outside this City Hall to be registered to vote. Has the racing community been singled out as the red-neck sport and to be shut down – removed from the hearing distance of a new hotel. If this Council does not work to make this happen, you are sending a message to all of the locals, all of the red-necks, and yes, I consider myself one of them, and all the locals that have moved in here that want to become red-necks, that if your hobby gets in the way of a greenway or a high dollar hotel, bye-bye – you're gone. Can this Council have the leadership. Is there one to stand up and say, wait a minute. We are fixing to open up a belly of a Trojan horse. A belly that may contain asbestos. A broken contract with the drivers that is a possible lawsuit. Lost tax revenues. Increased burden on the taxpayers and maybe misplaced deeds. And maybe even possibly a question of 501-C status of RiverLink as they pledge in their Articles of Incorporation to care about everyone – all of the people, not just a select few. This Council has a chance to make this decision. I urge you to carefully look at the message you're sending to the people. When this same Council says, we won't let a businessman drill at the Airport to look for a raceway and evaluate the property. When that information would be extremely valuable to you. I think any businessman in Asheville if someone walked in his door and said I will do something for you and give you the information for free, they would take it. So, with that action and the action that you are possibly going to take to shut racing down – does that not send a message that yes, you have the power to shut racing down. And folks, if you have that power, you have the power to let it continue. Think about what leadership role you have.

Mr. Clyde Flowers said that he has raced off and on for 33 years at the speedway. He questioned why City Council took 40 years of racing heritage away from the racing community behind closed doors and leave them with no where else to go.

Mayor Sitnick said that "there is nobody on this Council who doesn't understand how you feel, all of you. There was a private property owner, and all of you are private property owners, who decided five years ago to sell the Asheville Motor Speedway. The Asheville Motor Speedway was advertised in in-City and out-of-City newspapers. I have been told this by dozens of race fans. I don't know all of the history that involved Mr. Gregg's feelings about the race track and his desire to sell it. I do know that for four years nobody bought it. And then a group of private developers came along, private donors – they decided to buy it. Mr. Gregg came to the City and told us that he had a donation to give to us. A gift. He wanted it kept confidential because he wanted to honor his father by naming part of it in his father's name. I am telling you what happened. Don Yelton has been in my office many times. I have known Don Yelton for years. Don has always told me, he believes in my honor and he trusts me. I am telling you the truth as best I know it. We agreed that it was a very nice gesture for Mr. Gregg to honor his father and he wanted to surprise his father by naming the Roger Gregg Sr. Greenway after him. We never held a secret meeting. We held one legal closed session in order to discuss the acquisition of land, which is allowed by North Carolina state statute. During that meeting, we discussed the possibility of this gift and the fact that there would be an easement that would be turned over to the North Carolina Clean Water Trust Fund. We never discussed the acquisition of this property in closed session again. So there was no secret meeting. Last year a number of racing fans came to this Council and, I have all of the minutes and would be happy to provide you with copies of these minutes, of all of the meetings where all of you and those not here tonight, requested of this Council that we do all in our power to get one more season of racing for you. To get one more year for the Asheville Motor Speedway while you-all worked on creating another track. There were even discussions between our City Attorney and several potential developers, some of whom continue today looking for another track, and some who came, made promises and kind-of disappeared during the process. This Council bent over backwards and went to the donors and went to RiverLink and begged for another year – which is what you-all asked us to do. We did exactly as you requested. In order to get that year, we had to promise that we would not ask again. So in order to get that year, which is what you-all requested of us, we did that. But it was more than a promise, it was an agreement. And, I would venture to say that if any of you had asked any of us when we were candidates, if we would break an agreement when we got elected, and we said yes, you would not have voted for us. And anybody who asks an elected official to break an agreement, is not asking a proper thing. We did it last year and we got the year for you. At my own personal risk, even though we promised and signed an agreement not to ask again in order to get that year, two weeks ago I picked up the phone and made the calls that Don Yelton asked me to make and requested the possibility of allowing racing at the race track. I was told no. Final answer. I was told even asking could get us sued. But I took the risk and I asked exactly what you're asking us tonight. And I was told no. I'm sorry about what happened to the speedway. I'm sorry about the history that has been cut off. We all are. We didn't know what Mr. Gregg's intentions were but he was a private property owner. The restrictions that we placed on the Asheville Motor Speedway to not allow racing there anymore were placed on it by Mr. Gregg. Not by the City of Asheville. When you use terms like we shut you down, it's not so. We accepted the gift on behalf of the taxpayers of this City. We're sorry about the wounds, but they were not caused by the City of Asheville. In the newspaper, Mr. Yelton was quoted as saying, and if this is not what you actually said Don, I apologize to you, because sometime things are quoted in the newspaper and they come out a little different than real, so correct me if I'm wrong. You said that the City Council took an oath to serve everybody. I feel we did that. We received the gift on behalf of the taxpayers of the City. We did everything we could to have one more year of racing at the speedway. We took an oath to be truthful, to be honest, to abide by our agreements. And you are now asking us to break that agreement. You say that we broke it one year. We didn't break it one year. We did exactly as you requested. We went to the donors and to RiverLink and we begged for one more year. One more season. Time and again, in the minutes of those meetings, that's what you asked for. And that's what we got. I don't know what more we can do at this point. This has been a very difficult episode in Asheville's history. Frankly, speaking for myself, if I had known the pain that it would have caused when I was asked to keep in confidence this gift, I would have said no thank you. It is my hope that a race track is built, and built quickly. I don't know that it will be built in time to satisfy everybody. I don't know whether the track in Canton is going to be built. I don't know whether the Youngs are going to build one – I certainly hope one is built as soon as possible. But the Asheville City Council and the City of Asheville did not shut down the speedway."

Mr. Yelton asked "if we can raise the money to pay Roger Gregg his share of that track and you can refund that money to him, would the City possibly consider doing that and letting him remove his deed covenant and then we would work with the City so that we could pay the City, and we would actually increase the price of each race ticket by $1 and let that money go to the City and toward construction of the park."

Mayor Sitnick said that "I will suggest to you now what I have suggested to you in my office. If you want to go and ask all of the parties involved, and follow the line, and get that done, I welcome you to do it."

Councilman Worley suggested Mr. Yelton look at the deeds and the other restrictions that were put on record – not only were the deeds which contain restrictions, there was a conservation easement also placed on the property. The holder of that conservation easement would also have to be contacted. The restrictions were placed on the deed from Roger Gregg to RiverLink. The same restrictions were also placed on the deed from RiverLink to the City of Asheville. He felt both organizations would need to be involved in releasing those restrictions.

Several other speakers made comments as follows: who did the Mayor talk to that said no more racing, let the Planning & Zoning Department and the Economic Development Division find a place to locate a race track, are the Young's still trying to find a location to build a track, why didn't the City give permission to the Young's to do soil borings on the property near the Airport, and there are a lot of arrests at the park on the corner of Amboy Road.

Mr. Charlie Crawford said that he is building a raceway in the outskirts of the City of Canton and he believes that it will be open sometime in 2001.

D. COMMENTS BY MS. SHIRLEY DOZIER

Ms. Shirley Dozier passed out a hand delivered letter dated January 25, 2000, to Mayor Leni Sitnick and stated that she has not had any response to that letter. She felt that no response reflects the lack of responsibility for the damages that the City has caused her family as taxpayers of the City of Asheville. She urged the City to stop the harassment of the Dozier family.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:45 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - March 21, 2000 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger (participating by speaker phone); Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and Deputy City Clerk Phyllis Corns

Absent: None

CONSENT:

Shiloh Community Center Roof Replacement

Summary: The consideration of a resolution authorizing the City Manager to enter into a roof replacement contract with Carolina Mountain Roofing and Construction, Inc. for the Shiloh Recreation Center.

In an effort to maintain city facilities, City staff, through the capital improvement process, has determined the Shiloh Recreation Center requires roof replacement. Staff solicited sealed bids from seven roofing contractors, three of which were minority contractors, to supply and install a new roofing system. Staff received five qualified bids which are as follows:

Construction Advantage, Inc.	$99,630.00
Service One, Inc.	$92,143.00
Stroup Sheet Metal Works, Inc.	$99,800.00
Carolina Cornerstone Construction, Inc.	$87,957.00
Carolina Mountain Roofing and Const., Inc.	$69,400.00

Staff has reviewed all bids and determined that Carolina Mountain Roofing and Construction, Inc. is the lowest bidder and staff recommends acceptance of the total bid amount of $69,400.00.

Approved funding is available in the capital improvement project account to pay for this roof replacement for Shiloh Recreation Center.

The Parks and Recreation Department requests City Council authorize the City Manager to enter into a contract for $69,400.00 with Carolina Roofing and Construction, Inc.

Grant Application for Pack Square Renaissance Project from Asheville Merchants Foundation

Summary: The consideration of a resolution to apply and enter into an agreement with the Asheville Merchants Foundation for grant monies to assist with funding for Phase II of the Pack Square Renaissance Project.

The Pack Square Renaissance project is a public-private effort to develop and implement a plan for a redesigned Pack Square and City-County Plaza. Phase I of the project is currently underway and will involve the creation of a conceptual plan for this redesign. Phase II of the project will involve the development of a final plan and construction drawings and is estimated to cost in excess of $150,000. The Pack Square Task Force, which is comprised of both public and private sector individuals, has been leading the project. The Task force recognizes that the vast majority of the funding for the project will need to come from sources other than the public sector. With this in mind, the Task Force is seeking grant monies to supplement private sector fundraising efforts.

The Planning and Development Department is requesting $20,000 in grant funds from the Asheville Merchants Foundation. The grant does not require matching funds.

The Planning and Development Department recommends City Council adopt the resolution to apply and enter into an agreement with the Asheville Merchants Foundation for grant monies to assist with funding for Phase II of the Pack Square Renaissance Project.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UDO AMENDMENT REVIEW

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which are scheduled on April 11, 2000. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Charlotte Street Transition Overlay Zoning District and Application of that District to 43 Properties in that Area

Director of City Development Mike Matteson said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to establish a Charlotte Street Transition Overlay District and application of this overlay district to 43 lots in the Charlotte Street area.

The Charlotte Street Transition Overlay District is an incentive based overlay zoning district designed to aid in the implementation of the Charlotte Street Corridor Plan. The Corridor Plan, adopted by City Council in January, 1999, recommends, among other things, compatible in-fill development which is more urban in nature and which relates to the street and sidewalk and serves the surrounding community. The overlay district provides property owners and developers with incentives, in the form of square footage bonuses, to develop property in a manner consistent with the recommendations of the plan. Structures may be larger than permitted in the underlying zoning district provided that certain design features or other elements are incorporated into a proposed development.

The Planning and Development Department is proposing to apply this overlay district to 43 properties in the Charlotte Street area. The underlying zoning district is CBI Community Business I.

City Council is asked to first consider the ordinance amendment to create the Charlotte Street Transition Overlay District and then to consider the application of the overlay district to the properties in question.

At their January 5, 2000, meeting, the Planning & Zoning Commission voted unanimously to recommended approval of both the ordinance amendment creating the Charlotte Street Transition Overlay District and the application of the overlay district to the properties in question. The Planning & Zoning Commission asked staff to make some minor changes to the proposed overlay district and those changes will be incorporated into the proposed district.

The Planning and Development Department staff is also recommending approval of both the ordinance amendment and the application of the overlay district.

Discussion surrounded the definition of "mixed use" vs. "multiple use". Mr. Shuford said that he would provide Council with information relative to "mixed use" and why they feel it is important from a planning standpoint.

Councilman Peterson felt there may be concerns from the business community regarding the incentive points and the appearance that the City is getting into the design process. It was his understanding developers want fixed rules and not so much discretionary items that drag the process out.

Councilwoman Field suggested a clarification on the point system.

Mr. Matteson responded to Councilman Peterson about his concerns relative to increased traffic if larger structures are allowed on Charlotte Street.

Councilwoman Whitmire asked if incentives could be included for affordable housing as part of the mixed use component. Mr. Matteson said that he would explore that option.

Councilwoman Field asked Mr. Matteson to review if requiring skylights to be flat might be a disincentive to putting skylights in at all.

Temporary Wireless Telecommunication Facilities at Approved Sites

Senior Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) which would allow temporary telecommunications facilities at approved sites.

The Planning and Zoning Commission, at their March 1, 2000, meeting, reviewed and recommended approval of an amendment to the UDO which would amend Section 7-14-2 to allow temporary telecommunications facilities at approved sites. The proposed amendment would permit a temporary telecommunications facility to be located at sites that have been approved for the location of a permanent facility (telecommunications tower, concealed telecommunications facility, or co-located facility). A temporary telecommunications facility could be placed on the approved site for a period of up to 6 months while the permanent facility is being constructed and/or installed. The time period for the temporary facility could be extended for another 6 months if the construction has begun but has not been completed. With the proposed amendment, telecommunications service providers could begin providing service from an approved site almost immediately instead of waiting for the construction and/or installation of the permanent facility.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the amendment.

Mr. Green responded to a question from Councilman Hay regarding notifying people that the telecommunications facility is only a temporary facility.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearings on April 11, 2000.

DISPOSAL OF SMOKING MATERIAL

Mr. Richard Grant, Solid Waste Manager, said that on October 12, 1999, City Council proposed an ordinance requiring businesses to install cigarette receptacles at entrances to their businesses and asked that the Downtown Commission make recommendations regarding the proper disposal of cigarette butts not only in the downtown area, but the entire City.

They felt that there is no need for over zealous ordinance enforcement and downtown merchants should not be singled out because litter problems exist throughout the City.

The City has two existing ordinances, Sections 15-5 and 16-3, which prohibit littering and require businesses to keep storefront sidewalks and gutters clean. While these ordinances deal with litter, they are difficult to enforce particularly when dealing with cigarette trash. In an effort to gain additional input on the problem, City staff made presentations to the Downtown Commission, Asheville Downtown Association and information was received from the Merchants Action Coalition. The majority of participants agreed the suggested ordinance requiring receptacles would not alleviate the problem and places responsibility on the business rather than the smoker.

The groups suggested the following approaches in lieu of the receptacle requirement:

- Develop an awareness and educational outreach program with the Downtown Commission targeting smokers, business owners, tenants and media. This campaign would promote litter laws, encourage merchants to keep sidewalks clean and establish ongoing physical and educational campaigns. Several slogans/messages have been suggested as well.
- Phase installing additional receptacles on downtown trashcans over the next several years. Investigate different types of receptacles for functionality and exposure. There are 245 trash containers in Biltmore and downtown areas, 28 having receptacles. Additionally there are 60 stand-alone receptacles in front of 38 buildings.
- Evaluate the placement of existing public trash receptacles to maximize their use.
- Use inmate labor to sweep sidewalks once per month (current) and coordinate with the Street Division sweeping operations. Downtown streets are swept 4 times per week and sidewalks once per week.
- Promote Adopt-A-Street programs in the downtown business areas.

Staff recommends approval of the suggestions received from the Downtown Commission, Asheville Downtown Association and Merchants Action Coalition.

Mayor Sitnick said that she has a citizen suggestion for the educational campaign – "Asheville, No Butts About It."

Upon inquiry of Mayor Sitnick, Mr. Grant said that non-retaining water receptacles range from $90 to $200.

Mayor Sitnick suggested a user fee because she would hate to make someone who never smokes pay for these receptacles. She wanted to see the outreach/educational program extend as much to the N. C. Dept. of Transportation as well as merchants because cigarette butts are a problem all over the City. She also requested all business organizations include information about this in their newsletters. She suggested including a notice about the existing ordinances in the water bill inserts and also that at the front-end of the campaign, the City have on display the two sidewalk sweepers to show that the City is doing their part as well.

Councilwoman Field also suggested the existing ordinances be placed on the Government Channel.

Councilwoman Whitmire suggested City staff to talk to three different PTO's or PTA's in order to get feedback from parents about the use of the word "butt" in our slogans.

Public Works Director Mark Combs responded to a suggestion by Mayor Sitnick about all City employees being part of a litter patrol and having one staff person be the contact person for all complaints.

City Manager Westbrook said City staff will come back to City Council with the outreach program and also recommendations on stepped out enforcement on all litter.

It was the consensus of City Council to approve the recommendations received from the Downtown Commission, the Asheville Downtown Commission and the Merchants Action Coalition and to instruct City staff to work with the downtown groups to promote awareness and education of cigarette litter laws.

REVISIONS TO THE ASHEVILLE STANDARD SPECIFICATIONS AND DETAILS MANUAL

City Engineer Cathy Ball said that this is the consideration of adopting revisions to the Asheville Standard Specifications and Details Manual.

In May 1997, City Council adopted the Asheville Standard Specifications and Details Manual. This manual provided developers, engineers, architects and other design professionals with guidelines for development in the City of Asheville and the extraterritorial jurisdiction. Since that time some minor changes have been made and implemented in the Manual.

On November 9, 1999, City staff held a public meeting to get input on the revisions to the standards. Approximately 200 people were invited to attend. Approximately 25 people attended and provided input on the revisions to the Manual. In addition to public comment, other City departments suggested revisions to the Manual. Most of the public and other City department's comments are reflected in the revision to the Manual.

The major revisions consist of the following:

- Revising the streetscape requirements to reflect the recent changes proposed by the Transportation Advisory Committee to the N. C. Dept. of Transportation (i.e., 4 lanes with median divided);
- Allowing rolled (valley) curb for all residential streets;
- Allowing 6" of stone and 2" of asphalt on private parking lots;
- Incorporating the recent changes to the Unified Development Ordinance (UDO) regarding sidewalks;
- Adding the requirement that curb and gutter can be required by the City Engineer when necessary to control storm water runoff;
- Removing the section regarding Traffic Calming as it has recently been adopted as a separate policy by City Council;
- Allowing High-Density Polyethylene (HDP) Pipe to be used in the right-of-way for residential cul-de-sac and loop streets;
- Rewriting Section 6.00 "Water Distribution" to reflect recommended revisions from the Water Resources Department;
- Amending the Asheville Standard Specifications and Details Manual to be consistent with the requirements in the UDO (i.e., parking stall width); and
- Providing sample easements for water and storm water lines.

Staff will be working with Planning and Development Department in the next several months to ensure that the Asheville Standard Specifications and Details provide standards that promote "Smart Growth" as a part of new development consistent with City Council goals.

Staff recommends that adoption of the revisions to the Asheville Standard Specifications and Details Manual.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

AUTOMATED REFUSE COLLECTION PROGRAM

Mr. Richard Grant, Solid Waste Manager, gave City Council an overview of the automated refuse collection program policies.

Last year City Council approved a pilot automated refuse collection system to more than 3,000 households. All equipment, training and logistics are in place for the program to begin April 2, 2000. This program will require citizens to learn new policies in order for efficient, cost effective service. As with any changes, there will be resistance until new habits are formed.

The current system of refuse collection provides for the collection of up to six containers placed at the curb. The use of personnel to load refuse allows for considerable flexibility to citizens in the type and placement of refuse. For example, bulky wastes such as televisions are often placed on top of or adjacent to containers, which posed no problems to collection personnel; however, an automated system is designed to pick up standardized collection containers designed for the arm mechanism (all wastes must be placed in the supplied container). Thus, the habit of placement of wastes on top of or adjacent to containers will no longer be acceptable due to the inability to load with the arm mechanism.

Households in the pilot areas will receive written information, policies and guidelines with the delivery of their container. Staff will also mark the spot where containers must be placed. Sanitation area supervisors will make every effort to educate, correct and service citizens to insure a smooth transition to the new system.

However, municipalities who implemented similar programs advised staff to designate a 'grace period' where customary service is provided to help citizens adjust to the new system. The grace period will be provided for 30 days. In addition to customary service (return for pick-ups, pick up non-containerized refuse, etc.), citizens would also receive information pamphlets and notices to help educate them.

At the conclusion of the grace period it was recommended that sanitation staff eliminate 'customary service' and not return to pick up, remove, or hand-load any refuse not appropriately placed in the supplied containers.

Consequently, after the grace period some citizens may call Council members to demand 'customary services' (after the grace period). Such service would neutralize the advantages of such a system.

New policy consists of: residents must use City supplied roll out container only; trash left beside the roll out container will not be collected; trash placed on top of the roll out container will not be collected; trash must be bagged prior to placing in the roll out container; the roll cart must be placed so the handle faces away from the street; roll out containers must be in an accessible location, at least five feet from any obstacle, within two feet of the curb and away from low hanging utility polices; and bulky items will be collected separately from the automatic collection – residents must call 21-1122 to schedule.

Conformance with these policies is critical to the success of the program. Staff requests City Council's support for staff's enforcement of the pilot program policies (beyond the grace period).

Mayor Sitnick had a suggestion that prior to the formal Council meetings, a 10-minute promotion spot be taped for viewing on the Government Channel to inform the public about a program, instructions for new trash pick-up, etc.

City Council discussed different avenues to notify the public of this new system.

OTHER BUSINESS:

Due to the 4th of July holiday falling on a Tuesday, it was the consensus of City Council to cancel their July 4, 2000, City Council worksession.

Mayor Sitnick wanted the City to become very serious about the problem with litter, about cleaning it, enforcing our laws and prevention programs. She hoped that during the budget process perhaps more money should be allocated for litter prevention.

Mayor Sitnick suggested City Council send a letter to the Buncombe County Commissions requesting them to eliminate or reduce dumping fees for demolitions done by non-profits who will provide affordable housing on those sites where the demolition occurs. It was the consensus of City Council to have Councilwoman Field do some preliminary dialog with the person who is mostly involved with affordable housing at the County level prior to sending the letter.

At the suggestion of Mayor Sitnick, it was the consensus of City Council to send a letter to the local N. C. Dept. of Transportation to request they make an effort to repair the islands and, in conjunction with the Governor's Litter Sweep, to clean the state roads and medians. She will also include in that letter a request to coordinate the traffic lights on Tunnel Road near the Asheville Mall.

CLOSED SESSION

At 5:15 p.m., Councilwoman Field moved to go into closed session in order to (1) consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: Elijah Jones t/a Jones Convenience Store and City of Asheville - the statutory authorization is contained in G.S. 143-318.11(a)(3); (2) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease - the statutory authorization is contained in G.S. 143-318.11(a)(5); and (3) to prevent disclosure of information that is privileged or confidential pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that renders the information to be discussed confidential is N. C. Gen. Stat. 160A-168, the Personnel Privacy Act - the statutory authorization is contained in G.S. 143-318.11(a)(1). This motion was seconded by Councilman Hay and carried unanimously.

At 6:16 p.m., Councilman Hay moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously. (Vice-Mayor Cloninger signed off at 6:00 p.m.)

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CIVIC CENTER

A brief discussion was held about the Civic Center and potential changes to the Civic Center Commission ordinance to clarify the Commission's role. City Attorney Oast and City Manager Westbrook were to meet with some Commission members on Friday, March 24, 2000, to discuss this matter.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:25 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - March 28, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger (participating by speaker phone); Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Peterson gave the invocation.

ADDITIONS TO THE AGENDA

Councilman Peterson asked that a matter regarding an amendment to the City Council's Rules and Procedures be added to the agenda under "Other Business."

Mayor Sitnick asked for a brief discussion relative to the WNC Regional Air Pollution Control Board be added to the agenda under "Other Business."

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 15, 2000

B. RESOLUTION NO. 00-61 - RESOLUTION ADOPTING REVISIONS TO THE ASHEVILLE STANDARD SPECIFICATIONS AND DETAILS MANUAL

Summary: The consideration of adopting revisions to the Asheville Standard Specifications and Details Manual.

In May 1997, City Council adopted the Asheville Standard Specifications and Details Manual. This manual provided developers, engineers, architects and other design professionals with guidelines for development in the City of Asheville and the extraterritorial jurisdiction. Since that time some minor changes have been made and implemented in the Manual.

On November 9, 1999, City staff held a public meeting to get input on the revisions to the standards. Approximately 200 people were invited to attend. Approximately 25 people attended and provided input on the revisions to the Manual. In addition to public comment, other City departments suggested revisions to the Manual. Most of the public and other City department's comments are reflected in the revision to the Manual.

The major revisions consist of the following:

- Revising the streetscape requirements to reflect the recent changes proposed by the Transportation Advisory Committee to the N. C. Dept. of Transportation (i.e., 4 lanes with median divided);
- Allowing rolled (valley) curb for all residential streets;
- Allowing 6" of stone and 2" of asphalt on private parking lots;

- Incorporating the recent changes to the Unified Development Ordinance (UDO) regarding sidewalks;
- Adding the requirement that curb and gutter can be required by the City Engineer when necessary to control storm water runoff;
- Removing the section regarding Traffic Calming as it has recently been adopted as a separate policy by City Council;
- Allowing High-Density Polyethylene (HDP) Pipe to be used in the right-of-way for residential cul-de-sac and loop streets;
- Rewriting Section 6.00 "Water Distribution" to reflect recommended revisions from the Water Resources Department;
- Amending the Asheville Standard Specifications and Details Manual to be consistent with the requirements in the UDO (i.e., parking stall width); and
- Providing sample easements for water and storm water lines.

Staff will be working with Planning and Development Department in the next several months to ensure that the Asheville Standard Specifications and Details provide standards that promote "Smart Growth" as a part of new development consistent with City Council goals.

Staff recommends that adoption of the revisions to the Asheville Standard Specifications and Details Manual.

RESOLUTION BOOK NO. 26 – PAGE 1

C. MOTION SETTING A PUBLIC HEARING ON APRIL 11, 2000, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CONSIDER A NEW CHARLOTTE STREET TRANSITION OVERLAY DISTRICT AND APPLICATION OF THAT DISTRICT TO 43 PROPERTIES LOCATED IN THAT AREA

D. MOTION SETTING A PUBLIC HEARING ON APRIL 11, 2000, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW TEMPORARY WIRELESS TELECOMMUNICATION FACILITIES AT APPROVED SITES

E. RESOLUTION NO. 00-62 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAROLINA MOUNTAIN ROOFING AND CONSTRUCTION INC. FOR THE SHILOH COMMUNITY CENTER ROOF REPLACEMENT

Summary: The consideration of a resolution authorizing the City Manager to enter into a roof replacement contract with Carolina Mountain Roofing and Construction, Inc. for the Shiloh Recreation Center.

In an effort to maintain city facilities, City staff, through the capital improvement process, has determined the Shiloh Recreation Center requires roof replacement. Staff solicited sealed bids from seven roofing contractors, three of which were minority contractors, to supply and install a new roofing system. Staff received five qualified bids which are as follows:

Construction Advantage, Inc.	$99,630.00
Service One, Inc.	$92,143.00
Stroup Sheet Metal Works, Inc.	$99,800.00

Carolina Cornerstone Construction, Inc.	$87,957.00
Carolina Mountain Roofing and Const., Inc.	$69,400.00

Staff has reviewed all bids and determined that Carolina Mountain Roofing and Construction, Inc. is the lowest bidder and staff recommends acceptance of the total bid amount of $69,400.00.

Approved funding is available in the capital improvement project account to pay for this roof replacement for Shiloh Recreation Center.

The Parks and Recreation Department requests City Council authorize the City Manager to enter into a contract for $69,400.00 with Carolina Roofing and Construction, Inc.

RESOLUTION BOOK NO. 26 – PAGE 2

F. RESOLUTION NO. 00-63 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH THE ASHEVILLE MERCHANTS FOUNDATION FOR A GRANT TO ASSIST WITH FUNDING FOR PHASE II OF THE PACK SQUARE RENAISSANCE PROJECT

Summary: The consideration of a resolution to apply and enter into an agreement with the Asheville Merchants Foundation for grant monies to assist with funding for Phase II of the Pack Square Renaissance Project.

The Pack Square Renaissance project is a public-private effort to develop and implement a plan for a redesigned Pack Square and City-County Plaza. Phase I of the project is currently underway and will involve the creation of a conceptual plan for this redesign. Phase II of the project will involve the development of a final plan and construction drawings and is estimated to cost in excess of $150,000. The Pack Square Task Force, which is comprised of both public and private sector individuals, has been leading the project. The Task force recognizes that the vast majority of the funding for the project will need to come from sources other than the public sector. With this in mind, the Task Force is seeking grant monies to supplement private sector fundraising efforts.

The Planning and Development Department is requesting $20,000 in grant funds from the Asheville Merchants Foundation. The grant does not require matching funds.

The Planning and Development Department recommends City Council adopt a resolution to apply and enter into an agreement with the Asheville Merchants Foundation for grant monies to assist with funding for Phase II of the Pack Square Renaissance Project.

RESOLUTION BOOK NO. 26 – PAGE 3

G. RESOLUTION NO. 00-64 - RESOLUTION CANCELLING THE CITY COUNCIL MEETING OF JULY 4, 2000

RESOLUTION BOOK NO. 26 – PAGE 4

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Hay and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR A TELECOMMUNICATIONS TOWER AT 200 TUNNEL ROAD

Urban Planner Dan Baechtold said that the applicant, American Tower Corporation, is requesting another continuance in this matter. The public hearing was opened on September 28, 1999, and continued a number of times. The last two continuances have been at the request of the applicant. The applicant is attempting to co-locate on the existing tower on Kenilworth Knoll as an alternative to building a new tower. The applicant is having some difficulty working out the technical details of co-location, and therefore is not ready to withdraw the application for the new tower.

Letters have been received from American Tower Corporation and Crown Castle, the company that owns the existing tower, which indicate that all parties expect the co-location to be successful as soon as the technical issues are resolved.

Continuances in this matter have been granted in the past, because allowing the applicant time to seek co-location on an existing tower may obviate the need for a new tower. In the previous continuances, staff made an effort to choose a hearing date that would allow sufficient time for the applicant to resolve outstanding issues prior to the hearing. Because of the uncertainty about the date that this will be resolved, staff recommends continuing this matter indefinitely. Under this option, the applicant will notify the City when they are ready to proceed with the hearing. Staff recommends that the applicant be required to pay the costs of notice and advertising for rescheduling the hearing.

Staff recommends continuing this matter indefinitely, subject to the condition that the applicant pay any costs of notice and advertising caused by rescheduling the public hearing.

Mayor Sitnick stressed that it is very unusual for City Council to grant this many continuances and this in no way should be construed as City Council setting a precedence on continuances.

A brief discussion was held about Council's policy of co-location and since it appears that American Tower will be able to co-locate on an existing tower, a continuance is favored.

Vice-Mayor Cloninger noted that if co-location takes effect, it will not raise the height of the tower.

Mr. David Herbert stated that telecommunication towers are a blight on our community.

After Mr. Wesley Bennett, representing the McKibben Hotel Group, was given a brief explanation of what the continuance would allow, he supported continuing the matter.

Councilman Hay moved to continue this matter indefinitely, subject to the condition that the applicant pay any costs of notice and advertising caused by rescheduling the public hearing. This motion was seconded by Councilman Worley and carried unanimously.

B. PUBLIC HEARING RELATIVE TO THE LOCAL HISTORIC LANDMARK DESIGNATION FOR THE PATTON/PARKER HOUSE LOCATED AT 95 CHARLOTTE STREET, ASHEVILLE, N.C.

ORDINANCE NO. 2679 - ORDINANCE DESIGNATING THE PATTON/PARKER HOUSE LOCATED AT 95 CHARLOTTE STREET, ASHEVILLE, NORTH CAORLINA, AS A LOCAL HISTORIC LANDMARK

Mayor Sitnick opened the public hearing at 5:24 p.m.

Ms. Angela Heitter, Planning Technician, said that this is the consideration of an ordinance designating the Patton/Parker House located at 95 Charlotte Street as a Local Historic Landmark. The public hearing on this matter was advertised on March 17 and March 24, 2000,

The property known as the Patton/Parker House was built in 1868, during the Civil War-Reconstruction Era. The owner, Thomas Walton Patton, and two African-American carpenters were responsible for building the vernacular Victorian-style dwelling. The Patton/Parker House is a two-story, wood frame residential building. The majority of exterior and interior elements are original and maintain high significance. In addition, the House is one of the last remaining residential estates on the Charlotte Street corridor.

Designation of this building as a local historic landmark makes the property owner eligible for a 50% reduction of property taxes. Currently the assessed value of the property is $441,100 and the total taxes paid for this year were $5,954.85. If the Patton/Parker House and property were designated historic the taxes would be reduced by half to $2,977.43.

When a property is designated historic, restrictions are placed on the property and to any exterior improvements or interior improvement where interiors are designated as significant. Any modification to the structures or land must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County (HRC) and all improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings.

The ordinance designates the Patton/Parker House a Local Historic Landmark. It is important that properties of local significance be preserved and protected for cultural, historic, and economic reasons for future generations.

The HRC, by unanimous vote, recommends to City Council that the Patton/Parker House located at 95 Charlotte Street be designated a Local Historic Landmark.

Since Asheville is a Certified Local Government, the North Carolina Department of Cultural Resources, State Historic Preservation Office (SHPO), has the right to comment on any nomination for Local Historic Landmark designation. The SHPO concurs with HRC's recommendation.

City staff recommends City Council consider an ordinance designating the Patton/Parker House located at 95 Charlotte Street as a Local Historic Landmark.

Mayor Sitnick closed the public hearing at 5:28 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2679. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 180

B. PUBLIC HEARING TO REZONE FIVE LOTS ON GLENDALE AVENUE FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2680 - ORDINANCE TO REZONE FIVE LOTS ON GLENDALE AVENUE FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 5:29 p.m.

Urban Planner Carl Ownbey said that this is the consideration of an ordinance to rezone property on five lots on Glendale Avenue from RS-4 Residential Single-Family Medium Density District to RS-8 Residential Single-Family High Density District. This public hearing was advertised on March 17 and 24, 2000.

The owners/applicants of this property are Dorothy Holt, Mike and Kim Dawson/Ron Moser. The property on Glendale Avenue (PIN Nos. 9658.18-30-3284, 4017, 4292, 6220, and 9014) is approximately 5 acres in size. The property owners have been working for the past two to three years to develop the property but have been unsuccessful due to the topography and the RS-4 zoning. The property owners are requesting that the property be rezoned to RS-8 to permit a denser development. The 2010 Plan indicates this area to be low density residential; however the majority of the Oakley area consists of small lots with development much denser than indicated by the 13 year old Comprehensive Plan. This particular area was zoned RS-4 during the Unified Development Ordinance process at the request of the Oakley community to identify lower density areas in the community.

The traffic impact of the area was reviewed by the Traffic Engineer and he indicates that theoretically under the RS-4 zoning potential development would generate 20 peak hour trips per day and under the RS-8 zoning potential development would generate 40 peak hour trips per day. Glendale Avenue has an average daily traffic count of approximately 3000 vehicles. With traffic signals at both terminuses of the road, several calculations were made as well as assumptions on turning movements at the intersections. A determination was made that the additional trips would have an unnoticeable difference in the operations of the two intersections.

The RS-8 zoning would permit development of the property as a conventional single-family lot subdivision. During the Planning & Zoning Commission meeting, other options were identified which would permit the development of this property for affordable housing. These options included the Planned Unit Development overlay zone and conditional use zoning (which was not adopted by City Council at the time of the Commission's hearing).

The Planning and Development Department reviewed this rezoning and presented it to the Planning and Zoning Commission at their March 1, 2000, regular meeting with a recommendation to approve the rezoning request. After receiving comments from the public, the Commissioners voted 6 to 1 to recommend the rezoning of the five lots to RS-8 Residential Single-Family High Density District.

Mr. Ownbey responded to Councilwoman Field's concerns regarding two lots having no access onto Glendale Avenue. Even though Mr. Ownbey understood that City Council cannot rezone property based on it's intended use, he did note that the property owner is planning to develop a subdivision on this property which will require a street to be built.

Mayor Sitnick stated that she has received 2-3 phone calls and several letters opposed to the proposed rezoning.

Mr. Ron Moser, developer of the property, passed out a plat of the proposed subdivision to give Council an idea of what the property will be used for if rezoned. He spoke in support of the rezoning in that under the present RS-4 zoning, he cannot provide affordable housing on the proposed 19 lot subdivision.

City Attorney Oast reminded Council that this public hearing is only on rezoning the property and not Council's approval of the proposed subdivision plan. Any representation that is shown on the plan can be considered only for the purposes of what can be done with the property, not will be done with the property.

Ms. Kim Dawson, property owner, explained that it was her father (former property owner) that pushed for the RS-4 zoning during the UDO process because more apartment projects, such as Oak Knoll, were slated to be built in Oakley. And, since his family was one of a few families with a large amount of property in Oakley at that time and he did not want another complex in that area. She felt if it was not for her father's insistence on the RS-4 zoning at that time, the property would have probably been zoned RS-8.

Mayor Sitnick closed the public hearing at 5:53 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger felt that since City Council paid close attention to the different zoning designations during the UDO process and spent an enormous amount of time on the Oakley area, he felt the zoning classification of the current RS-4 should remain.

Councilwoman Field moved for the adoption of Ordinance No. 2680. This motion was seconded by Councilman Worley and carried on a 6-1 vote, with Vice-Mayor Cloninger voting "no".

ORDINANCE BOOK NO. 18 – PAGE 183

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2681 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE MEADOWS, PHASE III, LOCATED OFF ASCENSION DRIVE IN WEST ASHEVILLE

Due to the fact that Vice-Mayor Cloninger did not hear the entire public hearing on this issue and he did not vote to instruct the City Attorney to prepare the Order, Councilman Worley moved to excuse Vice-Mayor Cloninger from voting on this matter. This motion was seconded by Councilman Hay and carried unanimously.

City Attorney Oast said that following a public hearing on March 15, 2000, City Council voted to issue a conditional use permit for Phase III of The Meadows apartment complex. The order contains findings and conclusions developed from the public hearing and City Council's discussion. The order may be changed as Council wishes prior to it's adoption.

Mayor Sitnick requested that City staff work with the developers to correct certain difficulties that have not been settled in the Phase II development.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2681. This motion was seconded by Councilman Hay and carried unanimously (with Vice-Mayor Cloninger not voting).

ORDINANCE BOOK NO. 18 – PAGE 185

V. NEW BUSINESS:

A. RESOLUTION NO. 00-65 - RESOLUTION APPOINTING A MEMBER TO THE GREENWAY COMMISSION

Vice-Mayor Cloninger said that on February 22, 2000, City Council interviewed Phyllis Stiles and Crystal Pace. On March 21, 2000, City Council interviewed Judith Hamill.

Phyllis Stiles received 3 votes, Crystal Pace received 3 votes and Judith Hamill received one vote. Another vote was taken and Crystal Pace received 4 votes and Phyllis Stiles received 3 votes. Therefore, Councilwoman Whitmire moved to appoint Crystal Pace as a member of the Greenway Commission to serve a one year term, term to begin immediately and expire on December 31, 2000, or until her successor is appointed. This motion was seconded by Councilman Peterson and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 5

VI. OTHER BUSINESS:

Procedural Change With Regard to Closed Sessions

Councilman Peterson said that after the worksession on March 21, 2000, City Council came out of closed session and continued to discuss business. He felt an amendment to the City Council's Rules and Procedures should be that a decision will be made prior to going into closed session whether any further discussion will occur after the closed session so that the public and/or media will know whether they should wait or leave.

Mayor Sitnick said that Councilman Peterson's point is well taken, however, it is very rare that City Council does come out of closed session and then continues to discuss business.

City Attorney Oast said that it has been his experience that when City Council does have an announcement coming out of a closed session that Council will so advise the people in attendance prior to going into closed session. However, there was no announcement in this case and that was not done.

Councilman Peterson moved to amend the City Council's Rules and Procedures No. 25 "Closed Sessions," that requires City Council to make a decision, prior to making a motion to go into closed session, on whether there will be an open session after the closed session or whether the meeting will be immediately adjourned after the closed session. This motion was seconded by Councilwoman Whitmire.

Mayor Sitnick felt that the procedural change will inhibit City Council from having the opportunity to have additional discussion that Council thinks of at the last minute. Since this occurs so infrequently and since it is not often that City Council even goes into closed session, she encouraged the media to stay until the closed session is over to see if there is something further that will be discussed. She strongly felt that Councilman Peterson's motion prohibits City Council from having any kind of spontaneity in their thinking and in their process to bring things to the public.

Councilman Hay noted that in the past, the press used to stay until the closed sessions were over, the doors opened, and the meeting officially adjourned. He said that nothing has changed in Council's practice, but what has changed is the press' practice in not staying until after the meeting is officially adjourned.

Vice-Mayor Cloninger said that perhaps an alternative would be that anytime City Council goes into closed session that an announcement be made that it's possible there will be other discussion after the closed session. Then it's up to the press whether they want to stay or not – which has been the case always.

Councilwoman Whitmire was concerned that members of the public may want to hear whatever Council has to say in addition to the press. To avoid the perception that City Council is doing business behind closed doors, she wanted to continually have open meetings.

When Councilwoman Field suggested having closed sessions at the beginning of the meetings, Mayor Sitnick said that then Council would be keeping people much later than anticipated.

Councilman Peterson suggested that when Council goes into any closed session, they announce that there may be discussion of items after the closed session.

Mayor Sitnick said that if the motion fails, she suggested City Council go on record saying that anytime City Council goes into closed session there is the potential that they may discuss an item after closed session.

Vice-Mayor Cloninger also suggested that if staff is ever asked if there will be discussion after closed session, that staff can honestly reply that they don't know whether anything will be discussed after closed session.

The motion made by Councilman Peterson and seconded by Councilwoman Whitmire failed on a 2-5 vote with Mayor Sitnick, Vice-Mayor Cloninger, Councilwoman Field, and Councilmen Hay and Worley voting "no".

Mayor Sitnick stated that City Council needs to make sure that the press knows they are always welcome to stay until the closed sessions are over because there is always the opportunity for spontaneity at the end of a closed session.

WNC Regional Air Pollution Control Agency and Board

Mayor Sitnick said that the ad hoc committee she appointed will be having their first meeting on March 30, 2000, with a group of invited guests who will be at the meeting as resources. She said that it has been brought to her attention that there is the possibility of other discussion that may occur before that date that has to do with Buncombe County's feelings about the Air Pollution Control Board. Therefore, she wants to make sure that the County is aware that the City of Asheville wants to be a part of any dialog that occurs so that our input is on the table at the time of any decision-making. It is also her hope that any decision that is made by Buncombe County is not made prior to the meeting on March 30 so that the City has an opportunity to put our feelings forward about how to proceed with the Air Pollution Control Board discussion. Given the fact that Haywood County has pulled out, it might require the need to reconfigure the Board to either stay local, go to the state, etc. There is a passionate feeling in the City of Asheville that the City stay part of the process.

Councilman Peterson suggested a formal letter be sent to Buncombe County from the Mayor and City Council asking that the City be included in any discussions since this is a joint Board. He hoped that unilateral decisions will not made.

Ms. Hazel Fobes, Chair of Citizens for Safe Drinking Water and Air, said that it was "this organization which, in September 1998, was requested to make a statement before the Air Quality Committee of the State Environmental Management Commission regarding concerns over management of the WNC Air Pollution Control Agency and Board. I made that presentation. Some of the concerns we had voiced were cited in the 1999 Administrative Audit of the regional body carried out by the State. Since that time, many positive changes have been effected at the Agency and in operation of the Board, lead by a new and able director and a qualified Board chair. There is a greater degree of fulfillment of responsibilities and sense of accountability. It holds monthly meetings, with first ever by-laws and attention to rules of procedure. It has created a strategic planning committee, a budget committee and enlarged and made its Advisory Council more representative and active. Personnel management has improved at the Agency; documentation has improved; and civil penalty procedures are enforced. In the light of the recent withdrawal of Haywood County from the regional agreement, CSDW has mobilized a coalition of interested civic organizations to consider the future of the agency and the board. We are requesting the Buncombe County Commissioners to withhold any decision which might lead to breakup of the interlocal cooperation. We believe that we need a regional, autonomous board and agency with functions as today taking advantage of the recent progress made. To that end, we would like to see a new interlocal agreement with the County and the City of Asheville for the present. We are prepared to offer specific arguments for continuing these local arrangements which assure effective monitoring and especially the support and involvement of the citizens." Ms. Fobes also handed out a letter from Nelda Holder, Chair of the WNC Regional Air Pollution Control Board, which lists most of the relevant initiatives of the past half year by the Board. In addition she passed out various other documents and articles.

Councilman Peterson moved to send to the Buncombe County Commissioners a formal letter from the Mayor and City Council requesting that the City be allowed to participate in the decision-making process regarding the future of the WNC Regional Air Pollution Control Agency and Board and that the County Commissioners not act unilaterally. This motion was seconded by Councilwoman Whitmire.

Councilwoman Field felt that perhaps the first thing that should happen is that we talk to the County before we start writing formal letters.

Mayor Sitnick said that she and Vice-Mayor Cloninger have a meeting tomorrow with the Chair of the County Commissioners, Mr. Tom Sobol, to discuss this issue and that the idea of a formal letter is just to put it on the record so that the community knows the City's intent to be a part of the process.

Councilman Worley felt that at the meeting set up for tomorrow with the County Chair, would be an ideal opportunity to community our concerns and our wishes without taking the formal step of a letter.

Councilman Peterson said that it was his understanding that at the County Commissioners meeting on Tuesday, April 4, the County is planning to take formal action. Therefore, if the City doesn't do something now, we will have missed the opportunity to make a statement.

Vice-Mayor Cloninger asked if Councilman Peterson would consider having an understanding that after he and the Mayor meet with Mr. Sobol, they will memorialize the discussion through a letter to County Commissioners.

Mr. Jeff Fobes, Citizens for Safe Drinking Water and Mountain Xpress, strongly spoke in support of Mayor Sitnick's statements.

Mr. Mike Lewis urged City Council to insist to the County that the City of Asheville wants to be a part of this process. He felt if the Air Pollution Control Agency is taken over by the County, then it will become subject to political process.

Ms. Susan Hutchinson, representing the Clean Air Task Force of the Alliance, suggested a joint public hearing so that the public can have input into how they want air issues dealt with.

Councilman Hay felt that we are only talking about a written memorandum that affirms our understanding that a decision will be made jointly with us. The concern is a decision will be made and we won't be on record in some fashion or another as having said that. If we're on record in a written way, then the issues are squarely in front of everyone. When the letter is written and by whom seems less important than there is some written statement from the City to the County that this is important to us.

Councilman Peterson said that he would be willing to amended his motion to leave the contents of the letter up to the Mayor's and Vice-Mayor's discretion and that the letter not be sent until after the meeting with Mr. Sobol. He just wanted to make sure that there be some formal sense of the City before the County Commissioner's meeting on April 4.

Councilman Peterson therefore amended his motion to read that a formal letter be sent from the Mayor and City Council to the Buncombe County Commissioners, leaving the contents of the letter up to the Mayor's and Vice-Mayor's discretion, expressing Council's intent that the City of Asheville be included in the decision-making process regarding the future of the WNC Regional Air Pollution Control Agency and Board and that the County Commissioners not act unilaterally. Also that the letter not be sent until after the meeting with the County Commissioner Chair Sobol. This motion was seconded by Councilwoman Whitmire and carried unanimously.

Mayor Sitnick said that it will be her intent to have the meeting with Mr. Sobol and then immediately draft a letter and send it to the County Commissioners.

Claims

The following claims were received by the City of Asheville during the period of March 3-16, 2000: Phyllis Childress (Streets) and Mary Chambers (Water).

The following claims were received during the period of March 17-23, 2000: Debra Shook (Water), Margaret Coates (Water), Solomon Golson (Police), Jim Parker (Sanitation), Sandy Ford (Streets), Sandy Matzko (Water) and Jason Petty (Parks & Recreation).

These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuit

The City received the following Complaint on March 21, 2000, as follows: County of Buncombe v. Associates Financial Services Co. Inc. (property owner) and City of Asheville (demolition lien holder) – Tax foreclosure proceeding on which the City of Asheville allegedly holds a demolition lien on the subject property. This matter is being handled in-house.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:55 p.m.

Magdalen Bulleon
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - April 4, 2000 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Restructuring of Redevelopment Loan to Robert Eidus

Summary: The consideration of a resolution authorizing the restructuring of a redevelopment loan in connection with the redevelopment of Disposal Parcel 5B of the Head of Montford Redevelopment Project.

Robert Eidus purchased property known as Disposal Parcel 5B of the Head of Montford Redevelopment Project from the City of Asheville on March 15, 1999. The property is located at 102 Montford Avenue and was formerly known as the Miller Cab property. As part of the consideration for Disposal Parcel 5B, the City received a Promissory Note, secured by a Deed of Trust on Disposal Parcel 5B, in the principal amount of $23,850.00. The Note is a balloon note with principal and interest at 7% per annum due and payable on February 16, 2001.

Mr. Eidus obtained a construction/permanent loan from Clyde Savings Bank to finance the redevelopment of the property in the amount of $30,000.00 at an interest rate of 7.75% and 15 year term. Redevelopment has been completed in accordance with the plan submitted by Mr. Eidus and approved by the City.

In order to pay off his obligation to the City as a balloon note due in 2001, Mr. Eidus would have to refinance his loan with Clyde Savings Bank. Refinancing would increase the interest rate to 8.5-8.75%. The higher interest rate would adversely impact the economic viability of the property based on its rental income potential. Mr. Eidus has requested the restructuring of his obligation to the City in order to avoid refinancing the loan from Clyde Savings Bank. As a result of negotiations with staff Mr. Eidus has agreed to pay monthly installments with interest at 8% over a period of twenty (20) years.

The terms proposed for restructuring the City's loan are reasonable and the restructuring will contribute to the economic viability of the property and the success of the Head of Montford Redevelopment Project.

Approval of the resolution will authorize the Community Development Director to restructure the loan.

Community Development staff recommends adoption of the resolution.

Amendment to Animal Control Ordinance

Summary: The consideration of an ordinance authorizing the City Manager to designate other City departments to enforce Chapter 3 of the City Code regulating animal control.

By Ordinance No. 2631, adopted by the City Council on October 27, 1999, keepers of animals within the City were specifically ordered to clean up after said animals. That ordinance authorized "appropriate officials" of the City to issue a civil penalty to violators of the ordinance. To determine what constitutes an "appropriate official," Section 3-6 of Chapter 3 of the City's Code must be reviewed. That Section of the Code restricted the enforcement personnel. This amendment will authorize the City Manager to administer the ordinance by designating other City departments to enforce some or all of the provisions of Chapter 3 of the Code of Ordinances and also authorizes the City Manager to create an Animal Control Division within a City Department. For example, enforcement of this ordinance in City parks be delegated to Parks and Recreation Department employees. Buncombe County Friends for Animals will provide training for City staff in enforcement of the ordinance.

The Police Department recommends adoption of the ordinance.

Amendment to Agreement with Grove Arcade Public Market Foundation regarding Location of Proposed Portico

Summary: The consideration of an amendment to the Preservation, Operation and Restoration Agreement between the City and the Grove Arcade Public Market Foundation regarding the location of a proposed portico.

During the course of preparing documents for the reorganization for the tax credit financing for improvements to the Grove Arcade at the end of last year, it was discovered that the Preservation, Operation and Restoration Agreement provides in Paragraph VII.E.2. that a pergola may be built on the north side of the building. The intent was and has always been to put the structure on the south side of the building. This mistake was the probable result of confusion arising from Battery Park Avenue being on the south side, while the Battery Park Hotel is on the north.

The Grove Arcade architects have suggested that the proposed structure is more correctly a "detached portico" than a "pergola", and an amendment to this effect has also been requested.

Adoption of the resolution authorizing the amendment is recommended.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

REPORT FROM THE FUTURE OF THE CIVIC CENTER TASK FORCE

Councilman Hay, and Chair of the Future of the Civic Center Task Force, stated that the hard-working and diligent Task Force members include: Charles Worley, Tommy Sellers, David Gantt, Barbara Halton, LaVerne Laney, Jan Davis and Mark Rosenstein. He said on behalf of the Task Force on the Future of the Civic Center, this is the latest in a series of reports to City Council by the Task Force on the Future of the Civic Center. Previous reports have covered the series of public meetings conducted by the Task Force, the commissioning of a market study and the results of that study, and the recommendations made by Hunter Interests Inc., the City's consultant. In its last presentation, the Task Force recommended that the Civic Center be improved as follows: (1) That the Thomas Wolfe Auditorium be improved to make it a "first class" performing arts center; (2) That no arena be studied for improvement and expansion; (3) That trade show space be expanded; and (4) That Hunter Interests Inc. be authorized to develop plans for a convention/conference center in partnership with private developers.

It was the opinion of the Task Force at that time that all goals could be best achieved by the convention/conference center proposal, and that all community needs could be met in a cost-efficient and comprehensive fashion.

In the late winter, the Task Force received the results of the Hunter Interests effort, which we have previously shared with City Council. The report indicated that developer interest was very high in the proposal, but it could not go forward without having previously identified a dedicated funding source for the public portion of the project. The consultant recommended that the City build support for such a funding source for the convention/conference center, and also move forward immediately with plans for a new arena.

Since receiving the report in January, the Task Force has met weekly to study options, and is prepared to make its recommendations about next steps. The Task Force has been joined in these latest meetings by representatives of UNC-A, the Asheville Smoke, the Downtown Commission, the Convention and Visitors Bureau, the Asheville Symphony, and the proposed amateur sports facility. Their assistance is greatly appreciated.

In light of Hunter Interests' latest report, the Task Force recommends that the City move forward on all four of the initial projects, but as individual efforts, rather than the consolidated effort previously built upon the convention/conference center effort. All four objectives are necessary, are in demand from the citizens, and are, in the opinion of the Task force, achievable contemporaneously. Taken individually, the projects are as follows:

Convention/Conference Center – The Hunter Interests' market studies remain valid, and have been affirmed by all research and anecdotal evidence considered by the Task Force. A convention/conference center would provide a measurable boot to the local economy, in particular to the hospitality industry, as well providing a new venue for community activities. In the event that the arena is relocated, dedication of the facility to a convention/conference center appears to be its most appropriate use. The opening of the Grove Arcade Public Market next year, along with continued revitalization of the down area, will make for an energized convention market, and studies show a demand for a venue for conferences in the Asheville area. The strong developer interest in the project is further proof of the feasibility of the proposal.

The Task Force recommends that efforts continue to build community support for the dedicated funding source necessary for the project, and that additional community partners, such as UNC-A, be approached. The Task Force recognizes that private development in the form of an adjacent hotel is essential to the development of a successful convention/conference center. However, nothing in this report is to be construed as endorsing or proposing a governmental subsidy of such private development. The Task Force is unanimous in its believe that such private development must stand on its own.

Performing Arts Center – No venue at the existing Civic Center shows stronger sustained community interest than the Thomas Wolfe Auditorium. Not only does it provide space for anchor tenants such as the Symphony and Community Concerts, its use is in high demand for popular events (as evidenced by the spring schedule). Due to relatively low operation costs, as well as the high level of use, no aspect of the existing Civic Center puts a lower burden on public funds. In addition to providing a venue for popular performing arts events, the auditorium serves an important community need by nurturing the arts, which is important to the continuing prosperity of our City. No other facility, existing or proposed, presently meets this important community need. The Task Force recommends that we build on the strong community interest in creating a first-class performing arts center.

A coalition of regular auditorium users, including the Symphony, Community Concerts, and the Arts Council, has offered to study other performing arts centers in cities such as

Greenville and Charlotte, and to report on design and funding. A delegation is presently planning a tour of similar facilities, with the goal of making recommendations to the Task Force. Interest is very high in improving the Thomas Wolfe Auditorium, and we believe that it is feasible to bring together a combination of public and private funds to make a first-class performing arts center a reality. In light of the long history of performing arts at that location, the importance of the auditorium to downtown, and the proposal that the performing arts center be complementary to the convention/conference center, we do recommend that the new facility, whether it be by renovation or new construction, be located at its present site.

Arena – The Hunter Interests' market study of several years ago found that the existing arena, if improved, would meet the needs of our community for the foreseeable future. In light of changes in the market since that time, as well as the success of the Asheville Smoke as an anchor tenant, Hunter Interests now recommends that we move forward with plans for a new arena. We agree. There has been a dramatic loss of events from our arena in the past few years, due primarily to the size and design of the facility. Events which would otherwise use the arena, such as large shows and basketball tournaments, go to other cities solely because of the facility. The success of minor league hockey, as well as the prospect of other such anchor tenants, indicates that a new arena can be successful built in partnership with private interests. Dan Wilhelm of the Asheville Smoke has a proposal based upon similar arenas in other cities which provides a model for what can work in Asheville.

The Task Force believes that that arena will almost certainly need to be built in a different location. Our research indicates that the expense and architectural feasibility of making the necessary changes in size and facilities render the present site unsuitable. We have considered requesting the Commission of a study of the existing arena, but have concluded that the expenditure is unnecessary. Among our reasons for relocation are the following: (a) Parking downtown for large events is seen as a major impediment, and all financial projections for funding a new arena require parking revenues to be successful (which is not available downtown); (b) Increasing seating at the present arena is not feasible, but of equal importance is a site, which would allow for additional expansion if required in the future; (c) Most new arenas include an additional ice rink for recreational skating, which would be infeasible at the present site; (d) Renovation would require displacement of present tenants and events during a long period of construction; (e) Interest from private investors, a prerequisite for funding a new arena, is much higher in a new, rather than renovated, facility; and (f) Relocating the arena would allow for space for the convention/conference center.

The Task Force recommends consideration of any potential location for a new arena, but feels preference should be given to a site within the City limits which will be synergetic with other City goals, such as downtown vitalization, riverfront development, or partnership with UNC-Asheville.

Trade Shows – The community has a vested interest in the success of a variety of trade shows, and expanded, improved space is desirable. The Task Force believes, however, that this need can be best met by careful design of the convention/conference center and the arena. The nature and requirements of different shows can be accommodated in several venues, with craft shows, for instance, located downtown and RV shows at the arena.

In conclusion, the civic leaders who planned our present multi-purpose civic center gave us a facility which has served our City very well for almost 30 years, but we believe our needs have outgrown the present location. We propose that we preserve the multi-purpose civic center concept by relocating the arena and dedicating the existing facility to a convention/conference center and performing arts center. In furtherance of that goal, we recommend that City Council commission the Task Force to do the follows: (a) Build support for a dedicated funding source for a convention/conference center, to be located at the site of the present Civic Center; (b)

Investigate promptly and aggressively the prospects of creating a first-class performing arts center, also to be located at the present location; and (c) Explore location and construction of a new arena.

In addition, we request that Chancellor Mullen of UNC-Asheville be asked to make an appointment to a vacant seat, and a non-attending member be replaced by someone with similar interests. Finally, the Task Force proposes that it be authorized to create an advisory panel to assist to in its work.

Councilman Hay, along with Councilman Worley, answered various questions/comments from Council, some being, but are not limited to: hotel owners do not want any more rooms built; we should not base a huge financial investment only on the success of the Asheville Smoke; there are other kinds of sports, other than hockey and basketball, that the community would like to see, e.g., racing; if a new arena is built, it should be located in the downtown area; the City should explore a partnership with UNC-A; the suggestion of a new, larger arena should be explored carefully; how is the feasibility of building a new arena determined; if we move forward with these recommendations, we still need to repair our existing deteriorating Civic Center; is it possible to purchase items for our Civic Center and then move them to be used in another facility if its built; the financial commitment should not rest solely on the Asheville taxpayers; we should explore naming opportunities; and the need to pursue the dedication of a raise in the room tax going specifically towards infrastructure needs.

Councilman Peterson wanted to stress that we are taking care of our existing facility in addition to exploring a new arena.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BELE CHERE 2000 BUDGET

Mr. Irby Brinson, Director of Parks and Recreation, said that this is the consideration of a budget amendment, in the amount of $545,000, appropriating revenue and expenditures for Bele Chere 2000 Festival.

This budget will be considered by the Bele Chere Board at their April 5, 2000, meeting and was approved Parks & Recreation Department staff. This request represents a balanced budget with appropriate revenue offsetting expenditures.

The Parks & Recreation Department staff recommend City Council adopt the budget amendment in order to recognize revenue and appropriate funds for Bele Chere 2000 Festival.

Councilwoman Whitmire questioned the figures with regard to beverages, the shuttle service, souvenirs and cost of inserts in the water bills. Mr. Brinson responded to all of her concerns and said that he would make available to all Council members, prior to the April 11 meeting, the 1998 Budget, 1999 Budget, 1999 Actual and 2000 Budget.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

OTHER BUSINESS:

WNC Regional Air Pollution Control Agency and Board

Mayor Sitnick updated City Council on the informal meeting held on March 30 to discuss the future of the WNC Regional Air Pollution Control Agency. After much discussion, there appeared to be three options: (1) the agency become a County operated department; (2) operate the function as a joint agency controlled by a board appointed by the City, the County and perhaps by other towns in the County; or (3) leave the agency in place for a year to see if it would work. The committee members requested the County consider a joint public hearing and Buncombe County Commissioner Chairman Tom Sobol said that he would relay this request to the Commissioners. Mr. Paul Muller, local representative of the NC Division of Air Quality said that he felt the state would allow the current structure to stay in place until the Environmental Management Commission ("EMC") approved changes and that he would send us a letter to that effect.

Mayor Sitnick asked Council to consider writing a letter to the EMC and the Buncombe County Commissioners to clarify in writing the City's position in that the agency should continue it's current structure, modified to recognize the deletion of Haywood County, until the issue is cleared up.

Councilman Peterson suggested that the City Council fact-finding committee make a report to City Council at their formal meeting on April 11, 2000. Discussion then surrounded whether the recommendations should or could be approved at the next worksession held on April 18, 2000.

It was the consensus of City Council to have the Council fact-finding committee report to the full City Council at their meeting on April 11 or April 18, whichever meeting the report can be finalized for. It was agreed that the City will find out what action, if any, the Buncombe County Commissioners took with regard to this matter at their meeting held earlier today. City Council also agreed that if the County Commissioners were amenable to a joint public hearing, the City Council would be eager to participate.

Affordable Housing

Councilwoman Field asked that on the April 18 worksession agenda the issue about dedication of 1 cent of property tax to be leveraged to the housing trust fund. Because this has such a major effect on the budget, Council should give direction to the City Manager as quickly as possible. She also asked staff to research what impact that would have on the overall budget (which would be a reduction of approximately $400,000 in the General Fund) and if the money is dedicated, if additional housing units can be built in that year.

Parking Meter Rates

When Councilwoman Field raised the question about a article in the newspaper about City Council raising parking rates, Mayor Sitnick pointed out that discussion is in the very preliminary stages and the Fees and Charges Committee has only heard part of a report. The news media should not have drawn any conclusions on preliminary discussion.

Parks and Recreation Master Plan

Councilman Peterson asked for an update on what the City is doing to implement the Parks and Recreation Master Plan since the Master Plan Bond was defeated.

Revenue Roundtable

Mayor Sitnick requested that a revenue roundtable be set up in order to get public input and buy-in from the community. Discussion surrounded when the roundtable should take place. It was the consensus of City Council that the Mayor meet with the City Manager and report back with suggested dates.

Closed Session

At 5:45 p.m., Councilman Worley moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: Leanna F. Young; Janet Rebecca Crisp; Paul Evington; Scott Alan Gaddy; Rock S. Edwards; William R. Annarino; Leroy Lunsford; and City of Asheville - statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease - statutory authorization is contained in G.S. 143-318.11(a)(5). This motion was seconded by Councilwoman Field and carried unanimously. Councilman Hay was excused at 5:45 p.m. from participating in the first closed session item.

At 6:03 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

ADJOURNMENT:

No further business taking place, Mayor Sitnick adjourned the meeting at 6:04 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - April 11, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilwoman Whitmire gave the invocation.

CHANGE TO AGENDA

At the request of Mayor Sitnick, a brief report on the future of the WNC Regional Air Pollution Control Board was added to the agenda under "Other Business."

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING APRIL 11, 2000, AS "PARKINSON'S DISEASE AWARENESS DAY"

Mayor Sitnick read the proclamation proclaiming April 11, 2000, as "Parkinson's Disease Awareness Day " in the City of Asheville. She presented the proclamation to Mrs. Samuel Bingham, who briefed City Council on some activities taking place during the day.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE WORKSESSIONS HELD ON MARCH 21, 2000, AND APRIL 4, 200, AND THE FORMAL MEETING HELD ON MARCH 28, 2000

B. MOTION SETTING A PUBLIC HEARING FOR APRIL 25, 2000, TO CONSIDER ADOPTION OF DRAFT CONSOLIDATED HOUSING AND COMMUNITY DEVELOPMENT PLAN

C. RESOLUTION NO. 00-66 - RESOLUTION AUTHORIZING THE RESTRUCTURING OF THE REDEVELOPMENT LOAN TO ROBERT EIDUS AT 102 MONTFORD AVENUE

Summary: The consideration of a resolution authorizing the restructuring of a redevelopment loan in connection with the redevelopment of Disposal Parcel 5B of the Head of Montford Redevelopment Project.

Robert Eidus purchased property known as Disposal Parcel 5B of the Head of Montford Redevelopment Project from the City of Asheville on March 15, 1999. The property is located at 102 Montford Avenue and was formerly known as the Miller Cab property. As part of the consideration for Disposal Parcel 5B, the City received a Promissory Note, secured by a Deed of Trust on Disposal Parcel 5B, in the principal amount of $23,850.00. The Note is a balloon note with principal and interest at 7% per annum due and payable on February 16, 2001.

Mr. Eidus obtained a construction/permanent loan from Clyde Savings Bank to finance the redevelopment of the property in the amount of $30,000.00 at an interest rate of 7.75% and 15 year term. Redevelopment has been completed in accordance with the plan submitted by Mr. Eidus and approved by the City.

In order to pay off his obligation to the City as a balloon note due in 2001, Mr. Eidus would have to refinance his loan with Clyde Savings Bank. Refinancing would increase the interest rate to 8.5-8.75%. The higher interest rate would adversely impact the economic viability of the property based on its rental income potential. Mr. Eidus has requested the restructuring of his obligation to the City in order to avoid refinancing the loan from Clyde Savings Bank. As a result of negotiations with staff Mr. Eidus has agreed to pay monthly installments with interest at 8% over a period of twenty (20) years.

The terms proposed for restructuring the City's loan are reasonable and the restructuring will contribute to the economic viability of the property and the success of the Head of Montford Redevelopment Project.

Approval of the resolution will authorize the Community Development Director to restructure the loan.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 6

D. ORDINANCE NO. 2682 - BUDGET AMENDMENT APPROPRIATING REVENUE AND EXPENDITURES FOR THE BELE CHERE 2000 FESTIVAL

Summary: The consideration of a budget amendment appropriating revenue and expenditures for Bele Chere 2000 Festival.

This budget has been approved by the Bele Chere Board and Parks & Recreation Department staff. This request represents a balanced budget with appropriate revenue offsetting expenditures.

The Bele Chere Board and Parks & Recreation Department staff recommend City Council adopt the budget amendment in order to recognize revenue and appropriate funds for Bele Chere 2000 Festival.

ORDINANCE BOOK NO. 18 – PAGE 191

E. ORDINANCE NO. 2683 - ORDINANCE AUTHORIZING THE CITY MANAGER TO DESIGNATE OTHER CITY DEPARTMENTS TO ENFORCE CHAPTER 3 OF THE CODE OF ORDINANCES REGULATING ANIMAL CONTROL

Summary: The consideration of an ordinance authorizing the City Manager to designate other City departments to enforce Chapter 3 of the City Code regulating animal control.

By Ordinance No. 2631, adopted by the City Council on October 27, 1999, keepers of animals within the City were specifically ordered to clean up after said animals. That ordinance authorized "appropriate officials" of the City to issue a civil penalty to violators of the ordinance. To determine what constitutes an "appropriate official," Section 3-6 of Chapter 3 of the City's Code must be reviewed. That Section of the Code restricted the enforcement personnel. This amendment will authorize the City Manager to administer the ordinance by designating other City departments to enforce some or all of the provisions of Chapter 3 of the Code of Ordinances and also authorizes the City Manager to create an Animal Control Division within a City Department. For example, enforcement of this ordinance in City parks be delegated to Parks and Recreation Department employees. Buncombe County Friends for Animals will provide training for City staff in enforcement of the ordinance.

The Police Department recommends adoption of the ordinance.

ORDINANCE BOOK NO. 18 – PAGE 196

F. RESOLUTION AMENDING PRESERVATION, OPERATING AND RESTORATION AGREEMENT FOR GROVE ARCADE BUILDLING

This item was removed from the Consent Agenda due to a conflict of interest by Vice-Mayor Cloninger.

G. MOTION SETTING A PUBLIC HEARING ON APRIL 25, 2000, TO CONSIDER A PLANNED UNIT DEVELOPMENT OVERLAY ZONING FOR CROWELL FARMS LOCATED ON WEST OAKVIEW ROAD NEAR EAGLE'S NEST LANE

H. MOTION SETTING A PUBLIC HEARING ON APRIL 25, 2000, TO CONSIDER THE REZONING OF 655 BREVARD ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO OFFICE I, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE REZONING)

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 00-67 - RESOLUTION AMENDING PRESERVATION, OPERATING AND RESTORATION AGREEMENT FOR GROVE ARCADE BUILDLING

Due to a conflict of interest by Vice-Mayor Cloninger, Councilman Worley moved to excuse Vice-Mayor Cloninger from voting on this matter. This motion was seconded by Councilman Hay and carried unanimously.

Summary: The consideration of an amendment to the Preservation, Operation and Restoration Agreement between the City and the Grove Arcade Public Market Foundation regarding the location of a proposed portico.

During the course of preparing documents for the reorganization for the tax credit financing for improvements to the Grove Arcade at the end of last year, it was discovered that the Preservation, Operation and Restoration Agreement provides in Paragraph VII.E.2. that a pergola may be built on the north side of the building. The intent was and has always been to put the structure on the south side of the building. This mistake was the probable result of confusion arising from Battery Park Avenue being on the south side, while the Battery Park Hotel is on the north.

The Grove Arcade architects have suggested that the proposed structure is more correctly a "detached portico" than a "pergola", and an amendment to this effect has also been requested.

Adoption of the resolution authorizing the amendment is recommended.

Councilman Hay moved for the adoption of Resolution No. 00-67. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 7

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH A NEW CHARLOTTE STREET TRANSITION OVERLAY DISTRICT AND APPLICATION OF THAT DISTRICT TO 43 PROPERTIES LOCATED IN THAT AREA

Due to an error in posting the property, Councilwoman Field moved to schedule the public hearing on April 25, 2000. This motion was seconded by Councilman Worley and carried on a 5-2 vote, with Councilman Peterson and Councilwoman Whitmire voting "no".

B. PUBLIC HEARING RELATIVE TO AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE WHICH WOULD ALLOW TEMPORARY TELECOMMUNICATIONS FACILITIES AT APPROVED SITES

ORDINANCE NO. 2684 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE WHICH WOULD ALLOW TEMPORARY TELECOMMUNICATIONS FACILITIES AT APPROVED SITES

Mayor Sitnick opened the public hearing at 5:32 p.m.

Senior Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) which would allow temporary telecommunications facilities at approved sites. This public hearing was legally advertised on March 31 and April 7, 2000.

The Planning and Zoning Commission, at their March 1, 2000, meeting, reviewed and recommended approval of an amendment to the UDO which would amend Section 7-14-2 to allow temporary telecommunications facilities at approved sites. The proposed amendment would permit a temporary telecommunications facility to be located at sites that have been approved for the location of a permanent facility (telecommunications tower, concealed telecommunications facility, or co-located facility). A temporary telecommunications facility could be placed on the approved site for a period of up to 6 months while the permanent facility is being constructed and/or installed. The time period for the temporary facility could be extended for another 6 months if the construction has begun but has not been completed. With the proposed amendment, telecommunications service providers could begin providing service from an approved site almost immediately instead of waiting for the construction and/or installation of the permanent facility.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the amendment.

Mayor Sitnick closed the public hearing at 5:50 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2684. This motion was seconded by Councilman Hay and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 197

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 2685 – ORDINANCE WAIVING SECTION 7-11-6 OF THE CODE OF ORDINANCES WITH RESPECT TO A SIDEWALK AT 1190 SWEETEN CREEK ROAD

City Engineer Cathy Ball said that this is the consideration of a request to waive the Unified Development Ordinance (UDO) requirement for a sidewalk along Sweeten Creek Road for a proposed warehouse.

Mr. Karl Lail, owner of the Have a Cup, Coffee Service, Inc., located at 1190 Sweeten Creek Road, is requesting a waiver of the UDO requirement for a sidewalk along Sweeten Creek Road for a proposed warehouse.

Section 7-11-6 of the UDO requires that new commercial construction place sidewalks as specified in the Asheville Standard Specifications & Details Manual along street rights-of-way or pay a fee in lieu of constructing the sidewalk. Mr. Lail proposes to construct a new warehouse at 1190 Sweeten Creek Road. Sweeten Creek Road is a State maintained road. The State proposes to widen this section of Sweeten Creek Road from Roberts Street to Rock Hill Road within the next two years.

This development meets the requirements for a paying a fee in lieu of constructing the sidewalk due to the fact that sidewalks are scheduled to be installed as part of a State project which has been funded for construction. This development has approximately 100 linear feet of frontage on a public street with a twenty-four foot wide driveway. The amount of the fee in lieu of construction will be approximately $1,520.00.

As a part of the N.C. Dept. of Transportation (NC DOT) project, the City will be requested to participate in the cost of sidewalks by paying 40% of the cost of sidewalks for the portion of the project within the corporate limits. Staff **does not** recommend that City Council waive the requirement that the developer pay the fee in lieu of construction for a proposed warehouse at 1190 Sweeten Creek Road.

City staff requests that City Council not waive the requirement that a sidewalk be placed along Sweeten Creek Road or a fee in lieu of construction be paid as required by the UDO Section 7-11-6 for the proposed warehouse located at 1190 Sweeten Creek Road.

Mr. Karl Lail, owner of the property located at 1190 Sweeten Creek Road, said that he would have no problem with paying the fee, however, the sidewalks are already funded as part of the NC DOT project. He requested City Council waive the fee in lieu of construction in the amount of $1,520.00.

Discussion surrounded the fairness of making Mr. Lail paying the entire fee when in two years sidewalks are scheduled to be installed by the State. Since the City will be requested by the State to pay 40%, Vice-Mayor Cloninger moved to waive the provision of the UDO which requires that a sidewalk be constructed for new development or a fee in lieu of construction of the sidewalk to require Mr. Lail pay 40% of $1,520.00 and waive the remaining 60% of the costs for a sidewalk at 1190 Sweeten Creek Road. It was noted that this partial fee waiver is site specific only. This motion was seconded by Councilman Worley and carried on a 6-1 vote, with Councilman Peterson voting "no".

ORDINANCE BOOK NO. 18 – PAGE 199

Mayor Sitnick pointed out that this City Council is making significant efforts and strides to improve the permitting process to make it easier for development to occur in the City and has held several meetings with developers, realtors, home builders, architects, etc. to address any concerns.

B. REPORT FROM THE TASK FORCE ON THE FUTURE OF THE CIVIC CENTER

Councilman Hay, and Chair of the Future of the Civic Center Task Force, briefly reviewed the report in which he went over in detail at the April 4, 2000, worksession. In summary, he stated that the civic leaders who planned our present multi-purpose civic center gave us a facility which has served our City very well for almost 30 years, but we believe our needs have outgrown the present location. We propose that we preserve the multi-purpose civic center concept by relocating the arena and dedicating the existing facility to a convention/conference center and performing arts center. In furtherance of that goal, we recommend that City Council commission the Task Force to do the follows: (a) Build support for a dedicated funding source for a convention/conference center, to be located at the site of the present Civic Center; (b) Investigate promptly and aggressively the prospects of creating a first-class performing arts center, also to be located at the present location; and (c) Explore location and construction of a new arena.

Councilman Hay then reported on a trip that he and several others went to the Bi-Lo Center in Greenville, S.C. Even though that Center doesn't meet the needs Asheville has, there was a lot that was learned with regard to site location, funding, operation, etc.

Vice-Mayor Cloninger endorsed the report but was concerned that as we explore building a new arena that we not defer making renovations to our existing facility. He also expressed concern about the need and economic feasibility of a new arena.

Councilman Hay stressed that this is a challenge and we need to make sure the arena is what Asheville wants and what they need.

Mayor Sitnick said that if discussions cannot move forward with an arena, possibly a regional partnership can be explored

Councilwoman Field voiced concern about siting anything outside of the downtown area.

Councilman Worley moved to accept the report from the Task Force on the Future of the Civic Center. This motion was seconded by Councilwoman Field and carried unanimously.

VI. OTHER BUSINESS:

A. WNC REGIONAL AIR POLLUTION CONTROL BOARD AND AGENCY

Mayor Sitnick updated City Council on the issue of the Haywood County withdrawing from the WNC Regional Air Pollution Control agreement. She reviewed the options available to Council stating that Council's number one concern is the public health. A recommendation will need to be sent to the Environmental Management Commission (EMC) prior to June 1 with a recommendation on how the program should be operated in the future. She said that the Buncombe County staff made a presentation to the Buncombe County Commissioners recommending that the County take over the functions of the Board and Agency and have the agency be a part of County government to be administered by the County and rather than have an independent board, that an advisory committee be formed. Mayor Sitnick has asked the County Commissioners to have a joint public hearing with the City Council in order to receive the public's input on the future of the Agency and Board.

Vice-Mayor Cloninger felt that the City Council should proceed with a public hearing, hopefully with the County Commissioners, and reach a decision on what City Council would like the future of the Agency to be.

Upon inquiry of Councilman Peterson, City Attorney Oast said that if City Council recommends that we work with Buncombe County to develop a joint agency and the County is agreeable to that, the process would be that we inform the EMC of what our intentions are and then work with the County to develop a new interlocal agreement based on the old one. Once the agreement is approved by both bodies, then it can be submitted to the EMC for their approval. If the City and County vote differently on the future of the Agency, then the City will have to decide what position they want to recommend to the EMC.

Mayor Sitnick passed out correspondence she has complied with regard to the issue of the future of the Agency and Board.

Ms. Hazel Fobes gave a brief update of the Buncombe County Commissioners meeting on this subject stating that the County has not taken any official position as of yet. She urged the City and County to have a joint public hearing on this matter.

It was the consensus of City Council to hold the public hearing as soon as possible in order to get on record the City's position regarding the Agency and still allow us time to work with the County.

Vice-Mayor Cloninger moved to schedule a public hearing on Tuesday, April 18, 2000, at 7:00 p.m. in the Council Chamber located on the 2nd Floor of the City Hall Building to receive public comments on the future of the WNC Regional Air Pollution Control Agency and to officially invite the Buncombe County Commissioners to equally participate in this public hearing process. This motion was seconded by Councilman Peterson and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the period of March 24-April 6, 2000: Kathleen Waters (Streets), Patricia Farmer (Water), Billy Helton (Police), Robert Zieber (Streets), Eckel Bradley (Engineering), Peggy Griffin (Police) and Kristi Outlaw (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

C. LAWSUIT

The City received a Complaint on April 7, 2000, which is generally described as follows: Mark Gibney v. City of Asheville. The nature of the proceeding is small claims action for unlawful taking of property. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Minimum Housing Complaint

Mr. J. T. Black expressed concern about the problems he has been having with code inspections on his property at 331 Fairview Road. He felt that this house is not unsafe housing and his tenants should be allowed to return to the house. City Manager Westbrook said that he would look into the situation, noting that Asheville does have a very stiff Minimum Housing Code.

Economic Development

Mr. Peter Dawes felt that the City and County should work closer together, especially with regard to economic development.

WNC Regional Air Pollution Control Agency

Ms. Hazel Fobes, representing Citizens for Safe Drinking Water, read the following statement: "Water and air are the two universal life sustaining elements. They need to be protected by each continent – country, state, county and village in their purest possible state. To gain progress toward such a state requires cooperation in nations, through the United Nations system. In state and local agencies it will require governments and citizens working together. This will call for a special arrangement, supervision of air and water. No one agency of government should attempt to control an air pollution agency and/or board. That would be interpreted as an act of narrow-mindedness – selfishness – hidden agenda. Regionalism in water and air is vital to their survival in the purest condition possible."

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:25 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - April 18, 2000 - 9:00 a.m.

Special Meeting

Present: Mayor Leni Sitnick, Presiding; and Councilwoman Terry M. Whitmire

Staff Present: Gerald Green, Senior Planner; Dan Baechtold, Urban Planner; Robert W. Oast, Jr., City Attorney

At 9:08 a.m., Mayor consulted with City Attorney Oast and noted that no quorum was present.

There being no quorum present, the meeting was adjourned at 9:11 a.m.

Mayor Sitnick and Councilwoman Whitmire accompanied staff (Mr. Green and Mr. Baechtold) on a tour of Crowell Farms property.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - April 18, 2000 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Auditing Services

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Crisp Hughes Evans LLP, Certified Public Accountants, for auditing services for Fiscal Year 1999-2000.

N.C. General Statutes 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In 1998 the City solicited proposals from 36 accounting firms to perform the City's annual audit for the Fiscal Years 1997-98, 1998-99 and 1999-2000. City Council selected Crisp Hughes Evans LLP to conduct the Fiscal Year 1997-98 audit with the option to be re-engaged annually for two more years. They completed both the Fiscal Year 1997-98 and Fiscal Year 1998-99 audit and have now submitted an engagement letter for the Fiscal Year 1999-2000 audit. The fee has been estimated at $54,700. Funds are appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends City Council adopt the resolution.

Budget Amendment for French Broad River Park, Phase IV

Summary: The consideration of a budget amendment, in the amount of $500, to accept a private donation to fund the development of French Broad River Park, Phase IV.

French Broad River Park, Phase IV represents the City of Asheville's next phase of a major greenway and park system being developed along the French Broad River on Amboy Road. The park will include greenways, bicycle facilities, lawn bowling, soccer and softball fields, restrooms, skateboarding and rollerblading facilities, open space, picnic shelter, parking, and perhaps a welcome center. Phase IV will also connect to a planned NC DOT funded greenway from Hominy Creek on the west, and eventually to the Amboy Road greenway to the east.

The Parks and Recreation Department and RiverLink are in partnership to implement an ambitious fundraising plan to raise approximately $2 million to build the park. Private donations are one of the means to raise funds for the park.

The Parks and Recreation Department recommends the City of Asheville accept the donation on behalf of the Parks and Recreation Department for development of French Broad River Park, Phase IV.

Grant from Land, Water & Conservation Fund for French Broad River Park, Phase IV

Summary: The consideration of a resolution to apply for and enter into an agreement with the N. C. Department of Environment and Natural Resources, Division of Parks and Recreation in the Land, Water and Conservation Fund to assist with the construction of the French Broad River Park, Phase IV.

French Broad River Park, Phase IV, represents the City of Asheville's next phase of a major greenway and park system being developed along the French Broad River on Amboy Road. The final master plan is complete, and approved by the Parks and Recreation Advisory Board and the Greenway Commission. The park will include greenways, bicycle facilities, lawn bowling, volleyball and soccer complex, softball field, playground, restrooms, roller hockey, open space, picnic shelter, parking, and a welcome center. Phase IV will also connect to a planned NC DOT funded greenway from Hominy Creek on the west, and eventually to the Amboy Road greenway to the east.

The Parks and Recreation Department and RiverLink are in partnership to implement an ambitious fundraising plan to raise approximately $2 million to build the park. To date, $50,500 has been raised, and $520,000 in grant proposals are pending.

The Parks and Recreation Department is requesting $250,000 to $300,000 in grant funds from the Land, Water and Conservation Fund which requires a 50% cash or in-kind match. The in-kind match is available in land value, labor, equipment, and project management through Parks and Recreation.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for grant funds with the N. C. Department of Environment and Natural Resources, Division of Parks and Recreation, through the Land, Water and Conservation Fund to assist with the construction of the French Broad River Park, Phase IV.

Two Police Department Grant Applications

Summary: The consideration of two resolutions authorizing the City Manager to submit full applications and accept two grant awards from the N. C. Department of Crime Control and Public Safety, Division of the Governor's Crime Commission, in support of a community policing GIS project; and a second grant in support of a social work and police partnership project.

The Governor's Crime Commission has invited the City of Asheville to submit a grant application in the amount of $63,465 in support of a one year Community Policing Geographic Information System Project outlined in the pre-application reviewed by the Commission. A local match of $21,155 is required. The local match will be budgeted in the Fiscal Year 2000-01 Annual Operating Budget. The purpose of this project is to enable consolidation most of the City's geographic information systems data and coordinate its application in support of Community Oriented Governing.

The Governor's Crime Commission has also invited an application in the amount of $85,950, covering two years, in support of a Social Work and Police Partnership project (SWAPP), as outlined in the pre-application reviewed by the Commission. A local match of $28,650 is required for each of two (2) consecutive years over the 2 year life of the project. The local match will be budgeted in the Fiscal Year 2000-01 and 2001-02 Annual Operating Budget. The purpose of this project is to reduce family violence issues contributing to chronic juvenile run-away behavior.

City staff recommends City Council adopt two resolutions authorizing the City Manager to submit grant applications and if awarded, acceptance of grants, to the N. C. Department of Crime Control and Public Safety, Governor's Crime Commission, (1) in support of a community policing GIS Project; and (2) in support of a social work and police partnership project.

New Street Name Approval – Barrett Lane

Summary: The consideration of a resolution accepting the new proposed street name "Barrett Lane."

Givens Estates, Inc., owner of lots in Givens Estates United Methodist Retirement Community, has petitioned the City of Asheville to accept the street name of "Barrett Lane." This new street is to begin at Wesley Drive and end at the dead-end.

Staff recommends adoption of the resolution.

New Street Name Approval – Westwind Lane

Summary: The consideration of a resolution accepting the new proposed street name "Westwind Lane."

AGR Real Property Investors, LLC., owner of lots in the Westwind Subdivision, has petitioned the City of Asheville to accept the street name of "Westwind Lane." This new street will begin at Maple Avenue and end at the dead-end.

Staff recommends adoption of the resolution.

Brevard Road Annexation Area Phase II – Contract "B" Sanitary Sewer Improvements Bid Award

Summary: The consideration of a resolution awarding the contract for Brevard Road Annexation Area Phase II Contract "B" to Buckeye Construction Company, Inc., in the amount of $270,258.42.

This project is part of the Brevard Road Annexation Area Sanitary Sewer System Improvements and consists of the installation of approximately 1,703 linear feet of twelve inch (12") diameter sanitary sewer line and 1,471 linear feet of eight inch (8") diameter sanitary sewer line and related appurtenances.

The Engineering Department received and publicly opened five (5) bids on Tuesday, April 4, 2000, at 2:00 p.m. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, Buckeye Construction Company, Inc., was found to be the lowest responsible bidder with a total bid of $270,258.42. The Engineer's estimate for this project was $ 379,630.00.

Buckeye Construction Company, Inc., has performed several projects of this nature in the past without any major problems.

The construction time for this project is identified as 120 calendar days in the contract documents. The contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

Staff recommends that City Council accept a resolution awarding the bid for Brevard Road Annexation Area - Phase II - Contract "B" Sewer System Improvements to Buckeye Construction Company, Inc., the responsible low bidder and authorize the City Manager to execute all necessary agreements and contracts.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

Edward- vision board and I accepted on behalf of city a plaque recognizing our contributions to vision for 99.

2000 VISION BENCHMARK

Councilman Hay accepted, on behalf of the City of Asheville, a plaque from the Asheville-Buncombe VISION, Inc., which honored the City of Asheville for their significant commitment to the future of Asheville-Buncombe County in 1999-2000. He presented Mayor Sitnick with the plaque.

Mr. Robert Burgin, representing the Asheville-Buncombe VISION Board of Directors, reviewed with Council how the shared VISION was developed and updated Council on the status of the benchmarks. He stressed that the benchmarks will always be a work in progress as they refine data and discover better ways to measure results toward achieving this VISION.

Upon inquiry of Councilwoman Whitmire, Mr. Burgin said that they will continue to look for a measurable benchmark for substance abuse.

On behalf of City Council, Mayor Sitnick thanked the VISION Board of Directors and all their supporters for their significant commitment to Asheville's future.

FUNDING REQUEST BY REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON

Mr. John Tate, Chair of the Regional Water Authority of Asheville, Buncombe and Henderson requested a commitment of $13,000 from the City of Asheville to match funds promised by Henderson and Buncombe counties and the City of Hendersonville. These funds are part of a $65,000 commitment from the Cross Creek Foundation which commitment is contingent on an equal match (dollar for dollar) for funding from local governments.

The N.C. Clean Water Management Trust Fund awarded grants to the Mills River Partnership in 1999 for up to $730,000 resulting in the execution of the following two grant agreements: (1) $541,000 to the Regional Water Authority to construct agrichemical handling facilities, buffer restoration, stream bank stabilization, erosion control in the National Forest, and long term strategic planning for Mills River watershed protection; and (2) $189,000 to the Carolina Mountain Land Conservancy for buffer preservation.

The Regional Water Authority is a member of the Mills River Partnership. The Partnership had developed a management strategy when the grant application was prepared which provided that the Regional Water Authority would be the overall grant administrator and would contract with the Henderson Soil and Water Conservation District (HSWCD) and the U.S. Natural Resources Conservation Service (NRSC) for local administration of specific elements of the agrichemical handling facilities, buffer restoration, and stream bank stabilization projects. The HSWCD would perform these functions through NRSC engineers and a Soil Conservationist hired with proceeds from the Trust Fund Grant. When the Clean Water Management Trust Fund

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awarded the Grant, they omitted funding for the Soil Conservationist, which required the Mills River Partnership to alter its strategy for implementing the grant projects.

The HSWCD estimates that funding of a Soil Conservationist for two years is necessary to insure the complete administration of the grant projects they are responsible for and to insure the successful applicant has the skills to perform the work. A two year budget for this position has been estimated at $100,000, none of which can be funded by the Clean Water Management Trust Fund proceeds.

The Carolina Mountain Land Conservancy has secured a commitment from the Cross Creek Foundation to provide an equal match (dollar for dollar) to any new funding preferably from local governments for this Soil Conservationist position. The Foundation has set a deadline of June 30, 2000. The Carolina Mountain Land Conservancy has obtained a %16,000 commitment from the City of Hendersonville, and an $8,000 commitment from Henderson County. An additional $26,000 is needed to raise a total of $50,000 from local governments, which could then be matched by $50,000 from the Foundation to fund the position for two years. He has been advised that Buncombe County has agreed to fund $13,000 of the $26,000 if the City of Asheville agrees to fund an equal amount.

Due to conservation measures during the period of the drought last year, the revenues of the Regional Water Authority are down and our costs are increased based upon rising fuel prices, increase costs during the drought, and significant unfunded mandates in the form of, among others, reimbursement to the N. C. Dept. of Transportation for non-betterment costs. Our Water Fund budget is extremely tight and they were forced in the 1999-2000 fiscal year to significantly reduce their efforts at continuing repair of the aged water system.

He requested the City of Asheville match the contribution of Buncombe County in the amount of $13,000 to help fund the Soil Conservationist position.

Councilman Worley strongly supported this request.

Upon inquiry of Vice-Mayor Cloninger, City Manager Westbrook said that the City would have to do a budget amendment to transfer the funds from the Contingency Fund to the Water Fund.

Councilwoman Field was troubled that when Buncombe County is asked for a match, that they base their decision on whether the City of Asheville agrees to fund an equal amount. She felt there should be a more fair balance when requests go to the City and County in matches.

Mayor Sitnick voiced several concerns, some being, but are not limited to, polluters should be responsible for cleaning up their own pollutants, City taking money from Contingency and transferring it to the Regional Water Authority, and general dissatisfaction with the Water Agreement. She said that she would talk with Mr. Tate and Councilman Worley (former Chair of the Regional Water Authority) to discuss her concerns with regard to this matter.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda, along with a resolution authorizing the City Manager to execute an agreement with the Regional Water Authority for the funding of the Soil Conservationist position.

CONSOLIDATED HOUSING AND COMMUNITY DEVELOPMENT PLAN

Ms. Charlotte Caplan, Community Development Director, said that the Consolidated Plan is the City's plan for using federal Community Development Block Grant (CDBG) and Home Partnerships Act (HOME) program funds. It is in two parts. One document is the Strategic Plan which is prepared once every five years, which explores needs, priorities, strategies and objectives for the programs for 2000-2005. The other document is the Action Plan, prepared annually, which details the proposed use of funds for specific projects in 2000-2001.

Notices of the availability of the draft plans for public comment, with the date of the public hearing, were published on April 7, 2000. A formal notice of the public hearing date will be published on April 14 and 21.

After the public hearing, the formal public comment period remains open until May 7, 2000. On May 9, 2000, City Council will be asked to give final approval to both plans, amended as necessary. The deadline for submitting the Plans to HUD is May 12, 2000.

Ms. Caplan explained how they approached the strategic plan, the key priorities, affordable housing strategies, and affordable housing targets (185 CDBG or HOME assisted units a year, reduce LBP hazards in 40 units a year, and screen 25% of young children annually for lead poisoning). She stressed that our community, our children, our parents and our workers need affordable housing as homeowners and as renters.

Ms. Caplan then addressed affordable housing targets, homelessness and non-housing community development.

She said that the Action Plan for 2000/01 (1) allocates $3,700,000 CDBG and HOME for next year; (2) Strategic Plan priorities used to evaluate proposals; (3) new CDBG programs include: EMSCD "You Stand" and Property Redevelopment, NHS Sycamore Hollow, City-wide down-payment assistance, Brotherton site development, and relocation; and (4) several projects depend on Biltmore Avenue property sale.

Councilwoman Field felt there may be a need for another worksession on the lead based paint issue because it does affect economic development and we need some sort of commitment. She felt we also need to look at our Unified Development Ordinance (UDO) in terms of multi-family housing and if it is making it more difficult to site affordable housing.

Mayor Sitnick felt that Council should look at a policy that deals with living wages.

It was the consensus of City Council for Councilwoman Field, as Chair of the Housing and Community Development Committee, to write a letter to the Buncombe County Commissioners requesting them to waive the dumping fees for demolitions done by non-profits who will provide affordable housing on those site where the demolition occurs.

Councilman Hay noted that there are some strategies to amend some provisions in the UDO which will need to be reviewed, but not necessarily changed.

It was the consensus of Council to have the Housing and Community Development Committee carefully review the lead based paint issue and then report back to City Council. Councilwoman Whitmire asked to be included in the meeting that looks at this issue in detail.

Mayor Sitnick said that a public hearing will be held on April 25, 2000, to receive comments and questions on the draft Consolidated Housing and Community Development Plan.

FUNDING OF HOUSING TRUST FUND

Ms. Joyce Harrison, Co-Chair for the Asheville-Buncombe Task Force, asked City Council to support a resolution for a Housing Trust Fund which will be a revolving pool of investment – local, flexible, and accountable to the people – for creating attractive, affordable homes and preserving existing homes in Asheville and Buncombe County.

Ms. Harrison requested the City dedicate annually the local revenue equivalent of one cent per hundred dollars of property tax value (approximately $370,000). She noted that by designing a program of loans, not grants, with favorable terms of payment, those who could not afford a home will be able to pay a monthly rent or house payment.

Community Development Director Charlotte Caplan responded to several questions from Council regarding how the Fund would be built, what other cities are doing, how the structure would be in place for a bond referendum in the future, and if there are monies in the Section 108 rehabilitation loan program.

Councilwoman Field was supportive of this Fund but noted that City Council cannot bind future councils for this revenue stream. She also noted that Buncombe County is very committed and supportive of this, however, this is an election year in the County and it's unlikely that they will raise taxes. Therefore, she suggested starting with the City and then look to the County next year for participation.

Mayor Sitnick said that if the City is going to take the leadership role, the community will have to be willing to take steps as well.

Councilwoman Whitmire spoke in support of this Trust Fund.

City Council asked City staff to investigate on how this has worked in other communities and exactly how it can work in Asheville.

UPDATE ON UDO AMENDMENT REVIEW OF CHARLOTTE STREET TRANSITION OVERLAY DISTRICT

Mr. Mike Matteson, Director of City Development, reviewed some recommended ordinance revisions regarding the Charlotte Street Overlay District, as a result of concerns raised at the March 21, 2000, worksession.

Mayor Sitnick noted that this public hearing will be on April 25, 2000.

FRENCH BROAD RIVER PHASE IV MASTER PLAN

Mr. Alan Glines, Park Planner, said that this is the consideration of a resolution authorizing City Council to adopt the French Broad River Park Phase IV Master Plan and authority to implement the Plan as funds become available.

The Parks and Recreation Department began a public process in the fall of 1999 to develop a master plan for the new park. The department hired the services of W. K. Dickson Inc. to help develop the plans. A community advisory group was formed to guide the planning process which represents broad community interests. After several meetings with the advisory group and a public planning workshop held in November of 1999, the master plan was developed incorporating many of the diverse interests of the community.

The master plan includes several first time events and features in the Asheville park system. These elements include lawn bowling, roller hockey, a volleyball complex area, adaptive re-use of the race track for bicycle riding and racing, in-line skating and walking. The master plan will also include greenway trails, a children's playground, an open meadow, a wetlands boardwalk, fishing areas, a volleyball and soccer complex, a park office and support facilities. Several grants have been written to help fund the park master plan which include a Parks and Recreation Trust Fund Grant, a Janirve Grant, and a Pigeon River Fund Grant. Decisions on the grants have not been finalized at this time.

The project master plan was reviewed at a public forum in March of 2000 and was overwhelmingly approved by the community present. The plan has also been reviewed and approved by the Parks and Recreation Advisory Board and the Asheville Greenway Commission.

The Parks and Recreation Department staff is seeking City Council approval of the master plan and the approval to proceed with implementing the plan as funding is secured.

Mr. Glines showed some components of the master plan. We are looking to dispose of some property (bleachers) sometime next month and we can start working on volleyball areas right away for play this summer. We will also be developing a historical component for racing community.

Mayor Sitnick noted again that the sale of the City was a corporate sale that had nothing to do with the City of Asheville.

Upon inquiry of Councilman Peterson, Mr. Glines said that the bleachers are being removed because they do not comply with the State Building Code anymore.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

LENGTH OF CITY COUNCIL MEETINGS

City Manager Jim Westbrook said that this report contains a list of suggestions from staff for Council to consider which could reduce the length of Council meetings. After review and upon further direction from Council, staff will implement any changes as directed.

Recently City Council requested that staff bring suggestions to Council, which, if implemented, would shorten the length of Council meetings. The City Manager, the City Attorney, the City Clerk, the Assistant City Manager, the Planning and Development Director, and the Public and Community Information Coordinator met to brainstorm and review previous Council meetings in order to provide a list of suggestions that would be helpful in shortening the meetings. The following information is the result of the brainstorming session and an attempt to provide Council with a wide range of suggestions from which to pick and choose the ones thought to be most effective. For the purpose of clarity, I have broken down the suggestions into categories.

A. DEVELOPMENT PROCESS

1. Have Most Level III Development Projects Approved by TRC, Not City Council

   Currently, all Level III development proposals are conditional use permits (CUPs) under the UDO. These projects range from larger multifamily and office projects to "big box" retail projects that have supplemental review standards (like the newly approved Home Depot.) In many cases, Council review does not add conditions above and beyond what is required by the UDO. Most public interest seems to involve the big box developments like Home Depot and the Asheville Mall, where supplemental standards would be established through staff recommendation and

Council approval of conditions. Level III developments not subject to supplemental standards could be approved administratively (by the TRC) and not sent to Council as CUPs. This would allow Council to concentrate on projects where design related conditions have real impacts on surrounding neighborhoods and the community at large. It is possible to adjust this option by allowing the applicant or other interested party to appeal the TRC decision to the Planning and Zoning Commission or City Council; the appeal option would provide an incentive for the developer to satisfy concerns in order to avoid an added step in the development review process.

2. Administrative Approval for Duplexes, Triplexes and Quadraplexes in Single Family Zones

The UDO allows for duplex, triplex and quadraplex projects in single family zones only upon approval of a conditional use permit by City Council. Staff recommends moving these uses to an administrative approval process, with specific standards for these uses provided in the City Code. We have a text amendment under development that will accomplish this; we plan on bringing it to Council later in the spring after review by the Planning and Zoning Commission.

3. Delegation of Conditional Use Permit Approval Duties, in Whole or in Part, to the Planning and Zoning Commission

The City Council could utilize the Planning and Zoning Commission to approve CUPs or make recommendations to Council on CUPs. There are several alternatives for involving the Planning and Zoning Commission in this fashion. All of these alternatives would add to the workload of the Commission, but all have the potential to streamline and/or improve the quality of the development approval process.

- Council could delegate approval of all CUPs to the Planning and Zoning Commission. This alternative would reduce the Council's workload.

- Council could delegate approval of certain CUPs to the Planning and Zoning Commission. Some current CUPs do not have the same level of value to the community added by a Council review process (see suggestion #1 above).

- Council could request a recommendation on all CUPs from the Planning and Zoning Commission, just as is done for rezoning requests. This alternative would allow most community issues to be identified prior to Council consideration, enhancing the potential for a "negotiated settlement" before the proposal reaches Council, thereby reducing the time spent at City Council identifying conditions that are needed to mitigate project impacts.

4. Establish Standards for Developer Presentations

Presentations by developers often lengthen the public hearing process due to the materials that are presented and the format of these materials. Council could establish specific standards for developer presentations that could become part of our application process. Such standards might include submittal of audio-visual materials in a consistent format (e.g., transparencies), pre-meeting submittal of handouts and other information, and similar requirements. We would recommend that these standards have some flexibility in order to allow for exceptional cases, but such standards could help organize the flow of developer presentations in a positive way.

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5. Discuss Upcoming Public Hearings at Worksession

Currently all public hearings for rezonings and conditional use permits are considered for the first time at formal Council meetings. In an attempt to shorten the formal Council meeting, Council could receive staff input for public hearings at worksessions. At formal Council meetings, staff would only present short explanations of controversial items, and then Council would hear from the public. If Council should choose to implement this process, it is imperative that the public not be allowed to comment at worksessions when staff makes presentations for upcoming public hearings. While this may have the effect of shortening formal Council meetings, it would also have the effect of lengthening Council worksessions.

6. Setting Public Hearing Dates

Currently all public hearings are set by City Council. These usually appear on the consent agenda. While they usually receive no public or Council comment, they do appear to make the agenda longer than it actually is, and it lengthens the process for final action by including a legally unnecessary step. General Statutes require public hearings on certain issues discussed by Council; however, the General Statute does not require Council to set the public hearing. As an alternative, Council could authorize staff to set public hearings as appropriate without having that action approved by Council. On a weekly basis, the City Clerk could furnish Council with a list of public hearings and the dates set for each.

NOTE: The Planning and Zoning Commission has also discussed several of these streamlining ideas. They suggest making most Level III plans subject to TRC review only and having Planning and Zoning make recommendations on CUPs but no approval authority.

B. MEETING PROCEDURES

1. Reading of Proclamations

Currently the practice of reading proclamations at the beginning of Council meetings does consume time. In the past it has taken as long as 30 to 40 minutes at the beginning of Council meetings to read proclamations. As an alternative, Council could simply present proclamations without reading them word for word with a brief thanks from Council for the specific group or person for whom the proclamation is made. A corollary to this suggestion would be to eliminate "acceptance speeches" by the organizations/persons being recognized.

2. Starting Time

The following are points for Council to consider regarding time management. These points will become important when Council meetings are televised live.

- Start the meetings on time.
- Recess for a specific amount of time and resume the meeting promptly when that time has expired.
- When speakers are given three or ten minutes to comment on issues, strictly adhere to the time limits established. Questions and discussion by Council Members could be entertained following the public input on issues. Appropriate allowance should be made for quasi-judicial hearings.

3. Length of Meetings

Amend the Council rules to set a time limit for formal Council meetings of 9:00 P.M. Once that time is reached, Council would need to vote to extend the meeting beyond the 9:00 P.M. time or to continue the meeting to the next day or some other time certain.

4. Signing Up for Public Comment

Currently anyone in the Council Chamber can speak during the meeting on any item on or off the agenda. Council could require citizens who want to speak at public hearings to sign up with the City Clerk anytime prior to a Council meeting, but no later than 30 minutes prior. This is practiced in many cities, and staff could do further research on this issue if Council wishes to pursue it. The City Clerk would have the list prepared and the Mayor would call the interested parties forward for each item of the public hearing portion of the agenda. Again, appropriate allowance may be required for some quasi-judicial public hearings.

5. Removing Items From Consent Agenda

Council rules currently state that the public can pull items off the consent agenda. Items on the consent agenda have usually been discussed at a worksession or are routine reports. The public infrequently pulls items off the consent agenda. If the public wishes to discuss an item on the consent agenda, if Council establishes rules requiring them to sign up to speak at the worksession or formal meeting no later than 30 minutes prior to the beginning of the meeting, this would be eliminated. (See Item 4 above.)

6. Change Beginning Time of Formal Council Meetings to 4:00 P.M.

Start formal Council meetings at 4:00 P.M. and rearrange the agenda so that proclamations, other business, unfinished business, and new business as the first items on the agenda, with public hearings and informal discussion and public comment being the last items on the agenda. This would insure that most public hearings would start around 5:00 P.M. or later for the public's convenience.

7. Introductory Paragraphs

In order to announce the Council rules established for the meeting, the Mayor could read the following paragraphs of information/instruction to the public prior to portions of the agenda or meeting as follows:

To Be Read Before Worksession Begins: (Draft)

This is a City Council worksession. It is designed to be informal to allow Council to become familiar with and understand issues on which we may take formal action at a formal Council meeting. Most of the issues we discuss today will appear on the agenda at the next formal Council meeting, and at that time we will officially vote on the issue. Any consensus we reach today, or informal votes we take, reflect only that the Council understands the issue and is ready to place it on the regular agenda. If we discuss issues that will be heard at a future public hearing, we will not accept public comment on that issue today, in order to have everyone heard at the public hearing. Any member of the public who has a direct interest in any of the issues we discuss today may be allowed to speak on that issue at the sole discretion of City Council.

To Be Read at Public Hearings as Part of the Agenda: (Draft)

This is the time and date set for public hearings. At this point I would like to remind everyone of the City Council rules for public hearings. The purpose of the public hearing is to receive the public's input on decisions about to be made by the City Council. When you are recognized, please come to the podium and speak directly into the microphone, giving your name and address for the record. These proceedings are being recorded, and that information is important. If you are speaking as an individual, you have up to three minutes to relate to the Council your point of view on the issue. If you represent a group, you have up to ten minutes to relate to the Council the point of view of the group. The Council is interested in all new, relevant information on the subject matter. Please refrain from repeating information given by previous participants. Also, please refrain from discussing issues, which are not the subject of the public hearing. The Council will receive written information from an individual or group that cannot conclude their presentation within the designated time limitation.

To Be Read Before "Informal Discussion and Public Comment": *(Draft)*

The next item on the agenda is "Informal Discussion and Public Comment." This section of the agenda is usually reserved for informal discussion between Council Members and staff. This portion of the agenda is also used to allow the public to discuss an issue or problem with Council. If a member of the audience would like to bring an issue to the Council, please come to the podium when recognized and speak directly into the microphone, giving your name and address. You will have a maximum of three minutes to discuss that issue with the Council. The Council does not normally make decisions during this time, but would refer any issues raised to the staff for a recommendation. The Council will receive written information from an individual or group that cannot conclude their presentation within the designated time limitation.

To Be Read Prior to Conditional Use Permits

This is a quasi-judicial public hearing, and we are required to observe certain procedures in order to insure that due process requirements are met. We will hear first from the City's staff, then the applicant will be allowed to make its presentation to Council. After that, anyone interested may comment on the application, or ask questions of the staff or applicant. If you speak, you must be sworn in, and the applicant has the right to ask questions of you. Please try to keep your comments on point and do not be repetitive. Written or documentary material that is offered as evidence may be examined by any other party.

C. STAFF CHANGES

Staff Presentations

Staff presentation will be improved in terms of clarity and information, style of presentation and the amount of information. In cases where staff has presented a more detailed report in a worksession, they will present a brief highlight at a formal Council meeting, which would include to the best of their knowledge any controversial points. At both worksessions and formal Council meetings, staff would be prepared to answer any detailed questions Council may have based on their briefing or the written material provided.

Should Council desire to implement any of the above suggestions, staff will need to prepare changes to appropriate documents such as Council's Rules of Procedure.

Staff recommends Council review the list of suggestions and give staff further direction on how they would like to proceed.

Councilwoman Whitmire suggested that when the public is asked to give their names, that their addresses not be asked, but just that if they live in the City of Asheville or in the extra-territorial jurisdiction.

Mayor Sitnick asked staff to encourage people to have proclamations presented outside the formal meeting, however, if proclamations are scheduled on the agenda that she will keep the proclamations brief and ask the person accepting the proclamation to speak briefly.

Mayor Sitnick said that she will make every attempt to start the meetings on time and when there is a recess called that it be held to the specific number of minutes stated for that recess. She also stated that if there is a quorum of Council present, she will begin the meeting if a Council member has not arrived yet. She also requested Council members notify the City Clerk if they find they will be late in attending a meeting.

Mayor Sitnick said that she will strictly adhere to the time limit requirements for speakers and urged City Council to refrain from asking questions of the speaker until their speaking time has expired.

City Manager Westbrook noted that staff presentations will be limited to 10 minutes and will be improved in terms of clarity and information, style of presentation and the amount of information. City staff is also working on possible revisions to the Unified Development Ordinance which will be brought back to Council as has been done in the past.

Councilman Worley suggested City Council set a time limit for formal Council meetings of 10:00 p.m. He said that after Council finishes the item they are currently considering, the rest of the meeting be continued to the next day, or the day after, or even the next worksession. Mayor Sitnick saw all kinds of logistical problems with Councilman Worley's suggestion and felt that perhaps a better job of scheduling items on the agenda could help alleviate lengthy meetings.

Councilman Hay encouraged City staff to review the possible UDO amendments and bring those forward to City Council with recommendations.

Vice-Mayor Cloninger felt that perhaps the public may not feel they are getting all the information if Council receives staff input for public hearings at the worksessions and then only receives a short explanation of the item at the formal public hearing.

Councilman Peterson spoke in support of delegating some conditional use permit authority to the Planning & Zoning Commission.

Vice-Mayor Cloninger felt that letters should not be read into the record, but just given to the City Clerk for inclusion. The City Clerk should then make a copy of that letter for all Council.

Councilman Worley felt that City Council should not require people to sign up for public comment because he felt it would deter people from speaking.

Councilman Worley suggested the public be able to comment on any items under the consent agenda, but only City Council have the authority to remove an item from the consent agenda.

Upon inquiry of City Council, City Attorney Oast said that he would provide information regarding the appropriateness of receiving information on conditional use permits outside of the hearing.

BOARDS AND COMMISSIONS

Councilman Hay gave a very brief update on the latest Future of the Civic Center Task Force meeting.

CONTINUATION OF MEETING

At 6:10 p.m., Councilman Worley moved to continue the meeting until 7:00 p.m. in the Council Chamber of the City Hall Building for the public hearing on the future of the WNC Regional Air Pollution Control Agency and Board. This motion was seconded by Councilwoman Whitmire and carried unanimously.

PUBLIC HEARING ON THE FUTURE OF THE WNC REGIONAL AIR POLLUTION CONTROL AGENCY

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Also Present:	Buncombe County Chair Tom Sobol; Commissioner David Gantt (arrived at 8:30 p.m.); Commissioner William H. Stanley; and Commissioner David W. Young

Mayor Sitnick reconvened the meeting and opened the public hearing at 7:00 p.m.

Mayor Sitnick said that originally the City Council and County Commissioners had anticipated holding a joint public hearing. However, the Commissioners only anticipated having two members present due to previously arranged travel plans. Since that time, some Commissioners changed their plans to make an effort to attend, however, proper legal notice could not be met. Therefore, this cannot be a joint meeting of both bodies. She does understand that the Commissioners anticipate having an opportunity for public comment sometime in the future.

The following individuals spoke in favor of keeping the WNC Regional Air Pollution Control Agency and Board independent and autonomous, that the City and County agree to this before June 30, 2000, that a new Interlocal Agreement be drawn up between Asheville and Buncombe County looking toward a future regional approach to air control which incorporate other counties and municipalities of WNC:

Dr. Lou Patrie, representing President of the WNC Physicians for Social Responsibility
Ms. Hazel W. Fobes, representing the Citizens for Safe Drinking Water and Air (submitted statement for record)
Mr. David Stewart, President of Smart Growth Partners of WNC (submitted statement for record)
Ms. Rachael Queen, representing Taxpayers for Accountable Government
Mr. Arlis Queen, City representative on the WNC Regional Air Pollution Control Board, but speaking only as an individual and not for the Board
Mr. James Gaddy

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Ms. Abby Gage, representing the Buncombe County League of Women Voters and Chair of the Environmental Committee
Mr. Don Yelton
Mr. Jeff Fobes, Publisher of Mountain Xpress newspaper (submitted 19 letters from industries in support of current WNC Regional Air Pollution Control Agency)
Ms. Susan Hutchinson, representing the WNC Alliance and Chair of the Clean Air Task Force
Mr. Brett Boyce
Mr. Mickie MaHaffey
Dr. Rick Maas, County representative on the WNC Regional Air Pollution Control Board, but speaking only as an individual and not for the Board
Ms. Kitty Boniske, member of the Buncombe County Environmental Affairs Board, but speaking only as an individual and not for the Board
Mr. David Herbert, representing the Clean Water Fund of North Carolina
Mr. Ed Stine
Ms. Dee Eggers, faculty member of UNC-A in the Environmental Studies Program, but speaking only as an individual and not the University or Program
Ms. Barber Melton, President of the Coalition of Asheville Neighborhoods
Ms. Beth Fogleman, Co-Chair of Active Students for Healthy Environment at UNC-A
Mr. Keith Thompson
Ms. Susan Andrew
Mr. Ted Prosser
Mr. Gary Semlak
Ms. Candice Carr, Student at UNC-A (submitted statement for record)
Ms. Elizabeth Bennett
Ms. Huma Alvarado, Student at UNC-A studying Environmental Science
Ms. Julie Brandt
Ms. Eileen Wilson, Board of Directors for the Board of Trustees of the local Audubon Chapter
Mr. Mike Lewis
Mr. John Yarnell
Ms. Brenda Robinson, Environmental Task Force of the Social Action Committee of the Unitarian Church
Ms. Laura Whitley (submitted a statement for the record)
Mr. Jack Fobes
Ms. Sarah Blankenship
Ms. Nancy Lance Hanover
Mr. Jerry Rice
Ms. Sharon Martin
Mr. Bob Tinkler (submitted statement for record)
Mr. Bob Camby, Director of the WNC Regional Air Pollution Control Agency, but speaking as an individual

Ms. Nelda Holder, Chair of the WNC Regional Air Pollution Control Board, but speaking only as an individual and not for Board, said whatever model is chosen, she had some requests: (1) the Fund Balance would be dedicated as it is now to air pollution control activities; (2) the revenue stream, including permit fees, gasoline tax allocation, fines, and grants continue to be dedicated solely for the purpose of air pollution control activities; (3) the civil penalty procedure will at minimum be maintained and potentially be strengthened; (4) in terms of staffing levels, the present comprehensiveness of inspections, monitoring, enforcement and other service be maintained; (5) the citizens will always be guaranteed a place at the table in developing and reviewing policy; (6) the advisory council will remain focused on consensus building between environmental, industrial, health, and scientific communities; and (7) the strategic planning continue. She submitted her statement for the record.

Councilman Hay entered into the record a series of letters from the following people who support continuation of the Agency and Board as it currently is: Mr. James Hall, Mr. Brian Cole, Ms. Doesha McDade, Ms. Linda King, Ms. Carolina McCready, Deaconess Debra Sue Chenault, Ms. Chitra Alvarado, Ms. Karin Heiman, Ms. Judy Williamson, Mr. Alex Page, and Ms. Gina Parise.

Chairman Sobol said that there is no question about keeping the Agency a local agency. The staff recommendation to put this under a County department is only a staff recommendation. There is no proposal on the table right now. They do feel strongly that they owe it to everyone that is concerned to be heard. There will be a meeting set up shortly with the Mayor and others to reach some type of working agreement. The Commissioners are concerned that if this remains an autonomous board that there be some performance measures and benchmarks which do not exist at this point. They will try to work on this as quickly as possible. He stressed that this is not a political issue.

Commissioner Young said that as they start discussions with City Council, they will take into consideration all the comments heard tonight and put together a strong organization that can clean up the air. He said that if it is set up between the City and County, it should be structured to allow other counties to join in. He is in favor of seeing the City and County work together and then to work regionally.

Commissioner David Gantt was in support of an autonomous policy-making board. He felt we needed the best air quality here and we need to encourage other governing units to join us so we have more leverage, more political impact and we can do a better job with more people involved. He encouraged the audience to also come to the County Commissioners' public hearing to be scheduled.

Commissioner Bill Stanley stated that he wanted to protect the mountains.

Councilman Worley was in support of the regional aspect of this issue and felt we need to invite and encourage other regional partners to join us for the protection of our air.

Councilwoman Field noted at we all care about our air quality and the decision which needs to be made is what is the best way to get there. She felt that we need to challenge whatever structure is set up to meet the attainable goals and to also balance that with the needs of the rest of the community.

Mayor Sitnick thanked the members of the County Commissioners for attending as well as the City Council and citizen activists. It has been made clear tonight that the environment is no longer and never should have been a political issue. What matters is that we move forward together in the spirit of cooperation. We need to double our efforts to lobby the federal and state governments to make sure that what we do from now on keeps the air from being polluted. Prevention is cheaper than clean-up. She said that whatever the Environmental Management Commission re-confirms, if it isn't working, she will lead the charge to make changes.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:04 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - April 25, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire (excused from meeting at 7:20 p.m.); and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Worley gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING APRIL 30-MAY 7, 2000, AS "DAYS OF REMEMBRANCE"

Mayor Sitnick read the proclamation proclaiming April 30-May 7, 2000, as "Days of Remembrance " in the City of Asheville. She presented the proclamation to Rabbi Ratner who briefed City Council on some activities taking place during this period.

B. PROCLAMATION PROCLAIMING SATURDAY, MAY 6, 2000, AS "RUNNIN FOR FUN 'N' FITNESS DAY"

Councilman Hay read the proclamation proclaiming Saturday, May 6, 2000, as "Runnin for Fun "N" Fitness Day" in the City of Asheville. He presented the proclamation to Mr. Bruce Handley who briefed City Council on some activities taking place during the day.

C. PROCLAMATION PROCLAIMING MAY 2000 AS "MOTORCYCLE AWARENESS MONTH"

Vice-Mayor Cloninger read the proclamation proclaiming May 2000 as "Motorcycle Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Richard Ware who briefed City Council on some activities taking place during the month.

D. PROCLAMATION PROCLAIMING MAY 4, AS "ASHEVILLE PARKS AND RECREATION DEPARTMENT VOLUNTEER RECOGNITION AND APPRECIATION DAY"

Councilman Whitmire read the proclamation proclaiming May 4, 2000, as "Asheville Parks and Recreation Department Volunteer Recognition and Appreciation Day" in the City of Asheville. She presented the proclamation to Ms. Susan Smith and Mr. Tom Knoebber, recipients of the Bill Fulp Community Service Award.

E. PROCLAMATION PROCLAIMING APRIL 30-MAY 6, 2000, AS "MUNICIPAL CLERKS WEEK"

Mayor Sitnick read the proclamation proclaiming April 30-May 6, 2000, as "Municipal Clerks Week" in City of Asheville. She presented the proclamation to City Clerk Maggie Burleson who thanked the Council for their support.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 11, 2000: AND THE SPECIAL MEETING, WORKSESSION AND PUBLIC HEARING HELD ON APRIL 28, 2000

B. RESOLTUION NO. 00-68 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CRISP HUGHES EVANS LLP, CERTIFIED PUBLIC ACCOUNTANTS, FOR AUDITING SERVICES FOR FISCAL YEAR 1999-2000

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Crisp Hughes Evans LLP, Certified Public Accountants, for auditing services for Fiscal Year 1999-2000.

N.C. General Statutes 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In 1998 the City solicited proposals from 36 accounting firms to perform the City's annual audit for the Fiscal Years 1997-98, 1998-99 and 1999-2000. City Council selected Crisp Hughes Evans LLP to conduct the Fiscal Year 1997-98 audit with the option to be re-engaged annually for two more years. They completed both the Fiscal Year 1997-98 and Fiscal Year 1998-99 audit and have now submitted an engagement letter for the Fiscal Year 1999-2000 audit. The fee has been estimated at $54,700. Funds are appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 26 – PAGE 6

C. ORDINANCE NO. 2686 – BUDGET AMENDMENT TO ACCEPT A PRIVATE DONATION TO FUND THE DEVELOPMENT OF THE FRENCH BROAD RIVER PARK PHASE IV

Summary: The consideration of a budget amendment, in the amount of $500, to accept a private donation to fund the development of French Broad River Park, Phase IV.

French Broad River Park, Phase IV represents the City of Asheville's next phase of a major greenway and park system being developed along the French Broad River on Amboy Road. The park will include greenways, bicycle facilities, lawn bowling, soccer and softball fields, restrooms, skateboarding and rollerblading facilities, open space, picnic shelter, parking, and perhaps a welcome center. Phase IV will also connect to a planned NC DOT funded greenway from Hominy Creek on the west, and eventually to the Amboy Road greenway to the east.

The Parks and Recreation Department and RiverLink are in partnership to implement an ambitious fundraising plan to raise approximately $2 million to build the park. Private donations are one of the means to raise funds for the park.

The Parks and Recreation Department recommends the City of Asheville accept the donation on behalf of the Parks and Recreation Department for development of French Broad River Park, Phase IV.

ORDINANCE BOOK NO. 18 – PAGE 200

D. **ORDINANCE NO. 2687 – BUDGET AMENDMENT FOR THE CITY'S PORTION OF FUNDING A WATER CONSERVATIONIST POSITION**

Summary: Match of the contribution by Buncombe County in the amount of $13,000 to help fund the Soil Conservationist position.

ORDINANCE BOOK NO. 18 - PAGE 202

E. **RESOLUTION NO. 00-69 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON TO FUND A WATER CONSERVATIONIST POSITION**

Summary: See Consent Agenda Item "D" above.

RESOLUTION BOOK NO. 26 – PAGE 10

F. **RESOLUTION NO. 00-70 – RESOLUTION AUTHORIZING A GRANT APPLICATION TO THE LAND, WATER AND CONSERVATION FUND TO ASSIST WITH THE CONSTRUCTION OF THE FRENCH BROAD RIVER PARK PHASE IV**

Summary: The consideration of a resolution to apply for and enter into an agreement with the N. C. Department of Environment and Natural Resources, Division of Parks and Recreation in the Land, Water and Conservation Fund to assist with the construction of the French Broad River Park, Phase IV.

French Broad River Park, Phase IV, represents the City of Asheville's next phase of a major greenway and park system being developed along the French Broad River on Amboy Road. The final master plan is complete, and approved by the Parks and Recreation Advisory Board and the Greenway Commission. The park will include greenways, bicycle facilities, lawn bowling, volleyball and soccer complex, softball field, playground, restrooms, roller hockey, open space, picnic shelter, parking, and a welcome center. Phase IV will also connect to a planned NC DOT funded greenway from Hominy Creek on the west, and eventually to the Amboy Road greenway to the east.

The Parks and Recreation Department and RiverLink are in partnership to implement an ambitious fundraising plan to raise approximately $2 million to build the park. To date, $50,500 has been raised, and $520,000 in grant proposals are pending.

The Parks and Recreation Department is requesting $250,000 to $300,000 in grant funds from the Land, Water and Conservation Fund which requires a 50% cash or in-kind match. The in-kind match is available in land value, labor, equipment, and project management through Parks and Recreation.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for grant funds with the N. C. Department of Environment and Natural Resources, Division of Parks and Recreation, through the Land, Water and Conservation Fund to assist with the construction of the French Broad River Park, Phase IV.

RESOLUTION BOOK NO. 26 – PAGE 11

G. RESOLUTION NO. 00-71 – RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT A GRANT APPLICATION TO THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY, GOVERNOR'S CRIME COMMISSION, IN SUPPORT OF A COMMUNITY POLICING GIS PROJECT

Summary: The consideration of two resolutions authorizing the City Manager to submit full applications and accept two grant awards from the N. C. Department of Crime Control and Public Safety, Division of the Governor's Crime Commission, in support of a community policing GIS project; and a second grant in support of a social work and police partnership project.

The Governor's Crime Commission has invited the City of Asheville to submit a grant application in the amount of $63,465 in support of a one year Community Policing Geographic Information System Project outlined in the pre-application reviewed by the Commission. A local match of $21,155 is required. The local match will be budgeted in the Fiscal Year 2000-01 Annual Operating Budget. The purpose of this project is to enable consolidation most of the City's geographic information systems data and coordinate its application in support of Community Oriented Governing.

The Governor's Crime Commission has also invited an application in the amount of $85,950, covering two years, in support of a Social Work and Police Partnership project (SWAPP), as outlined in the pre-application reviewed by the Commission. A local match of $28,650 is required for each of two (2) consecutive years over the 2 year life of the project. The local match will be budgeted in the Fiscal Year 2000-01 and 2001-02 Annual Operating Budget. The purpose of this project is to reduce family violence issues contributing to chronic juvenile run-away behavior.

City staff recommends City Council adopt two resolutions authorizing the City Manager to submit grant applications and if awarded, acceptance of grants, to the N. C. Department of Crime Control and Public Safety, Governor's Crime Commission, (1) in support of a community policing GIS Project; and (2) in support of a social work and police partnership project.

RESOLUTION BOOK NO. 26 – PAGE 12

H. RESOLUTION NO. 00-72 – RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT A GRANT APPLICATION TO THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY, GOVERNOR'S CRIME COMMISSION, IN SUPPORT OF A SOCIAL WORK AND POLICE PARTNERSHIP PROJECT

Summary: See Consent Agenda Item "G" above.

RESOLUTION BOOK NO. 26 – PAGE 13

I. RESOLUTION NO. 00-73 – RESOLUTION ACCEPTING THE NEW STREET NAME OF "BARRETT LANE" OFF OF WESLEY DRIVE

Summary: The consideration of a resolution accepting the new proposed street name "Barrett Lane."

Givens Estates, Inc., owner of lots in Givens Estates United Methodist Retirement Community, has petitioned the City of Asheville to accept the street name of "Barrett Lane." This new street is to begin at Wesley Drive and end at the dead-end.

Staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 14

J. **RESOLUTION NO. 00-74 – RESOLUTION ACCEPTING THE NEW STREET NAME OF "WESTWIND LANE" OFF OF MAPLE AVENUE**

Summary: The consideration of a resolution accepting the new proposed street name "Westwind Lane."

AGR Real Property Investors, LLC., owner of lots in the Westwind Subdivision, has petitioned the City of Asheville to accept the street name of "Westwind Lane." This new street will begin at Maple Avenue and end at the dead-end.

Staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 15

K. **MOTION SETTING A PUBLIC HEARING ON MAY 9, 2000, TO APPLY THE MANUFACTURED HOUSING OVERLAY DISTRICT TO FOUR LOTS ON GORMAN BRIDGE ROAD CURRENTLY ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT**

L. **MOTION SETTING A PUBLIC HEARING ON MAY 9, 2000, TO CONSIDER THE REZONING OF PROPERTIES LOCATED OFF HILLSIDE STREET AND WOODROW AVENUE FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)**

M. **RESOLUTION NO. 00-75 – RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH BUCKEYE CONSTRUCTION COMPANY INC. FOR "BREVARD ROAD ANNEXATION AREA – PHASE II – CONTRACT B SEWER SYSTEM IMPROVEMENTS"**

Summary: The consideration of a resolution awarding the contract for Brevard Road Annexation Area Phase II Contract "B" to Buckeye Construction Company, Inc., in the amount of $270,258.42.

This project is part of the Brevard Road Annexation Area Sanitary Sewer System Improvements and consists of the installation of approximately 1,703 linear feet of twelve inch (12") diameter sanitary sewer line and 1,471 linear feet of eight inch (8") diameter sanitary sewer line and related appurtenances.

The Engineering Department received and publicly opened five (5) bids on Tuesday, April 4, 2000, at 2:00 p.m. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, Buckeye Construction Company, Inc., was found to be the lowest responsible bidder with a total bid of $270,258.42. The Engineer's estimate for this project was $ 379,630.00.

Buckeye Construction Company, Inc., has performed several projects of this nature in the past without any major problems.

The construction time for this project is identified as 120 calendar days in the contract documents. The contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

Staff recommends that City Council accept a resolution awarding the bid for Brevard Road Annexation Area - Phase II - Contract "B" Sewer System Improvements to Buckeye Construction Company, Inc., the responsible low bidder and authorize the City Manager to execute all necessary agreements and contracts.

RESOLUTION BOOK NO. 26 – PAGE 16

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Whitmire and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE REZONING OF 655 BREVARD ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE I, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

ORDINANCE NO. 2688 - ORDINANCE TO REZONE 655 BREVARD ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE I CONDITIONAL USE ZONING

ORDINANCE NO. 2689 – ORDER GRANTING A CONDITIONAL USE PERMIT FOR 655 BREVARD ROAD (CONDITIONAL USE ZONING)

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to vote to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:20 p.m.

The following Council members disclosed that they visited the site: Vice-Mayor Cloninger, Councilwoman Field, Councilman Hay, Councilman Peterson and Councilman Worley.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

Mr. Dan Baechtold, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), and City Exhibit 3 (Staff Report).

Mr. Baechtold then said that this is the consideration to rezone one lot at 655 Brevard Road from RS-8 Residential Single Family High Density District to Office I, and issuance of a conditional use permit (conditional use zoning).

The property is identified as parcel number 9627.16-92-7864. Dr. Phil Davis, DDS, recently purchased this property (1.65 acres) at 655 Brevard Road and wishes to locate his dental practice on the property. Dr. Davis and his wife, Jana Gower, are also considering using the property as a residence. The subject property is currently occupied by one single-family dwelling and is located along a two-lane portion of Brevard Road, which lies generally between the WNC Farmer's Market and Biltmore Square Mall. The property is part of a small RS-8 District, which is surrounded by property zoned Highway Business and Commercial Industrial. There are six homes in this RS-8 zone facing Brevard Road. This small residential pocket is in transition from residential to commercial use. This transition pattern is further reinforced by the fact that the N. C. Dept. of Transportation plans to widen Brevard Road to four or five lanes in this location.

Planning staff determined that this type of small-scale medical office is a good low-impact use in an area that is transitioning from residential use to commercial use. A conditional use zoning of the property allows an opportunity for the City to ensure that the proposed office use will not be out of scale with the other remaining residences, and will not produce adverse impacts on the neighbors. The site plan submitted as part of this conditional use zoning application shows re-use of the existing residential structure, limits land disturbance and tree removal on the site, and ensures compatibility with surrounding residential uses by providing adequate buffering from adjoining properties. Under the conditional use zoning, the site must be developed according to the proposed site plan. The uses on the property will be limited to one medical office and one single-family residence.

This property is not currently connected to public sewer. Sewer is available in the rear of the property along Hominy Creek. In order to occupy the building as a commercial use, the applicant must either connect to the public sewer system or receive approval for a septic system for this use from Buncombe County Environmental Health. The applicant is aware of this requirement. The property is connected to public water. The waterline along Brevard Road is scheduled for an upgrade within the next two years. At this time, however, adequate pressure for fire flow is not available in the line. The applicant is aware that sprinklers or a supplemental water tank may be necessary to satisfy the requirements of the Fire Code.

The Planning and Zoning Commission reviewed this request at their meeting of April 5, 2000, and voted unanimously (6-0) to approve the rezoning. No members of the public commented at the hearing. The Planning and Development Department received one letter of support for the rezoning from a neighbor. There has been no other public comment.

Planning and Development staff recommends approval of a motion to rezone property located at 655 Brevard Road from RS-8 to Office-CU with the following conditions: (1) uses will be limited to one medical office and one single-family residence; and (2) site alterations will be limited to the proposed site development plans approved as part of the conditional use zoning application.

Dr. Phil Davis, petitioner, spoke in support of the proposed rezoning and issuance of the conditional use permit using a map (Applicant Exhibit 1) to show the location of the property in question.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 5:32 p.m.

Vice-Mayor Cloninger moved to adopt Ordinance No. 2688 to rezone one lot at 655 Brevard Road from RS-8 Residential Single Family High Density District to Office I – conditional use zoning. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 204

Councilman Worley moved to adopt Ordinance No. 2689 granting the conditional use permit for 655 Brevard Road (conditional use zoning), with the following conditions: (1) uses will be limited to one medical office and one single-family residence; and (2) site alterations will be limited to the proposed site development plans approved as part of the conditional use zoning application; and to instruct the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 206

B. PUBLIC HEARING RELATIVE TO AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH A NEW CHARLOTTE STREET TRANSITION OVERLAY DISTRICT AND APPLICATION OF THAT DISTRICT TO 43 PROPERTIES LOCATED IN THAT AREA

ORDINANCE NO. 2690 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO ESTABLISH THE CHARLOTTE STREET TRANSITION OVERALY DISTRICT

ORDINANCE NO. 2691 - ORDINANCE APPLYING THE CHARLOTTE STREET TRANSITION OVERLAY DISTRICT TO 43 LOTS IN THE CHARLOTTE STREET AREA

Mayor Sitnick opened the public hearing at 5:35 p.m.

Mayor Sitnick gave City Clerk Burleson several letters regarding this issue for inclusion in the file.

Upon inquiry of Mayor Sitnick if she had a conflict of interest due to her living ¼ block off Charlotte Street, City Attorney Oast said he saw no conflict.

Director of City Development Mike Matteson said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to establish a Charlotte Street Transition Overlay District and application of this overlay district to 43 lots in the Charlotte Street area. This public hearing was legally advertised on April 14 and April 21, 2000.

The Charlotte Street Transition Overlay District is an incentive based overlay zoning district designed to aid in the implementation of the Charlotte Street Corridor Plan. The Corridor Plan, adopted by City Council in January, 1999, recommends, among other things, compatible in-fill development which is more urban in nature and which relates to the street and sidewalk and serves the surrounding community. The overlay district provides property owners and developers with incentives, in the form of square footage bonuses, to develop property in a manner consistent with the recommendations of the plan. Structures may be larger than permitted in the underlying zoning district provided that certain design features or other elements are incorporated into a proposed development.

The Planning and Development Department is proposing to apply this overlay district to 43 properties in the Charlotte Street area. The underlying zoning district is CBI Community Business I.

City Council is asked to first consider the ordinance amendment to create the Charlotte Street Transition Overlay District and then to consider the application of the overlay district to the properties in question.

At their January 5, 2000, meeting, the Planning & Zoning Commission voted unanimously to recommended approval of both the ordinance amendment creating the Charlotte Street Transition Overlay District and the application of the overlay district to the properties in question. The Planning & Zoning Commission asked staff to make some minor changes to the proposed overlay district and those changes will be incorporated into the proposed district.

The Planning and Development Department staff is also recommending approval of both the ordinance amendment and the application of the overlay district.

Mr. Matteson also said that on April 19, he met with a group of residents from the Albemarle Park neighborhood regarding the Charlotte Street Transition Overlay District. This was the second meeting with this group, the first taking place during the initial development of the overlay district. Generally, the proposed district was received favorably by the group. However, a relatively small number of concerns were raised. As a result of that meeting, this morning via fax, he received a list of changes from that neighborhood which they are requesting.

After thoughtful consideration of the neighborhood group's list, staff is proposing several additional changes to the district. Please find below a summary of the changes requested by the group and staff's recommendation regarding the requests.

1) The group requested that the language in the district be strengthened by replacing words such as "should", "encourage" and "discourage" with "shall". - Staff recommends that the language be strengthened as requested.

2) The group requested that a higher percentage (40%) of the total building square footage be devoted to residential uses if a project is to accumulate points for providing residential uses. Additionally, it was suggested that the language be clearer with respect to the affordable housing provision. - Staff is comfortable recommending this increase from 25% to 40%.

3) The group requested that the landscaping provision, which allowed 20 points for increased landscaping and/or hardscaping, be deferred until a streetscape plan is developed. The group feels that the hardscaping alternative, in particular, is not quantifiable and won't be coordinated with other developments. - Staff does not recommend removing this provision. Increased landscaping and improved appearance were important issues identified by many groups and individuals. The point system has been carefully created to allow certain groupings of elements to achieve a larger building while contributing to the attractiveness and vitality of the street. However, staff is proposing the following change in the language to address this concern (change is underlined).

"The landscaping for the proposed development exceeds the requirements of Sections 7-11-2(F) and 7-11-2(G) of the Code of Ordinances of the City of Asheville by at least fifty percent (50%). Hardscape, which incorporates features determined by the Planning and Development Director to be pedestrian-oriented may be used in combination with or instead of landscaping along the street frontage of the lot. Examples of these features include benches, outdoor dining, planting boxes, etc. Street trees and hardscape features shall be consistent with any approved streetscape plan for the area.

Staff would further suggest that the community get together to develop a mutually agreed upon streetscape plan with technical assistance from City staff.

4) The group requested that the provision addressing building entrance design be removed from the point structure and added to the design criteria. - Staff does not recommend this change. Although the design criteria are relatively stringent, the intent was to identify the basic criteria that would help to ensure building compatibility. These items included height, scale and massing, fenestration, materials, etc. It was felt that more detailed criteria, such as the design of building entrances, should be encouraged through the point structure.

5) The group requested that the incentive to preserve historic buildings be increased by allowing 20 points for their preservation (up from 15 points). The group also requested that a disincentive be created by subtracting 20 points if an historic building is removed. - Although staff can support increasing the points received for preserving historic buildings, we feel that incorporating the proposed language to subtract points for demolition of an historic building is too significant a change to propose at this time, given the numerous meetings taken place to date.

He stressed that the proposed district is a result of many meetings with various groups and individuals. Staff has worked very hard to ensure that this proposed district addresses the interests and concerns of these groups and individuals in a balanced and equitable manner.

He then reviewed the revised list of staff recommended changes to the ordinance:

- **Section 7-9-10(F.)(1)(c.)(1) – strengthen language as follows:**

General Principles and Intent of the design criteria:

The intent of the following design criteria is to maintain and strengthen the unique historic character of Charlotte Street by helping to ensure that new buildings are architecturally compatible with the historic character of the street and that design characteristics are employed which are consistent with the historic architectural vocabulary of the area. These characteristics include historic building forms and silhouettes, proportions, treatments, exterior materials, massing and/or architectural style. Additionally, it is intended that the front elevations and overall massing of new buildings be pedestrian scaled and related to the street.

It is not the intent that new buildings mimic historic designs, but rather that they combine elements from the historic design palette in new ways to achieve a design which is compatible with and complementary to the historic character of the street.

In general, the predominant historic style of architecture within the boundaries of the overlay district is of a residential form with pitched roofs, porches and paned windows and is less urban than the structures south of E. Chestnut Street. To a lesser degree, brick historic commercial structures exist in the corridor and these have pitched roofs and sometimes use a combination of brick and stucco.

When developing designs for new buildings, it is advisable to reference existing historic buildings or other documentation to identify elements that are to be used in the project.

- **Section 7-9-10(F.)(1)(c.)(2.)(b.) – Change to read as follows:**

  Roof forms shall be similar to those used historically within the boundaries of the overlay district. The dominant roof shapes shall be gabled or hipped. The minimum roof pitch shall be 5:12. Gable ends shall typically face the street. The addition of dormers is permitted. Areas of flat roofs are discouraged and shall not exceed 25% of the primary facade and shall be located behind a sloped roof or parapet.

- **Section 7-9-10(F.)(1)(c.)(2.)(f.) – Change to read as follows:**

  A minimum of 40% of the first floor and 20% of the upper floor(s) on the front facade shall have window/door fenestration. Windows shall be set to the inside of the building face wall. Tinted or mirrored glass is not permitted.

- **Section 7-9-10(F.)(1)(c.)(2.)(g.) – Change to read as follows:**

  Skylights shall not be used on the front facades.

- **Section 7-9-10 (F.)(1)(d.) – Revise second paragraph to read as follows: (note: new language is underlined).**

  Developments accumulating between 50 and 79 points shall be allowed to exceed the permitted structure size indicated in item (a.) up to 50 percent (50%) above the maximum structure size. Developments accumulating 80 or more points shall be allowed to exceed the permitted structure size indicated in item (a) up to 75 percent (75) above the maximum structure size.

- **Section 7-9-10(F.)(1)(d.) – Change to read as follows:**

  1) The proposed structure is a "mixed use" building, housing two or more distinct use types (i.e. retail, office, residential, etc.). No single use type exceeds 75 percent (75%) of the total gross square footage of the building.

     30 points.
     40 points if residential uses are provided which occupy at least forty percent (40%) of the total gross square footage of the building.
     45 points if residential uses are provided which occupy at least forty percent (40%) of the total gross square footage of the building and at least 25 percent (25%) of those units are designed to have a total net square footage of 600 square feet or less.

  2) The proposed structure contains one or more of the following uses with an operable storefront entrance facing the street:

     Bakeries
     Barber shops and salons
     Bicycle shops
     Bookstores
     Candy, pastry, ice cream and snack shops
     Delicatessens
     Florists
     Fruit and vegetable markets
     Gift shops
     Grocery stores

Hardware/garden supply stores
Pharmacies
Restaurants
Tailors/dressmaker shops
Video rental stores
Other similar uses which serve the surrounding community and which may generate significant pedestrian activity

20 points

3) The landscaping for the proposed development exceeds the requirements of Sections 7-11-2(F) and 7-11-2(G) of the Code of Ordinances of the City of Asheville by at least fifty percent (50%). Hardscape which incorporates features determined by the Planning and Development Director to be pedestrian oriented may be used in combination with or instead of landscaping along the street frontage of the lot. Examples of these features include benches, outdoor dining, planting boxes, etc. Street trees and hardscape features shall be consistent with any approved streetscape plan for the area.

20 points

4) A connection is made between the parking area of the developing property and the parking area of one or both adjoining properties which allows for internal circulation between properties and results in there being only one drive entrance on Charlotte Street to access the developing property.

5 points

5) Entrances to the proposed structure are defined either by front porches, if designed with a residential character, or are recessed from the primary facade and defined with awnings or canopies.

15 points

6) The proposed development is designed to sensitively preserve the principle historic structure(s) on the site. For the purposes of this Section, historic buildings shall be defined as contributing structures within the boundaries of a National Register Historic District or those that are eligible for listing in the National Register of Historic Places.

15 points

7) A minimum of 25 percent of the total number of residential dwelling units provided in a proposed single-use residential development are designed to have a total **net** square footage of 600 square feet or less.

20 points

Mr. Matteson responded to several questions and comments from Council, some being but are not limited to, what was the rationale behind the higher percentage of the total building square footage being devoted to residential uses; how will staff determine what is sufficient with regard to the landscaping provision; there is no opportunity for innovative architecture; and concerns about existing traffic and what are the future plans for this corridor as it is developed to reduce the traffic gridlock and traffic dangers.

Upon inquiry of Mayor Sitnick, City Traffic Engineer Michael Moule said that he will be starting the process in the very near future to look at essentially all of the entire Charlotte Street corridor and all the traffic issues. He will get specific numbers for the traffic issues and recommendations for changing the corridor to improve pedestrian safety, maintain the capacity we need to carry the existing traffic, etc. He said their process is to involve residents and business owners in the community and not to have any preconceived notions as to what is a good design for the street.

Mr. Joe Adams, originally on the Charlotte Street Small Area Plan (Small Area Plan) as a representative of the Grove Park Sunset Neighborhood, gave Council a brief history of this project. The Small Area Plan and the neighborhood representatives recommended that the speed limit on Charlotte be reduced to 25 mph, however the Planning staff recommended the speed limit be reduced to 30 mph. To date, that has not been implemented. With regard to the traffic study, it was clear that at the Chestnut intersection there was gridlock. Another study was done but he felt that one was not done with the same detail as the original study – no counters between Chestnut Street almost all the way to Hillside, and the study was done well outside of the tourist season. He urged Council to implement another study prior to adopting any action that could increase traffic on Charlotte Street. He felt we needed to eliminate the unsafe conditions that exist today on Charlotte Street first.

Mr. Mike Ward, representing the Albemarle Park Manor Grounds Association, said they are generally supporting the overlay district and believe it improves the potential for development along Charlotte Street. He said the Small Area Plan called for two documents to be completed –a unified streetscape plan and a traffic study. As of today, we have neither document in place. Therefore, without the necessary guidance, we feel that staff would be hard-pressed to make consistent and fair decisions about landscape when there is no landscape plan. We ask the bonus for landscaping be deferred or set the highest priorities for these plans to be developed in a timely manner. Secondly, since the entrance to any building is the most important part of its overall design and defines the character of the street, they feel that provision should be moved from the incentives portion and incorporated into the primary design criteria. Additionally, they want the integrity of Charlotte Street's character to remain and to guide its future and once an historic structure is demolished, its historic character cannot be recreated. Therefore, they support increasing the incentive to preserve historic buildings from 15 to 20 points and that a disincentive be created by subtracting 20 points if a historic building is demolished.

Mr. George Ebraheem, resident on Kimberly Avenue, questioned the reasoning behind the incentive making residential dwelling units a total net square foot of 600 square feet or less. Mr. Matteson said the 600 net square feet was identified as the size structure that wouldn't guarantee affordability of these units but would at least make it more likely that the units are affordable.

Mr. Matteson said the Small Area Plan did recommend that the community get together, with technical assistance from staff, and develop a unified streetscape plan for the community. typically those address streetscape elements in the public right-of-way that the City provides as enhancements, although it could address landscaping and other features on private property. Since the Small Area Plan was adopted, staff has been working on this Charlotte Street Transition Overlay District. He did note that he didn't think that the streetscape plan needs to be in place before the overlay district is established.

Councilwoman Field said that the City has an excellent landscape ordinance in our Unified Development Ordinance and staff can rely on that.

Mr. Jim Bannon, representing Smart Growth Partners of WNC, spoke in support of the Charlotte Street Transition Overlay District. He said the ordinance will provide a legal document that offers a vision of what a neighborhood's central district might be – an appealing place where residents can walk from home to a variety of shops and back again, a place with the abundant street life that is the hallmark of any thriving community, a place where people come and linger, and a place where some of the control that we've given over to the automobile is won back. One feature, however, threatens to undermine the whole intent of creating a compact, pedestrian-oriented corner and that is the parking lot requirement. The parking lot minimums from CB-1 will remain and the result will be that as much as 50% of the developed land will be given over to surface parking lots. Even though the lots will be to the side or behind the buildings, it is simply not credible to think that you can create either compact or pedestrian-friendly patterns of development amidst a string of large surface parking lots. He felt the best solution probably is to increase on-street parking. He suggested reducing Charlotte Street to 3 lanes with parking on one side of the street. That would not only alleviate the need for numerous large surface parking lots, but would also provide a buffer between pedestrians and a traffic stream that often exceeds 40 mph.

Ms. Janet Hart felt that compatibility is the most important issue in this matter. She felt it was important that we consider the more we increase the size of buildings and increasing traffic along that corridor we will create a situation where it is less pedestrian friendly. She suggested re-marking Charlotte Street for a period of time to see if three lanes might work. She too agreed with prior speakers of the traffic issues along Charlotte Street.

Mr. Roger James presented City Council with a form letter signed by 52 people (including business owners) in the Charlotte Street area. He reiterated Mr. Ward's prior suggestions and noted that out of the four suggestions, one has been considered further by City staff and they recommend the change as well.

Mr. Doug Michaels, member of the Grove Park Association, suggested Council table action on this and look hard at the traffic issues. He, too, felt a unified streetscape plan and a traffic study should be place prior to approval of this overlay district.

Ms. Jane Mathews, spoke in support of the Small Area Plan and the three remaining recommendations outlined by Mr. Ward.

Mr. Matteson said that in talking with Historic Resources Director Maggie O'Connor, she felt very confident that any building within this area that is historic would meet the definition as being a contributing structure or one that is eligible for listing in the National Register of Historic Places.

Mayor Sitnick closed the public hearing at 6:42 p.m.

Because of discussion on various recommendations, it was the consensus of City Council to divide the issue and take an informal vote on each one.

It was the consensus of City Council to accept the recommendations of staff as outlined above with regard to Section 7-9-10 (F) (1) (c) (1), Section 7-9-10 (F), (1) (c) (2) (b), Section 7-9-10 (F) (1) (c) (2) (f), Section 7-9-10 (F) (1) (c), (2) (g), Section 7-9-10 (F) (1) (d) – second paragraph, Section 7-9-10 (F) (1) (d) (2), Section 7-9-10 (F) (1) (d) (4), and Section 7-9-10-(F) (1) (d) (7).

Discussion and an informal vote was taken on Section 7-9-10 (F) (1) (d) (1) to reduce the total building square footage to be devoted to residential uses if a project is to accumulate points for providing residential uses from 40% to 30%. Mayor Sitnick, Vice-Mayor Cloninger, Councilman Hay and Councilman Peterson voted to keep it at 40% (as recommended by staff) and Councilwoman Field, Councilwoman Whitmire and Councilman Worley voted to reduce it to 30%.

Discussion and an informal vote was taken on Section 7-9-10 (F) (1) (d) (3) and all Council, except for Councilman Peterson, voted to accept the staff recommendation.

Discussion and an informal vote was taken on Section 7-9-10 (F) (1) (d) (5) and all Council, except for Mayor Sitnick and Councilman Peterson, voted to accept the staff recommendation to not change the provision addressing building entrance design being moved from the point structure and added to the design criteria.

Discussion and an informal vote was taken on Section 7-9-10 (F) (1) (d) (6) and accept the recommendation of staff to support increasing the points (from 15 to 20) received for preserving historic buildings. In addition, discussion and an informal vote was taken on Section 7-9-10 (F) (1) (d) (6) to add a disincentive of subtracting 20 points if an historic building is removed. Mayor Sitnick, Councilman Hay, Councilwoman Whitmire and Councilman Peterson voted to add the disincentive of subtracting 20 points, and Vice-Mayor Cloninger, Councilwoman Field and Councilman Worley voted not to assign the disincentive of subtracting points.

Mayor Sitnick requested that the speed limit reduction and the traffic analysis be performed on Charlotte Street as soon as possible.

Mayor Sitnick said that members of Council have previously received a copy of the ordinances and they would not be read.

Vice-Mayor Cloninger moved to adopt Ordinance No. 2690 to adopt the Charlotte Street Transition Overlay District with the changes recommended by staff as outlined above, and with changes to Section 7-9-10 (F) (1) (d) (6) to increase the points from 15 to 20 received for preserving historic buildings and to add a disincentive by subtracting 20 points if an historic building is removed. This motion was seconded by Councilman Hay and carried unanimously.

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Councilwoman Field moved for the adoption of Ordinance No. 2691, to apply the Charlotte Street Transition Overlay District to 43 properties in that area. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 217

At 7:35 p.m., Mayor Sitnick announced a five minute break.

C. PUBLIC HEARING TO CONSIDER ADOPTION OF THE DRAFT CONSOLIDATED HOUSING AND COMMUNITY DEVELOPMENT PLAN

Mayor Sitnick closed the public hearing at 7:40 p.m.

Ms. Charlotte Caplan, Community Development Director, said that the Consolidated Plan is the City's plan for using federal Community Development Block Grant (CDBG) and Home Partnerships Act (HOME) program funds. It is in two parts. One document is the Strategic Plan which is prepared once every five years, which explores needs, priorities, strategies and objectives for the programs for 2000-2005. The other document is the Action Plan, prepared annually, which details the proposed use of funds for specific projects in 2000-2001.

Notices of the availability of the draft plans for public comment, with the date of the public hearing, were published on April 7, 2000. A formal notice of the public hearing date was be published on April 14 and 21, 2000. The formal public comment period remains open until May 7, 2000. On May 9, 2000, City Council will be asked to give final approval to both plans, amended as necessary. The deadline for submitting the Plans to HUD is May 12, 2000.

Ms. Caplan explained that the Strategic Plan is a framework to broadly direct the use of CDBG and HOME funds over the next five years. It also proposes consideration of other actions that support the affordable housing, economic development and other activities that CDBG and HOME funds can be used for to benefit our low income residents. The most far-reaching of these proposed actions is the proposal for one cent worth of property tax to support a local housing trust fund.

She said that the Action Plan is done every year and it's a detailed allocation of CDBG and HOME funds to specific projects for the coming fiscal year. We have tried hard to make this consistent with the five year Strategic Plan.

Both Plans were published on April 7 and since then we have received a number of comments. Staff would like to recommend three changes to the draft Strategic Plan as a result of those comments. (1) With regard to lead-based paint, the original draft proposed that the City consider making lead-based paint hazards a Minimum Housing Code issue. However, it turns out there are technical difficulties with this approach. After meeting last week with several interested parties, a revised proposal is to instead use housing inspectors and permit department staff to distribute information about lead-based paint hazards every time an older home is inspected or a renovation permit is issued. She passed out the full revised lead-based paint recommendation; (2) The Health Department asked if we could increase the annual target for screening children from lead based paint poisoning from 25% each year to 35%; and (3) With regard to public housing in Madison County, the draft originally indicated support for the proposal to consolidate the four separate public housing authorities that exist in Madison County. Since then, three out of the four have written expressing their opposition to such a step. Therefore, staff now suggests merely that the question of consolidation should be considered to see if there are advantages.

Ms. Pam Jowels spoke in support of the one cent property tax being dedicated for the Housing Trust Fund.

Mr. Jody Kuhne suggested that affordable housing organizations seek out affordable homes.

Mr. Neal Peek, President of the Carolina Real Estate Investors Group, supported staff's recommendation relative to lead-based paint education. With regard to the Housing Trust Fund, they do support it, however, they don't support many of the methods for funding it as outlined in the Plan. He did note though, that most of the members do support the one cent property tax being dedicated to the Fund. He said that if Asheville and Buncombe County is to solve the affordable housing problem, then the private sector, for-profit investors must be a part of that.

Ms. Carolina Wood read a letter from Natira Collington who supported the Housing Trust Fund.

Mr. Jim Barrett, representing the Affordable Housing Coalition, spoke in support of the recommendation that the City invest the equivalent of one cent on the property tax rate in affordable housing, using the Housing Trust Fund.

Mr. Al Mojonnier, board member of the Affordable Housing Coalition, spoke in favor of the one cent for the Housing Trust Fund.

Ms. Helen O'Connor, Affordable Housing Coalition, supported the one cent being dedicated for the Housing Trust Fund. She said that the Affordable Housing Coalition and the Consumer Credit Counseling Services would like to request City Council reallocate $47,000 of the proposed $100,000 down payment program to assist the continuation of core services for first time homebuyers, crisis intervention and crisis prevention. She said the Affordable Housing Coalition is committed to continuing to secure down payment assistance funds through local resources such as the Board of Realtors and the Mortgage Bankers Association.

Ms. Sophie Dixon, Vice-President of the Local Chapter of the Asheville Branch of the NAACP, spoke in support of the Housing Trust Fund.

Ms. Manning, representing the Hospitality House of Asheville, read a letter from Board Chair Mimi Cecil thanking City Council for their continued support of their programs. She invited Council to visit the A-Hope program which is a house for the unsheltered homeless.

Mr. Jamie Blue, President of the Asheville Board of Realtors, spoke in support of the Consolidated Plan and encouraged the education of lead-based paint issues.

Ms. Beth Maczka, Director of the Affordable Housing Coalition, spoke in support of the one cent property tax being dedicated to the Housing Trust Fund. She also spoke in support of the reallocation of $47,000 of the CDBG funds from down payment assistance to homebuyer education program and housing counseling.

Mr. Walter Plowie spoke in support of the Plan stressing that the lead-based paint hazards issue and the affordable housing issue must be dealt with as one.

Ms. Caplan read a letter from Mr. Marvin Vierra, Business Development/Procurement Specialist, which commended City staff on the format used to produce and distribute the plan to the public. He also spoke in support of the public participation in the planning process.

Upon inquiry of Councilman Hay, Ms. Caplan said that City staff would have no problem with the reallocation of the $47,000 the Affordable Housing Coalition requested if Council wishes to make that change. However, it would be a substantial increase for the Affordable Housing Coalition's program in a year when basically no other applicants have received an increase in funding.

Upon inquiry of Councilwoman Field with regard to the reallocation of $47,000, Ms. Caplan felt quite sure that if the Affordable Housing Coalition receives $78,000 this year, they would probably come back next year and ask for that same amount. Councilwoman Field asked that this issue be discussed at the next Housing and Community Development Committee meeting.

Mayor Sitnick closed the public hearing closed at 8:25 p.m.

Mayor Sitnick said that City Council will be considering adoption of the Consolidated Housing and Community Development Plan at it's formal meeting on May 9, 2000.

D. PUBLIC HEARING TO CONSIDER A PLANNED UNIT DEVELOPMENT OVERLAY ZONING FOR CROWELL FARMS LOCATED ON WEST OAKVIEW ROAD NEAR EAGLE'S NEST LANE

Mayor Sitnick said that Councilwoman Whitmire has left the meeting just after being notified of a sudden death in her family. She did ask Mayor Sitnick to be excused from the meeting. Mayor Sitnick then asked City Attorney Oast what direction Council should take as far as entertaining a motion to excuse Councilwoman Whitmire. City Attorney Oast said that the law doesn't provide a lot of clear guidance and there is certainly room for disagreement with his opinion and it's a point upon which reasonable minds may differ. It was his opinion that Councilwoman Whitmire may be excused from the meeting upon a majority vote of the Council. If she is not so excused, then her vote counts as an affirmative vote on any matter that comes before Council from this point on.

City Attorney Oast said that it is his understanding that there is a valid protest petition in this matter, thus invoking the ¾ vote of the entire Council, which if Councilwoman Whitmire is excused from the meeting would still require a 6-0 vote.

Vice-Mayor Cloninger moved to excuse Councilwoman Whitmire. This motion was seconded by Councilman Peterson and carried unanimously.

Mr. Marty Kocot, with Land Design and engineer of record on the job representing Crowell Farms, LLC, said that "we feel like Ms. Whitmire was going to be an affirmative vote in our favor, just based on our opinion and what we know about Ms. Whitmire. One of the issues that is critical is funding for this project. If this project was tabled or voted down tonight, we will lose critical funding for the affordable housing multi-family portion of the project and it will, without a doubt, put the entire PUD development in jeopardy from happening. At that point the developer will have two options – one, to develop it under the current zoning, or two, to sell the property to another developer who could develop it. That is the issue before you. What I'd like you to do is to rescind your vote excusing Ms. Whitmire and allow her to be counted as an affirmative vote."

Vice-Mayor Cloninger said that as a matter of fairness to the Councilmember not present on a issue that needed a vote, he would not want a vote to be recorded on his behalf that may not necessarily reflect the way that he would actually vote. He felt it was just a matter of fairness that if anyone is not here, to excuse them.

Mr. Kocot said that he understood, however, he questioned if it was "also a matter of fairness if one of you is wavering on which way to vote, that it counts in our favor? What I'm saying is if 6 out of 7 were required to vote for the project, if somebody is undecided, can they not vote undecided and it not hurt us? "

Mayor Sitnick was perplexed on how Mr. Kocot could assume how Councilwoman Whitmire would vote. She said when you are on Council and especially when you are dealing with a vote on an issue like this that has created some controversy, the whole idea of behaving in an ethical manner is to not pre-makeup your mind – to come into Council with a totally open mind and to base the decision only on what you hear in this Chamber. She also knows Councilwoman Whitmire and she would have to say that she believes that she would have that open mind and listen to the entire process and then make a decision based on what she heard at the public hearing.

Mr. Kocot said that he was not trying to assume anything.

Mayor Sitnick said that before Councilwoman Whitmire left she asked her if she could be excused. Granted she had just been told that her uncle had passed away and she was emotionally distraught and crying, but she has to respect her need to leave.

Mr. Kocot said that he respected the Mayor's opinion. He said that he felt Council should go forward with the public hearing because they do not have any option because the deadline for funding is April 28, 2000.

Because Mayor Sitnick wanted to be fair to the applicants, to the neighborhood and to Councilwoman Whitmire, she suggested the possibility of continuing the public hearing until either April 26 or April 27, even though Council could not be sure Councilwoman Whitmire would be able to attend even then. At this point, City Clerk Burleson left the meeting to attempt to reach Councilwoman Whitmire by phone, but was unable to reach her.

Mr. Jim Brinkley, principle in the firm of Brinkley Adams Developments, and said they are under contract for a portion of the multi-family land to develop an affordable housing community of 40 units for seniors. He said that this is an annual funding. One time a year there is an opportunity to present the application. The preliminary application from the N.C. Housing Finance Agency reads that "required zoning must be in place including any special use permits, conditional use permits, traffic studies and other land use requirements, as well as all public hearings required to develop the site, must be completed by April 28."

Upon inquiry of Mayor Sitnick, City Attorney Oast said that if Ms. Whitmire is able to attend the continued public hearing that he would ask Council to vote to admit her back to the meeting.

Vice-Mayor Cloninger moved to continue this public hearing until Wednesday, April 26, 2000, at 6:00 p.m. in the Council Chamber located on the second floor of the City Hall Building, Asheville, N.C. This motion was seconded by Councilman Worley and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. CONSIDERATION OF A RESOLUTION WAIVING THE REQUIREMENT FOR A SIDEWALK FOR MORSE ANTIQUES LOCATED AT 92 MCINTOSH ROAD

City Manager Westbrook asked that this item be pulled from the agenda for additional work.

B. RESOLUTION NO. 00-76 - RESOLUTION ADOPTING THE FRENCH BROAD RIVER PARK PHASE IV MASTER PLAN AND AUTHORIZING ITS IMPLEMENTATION AS FUNDS BECOME AVAILABLE

Mr. Alan Glines, Park Planner, said that this is the consideration of a resolution authorizing City Council to adopt the French Broad River Park Phase IV Master Plan and authority to implement the Plan as funds become available.

The Parks and Recreation Department began a public process in the fall of 1999 to develop a master plan for the new park. The department hired the services of W. K. Dickson Inc. to help develop the plans. A community advisory group was formed to guide the planning process which represents broad community interests. After several meetings with the advisory group and a public planning workshop held in November of 1999, the master plan was developed incorporating many of the diverse interests of the community.

The master plan includes several first time events and features in the Asheville park system. These elements include lawn bowling, roller hockey, a volleyball complex area, adaptive re-use of the race track for bicycle riding and racing, in-line skating and walking. The master plan will also include greenway trails, a children's playground, an open meadow, a wetlands boardwalk, fishing areas, a volleyball and soccer complex, a park office and support facilities. Several grants have been written to help fund the park master plan which include a Parks and Recreation Trust Fund Grant, a Janirve Grant, and a Pigeon River Fund Grant. Decisions on the grants have not been finalized at this time.

The project master plan was reviewed at a public forum in March of 2000 and was overwhelmingly approved by the community present. The plan has also been reviewed and approved by the Parks and Recreation Advisory Board and the Asheville Greenway Commission.

The Parks and Recreation Department staff is seeking City Council approval of the master plan and the approval to proceed with implementing the plan as funding is secured.

Mr. Glines showed some components of the master plan. He said they are looking to dispose of some property (bleachers) sometime next month and will start working on volleyball areas right away for play this summer. They will also be developing a historical component for racing community.

The following individuals spoke with enthusiastic support for the French Broad River Park Phase IV Master Plan:

Ms. Marjorie Maxwell
Mr. David Donnell, operator of Southern Waterways on the French Broad River
Ms. Laura Webb, business owner
Ms. Marilyn Siler
Ms. June Lamb

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Vice-Mayor Cloninger moved for the adoption of Resolution No. 00-76. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 21

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of April 7-19, 2000: George Caldwell (Streets), Jo Erin White (Streets), Marshall Wiles (Police), Pat Gosnell (Streets) and Jeff Eller (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

At 9:14 p.m., Mayor Sitnick adjourned the meeting until 6:00 p.m. on Wednesday, April 26, 2000.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Wednesday - April 26, 2000 - 6:00 p.m.

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

PUBLIC HEARING TO CONSIDER A PLANNED UNIT DEVELOPMENT OVERLAY ZONING FOR CROWELL FARMS LOCATED ON WEST OAKVIEW ROAD NEAR EAGLE'S NEST LANE

ORDINANCE NO. 2692 - ORDINANCE APPROVING THE PLANNED UNIT DEVELOPMENT OVERLAY ZONING FOR CROWELL FARMS LOCATED ON WEST OAKVIEW ROAD NEAR EAGLE'S NEST LANE

Councilman Hay moved to allow Councilwoman Whitmire to resume her seat. This motion was seconded by Councilman Worley and carried unanimously.

Mayor Sitnick opened the public hearing at 6:00 p.m.

City Attorney Oast reviewed with Council some matters of procedure. He handed out to City Council an excerpt from the Unified Development Ordinance (UDO) with regard to Planned Unit Developments. He said that this is a two-part process. One part is a rezoning, which is a legislative act, and one part is a Master Plan approval, which is a quasi-judicial act. Under our Code, the Master Plan is approved by the Planning and Zoning Commission and it stops there unless it is appealed, in which case it comes to City Council. An appeal from the Planning & Zoning Commission's approval of the Master Plan has been filed and therefore, City Council will need to schedule a public hearing. The only question before Council now is the appropriateness of applying the Planned Unit Development Overlay zoning classification to this particular piece of property. You may hear some particular information about the Master Plan, but Council should regard that only as an indication of what could be built on the property, not what will be built on the property. The Master Plan has been appealed and it could change, even after

Council has approved it, it could change. Again, tonight Council will only consider whether the Planned Unit Development Overlay zoning classification with the mixture of uses the developer has proposed is appropriate for this particular area.

City Attorney Oast said that it is his understanding that a valid protest petition has been filed with respect to the rezoning issue, which will require an affirmative vote of 6 out of 7 members of Council.

With regard to the disclosure of information, because this is a legislative matter, the importance of getting that information on the record is not as urgent in this hearing as it will be in considering the Master Plan. However, if Council has visited the site, Council should disclose that.

City Attorney Oast said that if the rezoning fails, there will be no need for Council to hear the appeal of the Master Plan. He said it was important to understand that whatever Council approves will not bind the developer to do that exact thing unless and until the Master Plan is finalized, by whatever means that occurs. If Council approves the rezoning tonight, he will ask Council to set a date for the public hearing on the appeal of the Master Plan.

Upon inquiry of Vice-Mayor Cloninger, City Attorney Oast said that staff will take of the enforcement details on the Master Plan. He explained that Council, in some cases, may not even see the Master Plan, or if they do, it will be with the understanding that it is conceptual only.

All members of Council disclosed that they have visited the property. Councilwoman Field and Councilwoman Whitmire disclosed that they have received correspondence from residents from the community and have made an effort not to read them. Councilman Peterson disclosed that he has read a number of letters and faxes and has spoke to residents on the phone as well. Mayor Sitnick disclosed that she has received letters and faxes with regard to this issue and has copied them for the City Manager and Council.

Mr. Tom Bell, attorney for the residents who oppose the planned unit development, said that he wanted it known that they do not waive their right to have this conducted as a quasi-judicial hearing with the rights to cross-examine witnesses, have witnesses sworn, and have non-hearsay testimony, etc.

Mr. Baechtold said that this is the consideration of a Planned Unit Development (PUD) overlay designation for 71.17 acres in the Extraterritorial Jurisdiction (ETJ).

On February 7, 2000, Crowell Farms, LLC presented a master plan and an application for a PUD overlay designation for a development of 288 dwelling units on 71.17 acres in the ETJ. In the ETJ the City exercises zoning controls and Buncombe County is responsible for erosion control, grading permits, and building permits.

The property is located on West Oakview Road near Eagle's Nest Lane. The property is split-zoned. The front portion (16 acres) is zoned RS-4. The back portion (55 acres) is zoned RM-6. This zoning has been in place since the Unified Development Ordinance (UDO) was adopted in 1997. Prior to that time the front portion was zoned R-1, which is essentially the same as RS-4. The back portion was zoned light industrial under the old zoning. Under the current zoning, the maximum density on the property is 395 units. The property is bordered by single-family residential development to the north, to the northeast and to the northwest. The Biltmore Commons Phase I condominium development is on adjacent property to the southwest, and there is vacant property to the south and southeast.

Mr. Baechtold explained the purpose of a PUD as outlined in the UDO.

The proposed PUD designation and master plan proposes 40 single-family lots, 98 townhouses, 70 condominium units for co-housing, and 80 apartment units to be used for affordable housing for seniors for a total of 288 dwelling units. The PUD designation and master plan will establish the number of units on the property, the amount of parking and dedicated open space, and the location of major infrastructure. The approval of the master plan is a conceptual approval only. The exact arrangement of the buildings is subject to change. As the property is developed, the developer will be required to submit detailed site plans showing the building location, landscaping and buffering, and other site details.

The master plan proposes a spine street to serve as collector road to be called Crowell Farms Drive. The plan proposes a sidewalk along one side of Crowell Farms Drive and approximately 10,000 feet of walking trails that will connect various parts of the development. The plan designates 15.3 acres of common open space to be deeded to a property owner's association. The conceptual layout shows a building arrangement that provides additional undisturbed area and recreation area as part of each multi-family development. Staff reviewed the master plan and determined that the amount of open space provided well exceeds the minimum amount of dedicated open space required in the UDO. In addition, staff determined that the open space meets the intent and follows the guidelines of the open space provisions in the UDO.

This project involves the extension of public water and public sewer. The project received a wastewater allocation from MSD. The project received a conditional letter of water allocation from the Water Resources Department. Staff received comments from area residents about frequent breakage of the water line on West Oakview Road. Mike Brookshire, of the Water Resources Department, investigated the repair history for the water line and concluded that there is no concern about the adequacy of the water line.

The developer prepared and submitted a Traffic Impact Analysis (TIA) as required by the City. The TIA analyzed traffic impacts of this development on four surrounding intersections. The report considers the impact of the traffic generated by the proposed development, combined with existing traffic and projected increases in area traffic, including the impact of the Home Depot Development. The analysis shows that there will be a decrease in the level of service at some of the intersections. The notable traffic impact is at the five-way intersection of West Oakview Road, Sand Hill Road, Sand Hill School Road, and Grandview Drive. The report concludes, however, that the impact is not enough to warrant improvements to the intersections.

The TIA has been reviewed by the City Traffic Engineer and the Division Traffic Engineer for the N. C. Dept. of Transportation (NC DOT). The City Traffic Engineer concurs with the trip generation and trip distribution shown in the TIA. According to the Traffic Engineer, the analysis shows that most of the intersections will continue to operate at a Level of Service "D" or better, which is generally considered an acceptable level. The original analysis projects that two of the approaches to the 5-way intersection of Sand Hill Road, Sand Hill School Road, Oakview Road, and Grandview Road will operate at a level of Service of "E" or "F". However, during the peak hour, it is not uncommon for the minor approaches of two-way stop-controlled intersections to operate at this level.

In addition to the original TIA, the consultant has completed an additional analysis of the 5-way intersection of Sand Hill Road, Sand Hill School Road, Oakview Road, and Grandview Road. The new analysis was completed because limitations in the modeling software make it difficult to analyze a 5-way intersection. The second analysis provided a "best case scenario" where they first looked at a "worst case scenario."

The City Traffic Engineer is in the process of working with the consultant to look at one more possible scenario for this intersection. This new analysis will include traffic generated by the Buncombe County soccer complex near Sand Hill School. This final analysis is important so that no questions remain about whether all the appropriate factors were considered in the analyses.

Once this final analysis is complete, a final recommendation will be made regarding any additional improvements that are needed. According to the City Traffic Engineer, however, it is unlikely that the new analysis will show significant changes from the previous two analyses. The NC DOT Division Traffic Engineer has stated that it is unlikely that the NC DOT will recommend any improvements for this intersection. The City will defer to the NC DOT on any recommendations for improvements.

Staff has received considerable public comment in opposition to this project. Neighboring property owners are concerned about the compatibility of this development with existing development on West Oakview Road; the rural character of the area; the impact of this development on surrounding property values; tree preservation; traffic impacts; stormwater runoff; and the adequacy of infrastructure in the area. Comments were received at two Technical Review Committee meetings and the Planning and Zoning Commission, as well as by letter.

At the review of this matter before the Planning and Zoning Commission on April 5, 2000, the Commission voted 5-1 in favor of recommending approval of the PUD designation. The dissenting member expressed a concern about whether or not the project meets the intent of the PUD district. Other members, supportive of the recommendation, stated that the current proposal minimizes grading on the site, preserves open space, and is a preferable alternative to seeing the property developed at maximum density. The Commission also voted 5-1 in favor of approving the master plan with the conditions. Detailed site development plans for each . Several commissioners expressed a desire to see more functional open space and usable walking trails, and conditions for approval were drafted that advance these interests. The dissenting Commission member felt more time was needed to adequately review the master plan.

On Monday, April 17, 2000, the applicant submitted revised plans showing additional area for passive recreation, and a re-configuration of the walking trails and open space.

The Planning and Development staff recommends approval of the Planned Unit Development overlay designation for Crowell Farms, with the conditions recommended by the Planning and Zoning Commission.

Mr. Michael Moule, the City's Traffic Engineer, said that an additional analysis was done of the 5-way intersection. The new analysis included the traffic from the soccer complex which is planned to be built. The two approaches at the 5-way intersection of Sand Hill School Road and West Oakview Road operate in the p.m. peak hour at Level of Service either "E" or "F" which is normally what we consider an unacceptable level. However, it is not uncommon for minor approaches to 2-way stop control intersections to operate at this level. Based on that new analysis, he talked with the NC DOT traffic engineer for this area and he does not recommend any improvements at that intersection. Given the fact that all of the streets coming into that intersection, except maybe Grandview Road, are NC DOT maintained roads, he would defer to them on that decision.

Mr. Marty Kocot, with Land Design and engineer of record on the project and lead planner, apologized to Council. He said that last night he came across as being presumptuous and that he felt Councilwoman Whitmire's vote on the project would be a positive one. That was not his intent. What he was trying to convey was that Land Design and Crowell Farms, LLL, have spent over a year planning and re-planning the Crowell Farms community being presented.

They feel very strongly that the plan they are presenting is the best one for the development of the property and they would hate to have Councilwoman Whitmire's unfortunate absence last night as a vote counting against the project.

Mr. Kocot reviewed the site plan of Crowell Farms. The plan creates a community of four neighborhood with different housing types, protects the environment, and preserves the feel of property as a rural farm community. The property is going to be developed, whether by Crowell Farms, LLC, or another developer. However, in creating the land plan for this project, the developer has listened to the different planning concepts Land Design has provided them and carefully evaluated the alternatives. They have even sacrificed making the greatest return on their investment by providing a responsible development plan for this 71 acre parcel. He said they are requesting this PUD overlay in order to (1) create a community with open space and walking trails to connect the four different neighborhoods and the West Oakview community; (2) reduce the amount of disturbed land and retain the natural features of the property; and (3) provide increased buffering greater than what is required to the adjacent neighborhoods by providing common open space. The plan would provide play areas, gardens, pastures, walking trails, and sidewalks along the main roadway and out in front of West Oakview Road. They have created 40 single-family lots, 98 single-family townhouses, 80 multi-family apartments (which is affordable elderly housing for seniors) and 70 single-family co-housing units. He then explained co-housing. He said there will be approximately 15.3 acres of common open space deeded to Crowell Farms homeowners association for use as they see fit. In addition, each neighborhood parcel provides additional common open space for the development and use of their residents. The total area of common open space provided under this current plan is 21.5 acres – 30% of their total site area. The common open space provided by this plan provides a 650% increase on the amount required under the PUD zoning. Of the 71 acre tract, 16 acres are zoned RS-4 in the front and 56 acres in the rear are zoned RM-6. They could propose 395 units without a change in zoning, but they are proposing 288 units. Additionally under the PUD they could ask for a 25% density increase because they are providing affordable housing and they could also as for an additional 10% because they are providing more than double the common open space required. They are not asking for any density increase. They can actually build a similar plan, same density and same style of housing, without providing common open space, walking trails and without having to come before City Council for the PUD overlay request. The developers have chosen to request the PUD overlay to provide a neighborhood community bound by pedestrian walkways and common open spaces.

Upon inquiry of Councilman Worley, Mr. Kocot explained how this project is consistent with the concept of smart growth.

Amy Massey, Traffic Engineer with Kimley-Horn & Associates of Charlotte, reviewed with Council the amount of trips projected for the site. She did a traffic comparison of what could be developed under existing zoning and what is planned on this property now, nothing that under the current plan there will be 20% less daily traffic, 25% less traffic during the am peak hour and 15% less traffic during the pm peak hour. She said the results of the study indicate that the intersections operate acceptably overall and reiterated that the NC DOT recommends no improvements.

Mr. Jim Brinkley, principle with Brinkley Adams Development which deals with affordable housing, stated that this is a program through the N.C. Housing Finance Agency and not an entitlement community. The only restriction that they have as owners of the property is that people cannot earn above a certain amount of money. With regard to traffic concerns, the affordable housing portion they are proposing is for seniors and they will generate a loss less traffic than a family project with 2-3 bedrooms.

Mr. Dean Pistor, representative of Brinkley Adams, said their initial application for the Crowell Farms site provided to the N.C. Housing Finance Agency found that the site was very suitable for an elderly multi-family project. Based on a market study and other factors, Crowell Farms ranked fourth in western North Carolina and number one in the Asheville market for funding of this project. He felt if Council does not approve the PUD, they will lose the chance to provide affordable housing to the aging citizens of Asheville and Buncombe County.

Upon inquiry of Mayor Sitnick, Mr. Brinkley said the rent of the one bedroom unit will be approximately $400/month and a two bedroom will be slightly under $500/month.

Mr. Tom Bell, attorney representing the West Oakview residents, said that this is a legislative hearing and was to hear only the zoning, not the Master Plan, but Council has heard nothing except information about the Master Plan itself. He said it was not proper for Council to hear that. He then read to Council Section 7-7-5 which is what this public hearing was noticed under. It says "when considering a proposed amendment, the Asheville City Council will not evaluate the petition based on any specific proposal for the development of the property. The petitioners shall not use any graphic materials or descriptions of the proposed development except for those which would apply for all uses permitted by the requested classification." He noted that the conduct of this hearing is against the advise of your City Attorney, against your ordinances and is inappropriate for Council to consider. He stressed that just because something else worse than this plan can be built on this property is not an appropriate reason to change the zoning. With regard to the number of units that could be built under the current zoning, their consultants have told them that with the topography of this land, you couldn't possibly build more than 320 units, so their figure of giving away 100 units in order to make this a good development, they don't think is the truth. He also pointed out that the issue before Council is whether there should be a PUD overlay and Council could not consider their planned PUD, but how much could be built under any PUD development. Their traffic study was for 288 units, not for any PUD development – it was for this PUD development. In addition, their traffic analysis shows that the 5-way intersection at certain periods of time will reach a Level of Service "F" – which is defined as "unacceptable" by the Highway Capacity Manual. It is appropriate when you consider zoning, the change in the neighborhood, the values in the neighborhood, and the character of the neighborhood. This is a rural community and putting this development out there is totally and completely changing the neighborhood. He also noted that there is no mass transit which the PUD requires. He noted that for Council to amend the Comprehensive Plan, it has to be shown there has been a change in the projections or assumptions upon which the Comprehensive Plan is based, issues or needs have been identified which are not adequately addressed in the Comprehensive Plan, and that the amendment will promote the health, safety and welfare of the City of Asheville - Council has had no information presented to indicate that any of those issues are true. Mr. Bell then presented Council with a petition containing 105 names who "are absolutely and in every respect opposed to the Crowell Farms PUD as proposed by Crowell Property, LLC."

The following residents spoke in opposition of the Crowell Farms PUD for several reasons, some being, but are not limited to: the West Oakview Road area is a quasi-rural community of single-family homes and the proposed PUD units are not compatible with the surrounding homes in the area; as stated in the traffic impact analysis submitted by the developer, the traffic on West Oakview Road will almost triple upon completion of the proposed PUD; West Oakview Road is only 16 feet wide in many places and school buses often have their wheels on the double yellow line when going around curves; single-family homes in the West Oakview community will decrease in value if the PUD is constructed; the 288 units in the proposed PUD will result in the overcrowding of land and undue concentration of population, both in violation of N. C. Gen. Stat. sec. 160A-383; the planned Buncombe County soccer fields traffic is not included in the TIA; two of the 20 acres of greenspace cannot be counted because you cannot use the recorded easements for aerial rights-of-way and there is a 70 foot wide

230,000 volt electric line that crosses this property; schools are already overcrowded; and, if Council is in favor of the PUD, then they should approve the Master Plan first so no more than 288 units can be built on the property:

Mr. Bill Kixmiller, speaking on behalf of the community and resident of 5 Eagle's Nest Lane
Mr. Frank Pomeroy, resident on West Oakview Road
Ms. Jenny Stamey, resident in the West Oakview Road area
Mr. Herb Singerman, resident at 6 Eagle's Nest Lane
Mr. McIntosh, property owner in area
Ms. Phyllis Robertson, resident at 110 West Oakview Road
Ms. Linda Riddle, resident of Osborne Street
Mr. David Pinelli, resident on West Oakview Road
Ms. Cathy Tyler, resident at 20 Eagle's Nest Lane

Upon inquiry of Councilman Hay, City Attorney Oast said that the availability of adequate transportation is something Council should consider, but the availability of public transit is not a requirement. Mr. Baechtold said that this is a goal that could be achieved by allowing the flexibility of a PUD. There is no transit service in the area, however, after talking with the Transit Services Director, he has indicated that this is the type of development that could be easily serviced by transit. In addition, Senior Planner Gerald Green said that transit was reviewed at the writing of this provision in a broader sense – not just public transit. The overall goal was to provide for the clustering of development and the arrangement of the uses within the development so that transit services of any type could easily be made available.

City Attorney said that the representation shown on the Master Plan and the information received should be viewed as an indication of what could go there, not what will go there. Council should be mindful that there is a theoretical legal possibility that the overall density could be increased, but the City does have some control over that through the Master Plan. However, as long as the UDO standards are satisfied, then Council's discretion in whether to approve the Master Plan may be limited to that extent.

Mayor Sitnick closed the public hearing at 8:20 p.m.

Councilwoman Field noted that Council could vote against this overlay district and tomorrow the developer could go out and build the same thing tomorrow. Mr. Green agreed somewhat in that looking at the site plan, the zoning boundaries are such that the developer could do exactly what is shown on the Master Plan that was approved by the Planning and Zoning Commission.

Discussion surrounded why the developer has requested a PUD overlay district. Mr. Green said that in the original meeting with the developers over a year ago, City staff recommended a PUD to provide some flexibility because staff was familiar with the site and realized some of the sensitive nature of the site, with the steep terrain and the ravines. Staff recommended that a PUD overlay district may be a way to provide developers with an option to obtain the density required to make a development feasible but also provide for some flexibility which would allow the protection of those sensitive areas. It was the staff's opinion that this process provides for an enhanced product and a product that meets the goals of the City. He felt that by the developer going through this PUD process, the community as a whole is getting a better product because of the increased flexibility in design, the time that staff has spent with the developer's design professionals in working out the design of the property, and the conditions required by the staff and the Planning & Zoning Commission.

Mayor Sitnick re-opened the public hearing at 8:28 p.m.

Mr. Ben Slosman, petitioner, said that after they first bought this property, they looked at putting 394 single unit homes on the property by grading it, stacking one almost on top of another, and it would have conformed with the existing ordinance. They even had suggestions of placing mobile homes on the property which he rapidly turned down. He asked the design professionals to come up with a concept of developing the property in PUD and then went to the City and asked if this PUD could possibly be developed. They felt it could be a model PUD of what PUD's could look like in the City in the future. They sacrificed over 100 units by not over-grading the property and leaving greenspace. The land values of the houses that will be built will be equivalent to anything that is in this area. If this PUD doesn't go through tonight, they will take and develop the property without the PUD. They will build more houses than they said they would build, there will be no greenspace, and they will go back to what the original zoning requires. That would be a shame, but that's where we're at.

Mr. Baechtold said that in the Master Plan that went before the Planning & Zoning Commission, the developer had asked for some reduced lot sizes. In addition, the other advantage that they are taking of the PUD is that the review process is done all at one time. He did note that to say that they can come in tomorrow and do exactly the same thing may not be entirely accurate. For instance, if they came in with a multi-family development of more than 50 units, that would trigger our conditional use permit process. Mr. Green also noted that in addition to the smaller lot sizes, the PUD allows some flexibility in the siting of the units, and probably the major advantage is in a RM-6 zoning district, the largest structure size is 4 units and the PUD overlay allows them to do structures containing more units (the affordable housing for seniors).

Upon inquiry of Vice-Mayor Cloninger about why staff did not let City Council know this was a suggestion by City staff rather than a request of the applicant, City Manager Westbrook said that City staff always makes suggestions to applicants of various ways to accomplish things.

Mr. Carl Ricker, partner with Mr. Slosman, noted that City staff did not make them do a PUD. It was his objective to work with the community and hoped that the PUD would increase the value of homes in the area. They asked City staff basically what they could do to make the process as easy to go through for them and still have a good project for the community.

Mr. Bell said there was a meeting that occurred shortly before the Planning and Zoning Commission meeting with the developers after a repeatedly request. The meeting did not result in anyone reaching anything. He later believed it was just an effort to comply with the suggestion of the City that the developers meet with the community early in the process. It is their opinion that this allows the developers to make maximum money out of this property. The bottom line is they think that the developers cannot, under the existing zoning, build this project on that land. This PUD allows them to put more units and make more profit.

Mayor Sitnick closed the public hearing at 8:40 p.m.

Upon inquiry of Councilman Peterson, Mr. Green said that there are 225 units in the adjoining Biltmore Commons.

Councilman Peterson asked if Council approves the PUD, how binding is the Master Plan. Mr. Green said that the Master Plan is binding with a small amount of flexibility. He believes they cannot increase the density more than 10% without coming back through the entire Master Plan process. They can rearrange the units on the site somewhat, but any substantial change to the road pattern or the building location would require them to go back through the entire review process.

Vice-Mayor Cloninger moved to approved the PUD overlay district for Crowell Farms. This motion was seconded by Councilman Hay.

Vice-Mayor Cloninger felt it was important to point out that if Council does not approve the PUD that does not mean that there won't be development on this site. In all likelihood there will be, and in all likelihood, it could be in a way that is less in harmony with the surrounding area. He does think the PUD would accomplish several things that we would not be able to assure otherwise. This will minimize the grading on the site, it will preserve the steepest slopes, it will preserve open space, and it will create usable walking trails. It will also provide for some affordable housing and housing to the elderly which we very much need. Furthermore, the housing provided for the elderly is likely to mean that there will be less impact on the road than there would be if this portion of housing were provided to people who drive cars on a regular basis. With regard to traffic concerns, he would have to defer to staff on that as to what conclusions they have drawn. Their belief is that this will increase traffic at an acceptable level so he is willing to take their word on it. He also felt it was very important that Council point out that when we passed the PUD concept, we encouraged developers to use that method so that they could engage in responsible development in the community. He felt in a situation like this, this PUD would accomplish so many of the goals that we hoped to achieve when we came up with this concept that we should grant this request.

Councilman Hay agreed with Vice-Mayor Cloninger's comments. He felt that with application of the PUD, Council has something to say about what is built out there. The traffic concerns are very real but are best controlled by what is before Council now. He does favor the use of the PUD here and in the future, but in particular in this case, because there will be retaining of the natural features, and the use of the PUD to cluster things so that what is best about the lay of the land is preserved not only to benefit the people who live there, but also for those people who live around the area.

Councilman Worley said that he has been familiar with this area for quite a long period of time and it has substantially changed from what it was 25-30 years ago, and it will be even more substantially changed 25-30 from now, even well beyond the changes that will be brought about by this development or whatever development occurs on that site. With regard to traffic, he will have to defer to our traffic engineer. He doesn't see that values will be affected by this development because his law practice deals primarily in real estate work and he sees the values day in and day out. Most importantly, the term smart growth is very much in the news and it means we need to look at the way we grow. Part of smart growth encourages mixed usage, various types of development in an area, it increases density, and lessens sprawl. He felt this PUD is consistent with smart growth principles.

Councilwoman Whitmire said that based on the information presented tonight, and only tonight, she was satisfied that the request for rezoning has met its requirements.

Councilman Peterson felt that it's not smart growth that we are allowing this sprawl, however, the issue before Council is whether the PUD with the mixed use that they propose is appropriate for this property as it's zoned. It is zoned for multi-family and if a PUD overlay district is not approved, multi-family could be built that is very undesirable. Given the standard that we are asked to consider what it's zoned now and what the PUD would allow, taking into account the Master Plan submitted, he felt it would probably meet the requirements to rezone.

Councilwoman Field said she was very much an affordable housing advocate and the idea of losing 80 affordable houses anywhere is not acceptable. She also believes that different kinds of living units that are available create community.

Mayor Sitnick hoped that great care be taken not to eliminate any trees that are within the walking trails. This Council is very much in favor of sidewalks but the pedestrian amenities that occur within the PUD should be echoed by the community's commitment to sidewalk development. A requirement should be created in the PUD that there be adjacent pedestrian amenities as well as amenities within the PUD. It would be her hope that as we find little pockets of money to do sidewalks, that we look to this neighborhood which will be significantly impacted. She remains concerned about the traffic issues and she would like to continue evaluating the area and not just rely on the current analysis, but look at what happens in that area several times a year as it applies to the PUD, as it applies to additional single-family private development, soccer fields, and the Home Depot. The PUD is a better regulated, more sensitive development than anything that could take place with the current zoning. She will vote for this PUD overlay district with her concerns being followed through with regard to preserving as much as the natural environment and making sure we look at the traffic issues repeatedly.

The motion made by Vice-Mayor Cloninger and seconded by Councilman Hay carried unanimously.

Mayor Sitnick said she appreciated Mr. Kocot's apology at the beginning of this meeting. After she felt the meeting yesterday, she found herself growing more and more angry at his comments for a number of reasons. Primarily because Councilwoman Whitmire was not here to address his comments. Councilwoman Whitmire has been meticulous, as all of Council has, in not making any decisions having to do with public hearings, rezonings, controversial issues, quasi-judicial hearings, conditional use permits, or any other things that come before this Council until we have evaluated all of the facts. We received a memo from the City Attorney telling us that we could not base this decision on a Master Plan and we could not base this decision on anything we heard from our neighbors and anything we heard from the applicants. Mr. Bell, Mr. Slosman and neighbors were very respectful of that and did not attempt to influence us at any time. What Mr. Kocot said last night, on television, in her opinion, besmirched the reputation of Councilwoman Whitmire and called all of Council's reputations into question by his comments. She then read Mr. Kocot's comments from the City Council meeting on April 25, 2000. Nobody knew her vote until tonight.

Councilwoman Whitmire thanked the community for allowing City Council to continue this process and appreciated their willingness to come back tonight. "Sitting here tonight was even more difficult to make this decision, not because of the passing of my uncle, but Mr. Singerman used to be my teacher and so I feel kind of bad voting against something a former teacher has something to do with. I was handed the minutes of last night at 5:55 p.m. today and was very disappointed. Angry, no – but disappointed. Integrity is the most important thing to me. That's all I have. You can take my job, you can take my house, I live with my mother, but whatever. The only thing I have is my word – that's it. And for you, Mr. Kocot, to put my integrity on the line in front of people who supported me – my goodness, I don't even know you, never seen you, never met you. But what you did was wrong. And I just wanted to publicly say that. It was wrong and I don't appreciate it. Do I hate you? No, actually I forgive you, because I'm bigger than that. And what you said is not true, is unfounded and not valid. And I don't appreciate it."

Councilman Worley moved to set the public hearing for the Master Plan on May 23, 2000. This motion was seconded by Councilwoman Whitmire and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 220

Mayor Sitnick adjourned the meeting at 9:14 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - May 2, 2000 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Barbara Field

CONSENT:

Disposal of City-Owned Property

Summary: The consideration of a resolution authorizing the Purchasing Director to dispose of City-owned personal property by sealed bid.

Subject to Council's approval, the resolution authorizes the City's Purchasing Director to dispose of a metal storage building and seven sections of bleachers that have been declared surplus by the Parks and Recreation Department. The surplus is located in the old Asheville Motor Speedway and will be sold on an "as is, where is" basis pursuant to N. C. Gen. Stat. sec. 160A-266.

City staff requests City Council's approval of the resolution.

Financial Feasibility Study

Summary: The consideration of a resolution confirming a resolution of the Regional Water Authority to award a contract to Raftelis Financial Consulting (RFC) to perform a Financial Feasibility Study.

In 1995, RFC prepared a Financial Feasibility Report that was included in the Official Statement for the City of Asheville's Water System Revenue Bonds, Series 1996, which were issued to fund the Mills River Expansion Program. Since the issuance of the 1996 revenue bonds, over $20 million of additional capital improvements have been identified and will become necessary over the next five years.

In order to finance $20 million in capital improvements, the Authority anticipates that the City of Asheville will need to issue revenue bonds in February or March of 2001. The bonds will be similar to those issued in 1996. As with the 1996 bond issue, a Financial Feasibility Report will be required that would include a five-year financial plan and an analysis of proposed rate increases. More significantly, the Report will demonstrate the ability of the Authority, through estimated debt service coverage, to pay off the bonds in the future. This report will be included in the Official Statement of the bond issue.

Development of a Financial Feasibility Report will involve the following tasks:

- Review of background information including financial, accounting, operations, legal, regulatory, and billing information.
- Development of the financial plan including projections of demand, revenues, operation and maintenance expenses, and capital costs. The plan will also detail the debt service schedule and coverage requirements for financing the proposed bond issue.

- Preparation of draft Financial Feasibility Report and presentation to the Authority, the City, the Authority's engineering consultants, investment bankers, bond counsel, and the Local Government Commission.
- Meeting with the LGC and other members of the financing team to discuss the Financial Feasibility Report. This will include three sets of modifications to the financial information and the report based on feedback.
- Revisions and finalization of the report, after obtaining input from the LGC and other members of the financing team. The final report will be included in the Official Statement of the bond issue.

Mr. Raftelis, of RFC, has served over 300 government utilities in his 25-year career. In particular, he has extensive experience in performing financial feasibility evaluations for various municipalities across the country. He has previously assisted the Authority in the water cost of service and rate study performed in 1995 and the financial feasibility analysis performed in 1996. He is very familiar with our organization and the political atmosphere of this community. Given RFC's prior work on the 1996 Bond Issue and his recent assistance to review the Authority's five-year financial plan, he was able to reduce fees substantially below the amount he billed for the 1996 feasibility study.

In order to meet the schedule to issue bonds in early 2001, it will be necessary to initiate the Financial Feasibility Study no later than June 1, 2000. The total cost is estimated not to exceed $44,989. Funding has been identified and is available in the 35 Fund.

The Regional Water Authority approved the award of a contract with RFC to conduct a Financial Feasibility Study which is required in order to issue bonds in early 2001, and staff recommends City Council's concurrence with the Authority's action.

Budget Amendment for Non-Resident Fees

Summary: The consideration of a budget amendment, in the amount of $25,000, to appropriate expenditures for non-resident fees which have been collected for various Parks and Recreation programs.

Several years ago, City Council approved collecting non-resident fees for various Parks and Recreation services. These fees include services for classes, adult and youth sports, and various clubs that use Parks and Recreation facilities. The Parks and Recreation Department wishes to establish expenditure line items and appropriation in order to spend funds which have been collected. The revenue that has been collected is intended to be used for various capital projects of the department. It is the intent of staff to use these funds in conjunction with various public/private endeavors and other activities or improvements that will benefit the community.

The Parks and Recreation Department requests City Council approve appropriating funding from revenue collected from non-resident fees totaling $25,000.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

RESOLUTION NO. 00-77 – RESOLUTION OF INTENT TO ESTABLISH AND MAINTAIN AN INDEPENDENT LOCAL AIR POLLUTION CONTROL AGENCY

Mayor Sitnick submitted to City Council a report on the future of the Western North Carolina Regional Air Pollution Control Agency and Board. The report contained the purpose of the Mayor's Ad Hoc Committee ("Committee"), the law, a brief history of the WNC Regional Air

Pollution Control Agency and Board, statistics, contacts, Committee minutes, Board and Employee Interim Policy, industry letters, minutes of worksession minutes regarding County Manager Wanda Greene's request and request withdrawal, and opinions from the Board, State and Agency.

In summary, on behalf of the Committee, the WNC Regional Air Pollution Control Agency should be an independent agency with an autonomous board by an interlocal agreement with the possibility of expanding the interlocal agreement to include other municipalities and counties.

A brief discussion surrounded expanding the Board to add representation of other municipalities or counties if the interlocal agreement is expanded.

Councilman Worley explained why, in the future, the City Council's participation in the interlocal agreement may be an impediment if our goal is for the agency to be regional.

City Attorney Oast read a resolution of intent to establish and maintain an independent local air pollution control agency. In said resolution, he read that (1) The City shall, through appropriate channels, pursue the establishment of an independent air pollution control agency, with an autonomous board, by interlocal agreement pursuant to N. C. Gen. Stat. sec. 143-215.112, with participation by Buncombe County and other local governments in the area as appropriate; and (2) The Mayor and City Manager are hereby each authorized to prepare and execute such documents and take such other action as necessary to give effect to this resolution.

Vice-Mayor Cloninger moved to waive the rules and take formal action at this meeting with regard to this matter. This motion was seconded by Councilwoman Whitmire and carried unanimously.

Vice-Mayor Cloninger moved to adopt Resolution No. 00-77. This motion was seconded by Councilwoman Whitmire and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 22

FISCAL YEAR 2000/2001 BUDGET REVIEW SCHEDULE

Budget Director Ben Durant said that this is the consideration of amending the Fiscal Year 2000-01 Budget Schedule.

City Council has requested a special budget worksession to discuss various funding options for affordable housing. Due to the consideration of this worksession, it is necessary to revise the previously adopted budget schedule.

Staff recommends Council establish a date for a special housing worksession and adopt revised a budget schedule.

After discussion, it was the consensus of City Council to hold (1) a budget worksession on May 18, 2000, at 1:00 p.m. in the First Floor North Conference Room, City Hall Building; (2) affordable housing worksession on May 30, 2000, at 4:00 p.m. in the First Floor North Conference Room, City Hall Building; (3) community meeting on May 30, 2000, at 7:00 p.m. at the Murphy-Oakley Community Center at 749 Fairview Road, Asheville, N.C.; (4) regular worksession on June 6, 2000, at 3:00 p.m. in the First Floor North Conference Room; (5) public hearing on the 2000-01 Annual Operating Budget and Capital Improvements Program on June 6, 2000, at 5:00 p.m. in the Second Floor Council Chamber, City Hall Building; and (6) adoption of the 2000-01 Annual Operating Budget and Capital Improvements Program on June 13, 2000, at 5:00 p.m. in the Second Floor Council Chamber, City Hall Building.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

LEGISLATIVE PACKAGE

City Attorney Oast said that this is the consideration of submissions to the legislative delegation, and request for legislative action during 2000 "short" session of the North Carolina General Assembly.

The 2000 session of the North Carolina General Assembly begins on May 8, 2000, and local bills must be submitted to the bill drafting office by May 17, 2000. The deadline for filing local bills is May 24, 2000. Because this is a "short" session, our legislators are requested to certify that local bills introduced by them are not controversial, and the City typically requests only routine amendments, if it requests anything.

At its retreat in January, City Council heard a presentation and expressed interest in submitting bills to address several discrepancies between our Charter and State law. These were:

1. Amend Section 8 of the Chapter regarding notice of Council meetings. Currently, the Charter provides that special meetings may be called by the clerk upon request of (i) the mayor; (ii) the city manager; or (iii) any three members of city council. Section 8 also provides for council members to receive 12 hours' notice of council meetings.

   The general law provides otherwise. G.S. 160A-71 provides that a special meeting may be called by the mayor, mayor pro tem (or vice mayor), and for council members to receive 6 hours' notice of special meetings.

   There are also some discrepancies between the general law and the charter regarding public notification of special meetings. The general law requires broader notice, which is what we do.

   SUGGESTION: Delete the part of Section 8 that addresses Special Meetings, at least as to notification procedures. If this is done, we will be bound by State law, and there will be no confusion with conflicting Charter provisions. The one part of the Charter provision that Council may desire to retain is the provision setting forth who may call a special meeting.

2. Sec. 22 of the "Related Laws" (non-charter local legislation) provides that the City may select the place or places to which the City's garbage may be removed, and the manner of its removal. This provision was enacted in 1923.

   The general law provides in G.S. 160A-311 and 312, that municipalities may operate solid waste collection and disposal systems and facilities.

   SUGGESTION: Delete Section 22 of the Related Laws as duplicative of the general law.

3. Add the City of Asheville to the list of cities to which G.S. 160A-300.1 applies.

This law, which was originally adopted in 1997 with application to Fayetteville and Charlotte only, authorizes the use of traffic control photographic devices as enforcement tools in connection with traffic control devices. Essentially, the law allows the use of cameras to catch vehicles that run stoplights. In 1999, it was expanded to include other cities.

The law authorizes a civil (as opposed to criminal) penalty of $50.00, and does not result in points against licensor insurance. The law requires the posting of adequate warnings that such a system is in use, and also provides that the citation must state specifically how the citation may be challenged. The civil penalty may only be imposed where no criminal violation is noted.

This was not discussed at the January retreat, but has been requested by the Police Department as a way to address and strengthen traffic control at some problem intersections.

SUGGESTION: Request that the City of Asheville be added to the list of municipalities authorized to use cameras to enforce the law at traffic lights. The only potential problem with this request is that it may be viewed as controversial and ineligible for consideration at this session.

4. Non-betterment Relocation Costs. This bill, which was introduced last session but did not pass either house, is nevertheless eligible for consideration in this short session because it affects the budget. Our legislators are working hard for us on this, and we will continue to monitor its progress.

If City Council wishes to submit these requests to our legislative delegation, approval of 1, 2 and 3 above is requested.

Discussion surrounded if City Council really wanted to proceed with the use of traffic control photographic devices as enforcement tools in connection with traffic control devices. City Attorney Oast again noted that this item may be viewed as controversial and ineligible for consideration at this Short Session. He said that he would gather information from other cities and see what their experience has been with this law.

It was the consensus of City Council to submit Items 1 and 2 described above to our legislative delegation, noting that Item 4 is on-going.

NEXT COMMUNITY MEETING

It was the consensus of City Council to held the May 30, 2000, community meeting on May 30, 2000, at 7:00 p.m. at the Murphy-Oakley Community Center at 749 Fairview Road, Asheville, N.C.

MISCELLANEOUS ITEMS

Vice-Mayor Cloninger noted that the Public Access Channel Commission will be approaching City Council to ask for a disbursement from the Contingency Fund for travel expenses, which he would recommend. Councilman Peterson stated that City Council needed to do what they can to support this Commission.

Vice-Mayor Cloninger reviewed with Council the upcoming board/commission appointment process.

City Manager Westbrook updated City Council on the status of the revisions to the Civic Center Commission ordinance.

Upon inquiry of Mayor Sitnick, City Attorney Oast said that he would be bringing a revised noise ordinance to City Council for consideration later this month.

CLOSED SESSION

At 4:25 p.m., Councilwoman Whitmire moved to go into closed session in order to (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Jennifer Jacobs, Meredith Hunt, Helen Gordon, Life Advocates, Inc., Leanna F. Young, Janet Rebecca Crisp, Paul Evington, Scott Alan Gaddy, Rock S. Edwards, William R. Annarino, Leroy Lunsford, City of Asheville, Leona Young, Boyd McKaskill, John Long, and Darryl Fisher - statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To prevent disclosure of information that is privileged or confidential pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that renders the information to be discussed confidential is N. C. Gen. Stat. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1). This motion was seconded by Councilman Worley and carried unanimously.

Councilman Hay asked if he should be excused from the closed session since he has a conflict of interest with one person named. City Attorney Oast said the point of the closed session is to update Council on the status on the lawsuit, not to discuss any strategies with regard to the lawsuit.

At 5:13 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilwoman Whitmire and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:13 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - May 9, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 00-78 - RESOLUTION IN SUPPORT OF PASSENGER TRAIN SERVICE TO ASHEVILLE

Ms. Judy Calvert, Human Resources Manager at Kunkle Industries in Black Mountain and Chair of the WNC Rail Corridor Committee, said that on March 4, 1997, City Council adopted Resolution No. 97-31 supporting the effort to bring passenger rail service to Asheville. City Council is being asked to support an updated version of the resolution by the WNC Rail Corridor Committee who is undertaking to have similar resolutions passed by local governments and other groups along the entire corridor.

The Committee's plan is to have all the resolutions in hand to deliver to State transportation officials as further demonstration of current unified support for the service from the communities to be served. The resolutions would be delivered to Transportation Secretary David McCoy and Pat Simmons of the N. C. Department of Transportation Rail Division by representatives of the Asheville Area Chamber of Commerce during the Chamber's annual legislative visit to Raleigh May 15-16, 2000. Bradley Hix, Vice President for Public Policy for the Asheville Chamber, is coordinating this effort.

The WNC Rail Committee organized a large showing of support at a March 27, 2000, meeting of a legislative study commission considering the issue. That meeting was held at the Grove Park Inn with about 300 people in attendance. This fall, the Committee is planning a public rally here in Asheville as another effort to maintain momentum for the project.

She recommended City Council adopt the resolution supporting passenger train service to Asheville. In addition, she requested City Council to bring immediate focus to finding a location for the Asheville station and the State will be looking at five different options.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 00-78. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 23

B. COMMENTS BY FIRE CHIEF JOHN RUKAVINA

Fire Chief John Rukavina said that his last day as Fire Chief of Asheville will be May 10, 2000. He publicly thanked City Council and the past Mayors and Councils with whom he worked with during his tenure and for the pleasure of working as Fire Chief in a well-governed community.

On behalf of City Council, Mayor Sitnick thanked Fire Chief Rukavina for his fine service to the citizens of Asheville and wished him well in the future.

C. PROCLAMATION PROCLAIMING THE WEEK OF MAY 15-19, 2000, AS "NATIONAL PEACE OFFICERS WEEK" AND MAY 15, 2000, AS "PEACE OFFICERS MEMORIAL DAY"

Mayor Sitnick read the proclamation proclaiming the week of May 15-19, 2000, as "National Peace Officers Week" and May 15, 2000, as "Peace Officers Memorial Day" in the City of Asheville. She presented the proclamation to Police Chief Will Annarino who outlined some activities taking place during the week.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 25, 2000, AND THE WORKSESSION HELD ON MAY 2, 2000

B. RESOLUTION NO. 00-79 - RESOLUTION AUTHORIZING THE PURCHASING DIRECTOR TO DISPOSE OF A METAL STORAGE BUILDING AND BLEACHERS BY SEALED BID

Summary: The consideration of a resolution authorizing the Purchasing Director to dispose of City-owned personal property by sealed bid.

Subject to Council's approval, the resolution authorizes the City's Purchasing Director to dispose of a metal storage building and seven sections of bleachers that have been declared surplus by the Parks and Recreation Department. The surplus is located in the old Asheville Motor Speedway and will be sold on an "as is, where is" basis pursuant to N. C. Gen. Stat. sec. 160A-266.

City staff requests City Council's approval of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 24

C. RESOLUTION NO. 00-80 - RESOLUTION ACCEPTING THE RECOMMENDATIONS OF THE REGIONAL WATER AUTHORITY TO CONTRACT WITH RAFTELIS FINANCIAL CONSULTANTS TO PERFORM A FINANCIAL FEASIBILITY STUDY

Summary: The consideration of a resolution confirming a resolution of the Regional Water Authority to award a contract to Raftelis Financial Consulting (RFC) to perform a Financial Feasibility Study.

In 1995, RFC prepared a Financial Feasibility Report that was included in the Official Statement for the City of Asheville's Water System Revenue Bonds, Series 1996, which were issued to fund the Mills River Expansion Program. Since the issuance of the 1996 revenue bonds, over $20 million of additional capital improvements have been identified and will become necessary over the next five years.

In order to finance $20 million in capital improvements, the Authority anticipates that the City of Asheville will need to issue revenue bonds in February or March of 2001. The bonds will be similar to those issued in 1996. As with the 1996 bond issue, a Financial Feasibility Report will be required that would include a five-year financial plan and an analysis of proposed rate increases. More significantly, the Report will demonstrate the ability of the Authority, through estimated debt service coverage, to pay off the bonds in the future. This report will be included in the Official Statement of the bond issue.

Development of a Financial Feasibility Report will involve the following tasks:

- Review of background information including financial, accounting, operations, legal, regulatory, and billing information.
- Development of the financial plan including projections of demand, revenues, operation and maintenance expenses, and capital costs. The plan will also detail the debt service schedule and coverage requirements for financing the proposed bond issue.
- Preparation of draft Financial Feasibility Report and presentation to the Authority, the City, the Authority's engineering consultants, investment bankers, bond counsel, and the Local Government Commission.
- Meeting with the LGC and other members of the financing team to discuss the Financial Feasibility Report. This will include three sets of modifications to the financial information and the report based on feedback.
- Revisions and finalization of the report, after obtaining input from the LGC and other members of the financing team. The final report will be included in the Official Statement of the bond issue.

Mr. Raftelis, of RFC, has served over 300 government utilities in his 25-year career. In particular, he has extensive experience in performing financial feasibility evaluations for various municipalities across the country. He has previously assisted the Authority in the water cost of service and rate study performed in 1995 and the financial feasibility analysis performed in 1996. He is very familiar with our organization and the political atmosphere of this community. Given RFC's prior work on the 1996 Bond Issue and his recent assistance to review the Authority's five-year financial plan, he was able to reduce fees substantially below the amount he billed for the 1996 feasibility study.

In order to meet the schedule to issue bonds in early 2001, it will be necessary to initiate the Financial Feasibility Study no later than June 1, 2000. The total cost is estimated not to exceed $44,989. Funding has been identified and is available in the 35 Fund.

The Regional Water Authority approved the award of a contract with RFC to conduct a Financial Feasibility Study which is required in order to issue bonds in early 2001, and staff recommends City Council's concurrence with the Authority's action.

RESOLUTION BOOK NO. 26 – PAGE 26

D. ORDINANCE NO. 2693 - BUDGET AMENDMENT TO APPROPRIATE EXPENDITURES FOR NON-RESIDENT FEES WHICH HAVE BEEN COLLECTED FOR VARIOUS PARKS AND RECREATION PROGRAMS

Summary: The consideration of a budget amendment, in the amount of $25,000, to appropriate expenditures for non-resident fees which have been collected for various Parks and Recreation programs.

Several years ago, City Council approved collecting non-resident fees for various Parks and Recreation services. These fees include services for classes, adult and youth sports, and various clubs that use Parks and Recreation facilities. The Parks and Recreation Department wishes to establish expenditure line items and appropriation in order to spend funds which have been collected. The revenue that has been collected is intended to be used for various capital projects of the department. It is the intent of staff to use these funds in conjunction with various public/private endeavors and other activities or improvements that will benefit the community.

The Parks and Recreation Department requests City Council approve appropriating funding from revenue collected from non-resident fees totaling $25,000.

ORDINANCE BOOK NO. 18 – PAGE 222

E. MOTION SETTING A PUBLIC HEARING ON MAY 23, 2000, TO REZONE PROPERTY AT 6 MOUNT CLARE AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS II DISTRICT TO COMMUNITY BUSINESS II DISTRICT

F. RESOLUTION NO. 00-81 - RESOLUTION MODIFYING THE SCHEDULED CITY COUNCIL MEETINGS TO INCLUDE (1) A BUDGET WORKESSION ON MAY 18, 2000, AT 1:00 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM, CITY HALL BUILDING; (2) AFFORDABLE HOUSING WORKSESSION ON MAY 30, 2000, AT 4:00 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM, CITY HALL BUILDING; (3) COMMUNITY MEETING ON MAY 30, 2000, AT 7:00 P.M. AT THE MURPHY-OAKLEY COMMUNITY CENTER AT 749 FAIRVIEW ROAD, ASHEVILLE, N.C.; (4) REGULAR WORKSESSION ON JUNE 6, 2000, AT 3:00 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM; (5) PUBLIC HEARING ON THE 2000-01 ANNUAL OPERATING BUDGET AND CAPITAL IMPROVEMENTS PROGRAM ON JUNE 6, 2000, AT 5:00 P.M. IN THE SECOND FLOOR COUNCIL CHAMBER, CITY HALL BUILDING; AND (6) ADOPTION OF THE 2000-01 ANNUAL OPERATING BUDGET AND CAPITAL IMPROVEMENTS PROGRAM ON JUNE 13, 2000, AT 5:00 P.M. IN THE SECOND FLOOR COUNCIL CHAMBER, CITY HALL BUILDING

RESOLUTION BOOK NO. 26 – PAGE 28

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO APPLYING THE MANUFACTURED HOUSING OVERLAY DISTRICT TO FOUR LOTS ON GORMAN BRIDGE ROAD CURRENTLY ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

ORDINANCE NO. 2694 - ORDINANCE TO APPLY THE MANUFACTURED HOUSING OVERLAY DISTRICT TO FOUR LOTS ON GORMAN BRIDGE ROAD CURRENTLY ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 5:21 p.m.

Mr. Carl Ownbey, Urban Planner, said that this is the consideration of an ordinance to apply the Manufactured Housing Overlay (MHO) District to four lots on Gorman Bridge Road, currently zoned RM-6 Multi-Family Low Density District. This public hearing was legally advertised on April 28 and May 5, 2000.

The owners of these four lots are Robert Oliver, Marvin Hollifield, Dennis & Barbara Olander, and Bruce & Ruby Austin. These four lots on Gorman Bridge Road (PIN Nos. 9629.08-99-6120, 5660, 6323, and the portion of 2181 within the City's jurisdiction) are approximately 5 acres in size. These lots are adjacent to the existing MHO district along Gorman Bridge Road and Riverview Church Road. The 2010 Plan shows the majority of this area to be low density residential. Three of the lots currently have manufactured homes on them. These lots are at the end of the City's jurisdiction and surrounded by a number of manufactured homes both within and outside of the City's zoning jurisdiction. The 1998 Average Daily Traffic count at this intersection is 1100 vehicles. The petitioners have been made aware that there are development standards in the Unified Development Ordinance for the placement of manufactured homes on individual lots.

The Planning and Development Department reviewed this rezoning and recommended approval to the Planning and Zoning Commission at their April 5, 2000, regular meeting. After receiving public comment, the Commissioners voted unanimously to recommend the application of the Manufactured Housing Overlay District to the four lots on Gorman Bridge Road.

Mayor Sitnick closed the public hearing at 5:24 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2694. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 225

B. PUBLIC HEARING TO CONSIDER THE REZONING OF ONE LOT AT 141 HILLSIDE STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

ORDINANCE NO. 2695 - ORDINANCE TO REZONE ONE LOT AT 141 HILLSIDE STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 CU RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2696 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR 141 HILLSIDE STREET (CONDITIONAL USE ZONING)

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

Planning and Development Director Scott Shuford reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to vote to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:25 p.m.

Ms. Stacy Merten, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), and City Exhibit 3 (Staff Report).

Ms. Merten said that this is the consideration of rezoning one lot at 141 Hillside Street from RS-8 Residential Single Family High Density District to RM-16 Residential Multi-Family High Density District, and issuance of a conditional use permit (conditional use zoning).

The Planning and Zoning Commission, at their April 5, 2000, meeting, reviewed and recommended approval to conditionally rezone a 1.43 acre tract located on Hillside Street (PIN No. 9649.14-34-2645). The subject property is located in the midst of an RS-8 zoning district. Currently there are three buildings on the site, consisting of two single-family houses located on either side of a large 12,000 square foot structure, formerly used as a nursing home (City Exhibit 4) . This building is now used for a non-violent drug treatment facility - Life on Life's Terms. The owner proposes to convert this facility into an apartment building. The parking would be located to the rear of the property and access would be one-way, entering on Woodrow Avenue and exiting on Hillside Street. This conditional use zoning would allow the existing structure to remain viable with a minimum of impact on the neighborhood.

The Planning and Zoning Commission voted unanimously to recommend approval of the conditional use rezoning with the following conditions:

- The parking area in front of the building should be eliminated. The pavement should be removed and landscaping installed.
- The apartment building should be restricted to 12 units.
- The project should undergo site plan review to determine specific parking and landscape requirements, prior to the issuance of a zoning permit.

The Planning and Development staff recommends approval of the conditional use zoning.

Mr. George Meade, property owner, talked about the 12,000 square foot structure.

City Attorney explained that City Council can consider the appropriateness of Mr. Meade's use for this particular zone and then the actual conditional use approval will focus on details on the site plan.

Upon inquiry of Councilwoman Field, Mr. Meade said that the rent really will depend upon how much it will cost him to renovate the building to apartments. He felt it would be in the range of $650/month for two bedrooms.

Upon inquiry of Councilman Worley, City Attorney Oast said that it would be appropriate to add an additional condition to the conditional use permit which would require that the two single-family houses on the lot remain single-family residences.

Upon inquiry of Councilman Hay, Planning & Development Director Scott Shuford said that even though the RM-16 District will allow 22 units, the conditional use permit will limit the number of units to a lesser number. City Attorney Oast further explained that City Council should first consider whether multi-family zoning, with appropriate conditions, is acceptable for this property in the neighborhood where it exists. Secondly, on the conditional use permit issue, City Council should consider whether these particular conditions are the appropriate way to develop that property.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 5:43 p.m.

Vice-Mayor Cloninger moved to adopt Ordinance No. 2695 to rezone 141 Hillside Street from RS-8 Residential Single-Family High Density District to RM-16 CU Residential Multi-Family High Density District (conditional use zoning). This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 227

Vice-Mayor Cloninger moved to adopt Ordinance No. 2696 granting the conditional use permit for 141 Hillside Street (conditional use zoning), with the following conditions: (1) The parking area in front of the building should be eliminated. The pavement should be removed and landscaping installed; (2) The apartment building should be restricted to 12 units; (3) The project should undergo site plan review to determine specific parking and landscape requirements, prior to the issuance of a zoning permit; and (4) That the two existing single-family houses on the property remain single-family. Said motion also instructs the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 229

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 00-82 - RESOLUTION APPROVING THE CONSOLIDATED HOUSING AND COMMUNITY DEVELOPMENT PLAN FOR 2000-2005 AND THE CONSOLIDATED ACTION PLAN FOR 2000-2001

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of a resolution approving the Consolidated Housing and Community Development Plan for 2000-2005 and the Consolidated Action Plan for 2000-2001.

The Consolidated Plan is the City's plan for using federal Community Development Block Grant (CDBG) and Home Partnerships Act (HOME) program funds. It is in two parts. The larger document is a Strategic Plan, prepared once every five years, which explores needs, priorities, strategies and objectives for the programs for 2000-2005. The smaller document is the

Action Plan, prepared annually, which details the proposed use of a total of $4,087,065 in CDBG and HOME funds for specific projects in 2000-2001. These plans were presented to Council in draft form at the April 18, 2000, worksession.

Both Plans must be submitted to HUD no later than May 12, 2000.

The Strategic Plan was developed by a planning group of about 80 citizens who volunteered for the task after an initial public hearing in July 1999. Another five formal public hearings were held to receive input during the preparation of the Plan, and numerous informal meetings and discussion groups took place. Well over 200 people (excluding staff) participated in the process. Notices of the availability of the draft plans for public comment were published on April 7, 2000, and nearly 200 copies have been distributed. A final public hearing was held at the April 25, 2000, City Council meeting.

At the April 25 public hearing, twelve citizens commented on the plans. Comments included:

- Appreciation for the openness of the strategic planning process and for the quality of the resulting Strategic Plan;
- Support for the proposal for a local Housing Trust Fund to be capitalized initially with the equivalent of a one cent property tax;
- Concern about proposals for addressing lead-based paint in the draft Strategic Plan and support for the modified proposals subsequently developed by staff;
- A request by the Affordable Housing Coalition for the proposed FY 2000 grants to the Coalition and to the Consumer Credit Counseling Service to be increased by a total of $47,000, and the funding for down-payment assistance to be decreased by the same amount.

In addition, staff has received a number of written comments proposing minor changes to the narrative sections of the Strategic Plan.

The modified proposals for addressing lead-based paint hazards have been incorporated into the Strategic Plan, and other corrections and additions of a minor nature are being made. The public comment period remained open through May 7, 2000. On May 9, 2000, the Housing and Community Development Committee considered the Affordable Housing Coalition's request for changes to the Annual Action Plan.

Ms. Caplan said the only significant changes to the original drafts are as follows: (1) revising the lead-based paint strategies to take out references to the Minimum Housing Code and inserting references to using Code inspectors and permit staff to provide education and information about lead-based paint issues; (2) change on strategy in the public housing section that that merely suggests that Madison County consider the possibility of consolidating the four small Madison County housing authorities (3) increase the priority level for rental housing for elderly people of moderate income; and (4) a change recommended by the Housing and Community Development Committee that the proposed Fiscal year 2000 grants to the Affordable Housing Coalition and to the Consumer Credit Counseling Service be increased by a total of $47,000 and the funding for down-payment assistance be decreased by the same amount.

Ms. Caplan emphasized that in approving the Strategic Plan, Council is not committing the City to implement every individual strategy – but merely setting a general course that the City intends to follow.

Councilwoman Field said that the Affordable Housing Coalition and the Consumer Credit Counseling Service were well aware that City Council could not commit any future City Council or any future Housing and Community Development Committee to agree to continue the increased funding in subsequent years.

Councilman Worley said that he would like to see next year how successful the Affordable Housing Coalition was in raising the down-payment assistance money.

Councilman Hay stressed that he did not want to see the Housing and Community Development Committee make hard choices on where to allocate the money and then have a last-minute request to change the funding. He felt that only prolongs the process.

Upon inquiry of Councilwoman Whitmire, Ms. Caplan explained how the down-payment assistance program is administered by the City and would report to Council if the process is successful.

Town of Black Mountain Alderman Will Kennedy spoke highly in favor of the Plans and staff's openness of the strategic planning process and the quality of the resulting Strategic Plan.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

City Attorney Oast said that Councilwoman Whitmire does work for one of the sub-recipient agencies of CDBG and HOME funds, but the City of Asheville has obtained the appropriate permission for her to participate on City Council and her vote on this particular matter, both the Strategic Five Year Plan and the Action Plan, do not present a conflict of interest that disqualifies her from voting.

Councilwoman Field moved to amend the draft Action Plan to reduce CDBG funding for the City of Asheville Down-Payment Assistance Program by $47,000 and increase the funding for Consumer Credit Counseling Service by $13,000 and for Affordable Housing Coalition Homeowner Education by $34,000. This motion was seconded by Councilman Worley and carried unanimously.

Councilwoman Field moved for the adoption of Resolution No. 00-82 authorizing the submission to the U.S. Dept. of Housing and Urban Development of the Consolidated Strategic Plan for Community Development Block Grant and HOME Investment Partnerships Program funds for 2000-205, and the annual Action Plan for 2000-2001, as amended. This motion was seconded by Councilman Worley and carried unanimously.

Mayor Sitnick informed the community that this City Council does not appreciate anonymous faxes that use bully tactics to scare people based on non-facts and lies.

RESOLUTION BOOK NO. 25 – PAGE 29

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of April 20-May 4, 2000: Mabel Fletcher, Teijo Munnich (Traffic Engineering) and Bruce A. Morehead (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUIT

The City received the following Complaint on May 8, 2000, which is generally described as follows: Johnnie E. Harper v. City of Asheville and City of Asheville Civil Service Board. The nature of the proceeding is Petition for de novo review of Civil Service Board decision to reduce work hours and pay for refusal to take drug test.

This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:19 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - May 16, 2000 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Grant for the French Broad River Park Phase IV from the Transportation Equity Act for the 21st Century

Summary: The consideration of a resolution to apply for and enter into an agreement with the N. C. Department of Transportation, Transportation Enhancement Program for the Transportation Equity Act for the 21st Century (TEA21) to assist with the construction of the French Broad River Park Phase IV (FBRPIV).

FBRPIV represents the City of Asheville's next phase of a major greenway and park system being developed along the French Broad River on Amboy Road. The park will include greenways, bicycle facilities, lawn bowling, volleyball and soccer complex, softball field, playground, restrooms, roller hockey, open space, picnic shelter, parking, and a welcome center. Phase IV will also connect to a planned NC DOT funded greenway from Hominy Creek on the west, and eventually to the Amboy Road trail to the east.

The Parks and Recreation Department and RiverLink are in partnership to implement an ambitious fundraising plan to raise approximately $2 million to build the park. To date, $50,500 has been raised, and $770,000 to $820,000 in grant proposals are pending.

The Parks and Recreation Department is requesting $200,000 to $250,000 in grant funds from TEA21 which will be used to construct neighborhood and park connections to the new park. One neighborhood segment will bring a sidewalk and safe pedestrian crossing to Michigan Avenue and across Amboy Road to the park entrance. The second crossing will provide a pedestrian connection at Riverview Drive at French Broad River Park to the Amboy Road trail using a safe street crossing and ramp into the park. The final sidewalk connection will link Amboy Road trail and FBRPIV along Amboy Road at Edaco Salvage. The grant requires a 20% cash match, which will be available through current fundraising efforts by Parks and Recreation and RiverLink.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for grant funds with the N. C. Department of Transportation, Transportation Enhancement Program for TEA21 to assist with the construction of the French Broad River Park, Phase IV.

Budget Amendment regarding the Print Shop

Summary: The consideration of a budget amendment, in the amount of $22,700, to increase the appropriation of the Print Shops revenues and expenses.

The City's Print Shop has performed more services this fiscal year than it has in the past, requiring additional labor and materials. In addition, the Print Shop is paying for copier leases this fiscal year that were budgeted in departmental budgets rather than that of the Print Shop. This budget amendment for the increase of $22,700 in expenses is offset by the same increase in revenues.

The Finance Department recommends the City of Asheville approve the budget amendment for the Print Shop in the amount of $22,700.

Asheville-Buncombe VISION Office Space

Summary: The consideration of a request to allow the continued use of City office space for the VISION.

The City of Asheville has provided office space to the VISION of Asheville-Buncombe County, hereafter referred to as "VISION", since Spring 1996. The office space is located in the City Development Office at 29 Haywood Street and has been provided at no cost. The City also provides funding to the VISION through "outside agency" funding.

On March 30, 2000 from VISION Board Chair Albert L. Sneed, Jr., requested the City continue to grant an in kind donation of office space and existing support services for Fiscal Year 2000/01. The VISION Board has expressed gratitude to the City and the "ideal location" for the office space. Additionally, a separate request was received to grant continued use of the Rankin Street parking garage at no charge by providing two parking passes.

In looking at the upcoming year, City staff is not aware of any changes in the City Development office layout or staffing levels that will require the space currently utilized by the VISION. Therefore, the current space arrangement is recommended to be granted for the upcoming Fiscal Year 2000/01. Likewise, Staff recommends providing two parking passes to the Rankin Street parking garage for use by the VISION staff.

Staff recommends that Council grant the request of the VISION by a motion to approve the request thereby providing the continued use of donated office space, the existing level of support services and two parking passes to the Rankin Street parking garage for FY 2000/01.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

FILM BOARD UPDATE

Ms. Pam Turner, Chair of the Film Board, said that during the first year and one half of the Film Board's existence, the Board has set forth ambitious goals and undertaken numerous projects toward their implementation. The Board identified the following needs: (1) create a larger crew base to support the industry; (2) identify the strengths and weaknesses the community presents the film industry; (3) identify and establish incentives that will attract the industry; (4) create a film friendly community both in the public and private sectors; (5) establish a means of communication; and (6) create promotional materials.

Major actions and accomplishments include (1) created a logo for the Board; (2) created a web page for the Asheville Film Board (a) introduction and purpose; (b) incentives and production support (c) pictorial history of films shot in the region; (d) contracts and resource persons; (e) current events and announcements; (3) developed news releases for events; (4) sent a Film Board representative to the location trade show in Los Angeles; (5) planned and implemented an educational seminar at Asheville-Buncombe Technical Community College (a) six months planning for the first in a series of programs; (b) held the program "Lights/Camera, and You in the Action" on March 28, 2000, which was attended by approximately 250 persons; (c) presentations by Board members and six film industry professionals including casting, extras, action and locations; and (6) developed a promotional video with WLOS-TV.

She said that the Film Board has accomplished these projects through the volunteer work of the Board members, professional and competent support from Robin Nix, the City's staff support, a very small budget provided by the City, and the generous contribution of time and support from WLOS-TV staff in the production of the video.

The Board is very proud of its accomplishments to date and is eager to move forward with even more ambitious efforts to actively promote our area to the film industry. Development and implementation of effective promotions and projects will require staff and budgetary resources in order to reach the potential the Film Board envisions for the future of this vital sector of our community's economy.

Ms. Turner then showed the promotional video that WLOS-TV produced. She requested City Council to consider appropriating money for their next big project which will be a promotions book.

On behalf of City Council, Mayor Sitnick thanked the Film Board members for their outstanding service on this very important Board.

EDUCATIONAL ACCESS CHANNEL COMMISSION

Mr. Greg Dillingham, member on the Educational Access Channel Commission, provided City Council with a brief update of its current status and a report of planned future activities.

Ms. Marion Mathews, member of the Commission, asked if City Council would appropriate a minimum of $20,000 to help purchase a video equipment playback system. She hoped Council would not only provide intangible support of the Commission, but tangible support as well to help meet the goals that they set together.

Discussion surrounded the possibility of sharing equipment with the Public Access Channel, why the $60,000 video equipment playback system is needed, and are matches and grants available for needs of the Commission.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BUDGET AMENDMENT REGARDING THE CIVIC CENTER

Civic Center Director David Pisha said that this is the consideration of a budget amendment, in the amount of $593,737, for the Civic Center.

It is apparent the Civic Center will need an additional transfer of funds in order to continue operations through June 30, 2000. Revenues for the fiscal year are now estimated to be $1,406,896 versus a budget amount of $1,737,000. Expenses are estimated to be $2,293,315, versus a budgeted amount of $2,082,078. A portion of the increased expenses for the year include electrical repair work.

Three major revenue factors contributed to the current financial situation at the Civic Center. The arena under-performed compared to budget. Not only did it face stiff competition

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from the Bi-Lo Center, but ice events and conventions did not deliver the results as expected. And with a shortfall in attendance, concession revenues were not able to meet projections.

Revenues

Arena:

Revenues in several important event activities at the Civic Center were below expectations for the fiscal year. The arena continues to suffer from the increased competition with the Bi-Lo Center. Lack of any meaningful concert activity and lack of conventions in this area continues to hurt the overall financial performance of the venue. Rent, concession and novelty income all suffer when these events are absent. Rental revenues from the arena portion of the venue are projected to fall 26% this year from budgeted expectations.

Ice Events:

Paid hockey attendance was down 24% this year as compared to the opening season. This caused the rent the team pays to fall which makes up nearly half of the shortfall in this category. The falloff in attendance also was a significant factor in the declines shown in the various concession categories. Hockey concession sales were down. Although hockey continues to contribute substantial revenue, overall, growth in hockey revenue is slower than expected.

Conventions:

The loss of the convention business this year was another major contributor to the decline in concession sales and catering commissions. Last year the catering commission alone was over $12,000.00; the shortfall that is now anticipated in this category. Food and beverage sales were in excess of $30,000.00. A significant increase in convention activity at the facility is not anticipated in the near future.

Overall, revenues are $382,500 less than anticipated this fiscal year. A recap of major contributors to this occurrence are as follows:

Arena rent	$ 65,000
Beer & Wine sales	50,000
Food & Beverage sales	165,000
Catering commissions	12,000
Novelty commissions	12,000
Public skating	50,000
City use	10,000

Expenses

The operations expense portion of the budget also needs additional funding. There were $88,000 in unanticipated expenditures for building maintenance and repairs. Additionally, an electrical problem caused an additional expenditure of $60,000. The budget amendment includes funding for these two unexpected problems.

The overall deficit for the year will be approximately $886,419. This includes the current budgeted transfer from the general fund of $292,682 in addition to this request of $593,737.

City staff recommends City Council approve a budget amendment, in the amount of $593,737, for the Civic Center.

Mr. Pisha responded to several questions and comments from Council, some being, but are not limited to: what is the major generator of revenue; what is the reason we lost some of our events; and how much did Buncombe County contribute to the subsidy when the Art Museum and the Colburn Mineral Museum were located in the Civic Center.

Vice-Mayor Cloninger felt that some tough decisions will need to be made to see if the community can support an arena when the hockey season ends. He felt the City may need to shift their priorities and concentrate on a top notch performing arts center instead of a new arena.

Mayor Sitnick wondered if there was something we can do to attract shows that cater to the older generation that live in Asheville.

Councilman Hay said that the Future of the Civic Center Task Force will be thoroughly investigating the three options recommended by the consultant: a new arena; a performing arts center, and a convention/conference facility.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

MISCELLANEOUS ITEMS

Mayor Sitnick requested that the City do as much advertising as possible to let people know that there is a state law that requires trucks to be covered when they are on the highways.

Vice-Mayor Cloninger asked for an update of how the City's new roll-out container program is working.

The Buncombe County Board of Elections will hold a run-off election on May 30, 2000. City Council has scheduled a community meeting on May 30 at the Murphy-Oakley Community Center. However, since the Community Center is a polling place, the City Clerk was instructed to try to find another location for the City Council's community meeting on May 30, 2000.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 4:30 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - May 23, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr., City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Hay gave the invocation.

ADDITIONS TO THE AGENDA

At the request of City Manager Westbrook, it was the consensus of City Council to add the following items to the Consent Agenda: (1) resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Downtown Association's 2000 events, and (2) resolution authorizing the City Manager to enter into an agreement with Candler Concrete Works Inc. to install sidewalks along Cumberland Avenue and Chestnut Street.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY 25, 2000, AS "OLDER AMERICANS DAY" IN THE CITY OF ASHEVILLE

Mayor Sitnick read the proclamation proclaiming May 25, 2000, as "Older Americans Day" in the City of Asheville. She presented the proclamation to Mr. Dick Patzfahl, Executive Director of the Buncombe County Council on Aging, who briefed City Council on some activities taking place during the day.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 9, 2000, AND THE WORKSESSION HELD ON MAY 16, 2000

B. MOTION GRANTING THE REQUEST OF THE ASHEVILLE-BUNCOMBE VISION TO (1) CONTINUE USING DONATED CITY SPACE AT 29 HAYWOOD STREET, (2) USE OF EXISTING LEVEL OF SUPPORT SERVICES, AND (3) TWO PARKING PASSES TO THE RANKIN STREET PARKING GARAGE FOR USE BY THE VISION STAFF

Summary: The consideration of a request to allow the continued use of City office space for the VISION.

The City of Asheville has provided office space to the VISION of Asheville-Buncombe County, hereafter referred to as "VISION", since Spring 1996. The office space is located in the City Development Office at 29 Haywood Street and has been provided at no cost. The City also provides funding to the VISION through "outside agency" funding.

On March 30, 2000 from VISION Board Chair Albert L. Sneed, Jr., requested the City continue to grant an in kind donation of office space and existing support services for Fiscal Year 2000/01. The VISION Board has expressed gratitude to the City and the "ideal location" for the office space. Additionally, a separate request was received to grant continued use of the Rankin Street parking garage at no charge by providing two parking passes.

In looking at the upcoming year, City staff is not aware of any changes in the City Development office layout or staffing levels that will require the space currently utilized by the VISION. Therefore, the current space arrangement is recommended to be granted for the upcoming Fiscal Year 2000/01. Likewise, Staff recommends providing two parking passes to the Rankin Street parking garage for use by the VISION staff.

Staff recommends that Council grant the request of the VISION by a motion to approve the request thereby providing the continued use of donated office space, the existing level of support services and two parking passes to the Rankin Street parking garage for FY 2000/01.

C. RESOLUTION NO. 00-83 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR A GRANT AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR A GRANT TO ASSIST WITH THE DEVELOPMENT OF THE FRENCH BROAD RIVER PARK PHASE IV

Summary: The consideration of a resolution to apply for and enter into an agreement with the N. C. Department of Transportation, Transportation Enhancement Program for the Transportation Equity Act for the 21st Century (TEA21) to assist with the construction of the French Broad River Park Phase IV (FBRPIV).

FBRPIV represents the City of Asheville's next phase of a major greenway and park system being developed along the French Broad River on Amboy Road. The park will include greenways, bicycle facilities, lawn bowling, volleyball and soccer complex, softball field, playground, restrooms, roller hockey, open space, picnic shelter, parking, and a welcome center. Phase IV will also connect to a planned NC DOT funded greenway from Hominy Creek on the west, and eventually to the Amboy Road trail to the east.

The Parks and Recreation Department and RiverLink are in partnership to implement an ambitious fundraising plan to raise approximately $2 million to build the park. To date, $50,500 has been raised, and $770,000 to $820,000 in grant proposals are pending.

The Parks and Recreation Department is requesting $200,000 to $250,000 in grant funds from TEA21 which will be used to construct neighborhood and park connections to the new park. One neighborhood segment will bring a sidewalk and safe pedestrian crossing to Michigan Avenue and across Amboy Road to the park entrance. The second crossing will provide a pedestrian connection at Riverview Drive at French Broad River Park to the Amboy Road trail using a safe street crossing and ramp into the park. The final sidewalk connection will link Amboy Road trail and FBRPIV along Amboy Road at Edaco Salvage. The grant requires a 20% cash match, which will be available through current fundraising efforts by Parks and Recreation and RiverLink.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for grant funds with the N. C. Department of Transportation, Transportation Enhancement Program for TEA21 to assist with the construction of the French Broad River Park, Phase IV.

RESOLUTION BOOK NO. 26 – PAGE 30

D. ORDINANCE NO. 2697 - BUDGET AMENDMENT TO INCREASE APPROPRIATION OF THE PRINT SHOP REVENUES AND EXPENSES

Summary: The consideration of a budget amendment, in the amount of $22,700, to increase the appropriation of the Print Shops revenues and expenses.

The City's Print Shop has performed more services this fiscal year than it has in the past, requiring additional labor and materials. In addition, the Print Shop is paying for copier leases this fiscal year that were budgeted in departmental budgets rather than that of the Print Shop. This budget amendment for the increase of $22,700 in expenses is offset by the same increase in revenues.

The Finance Department recommends the City of Asheville approve the budget amendment for the Print Shop in the amount of $22,700.

ORDINANCE BOOK NO. 18 – PAGE 233

E. MOTION SETTING A PUBLIC HEARING ON JUNE 6, 2000, AT 5:00 P.M. RELATIVE TO THE 2000-01 ANNUAL OPERATING BUDGET AND CAPITAL IMPROVEMENTS PROGRAM

F. MOTION SETTING A PUBLIC HEARING ON JUNE 13, 2000, TO CONSIDER THE REZONING OF 23 CONGRESS STREET FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

G. RESOLUTION NO. 00-84 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE DOWNTOWN ASSOCIATION'S 2000 EVENTS

Summary: The consideration of a resolution making provisions for the possession of open containers of malt beverages and/or unfortified wine and the consumption of malt beverages and/or unfortified wine for the 2000 events of the Asheville Downtown Association at the locations and times specified.

For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville events to bring both the public and visitors to the Downtown area. These events include: *Moonlight Over Downtown*, *Honda Hoot Downtown After Five*, *and three Downtown After Five activities.* The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends approval of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 31

H. RESOLUTION NO. 00-85 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CANDLER CONCRETE WORKS INC. FOR THE INSTALLATION OF SIDEWALKS LOCATED ALONG CUMBERLAND AVENUE AND CHESTNUT STREET

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Candler Concrete Works Inc. for the installation of sidewalks located along Cumberland Avenue and Chestnut Street.

The City is in need of a contractor to provide sidewalk installation services for sidewalks along Cumberland Avenue and Chestnut Street. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for sidewalk installation services were solicited and three responses were received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
Candler Concrete Works Inc	100%	Yes	Yes	$80,632.75
Asphalt Unlimited	0	Yes	Yes	No brick bid
Green Concrete Finishers	0	Yes	Yes	No brick bid

The approximate length of the five (5) foot wide sidewalk associated with this project includes 267 feet along Cumberland Avenue and 770 feet along Chestnut Street. The existing sidewalk material is brick which will be replaced with brick, as specified by the Asheville-Buncombe Historic Resources Commission and will have a concrete underlay. The time to complete the project as outlined in the informal bid request is 90 days. Based upon contract prices for similar projects, staff feels the responsive bid is competitive.

Funding for this project has already been allocated in the Public Works Department's capital improvement budget.

The Public Works Department staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with Candler Concrete Works Inc. for the installation of sidewalks located along Cumberland Avenue and Chestnut Street.
Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

RESOLUTION BOOK NO. 26 – PAGE 33

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO THE APPEAL OF CROWELL FARMS MASTER PLAN

Mayor Sitnick said that this hearing will be conducted as a quasi-judicial hearing and Council will limit their consideration to whether the Master Plan complies with the standards in the ordinance as set out in Section 7-9-1 (e) of the Unified Development Ordinance. Council will make their findings based on the evidence at this hearing.

Mayor Sitnick opened the public hearing at 5:15 p.m.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast said that Mr. Tom Bell, attorney representing the West Oakview Park residents, has indicated that he may cross examine the applicant and staff, which he has the right to do.

Mr. Tom Bell, attorney representing the West Oakview Park residents, said that he does believe in quasi-judicial hearings and felt there are basic due process rights and fundamental fairness that include the right of cross-examination and the right to object to evidence. He said that he may make objections and it will be up to Council to determine how they want to handle those objections. And, he would like to cross examine the witnesses when they are finished.

Mr. Dan Baechtold, Urban Planner, submitted into the record the Affidavit of Publication (City Exhibit 1), the Certification of Mailing of Notice to Property Owners (City Exhibit 2), and the Staff Report dated May 23, 2000, including a location map and a copy of the Revised Site Plan dated 4/14/00 (City Exhibit 3).

Mr. Baechtold said that this is the consideration of an appeal of the action by the Planning & Zoning Commission on the master plan for the Crowell Farms Planned Unit Development (PUD) on West Oakview Road. The public hearing was advertised on May 12 and 19, 2000.

On April 26, 2000, City Council approved a PUD overlay designation for 71 acres in the extraterritorial jurisdiction. The master plan associated with this development was reviewed and approved by the Technical Review Committee (TRC) and the Planning & Zoning Commission by a vote of 6-1. The TRC and the Planning & Zoning Commission found that the master plan meets the development standards for a PUD master plan as outlined in the Unified Development Ordinance (UDO). Ordinarily, a PUD master plan does not come before City Council for approval unless the decision of the Planning and Zoning Commission is appealed. In this case, the decision of the Planning and Zoning Commission has been appealed.

The underlying zoning on the property would allow approximately 395 residential dwelling units on the property. This is a density of about 5.5 units per acre, and would have been allowed without a PUD approval. The PUD approval provides the opportunity for density bonuses, if a development provides certain beneficial elements such as affordable housing and preservation of environmentally sensitive areas. On this particular site, if all density bonuses were used, the theoretical density could be as high as 12 units per acre, or a total of 868 units.

In this case, the applicant is not asking for any density bonus at all. In fact, the applicant is proposing to develop the property at a reduced density, well below what would be allowed under the underlying zoning. The master plan for this development proposes a total of 288 dwelling units which translates to an overall density of about 4 units per acre. The master plan proposes 40 single-family lots, 98 townhomes, 70 units for co-housing, and 80 apartment units. The 80 apartment units are intended to be affordable housing for the elderly. By developing the property as a PUD, the developer gains some flexibility in lot size and structure size, and some streamlining of the approval process for the multi-family development.

The plan designates 15.3 acres of common open space to be deeded to a property owner's association. In addition, the master plan shows a significant amount of open space to be associated with each individual multi-family development on the property. The deeded open space will provide a buffer around the perimeter of the property and preserve the steepest slopes. Some of the open space is centrally located to provide open space areas that are more accessible. The amount of open space provided well exceeds the minimum amount of dedicated open space required in the UDO.

The PUD master plan establishes the number of units that can be built on the property, the amount of parking and dedicated open space, and the location of major access points. The exact arrangement of the buildings and configuration of the lots is subject to change. As the property is developed, the developer will be required to submit detailed site plans showing the building location, landscaping and buffering, and other site details that meet the requirements in the UDO. The UDO allows minor deviations from the master plan as long as they do not cause any of the following:

1. A 10% or greater increase in the overall site coverage by the structures.
2. An increase in the intensity of use. For example, an increase in density resulting from changing single-family residential to multi-family residential.
3. A 10% or greater increase in external traffic generation.
4. A 10% or greater increase in the demand for public utilities.
5. A 5% or greater reduction in the proposed open space.
6. A 10% or greater reduction in the number of parking spaces.
7. A change of an approved use.
8. An increase in the height of buildings.

As part of the PUD application, the developer prepared and submitted a Traffic Impact Analysis (TIA) as required by the UDO. The report analyzes the impact of the traffic generated by the proposed development. The report considers existing traffic and projected increases in area traffic, including the impact of the recently approved Home Depot development. The analysis shows that there will be increased delay at some of the intersections. The report concludes, however, that the impact is not enough to warrant improvements to the intersections. The City Traffic Engineer and the Division Traffic Engineer for the N.C. Department of Transportation have reviewed the TIA and concur with the findings. The TIA was considered by the City Council as part of the public hearing for the PUD overlay designation.

On April 5, 2000, the Planning & Zoning Commission voted to approve the master plan with the following conditions (City Exhibit 4).

1. Detailed site development plans for each phase of the multi-family development must be reviewed and approved by TRC. The detailed site plans must include all items normally required for Level II site plan review and must meet all applicable ordinances and City of Asheville standards. Especially note that requirements for fire lanes, turn-a-rounds to accommodate fire apparatus, fire hydrants, and minimum fire flow must be met as outlined by the TRC.
2. The City Traffic Engineer in cooperation with NCDOT will continue to review the traffic impact issue and will provide additional input and recommendation to City Council in their review of the PUD designation and master plan.
3. The developer shall shift multi-family, townhouse, co-housing building and parking areas to avoid existing tree locations in order to protect the existing tree canopy and to provide additional interior open space without in any way reducing the extent of the perimeter open space.
4. The developer shall re-examine the location of the walking trails to ensure that they are walkable for the average user and provide access to the new interior open space.

Several commissioners expressed a desire to see more functional open space and usable walking trails, and conditions for approval were drafted that advance these interests. On April 17, 2000, the applicant submitted revised plans showing additional area for passive recreation and a re-configuration of the walking trails and open space. The Planning and Development staff reviewed the revised plans and determined that the revisions meet the conditions of the Planning & Zoning Commission.

Planning and Development staff determined that this master plan is consistent with the purpose of the PUD District for the following reasons: 1) The plan proposes a mix of housing types; 2) The plan provides common open space with opportunities for active and passive recreation; 3) The plan retains natural features such as steep slopes, streams and drainageways; 4) The plan provides an opportunity for affordable housing; 5) The plan encourages pedestrian circulation within the development.

The Planning and Development staff recommends approval of the master plan for the Crowell Farms Planned Unit Development.

Upon inquiry of Councilman Hay, City Attorney Oast said that what is before City Council is an appeal of a master plan in the nature of a site specific kind of development plan. City Council's consideration is limited to whether the proposed master plan would satisfy the specific development standards contained in Section 7-9-1 (e) of the UDO (City Exhibit 5). He felt that since the neighborhood is the appellant in this case, it the burden of the neighborhood to point out what the deficiencies are, if any.

Mr. Bell said that he didn't exactly know what a quasi-judicial hearing is, but he knows it's something more than a legislative function – something different from that. He is of the opinion that fairness and the courts have said that that it does have certain requirements. He thinks the requirements include his clients' right to review the evidence that is presented against them, to confront the witnesses against them and to have them testify under oath. We have had them put under oath. He specifically objects to the City Council reviewing whatever they have in front of them which he has not seen, which has not been sworn to, which there has been no evidence presented to what it is, or why Council should consider it. He feels that whatever City Council has before them violates that. He also objected to what Mr. Baechtold testified to in the staff report because 100% of that is hearsay evidence, except that the Planning and Zoning Commission voted. He strenuously objected to the information about the TIA. He felt if Council is going to determine what the TIA revealed, then Council needs to hear from the people who performed it and he needs to be given the opportunity to cross-examine them to see if Council thinks what the conclusions Council has just heard is, in fact, conclusions that Council wants to adopt.

City Attorney Oast said that the development standards referred to are contained in the UDO as Section 7-9-1 (e). In addition, City Council does have a staff report which is a matter of record.

Mr. Bell stated that his objection is not just to the fact that he doesn't have a copy of what City Council has in front of them. His objection goes to the fact that the information in the report is hearsay that is not subject to cross-examination.

City Attorney Oast said that the case law that he is familiar with indicates that quasi-judicial boards are not bound by the formal rules of evidence. If there are problems that Mr. Bell thinks are connected with the hearsay nature of some of this evidence, he certainly is free to point that out. But, he doesn't think that means that City Council can't consider it.

When Vice-Mayor Cloninger suggested that Mr. Bell wait until the conclusion of the presentation to state his objections, Mr. Bell was not agreeable to that. He said that he would prefer that the Council not hear inappropriate evidence and that they hear only appropriate evidence. The type of evidence that is appropriate evidence for a judicial hearing, but not for a legislative hearing.

Mr. Bell then cross-examined Mr. Baechtold on several items, some being, but are not limited to: how did the project first come to City staff; who can initiate rezoning requests; what development review process did this project go through; who approves revisions to a site plan after the Planning & Zoning Commission approves it; how were the number of units determined; questions relative to the TIA and the information it contained; and questions relative to the greenspace.

Mr. Marty Kocot, representing Crowell Farms Property LLC, reviewed with Council the topography of the site. He said that this plan creates a smart growth community of four neighborhoods with different housing types. It protects the environment by clustering the buildings, preserves steep slopes and provides pedestrian connections between the four villages and around the perimeter of the property. This is only a master plan for the development and it is not uncommon for a plan to be changed or revised to avoid monumental trees, creeks or preserve some sort of special feature on the property that may or may not be discovered. This plan is the best fit for the property. He noted they did not have to go through this procedure for a zoning designation or this master plan approval – they could have built a similar plan with the same density and same styles of housing on the property. The only thing sacrificed would have been some of the common open space areas, trails and play areas that they have chosen to preserve. This plan meets all of the UDO requirements. The total common open space provided in the current plan is approximately 21.5 acres – over 30% of the site area. The common open space provided by this plan is more than 6-1/2 times what is required under the UDO. The plan has changed since the review by the Planning & Zoning Commission. It has been revised it to reflect the comments of the Planning & Zoning Commission and the Planning Department staff to provide more centrally located, less steep common open space and depict the individual parcel common open spaces. In addition, the neighborhoods have shifted around and subsequently their buffers that were along with each neighborhood have shifted at the same time. That is what has created the discrepancy between the reduction from 16.1 to 15.3 acres of deeded common open space. It has been their intent to create a close knit community. The best feature about the planned community is that it works to try to preserve the feel of the land, reduce grading and impacts to the environment.

Mr. Kocot then responded to several questions and comments from City Council which include, but are not limited to, minimum setback requirements on streets; maximum height of the buildings, parking standards; and how many acres are in the easement area.

When Councilwoman Field asked if Mr. Kocot has any documentation showing how the perpetual care maintenance of all the common open spaces will be provided for, he said that he did not have that documentation. However, it is the plan for the homeowners association that is established at Crowell Farms to own and maintain the open space. City Attorney Oast also noted that the final approval will not be given to the project until that kind of requirement is in place.

Mr. Bell then cross-examined Mr. Kocot regarding buffering in addition to questions relative to the affordable housing issue.

Ms. Kathy Tyler, resident of the Oakview neighborhood, submitted a letter to City Council with her concerns. She noted that since the developer shifted single family lots to the west side of the property where the green space and townhouses were located on the master

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plan submitted to the Planning & Zoning Commission on April 5, 2000, a road, traffic signal and seven single family lots are now located in existing tree and tree canopy areas referred to in Condition No. 3 of the Planning & Zoning Commission. In addition, to that shift by the developer, the perimeter space has been significantly reduced on the west side of the property. She questioned who determines if walking tails are "usable by the average person" and do they need to be accessible by the senior population living in the affordable housing units. She was concerned over the possible damage of the Tulip Poplar trees in the area on the west side of the property.

Mr. Bell urged City Council to reject the master plan because he did not think Council has appropriate evidence to approve it. He said that Council should not consider the evidence presented at the public hearing on the planned unit development for Crowell Farms because he hasn't been given the opportunity to cross-examine any of the people who performed the TIA. Council is supposed to hear sworn testimony and hear evidence that indicates that this is something Council should approve, and he doesn't think Council has it.

When Councilman Hay said the decision before City Council is whether or not the master plan is consistent with the planned unit development overlay, Mr. Bell disagreed. He felt City Council should consider whether the master plan is a good plan that a governmental body would want for this neighborhood because of the overall purposes involved in this kind of development.

Councilwoman Whitmire asked if this is the final master plan. City Attorney Oast responded that it is the master plan before City Council now. The way the City's Code is set up, if there are some changes that the Planning Director judges to be not substantial, then he may approve those, but there are certain limitations of what he can and cannot approve. In that respect, it is final in concept and the basic layout, but there may be some changes in the detail.

Councilwoman Whitmire asked what didn't the Planning & Zoning Commission see in this revised master plan. Planning & Development Director Scott Shuford said the plan before Council now is an effort to address many of the conditions that were imposed by the Planning & Zoning Commission and by the TRC. We have looked at that plan and it is our opinion that this plan has gone a long way toward meeting those conditions.

Mr. Shuford said that with regard to the ability of the plan to change sometime in the future, the Code does allow, under a planned unit development, that there be some potential for shifting of exact building locations and that sort of thing. That plan before Council now may not materialize exactly as shown on the ground, but if there are changes such as entry of a building into a setback area or something like that, then City staff will not allow that to happen. But if they need to shift a building over 10 feet to avoid a tree, then we will try to accommodate that within the bounds that are prescribed in the Code.

Upon inquiry of Mayor Sitnick, Mr. Bell explained that there are two kinds of testimony – lay and expert testimony. He was concerned that City Council has a lot of expert opinion, but no sworn testimony and he has been given no opportunity to cross-examine any of the expert opinion. He felt Mr. Baechtold has no knowledge about any of those things he testified to and he does not have any right to give testimony about opinions as to traffic analysis because he's not an expert in that field. Again, he didn't feel City Council has received any evidence.

Mr. Frank Pomeroy, resident of West Oakview Road, explained why there will most definitely be problems with traffic when this development is built. He felt the infrastructure in the area cannot absorb this kind of development.

Upon inquiry of Councilman Worley, City Traffic Engineer Michael Moule outlined his credentials. It was the consensus of City Council to consider Mr. Moule an expert in the field of traffic engineering.

Mr. Moule said that a TIA was prepared in connection with this master plan and he has reviewed it. He said that it was his opinion that the TIA that was prepared meets the requirements of Section 7-11-5 of the City Code. The TIA was entered into the record. (City Exhibit 6)

Mr. Bell then cross-examined Mr. Moule on the TIA. As a result of the cross-examination by Mr. Bell, Mr. Moule entered into the record some analyses of the five-way intersection traffic with a couple of different scenarios, some of which include the soccer traffic. (City Exhibit 7)

At the request of Mayor Sitnick, Mr. Shuford responded to the remaining questions outlined in Ms. Tyler's letter.

City Council accepted all the exhibits into the record.

Mayor Sitnick closed the public hearing at 7:00 p.m.

City Attorney Oast recommended City Council vote yes or no on the project and he will draft an appropriate Order to bring back to City Council for consideration at their next formal meeting on June 13, 2000.

It was the consensus of City Council to instruct the City Attorney to review the quasi-judicial process and how City Council should address the process in the future.

Councilman Worley moved to approve the master plan as approved by the Planning & Zoning Commission with the conditions imposed by the Planning & Zoning Commission and the revisions as stated by City staff. This motion was seconded by Vice-Mayor Cloninger.

Councilman Worley stated that his basis for voting in favor of the master plan is that based on careful review, it meets the requirements of the standards set forth in the UDO.

Councilman Peterson agreed with Councilman Worley in that the plan does meet the development standards.

Vice-Mayor Cloninger stated that the master plan is consistent with the purpose of a PUD.

Mayor Sitnick said that if the master plan is approved, she would like to suggest adding some further conditions: (1) a maximum effort to preserve trees during construction, including root systems and trunks so they are not hit by construction equipment; (2) if there is any shifting of the units, that the developer significantly make an effort to avoid the destruction of specimen trees; (3) wherever possible, the walking trails be made as accessible as possible to all ages, not only in the development but for the neighborhood as well; (4) buffering be given maximum attention; and (5) City staff conduct a broad review of the traffic conditions after the build-out and after the soccer field is constructed and do whatever it takes to make sure that the area is as safe and convenient as possible.

Councilman Peterson agreed with the conditions outlined by Mayor Sitnick.

Councilman Worley and Vice-Mayor Cloninger amended their motion to include the conditions outlined by Mayor Sitnick. The amended motion carried unanimously.

Mayor Sitnick announced a brief break at 7:17 p.m.

CHANGE IN AGENDA

At the request of Mayor Sitnick, Vice-Mayor Cloninger moved to amend the agenda in order to hear a topic of unfinished business with regard to adoption of the Sustainable Economic Development Strategic Plan. This motion was seconded by Councilwoman Whitmire and carried unanimously.

RESOLUTION NO. 00-86 - RESOLUTION ADOPTING THE SUSTAINABLE ECONOMIC DEVELOPMENT STRATEGIC PLAN

Mr. Jack Cecil, Chair of the Economic Development Task Force, said that this is the consideration of a resolution adopting the Sustainable Economic Development Strategic Plan (SEDSP) as developed by the citizen-led Task Force in conjunction with the consulting firm of Lockwood-Greene Consulting, Inc.; and appointment of a citizen-led Task Force to provide advisory guidance and oversight in implementing the plan.

The SEDSP was developed by the Task Force, drafted by the consultant, submitted to Council, and subsequently the general public for review, comment, and input.

The draft Plan was initially submitted to Council by the Task Force chairman and the consultant on January 18, 2000. Since then, there have been 17 public presentations completed and one additional presentation scheduled for later this month. A public input meeting was held on February 23, 2000, which was taped and has been aired in its entirety on a continuous basis on the Public Access Channel. In addition, since February 7, 2000, on the City's website, there has been a synopsis of the process undertaken to create the plan, the complete set of plan documents, and an e-mail feature to receive feedback about the Plan. (Actually, the website about the Plan was started in August 1999 and was continuously updated throughout the process.) Finally, there have been at least five articles that have appeared in the local print media since the January 18, 2000, presentation to Council.

What little public comment that has been received has been positive with some additional general ideas being offered, such as initiating a "Green Building" program, better integration of transportation into planning, concentrate on developing high bandwidth infrastructure, develop an incubator for arts oriented businesses, and being more diligent in preserving existing industrial land for that continued use.

Other than these type of general comments and ideas, there have been no other specific challenges or changes to the Plan advocated. Therefore, the Plan is being submitted for final approval as originally drafted and submitted.

At this time, Council is also being asked to appoint a citizen-led Implementation Task Force (ITF) to work with staff to carry out the Plan's goals and objectives. It is proposed that the ITF operate as follows:

- Membership would consist of no less than 15 and no more than 19 members at any given time. The proposed list below numbers 17.
- All members would serve a single term of three (3) years beginning with their appointment and running through June 30, 2003. There may be circumstances that warrant people to be

added either as new members or as replacements for existing members In those cases, those terms would also expire on June 30, 2003, regardless of their length of service during this initial 3 year period.

- Council will receive regular updates as to the progress of the implementation efforts As this initial three-year period comes to a close, Council will evaluate the progress and determine further actions as warranted by conditions at that time.

- The ITF will serve in an advisory capacity. The Plan has already provided our strategies The ITF will prioritize those, work with staff on developing implementation options, and make recommendations to Council.

- The proposed membership roster for the ITF is provided below. Most of the people listed were part of the original Task Force (as noted by an asterisk) which created the Plan. Several others are new to the process. Each person has been contacted and has expressed their willingness to serve if appointed.

  *JACK CECIL (Biltmore Farms, Inc.) Mr. Cecil has accepted to continue as Chairman ; *K RAY BAILEY (Asheville-Buncombe Technical Community College); *BOB ROBERTS (First Citizens Bank); *BRUCE TOMPKINS (Olde World Christmas Shoppe); *DR. JIM MULLEN (University of North Carolina – Asheville); *PATTI GLAZER (Glazer Architecture, PA); *CAROL KING (Carol King & Associates); *BENSON SLOSMAN (Benson Slosman, Inc.); *CHUCK TESSIER (Tessier & Associates); *PAM TURNER (Mills Manufacturing); *PAT WHALEN (Public Interest Projects); THEO PRITCHETT (T & E Technology); DAVID A. BROWN, M.D. (Mountain Allergy & Asthma Associates); DAVID SPILLERS (Mission St.-Joseph Health System); FRANK TAYLOR (Great Smokies Diagnostics Laboratories); *JAMES GETER (Eagle Market Street Development Corp.); and JEAN KEEN (Keen Impressions).

The City Manager will be an ex-officio member of the Task Force and the City's Economic Development Director will provide full-time staff support. In addition, other city staff may from time to time be asked to provide additional staff resources/input as required.

City staff recommends City Council adopt the Sustainable Economic Development Strategic Plan and appoint an Implementation Task Force to provide advisory guidance and oversight in implementing the Plan.

Mayor Sitnick spoke highly about the work of Mr. Cecil and of the plan itself.

Councilwoman Whitmire asked that the two remaining vacancies be filled with women, preferably minority women.

Councilman Hay felt this plan was very important for the City noting that the process represents a commitment by many people. He liked the plan in that it's self-implemented.

Councilwoman Field, along with Vice-Mayor Cloninger, also spoke in favor of the Plan.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Resolution No. 00-86 in order to adopt the Sustainable Economic Development Strategic Plan and appoint the members of the Task Force. This motion was seconded by Councilman Worley and carried on a 6-1 vote, with Councilman Peterson voting "no".

PUBLIC HEARINGS CONTINUED

B. PUBLIC HEARING RELATIVE TO REZONING A PORTION OF ONE LOT LOCATED AT 6 MOUNT CLARE AVENUE WHICH IS NOW ZONED RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO CB II COMMUNITY BUSINESS II DISTRICT SO THAT ALL OF THE LOT IS ZONED CBII COMMUNITY BUSINESS II DISTRICT

ORDINANCE NO. 2698 - ORDINANCE TO ZONE A PORTION OF ONE LOT LOCATED AT 6 MOUNT CLARE AVENUE WHICH IS NOW ZONED RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO CB II COMMUNITY BUSINESS II DISTRICT SO THAT ALL OF THE LOT IS ZONED CBII COMMUNITY BUSINESS II DISTRICT

Mayor Sitnick opened the public hearing at 7:50 p.m.

Mr. Dan Baechtold, Urban Planner, said that this is the consideration of an ordinance to rezone a portion of one lot located at 6 Mount Clare Avenue which is now zoned RS-8 Residential Single Family High Density District to CBII Community Business II District so that all of the lot is zoned Community Business II District. This public hearing was advertised on May 12 and 19, 2000.

Marketplace Developments, LLC is in the process of renovating the historic structure known as the five points building at the intersection of Broadway Avenue, Chestnut Street, and Mount Clare Avenue. The structure was built in 1923 and has a small parking area next to the building off of Mount Clare Avenue. The building is on a parcel that is currently zoned CBII and the parking lot is on a parcel that is split-zoned between CBII and RS-8. This rezoning application intends to correct the split-zoning of the parking lot, so that the entire lot can be used for parking once the building renovation is complete.

The size of the lot where the parking lot is located is approximately one-eighth of an acre. The portion to be rezoned is approximately half of the lot or about one-sixteenth of an acre. The property is almost entirely occupied by the small parking lot (10 spaces). The parking lot is and always has been an integrated use with the structure. In order for the parking lot to continue as an integrated use with the structure, the entire lot must be zoned for commercial use. In a rezoning case such as this one, the City Council must consider all of the potential uses of the property that are allowed under CBII. As a practical matter, however, additional development on the site would probably not be possible because of limited room for off-street parking and buffering that would be required by the Unified Development Ordinance.

The Planning and Zoning Commission reviewed this request at their meeting of May 3, 2000, and voted unanimously (6-0) to recommend approval of the rezoning. No members of the public commented at the hearing. The Planning and Development staff recommend approval of the rezoning request as well.

Planning and Development staff recommends City Council consider the rezoning request to rezone a portion of one lot located 6 Mount Clare Avenue which is now zoned RS-8 Residential Single Family High Density District to CBII Community Business II District so that all of the lot is zoned Community Business II District.

Mr. Dean Pistor, Marketplace Developments, LLC, spoke in support of rezoning this split-zoned lot and passed out copies of photographs taken several years ago to show that this property has always been a parking lot.

City Attorney Oast reminded City Council that if they rezone the property it can be used for any use allowable in that district.

Mayor Sitnick closed the public hearing at 7:55 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2698. This motion was seconded by Councilwoman Whitmire and carried unanimously.

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ANNEXATION PUBLIC HEARINGS

Planning & Development Director Scott Shuford opened the public hearing at 7:56 p.m.

Mr. Shuford said that the City of Asheville has initiated a multi-year annexation program. These hearings are the first phase of that program. Staff will begin bringing annexations to Council each year in accordance with a priority plan we expect to receive from our consultant in the near future. The public hearings tonight are on the Phase I annexation of six areas into the City of Asheville. He then went over the procedures on how these hearings would be conducted. First, he will provide background and general information about annexation, the annexation requirements of state law, how the City has followed these requirements in our annexation process, general information about the expected revenues, and the City's obligation regarding costs of service. After each public hearing is opened separately, a brief description will be given of the area and then the public will have an opportunity to speak regarding concerns that they may have about the area under consideration. This will enable us to address issues and questions more effectively and in a more organized fashion.

City Council will not be taking any action at this meeting to approve or deny these annexations. However, staff does request that Council indicate any needed adjustments to the services plan or to the areas covered by annexation so that they can incorporate those changes in the ordinances that will complete the annexation process. Adoption of those ordinances is scheduled for City Council's meeting on June 13, 2000.

Background and General Information

State law allows annexation by cities of 5,000 or more in population. Areas to be annexed must have specific urban characteristics – they must qualify under state law as urban areas – and our consultant, Benchmark Inc. is here to answer specific questions regarding these qualifications and how they apply to the areas under consideration for annexation. State legislative policy says that "municipal boundaries should be extended in accordance with legislative standards to include such areas" that exhibit these urban characteristics to provide high quality governmental services and to promote sound urban development. Additionally, state revenue sharing policies and practices assume that urban areas will grow through annexation. If we do not pursue such growth, we miss out on revenue sharing opportunities that are population-based (such as sales tax distributions) or miles of roadway (Powell Bill distributions).

Annexation by a city must follow a specific procedure and must insure that urban services are provided to the areas to be annexed in a timely fashion and at a level substantially similar to that provided to other areas within the city. The procedures that must be followed are:

- Adoption of a Resolution of Intent to Annex for each area – Adopted by Council on March 15, 2000;
- Approval of a Services Plan – Adopted by Council on March 15, 2000;
- Public Information Meeting –Held on May 2, 2000;
- Public hearing – Held tonight - May 23, 2000;
- Adoption of Annexation Ordinances – Set for June 13, 2000; and
- Effective Date of Annexation – June 30, 2001 - Please note that there is a one year period between the adoption of the ordinances and the annexation going into effect.

The Services Plan lays out the specific services that the City of Asheville intends to provide to the areas to be annexed and includes financial implementation information about these services. This Plan is very important from a legal standpoint as our courts have ruled that the central purpose behind the annexation procedure in the state statutes is to insure that in return for the added financial burden of municipal taxation, the areas annexed receive the benefits of all the major services available to other areas within the municipality. More significantly, it is important from an ethical standpoint for Asheville to fairly serve the areas it annexes and it is very clearly the policy of this City Council that this occurs.

Services covered in this plan include: (1) Police; (2) Fire; (3) Sanitation; (4) Street Maintenance; (5) Water; (6) Sewer; (7) Street Lighting; (8) Recreation Facilities and Services; and (9) Administration and Miscellaneous Services (e.g., governance by the City Council, administrative support by the City Manager and City staff, housing and building code services, planning and zoning services, community development services, legal representation and similar services).

The Services Plan provides estimates of revenues as well as expenditures necessary to insure that annexed areas receive a level of service comparable to other areas in the City. Estimated revenues include money from real property taxes, personal property taxes, state and local utilities franchise taxes, sales and use taxes, Powell Bill distributions, and the City recycling fees. These revenues total approximately $1.9 million per year.

Estimated annually-recurring expenditures by the City to serve the annexed areas include police, fire, sanitation, street maintenance and street lighting costs. These annual costs total approximately $248,000 per year. Additionally, the City will have capital costs to serve the annexed areas, including purchase of sanitation equipment, street paving, water and sewer line installation, fire hydrant and street light installation, and the upfit of a fire station. These capital costs total approximately $694,000.

He then summarized the service issues as they generally affect all the annexation areas. There are some specifics for some areas that will need to be discussed as we address each individual annexation area.

Police - In all of the annexation areas, we are proposing to provide police protection. We will accomplish this through adjusting the districts served by the various patrol groups. For this annexation phase, no additional staffing is needed, although there will be costs associated with increased vehicle miles traveled which will also affect our fleet replacement schedule. Our response times will not be negatively affected by these annexations and will not affect our Police Department's accreditation.

Fire - In all of the annexation areas, we are proposing to provide fire protection. We will accomplish this through one of three alternatives. First, because each of the areas to be annexed are currently served by one or more rural fire districts which levy a separate tax for their services, it is possible for the City to enter into good faith negotiations with these districts to have them continue to provide services on a contract basis, renewable on a five year term. We have been contacted by three of the rural fire districts expressing an interest in pursuing these negotiations. Second, we can provide City fire services by adjusting the districts served by the various fire stations. For this annexation phase, no additional staffing is needed, except in Annexation Area C – the Skyland area. Third, some combination of the first two alternatives is possible. Our response times will not be negatively affected by these annexations.

Sanitation - In all of the annexation areas, we are proposing to provide sanitation services. There are similar alternatives for providing this service as with the rural fire districts – we can enter into a contract with private haulers that serve the areas to have them continue their service. However, none of the companies have responded to our correspondence and we do not anticipate them continuing to serve the customers we will serve. We will have costs associated with the purchase of roll-out containers as well as the need to buy another automated packer vehicle. Redistricting will enable the annexation areas to be served without additional staffing.

We have heard some concern from the public regarding sanitation service. To ensure that there is no confusion: It is our intention under the Services Plan to provide the same level of service that City residents receive – curbside pickup of garbage and trash, plus recycling service. There is no fee for garbage and trash collection, but we do charge a recycling fee of $3.08 bimonthly. The City does not serve bulk containers like dumpsters; these will continue to be served by private haulers.

Street Maintenance - In all of the annexation areas, we are proposing to provide street maintenance services. These include streets currently maintained by NCDOT and private streets where the owners wish to have the City assume maintenance. We will work with NCDOT to determine which state-maintained streets should be turned over to the City. The state will continue to be responsible for major thoroughfares. For private streets, we will accept them upon request by the owners within one year of the effective date of annexation when:

- The street serves at least three occupied residences on property owned by separate persons.
- There is no reasonable alternative to accessing the property through publicly maintained streets.
- 100% of the property owners grant us sufficient right-of-way to serve their property for both street width and turnarounds, if needed.

Upon acceptance of the state or private street by the City, it will be placed on our street maintenance list in order of priority based upon our assessment of pavement conditions. No additional personnel will be needed to provide street maintenance services.

Water - In all of the annexation areas, we are proposing to provide water services for both water usage and fire protection. In order to provide this service, capital expenditures estimated at $403,810 will be needed. Only two annexation areas will require water line extensions or upgrades.

Sewer - In all of the annexation areas, we are proposing to provide sewer service in accordance with City policy and state law. Except for some locations in Annexation Area C – Skyland, sewer service currently is provided to all properties by MSD. In our discussion of Area C, the method of serving these properties through a septic system maintenance program will be covered.

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Street Lighting - In all of the annexation areas, we are proposing to provide street lighting along all public corridors in accordance with our practices elsewhere in the City.

Recreation Facilities and Services - In all of the annexation areas, we are proposing to provide the areas' residents, businesses and property owners with the same access to recreational facilities and service as other City residents.

Administration and Miscellaneous Services - In all of the annexation areas, we are proposing to provide the areas' residents, businesses and property owners with the same access to Administration and Miscellaneous Services as other City residents.

City Clerk Burleson then stated how and when notification was given to property owners in the affected areas, along with notification to the Buncombe County Board of Commissioners, the solid waste providers and the volunteer fire departments. In addition, on April 21 and 28, 2000, a notification was published in the Asheville Citizen-Times of the public information meeting, the public hearing, a notice of property owners' rights, a map and a description of the areas being considered for annexation.

C. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE CHUNNS COVE ROAD/PINEY MOUNTAIN ROAD AREA (AREA 2001-A)

Mr. Shuford opened the public hearing at 8:16 p.m.

Mr. Shuford said that Annexation Area A is located along Chunns Cove Road and Piney Mountain Road. It consists of 55.85 acres, and contains two establishments and no dwellings or persons. There are no service extensions or other service issues to report. Annexation of this area would close a gap in our City Limits along I-240.

Using the statutory standards statements from the Annexation Services Plan, Mr. Rick Cowick, representative of Benchmark, Inc., reviewed with Council how the area qualifies as an area acceptable for annexation under state law.

Mr. Dean Pistor, on behalf of Shelby Horton who is a property owner in the area but not in this area of involuntary annexation, stated that Mr. Horton would like to potentially voluntarily annex a portion of his property for a change in zoning. City Attorney Oast felt it would be appropriate for Mr. Pistor to discuss this voluntary annexation with City staff, noting that the City Council cannot condition the annexation on a particular zoning.

Mayor Sitnick closed the public hearing at 8:27 p.m.

D. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE AREA LOCATED NORTH OF U.S. HIGHWAY 70 BETWEEN RICEVILLE ROAD AND LOWER GRASSY BRANCH ROAD (AREA 2001-B)

Mr. Shuford opened the public hearing at 8:24 p.m.

Mr. Shuford said that Annexation Area B is located north of US 70 between Riceville and Lower Grassy Branch Roads. It consists of 195.15 acres, and contains six establishments, 242 dwellings and 689 persons. Annexation of this area would include the Veteran's Hospital area and the City would lose fire protection revenue once this property becomes part of the City. There are water service extensions required by this annexation which Mr. John Echeverri, Assistant Director of Engineering, will review. There are no other service issues to report.

Mr. Echeverri said that the Services Plan proposes an extension of a 6-inch waterline along Arnold Road, along with fire hydrants. All the lots are currently served by water, but the upgrade is to comply with the fire protection requirements.

Using the statutory standards statements from the Annexation Services Plan, Mr. Rick Cowick, representative of Benchmark, Inc., reviewed with Council how the area qualifies as an area acceptable for annexation under state law.

Ms. Lauronda Self, representing Parkway Vista Townhomes, passed out to Council a chart which breaks down their current services vs. what the City of Asheville will provide if they are annexed. She stated that they do not want to be annexed. She explained that they already pay a Townhome Association fee which provides them with most of the services. In addition, their Association fees are tax deductible. The current cost of a home with an assessed value of $75,000 is $1,267.50. After annexation, their cost will be $1,667.50. She said that the whole purpose of annexation is to provide services for the costs that people will have to pay when annexed, but the services provided by the City will not compensate them for the extra amount of tax they will have to pay if annexed.

Ms. Self said that police protection is very important to her, however, the area seems to be a low crime area. In addition, across the street from them is the City limits and she feels that regardless of whether they are in the City limits or not, the Asheville Police Department will respond to their needs.

Mayor Sitnick stated that City Council has to be sensitive to the Asheville taxpayers who are paying for the security Ms. Self described. Annexation is a way of spreading the burden in a more fair and equitable manner.

Mr. Shuford noted for the record that there were a number of people at the public information meeting on May 2 from Parkway Vista and none were in favor of the annexation.

Mr. James Profitt, President of Parkway Vista Homeowners Association, stated that the City of Asheville is asking them to pay additional taxes, but not receive any services.

Mr. Shuford said that at the May 2 information meeting, the Parkway Vista homeowners felt that the only benefit to them was police service. They feel they are not looking at much of a service enhancement. However, he reiterated that North Carolina law states that urban areas be in cities and this is an urban area. He said there will not always be areas where people who are served by the City are going to have a increase in their service as a result of annexation. But, there are so many other things that are important about a City and it is very difficult to put a dollar value on them.

Mayor Sitnick closed the public hearing at 8:49 p.m.

E. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE AREA LOCATED NORTH AND SOUTH OF LONG SHAOLS ROAD BETWEEN I-26 AND HENDERSONVILLE ROAD (AREA 2001-C)

Mr. Shuford opened the public hearing at 8:50 p.m.

Mr. Shuford said that Annexation Area C is a large tract generally centered on Lake Julian and Long Shoals Road. It contains a connection to the Asheville Regional Airport along I-26. It consists of 1,500.14 acres, and contains 32 establishments, 570 dwellings and 1,243 persons.

There are four service issues to report. First, annexation of this area would include the CP&L plant. The City has an agreement with CP&L that caps CP&L's franchise taxes at a certain level. Under this agreement, property taxes the City receives from CP&L are deducted from the franchise tax cap. Beginning in the year 2001, if and when the property tax exceeds the franchise tax cap, the franchise tax is fix at a fairly low maximum and CP&L is responsible for the entire property tax amount in addition. This agreement, therefore, affects the City's cumulative revenue stream received from CP&L.

Second, Annexation Area C contains several properties currently served by septic systems that are difficult to serve with sanitary sewer and their land use configuration may change as the surrounding area continues to urbanize and infrastructure is improved. State law allows cities the option of instituting a septic tank maintenance program in lieu of providing sanitary sewer. Given these service difficulties and land use uncertainties, we feel it is preferable to use this option in providing sewer service to these properties. Additionally, many of these properties are located close to Lake Julian and we believe having a regular septic system maintenance program will assist in improving or maintaining water quality in the lake. Staff recommends that there be no fee for this service.

Third, this area will require a fire station upfit and we will need to pursue additional staffing in the event we are unable to negotiate service responsibilities with the affected rural fire districts.

Fourth, there are water service extensions required by this annexation which Mr. John Echeverri, Assistant Director of Engineering, will review. There are no other service issues to report.

Mr. Echeverri said that there will be improvements in two particular areas. Along the Long Shoals Road corridor there was only one particular road that lacked fire protection. The City is proposing to extend a 6-inch waterline along State Road 3520 from Long Shoals all the way to the end of the pavement. The other area where major improvements will take place is the Haywood Road area and the Old Shoals Road area. We propose to extend a 6-inch waterline for fire protection purposes along Old Shoals from Haywood Road to basically the end of the pavement. We will also upgrade a small existing waterline on Old Shoals Lane to comply with current requirements. There will also be minor improvements along the Haywood Road area where we will extend the existing 6-inch waterline on Haywood Road to provide fire service protection for all the lots within that area.

Using the statutory standards statements from the Annexation Services Plan, Mr. Rick Cowick, representative of Benchmark, Inc., reviewed with Council how the area qualifies as an area acceptable for annexation under state law.

Mrs. Frances Briggs stated that it is the consensus of the area residents that want regular sewer service, not septic tank maintenance. They also asked if they live on a road that is not state maintained, but maintained by themselves, would they get garbage pick-up. Mrs. Briggs said that industries will be taxed heavily and jobs will be lost.

Public Works Director Mark Combs said that he visited the Old Long Shoals Road Extension and there is no turn-around and City vehicles can't travel on some portions of the gravel street that is there. There are considerable overhead branches that extend only 7-8 feet above the roadway. There are also several low utility wires that our vehicles can't drive under. There are some challenges for the City to provide any kind of service for them on that private street. Additionally, the road condition is very poor and we would require that those citizens give the City an affidavit holding us harmless for driving on those streets if they became worse for larger vehicles traveling on those streets for garbage pickup. The challenges are not impossible to overcome, but the homeowners need to work with the City for us to take over their maintenance and then eventually widen and bring that road up to City standards. Mr. Combs said that the City has liberalized their street acceptance policy for annexations to allow residents one year to get with the City and to dedicate the right-of-way to the City for the City's maintenance.

With regard to a form for water and sewer services to be turned into the City Clerk by 5:00 p.m. on May 30, 2000, Mr. Shuford explained that the form would need to be turned in only in a case where someone would want something that goes above and beyond what is called for in the Annexation Services Plan.

City Attorney Oast said that with regard to the agreement with CP&L, what is in the Annexation Services Plan is actually a Memorandum of Understanding that refers to the agreement. When the ordinances are brought to City Council for adoption, the Annexation Services Plan will be amended to include the actual agreement.

Mr. Shuford noted that on May 22, 2000, City staff met with a number of the industries in the Skyland annexation area. These businesses included Cutler-Hammer, Thantex, Custom Packaging, Medical Action Industries, CP&L, Welch Allyn and Hubble Inc. The information was presented to them regarding our annexation plans and they heard concerns from those industries regarding what they felt were the negative effects of annexation. Their chief concern was the fact that annexation would add an incremental burden to their cost of doing business. This increment, added to other increases, such as labor costs, other government requirements, supplier cost increases, etc., could decrease their ability to compete in today's worldwide market. While several businesses expressed some interest in incentive programs the City offers, none expressed support for annexation.

Ms. Mary Ann Quarngesser, resident on Long Shoals Road, stated that at the May 2, 2000, public information meeting not one property owner at that meeting was in favor of annexation

Mayor Sitnick closed the public hearing at 9:08 p.m.

F. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF RIDGEFIELD BOULEVARD AND OAK TERRACE AREA (AREA 2001-D)

Mr. Shuford opened the public hearing at 9:10 p.m.

Mr. Shuford said that. Annexation Area D is located on the east and west sides of Brevard Road south of Sardis Road. It consists of 205.65 acres, and contains 17 establishments, five dwellings and 13 persons. There are no service extensions or issues to report.

Using the statutory standards statements from the Annexation Services Plan, Mr. Rick Cowick, representative of Benchmark, Inc., reviewed with Council how the area qualifies as an area acceptable for annexation under state law.

Councilman Hay asked if one property owner challenges the annexation of his area, would the entire annexation area fail. City Attorney Oast said that it depends on the basis of the challenge.

Mayor Sitnick closed the public hearing at 9:14 p.m.

G. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF NEW LEICESTER HIGHWAY AREA (AREA 2001-E)

Mr. Shuford opened the public hearing at 9:14 p.m.

Mr. Shuford said that Annexation Area E is now opened. Annexation Area E is located on the east side of New Leicester Highway. It consists of 9.03 acres, and contains three establishments one dwelling and three persons. Its annexation would close a gap in our City Limits in this area. There are no service issues to report.

Using the statutory standards statements from the Annexation Services Plan, Mr. Rick Cowick, representative of Benchmark, Inc., reviewed with Council how the area qualifies as an area acceptable for annexation under state law.

Mayor Sitnick closed the public hearing at 9:15 p.m.

F. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF ROCKY RIDGE ROAD/WEDGEFIELD DRIVE AREA (AREA 2001-F)

Mr. Shuford opened the public hearing at 9:16 p.m.

Mr. Shuford said that Annexation Area F is now opened. Annexation Area F is generally located on the north and south sides Rocky Ridge Road west of Brevard Road. It consists of 7.08 acres, and contains three establishments and no dwelling or persons. There are no service issues to report.

Using the statutory standards statements from the Annexation Services Plan, Mr. Rick Cowick, representative of Benchmark, Inc , reviewed with Council how the area qualifies as an area acceptable for annexation under state law.

Mayor Sitnick closed the public hearing at 9:17 p.m.

Mr. Shuford asked City Council to consider one change to the Annexation Services Plan. City staff suggests a perpetual no fee for the septic tank maintenance program as long as the property remains in its current developed state.

Mayor Sitnick said that the date City Council will consider extending the corporate limits to these areas will be on June 13, 2000. The effective date of annexation, if the ordinances are adopted, will be June 30, 2001.

Mayor Sitnick closed the public hearings at 9:22 p.m.

CHANGE IN AGENDA

It was the consensus of City Council to consider the budget amendment regarding the Civic Center at this point in the meeting.

ORDINANCE NO. 2699 - BUDGET AMENDMENT FOR THE CIVIC CENTER

Civic Center Director David Pisha said that this is the consideration of a budget amendment, in the amount of $593,737, for the Civic Center.

It is apparent the Civic Center will need an additional transfer of funds in order to continue operations through June 30, 2000. Revenues for the fiscal year are now estimated to be $1,406,896 versus a budget amount of $1,737,000. Revenue estimates do not include any transfers already made by the City. Expenses are estimated to be $2,293,315, versus a budgeted amount of $2,082,078. A portion of the increased expenses for the year include electrical repair work.

The overall deficit for the year will be approximately $886,419. This includes the current budgeted transfer from the general fund of $292,682. Also included in the deficit figure is electrical repair work to the facility. The additional monies requested amount to $593,737.

City staff recommends City Council approve a budget amendment, in the amount of $593,737, for the Civic Center.

Mr. Pisha responded to several questions from Councilman Peterson.

Councilwoman Whitmire requested that the following two items be implemented beginning July 1, 2000: (1) a in-house marketing plan for the Civic Center that will promote the arena and Thomas Wolfe Auditorium; and (2) a bi-monthly update on the Civic Center finances.

City Manager Westbrook said that he would schedule the issue about an in-house marketing plan for the Civic Center on the July 18, 2000, City Council worksession.

Mayor Sitnick would like to explore the Civic Center being a regional responsibility.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Hay moved for the adoption of Ordinance No. 2699. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 237

IV. UNFINISHED BUSINESS:

A. REPORT ON THE FUTURE OF THE WNC REGIONAL AIR POLLUTION CONTROL AGENCY AND BOARD

Mayor Sitnick updated City Council on a meeting that she and Vice-Mayor Cloninger had with Buncombe County Chairman Tom Sobol and Buncombe County Commissioner David Young on the future of the WNC Regional Air Pollution Control Board and Agency. She said that the City Attorney and Mr. Siemens, attorney for the WNC Regional Air Pollution Control Board, have prepared a draft interlocal agreement. She then reviewed highlights of the draft agreement. In addition, she reviewed other items discussed at the meeting, in particular: protection for the employees of the Agency; the terms of the appointments to the Board; the Board being responsible for it's own organization, mainly it's appeal process; selection of the director; bookkeeping and financial, including fund balance, issues; whether the Board has the right to make their rules and regulations more stringent than Federal and State laws; formally appointing liaisons to the Board; and Clean Air Trust Fund and Trust Board issues. She said that a separate issue discussed was that City Council and the County Commissioners send a co-signed letter to the Governor asking him to eliminate the suit he has against the Environmental Protection Agency.

Mayor Sitnick noted that the final date to notify the Environmental Management Commission is June 1 and she asked if City Council would be willing to instruct the City Attorney to continue working with Mr. Siemens on a draft interlocal agreement.

Councilman Hay moved to authorize the City Attorney to proceed in negotiating an interlocal agreement with the Buncombe County Commissioners, as previously discussed, and to submit that draft agreement to the Environmental Management Commission prior to June 1, 2000, nothing that the draft agreement is subject to ratification by both governing bodies. This motion was seconded by Councilwoman Whitmire and carried unanimously.

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of May 5-11, 2000: Wayne D. Stoia (Civic Center), Richard Wagner (Water), Gregg McCoy (Water) and Gary Holmberg (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUIT

The City received the following Complaint on May 10, 2000, which is generally described as follows: R. J. Snodgrass v. John P. Miall and the City of Asheville. The nature of the proceeding is a small claims action for money owed from a Certificate of Occupancy inspection error in 1986 under the Minimum Housing Code.

This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:00 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – May 30, 2000
Reed Memorial Baptist Church
756 Fairview Road

7:00 p.m. - Community Meeting

Present: Mayor Leni Sitnick, Presiding; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor M. Charles Cloninger and Councilwoman Barbara Field

On behalf of City Council, Mayor Sitnick welcomed the official delegation from Asheville Sister City Saumur, France, and exchanged gifts.

Mayor Sitnick said that many citizens and residents of east Asheville have expressed concerns to Council members and City staff about the proposal to redevelop the old Sayles Bleacheries property with a shopping center, and have indicated a desire to address Council at this community meeting about those concerns. The proposal for the old Sayles Bleacheries site is a proposal for a conditional use permit. A conditional use permit may only be issued or denied after a public hearing held for that specific purpose, and Council may only base its decision to issue or deny the conditional use permit on the information presented at that hearing. Council may not consider information that it receives outside of that public hearing, including information presented at this community meeting. If you are concerned about the proposal for the old Sayles Bleacheries site, either in favor of or opposed to it, and wish Council to hear your concerns or receive other information that you wish to present, please come to the public hearing that will be held on the proposal, and present your concerns or information then. That public hearing is tentatively set for July 25. Please notify our City Clerk or City's Planning Department if you wish to receive written notification of the public hearing.

The following topics were raised by residents and addressed by City Council and City staff: Beechwood Road should be closed where it intersects with Swannanoa River Road with a cul-de-sac to eliminate the large amount of cut-through traffic; speeding on Crockett Lane; no sidewalks in Redwood Forest community; need for traffic to be on commercial thoroughfares, not residential streets; no more development in the area is needed; speeding in Beverly Hills community; Beverly Road and East Hawthorne is in need of repair; request to see plans for corner of Cedar Street and Fairview Road; closure of Liberty Street should be preceded by specific signage informing travelers of the change; signs should be placed on Sweeten Creek Road directing traffic to the Asheville Mall, Home Depot and River Ridge to I-40 rather than Fairview Road and signs should also direct travelers leaving those shopping areas to I-40; need for sidewalks from Oakley School to River Ridge shopping center; need to improve lighting at the bridge near Home Depot; need improved stoplights at the intersection in front of Home Depot; need for safer sidewalks in the vicinity of the Library; need for a "No Thru Trucks" sign on either end of Fairview Road; vacant and deteriorating houses at 155 Onteora Boulevard, store at the corner of Raleigh Road and Liberty Street, 10 Westview and 82 Crayton Road; a request for a "No On-Street Parking" sign on Stoner Road; need for benches and trash cans to be placed at bus stops and Arrowood Apartments; better bus service in evening; bike lanes; need to repair fire hydrant in front of 60 Liberty Street; request to close Reservoir Road and use it for bike traffic only; sewerage system problem behind Eastview Apartments; concern about emergency response times on Tunnel Road when traffic is heavy; no police enforcement of "No Large Trucks" signs on Fairview Road; request to leave Creighton Road open for a period of time after the new interchange is opened to see where traffic flows in order to determine if there is a need to close Creighton Road; and concerns over development review process.

RESOLUTION NO. 00-87 – RESOLUTION RATIFYING INTERLOCAL AGREEMENT FOR FORMATION OF LOCAL AIR POLLUTION CONTROL PROGRAM AND AGENCY

City Attorney Oast reviewed with City Council the most recent draft Interlocal Agreement with Buncombe County on the WNC Regional Air Quality Control Agency. He said that Buncombe County, earlier in the day, had adopted an Interlocal Agreement. He then reviewed with Council the differences in the City's draft of the Agreement and in the County's adopted Agreement. A lengthy discussion occurred on several points and issues the City and the County have come to agreement on and their remaining differences.

Mr. Alan McKenzie (County appointment to the current WNC Regional Air Pollution Control Board but speaking only as an individual) and Mr. Arlis Queen (City appointment to the current WNC Regional Air Pollution Control Board but speaking only as an individual) both felt that the Agreement Buncombe County adopted was an acceptable and workable agreement. They urged City Council to adopt the Agreement Buncombe County adopted earlier in the day.

More discussion occurred regarding the County's adopted Agreement and the City's draft Agreement.

As a result of the discussion, City Attorney Oast then read the following resolution ratifying an interlocal agreement for formation of local Air Pollution Control Program and Agency: WHEREAS, the City of Asheville has the authority pursuant to G.S. 160A-461 et seq., and G.S. 143-215.112(c)(3) to enter into an interlocal agreement with other units of local government to establish a regional program for air pollution control and to form an independent agency to administer said program; and WHEREAS, the City of Asheville and Buncombe County have been negotiating an interlocal agreement for a local air pollution control program to supersede and replace the interlocal agreement that established the Western North Carolina Air Pollution Control Agency, which is set to expire on June 30, 2000, as a result of the withdrawal of Haywood County from said agreement; and WHEREAS, the City desires to enter into an interlocal agreement with Buncombe County and to submit said agreement to the appropriate agencies of the State of North Carolina for approval as provided by law; NOW, THEREFORE, BE IT RESOLVED BY THE ASHEVILLE CITY COUNCIL THAT the interlocal agreement attached hereto as Exhibit A be and the same is hereby ratified, and that the Mayor be and is hereby authorized to execute said agreement, subject to the approval of the City Attorney.

Councilman Worley moved to adopt Resolution No. 00-87. This motion was seconded by Councilwoman Whitmire and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 35

Mayor Sitnick adjourned the meeting at 10:09 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - June 6, 2000 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Advertise for Upset Bids for 135 Cherry Street

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer from Neighborhood Housing Services of Asheville, Inc. (NHS) for the purchase of 135 Cherry Street in the Head of Montford Redevelopment Project in the amount of $105,000.00.

135 Cherry Street is an Office zoned parcel located on Cherry Street about 150 feet east of Montford Avenue facing the Billy Graham Freeway. The property comprises a 0.16 acre lot improved with a 1,984 sq. ft. two story residential type structure along with a contiguous 0.046 acre parking lot encumbered by a non-exclusive parking easement for the adjoining property and including a non-exclusive access easement across the adjoining property. The Fair Reuse Value for the property is $105,000.00. The proposed use for the property is Office.

NHS has submitted a bid to purchase 135 Cherry Street in the amount of $105,000.00. NHS is the current tenant and plans to continue to occupy the building for the immediate future. The property is in good condition having been rehabilitated by NHS at the time of occupancy and no additional improvements are planned.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

Withdrawal of Dedication of Oak Terrace

Summary: The consideration of a resolution finding that a portion of the right-of-way known as Oak Terrace Drive is not part of an adopted street plan.

According to N. C. Gen. Stat. sec. 136-96, if a right-of-way is not utilized within 15 years of dedication, it can be abandoned through a recording of a Declaration of Withdrawal.

To proceed with this process, Matney & Associates, on behalf of Sweeten Creek Realty, LLC, which is the successor in interest to the original developer of Stadley Mountain Park where Oak Terrace Drive is located, has requested that the City of Asheville verify if the specific rights-of-way are or are not part of the City's adopted street plan. The statute requires that the City adopt a resolution stating whether the right-of-way to be abandoned is or is not part of a proposed street plan.

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Public Works Department staff has determined that the right-of-way known as Oak Terrace Drive, beginning at the Northwest corner of Parcel Identification Number 9626-11-66-6108, and ending at the Southwest corner of Parcel Identification Number 9626-11-66-6422 as shown on plat book 12, page 7 is not part of an adopted street plan and is not a City maintained right-of-way.

City staff recommends City Council adopt the resolution finding that a portion of the right-of-way known as Oak Terrace Drive is not part of an adopted street plan.

Budget Amendment re: Youth Employment Services! 2000

Summary: The consideration of a budget amendment in the amount of $14,320 for an appropriation from the Community Foundation of Western North Carolina in the New Horizon Grant Program.

The City of Asheville applied for funds in February 2000 for the New Horizon Grant Program from the Community Foundation of Western North Carolina. The grant was recently awarded in the amount of $14,320 and designated to assist with operational costs of the Youth Employment Services! 2000.

City Council authorized Parks and Recreation on February 8, 2000 to apply for and enter into an agreement with the Community Foundation of Western North Carolina for a grant for $7,000. Since then, more elements were added to the project which increased the amount to $14,320.

Parks and Recreation is responsible for the management and operation of YES! 2000. The program is a result of a collaborative partnership between the City of Asheville, the Community Foundation, Job Link, the Asheville Housing Authority, and the Chamber of Commerce.

The Parks and Recreation Department recommends City Council approve the budget amendment in the amount of $14,320 to increase the budget for YES! 2000.

N. C. Dept. of Transportation Agreement and Budget Amendment for TEA-21 – Urban Trail

Summary: The consideration of a resolution authorizing the City Manger to enter into an agreement with the N. C. Department of Transportation for pedestrian streetscape improvements along the Urban Trail, and associated budget amendment, in the amount of $422,934.

The 2000-2006 Transportation Improvement Program (TIP) identifies the Urban Trail as the recipient of Transportation Equity Act for the Twenty First Century (TEA-21) funds. The project area will be defined to the path of the Urban Trail with a total project cost of $422,934. The grant will provide a reimbursement to the City of up to eighty percent (80%) for a maximum of $337,234 for the project. TEA-21 guidelines stipulate a minimum match of twenty percent (20%). The City's matching contribution will be $85,700, $40,000 of which is currently budgeted in the Fiscal Year 1999-00 budget, with the balance being supplemented by an appropriation from contingency.

Upon completion of the project and review, the City will be reimbursed for expenses as outlined in the agreement.

City staff recommends City Council (1) adopt a resolution authorizing the City Manager to enter into a municipal agreement with N. C. Department of Transportation, and (2) adopt a budget amendment, in the amount of $422,934.

Street Acceptance of Walden Ridge Drive

Summary: The consideration of a resolution to accept Walden Ridge Drive as a public right-of-way and City maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Walden Ridge Drive is a newly constructed street serving office and institutional uses. The street has been constructed and inspected in accordance with the City of Asheville Standard Specifications and Details Manual. The street is located off of Hendersonville Road. The street is a cul-de-sac that is approximately 755 feet long.

Following City Council's approval of this resolution, Walden Ridge Drive will be added to the official Powell Bill list.

Staff request City Council accept Walden Ridge Drive as a public right-of-way and City maintained street.

Budget Amendment re: Transit Services

Summary: The consideration of a budget amendment, in the amount of $117,710 to reflect additional revenue and offsetting expenses in the Transit Services Department budget.

The City of Asheville received additional funds from the state for the operation of Routes Six (Airport) and Seven (Enka-Candler). The City has also received funds from the Federal Government designated for capital projects (Bike Racks). Also revenue beyond the current budgeted amount was received from the sale of advertising, including a past due payment for advertising from Fiscal Year 1998-99. Additionally, several older buses were sold at auction during Fiscal Year 1998-99 and the revenue from that sale was not recognized in the current budget.

Offsetting expenses include some small adjustments to various administrative line items. The bulk of the offsetting expenses is reflected in the operating budget line item. This represents the increased cost of fuel, and the operations of routes Six and Seven funded by the state New Services grant.

City staff recommends City Council adopt the budget amendment, in the amount of $117,710, to reflect additional revenue and offsetting expenses in the Transit Services Department budget.

Contract with McGill Associates for the Survey, Design and Construction Documents for the W. T. Weaver Roadway and Greenway Project

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with McGill Associates, P.A., to prepare design and construction documents for the W.T. Weaver roadway and greenway (Phase II) improvements.

In 1999, the City received the opportunity to use Transportation Improvement Funds from the North Carolina Department of Transportation (NCDOT) to construct Phase II of the W.T. Weaver greenway. In order for this project to be eligible for the grant, detailed construction plans must be completed according to the NCDOT guidelines. Staff solicited costs for the design of the roadway and greenway (according to NCDOT guidelines) from Genesis Group, who were currently under contract for the conceptual plans for the greenway. The costs for design significantly exceeded staff's expectations. Staff then solicited proposals from McGill Associates to perform the work.

The contract with McGill Associates consists of surveying, preparing construction drawings and construction documents for roadway improvements and greenway installation. The scope of the roadway design is to create a round-about at W.T. Weaver and Barnard Avenue (also known as Edgewood Road Extension.) This entrance will become the main entrance to the University of North Carolina – Asheville (UNC-A). The fee for the project is based on an hourly rate plus allowable expenses, not to exceed $91,750.

Plans should be completed by the middle of August with construction beginning early fall 2000.

Staff has coordinated this project with UNC-A staff and the neighborhood.

City staff recommends City Council authorize the City Manager to sign a contract with McGill Associates, P.A. to prepare design and construction documents for the W.T. Weaver roadway and greenway improvements.

Vice-Mayor Cloninger noted that when this matter comes up for consideration at the next formal meeting, he would ask that it be pulled from the Consent Agenda due to a conflict of interest.

Contract for Conceptual Design and Opinion of Cost for Water Maintenance Complex Renovations

Summary: The consideration of a resolution confirming the award by the Regional Water Authority of a contract with Padgett & Freeman Architects, P.A., for conceptual design and an opinion of cost for renovating a portion of the Old Water Maintenance Building for the Water Resources Department.

In January 2000, the Water Resources staff presented to the Regional Water Authority a list of the most critical capital needs of the Water System. Among those needs identified was the renovation of the Water Maintenance facility on South Charlotte Street. The existing facility includes a prefabricated metal building currently housing the offices of the Water Maintenance Division, surrounded by a parking area for Division employees as well as the parking for the heavy equipment and service trucks which are used in the maintenance of the Water Distribution system. The metal building was built in the early 1970's and is in poor condition. The building was nearly condemned in 1993 (temporary repair was completed) due to a failure of a section of the roof after a large snowstorm.

Staff has performed a review of the entire facility to determine the best approach to take to renovate the facility. Problems which have been identified include the following: (1) the metal building must be either extensively renovated or abandoned in the near future due to its condition; (2) the site does not have sufficient space for parking for the construction equipment, service vehicles, and provide adequately for employee parking; (3) the site is surrounded and there is no room for site expansion, except for a small grassy area between the current employee parking area and Charlotte Street; and (4) Water Resources Administration and meter reading are located in City Hall but interact regularly with the Maintenance Division.

As part of the staff survey, the staff reviewed the current space allocation of the Old Water Maintenance Building, which is owned by the City of Asheville and is on the same site. About one-third of the floor area of this building is being used by the Asheville City Schools, but the remaining area is available with the relocation of some storage area being used by City Purchasing. The staff has determined that it is feasible to effectively combine Water Administration, Meter Reading, and Water Maintenance in the available space in the Old Water Maintenance Building, and combined with the demolition of the metal building, there will be adequate parking space. Given the high cost of land to develop a site elsewhere, and the need for Water Maintenance to remain close to the City Warehouse and Fleet Maintenance, the development of the Old Water Maintenance Building is the most cost-effective concept.

The recommended Water Fund budget for Fiscal Year 2000-2001 includes a recommendation that an $11.3 million revenue bond sale be held in early 2001. A sum of $1.0 million of the total is tentatively assigned to this project. At the present time, there is a need for a conceptual architectural plan to be developed to confirm if the concept of using the Old Water Maintenance Building will provide the present and future needs of the Water Resources Department and to provide a more detailed preliminary cost estimate for the upcoming revenue bond application.

Padgett and Freeman Architects, P.A., are already very familiar with the site, having been selected by the City of Asheville through an extensive consultant selection process in September 1996 for the renovation of the space now occupied by the Asheville City Schools. Padgett & Freeman's knowledge of the Old Water Maintenance Building, including the knowledge of the building, structure, plumbing, mechanical and electrical systems and capabilities, as well as the site and its stormwater conditions, allow Padgett & Freeman to offer the Authority economies in developing the conceptual plan for Water Resources. In addition, our review of their performance in renovating the area for the school was excellent. Staff has negotiated a fee not to exceed $17,150 to develop a conceptual floor plan, overall site plan with parking layout, and a budget opinion of cost to complete the project.

The Regional Water Authority approved award of a professional services contract to Padgett & Freeman, P.A., of Asheville, North Carolina in an amount not to exceed $17,150, on May 16, 2000.

City staff recommends City Council confirm the award by the Regional Water Authority of a professional services contract to Padgett & Freeman, P.A. of Asheville, North Carolina in an amount not to exceed $17,150.

Contract Award to Woolpert for Azalea Road Feasibility Study

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Woolpert, LLP, to prepare Phase I of a feasibility study for the proposed Azalea Road development.

In 1999, a task force was created to evaluate the Azalea Road site. The direction of the task force was to make a recommendation to City Council as to whether the property should be purchased by the City for the primary uses a beneficial fill site and soccer fields. The task force consists of City staff, area residents and other interested stakeholders. Prior to making the recommendation to City Council on the property, the task force has recommended that Phase I of a feasibility study be completed to evaluate critical issues.

Staff developed a Request for Proposals (RFP) to select a consultant to prepare the feasibility study and design of the site. The RFP was completed in December 1999 and proposals were received in February 2000. Five firms submitted proposals. The selection team reviewed the proposals and narrowed the list to three firms: Woolpert, Vaughn and Melton, and MA Engineers. Interviews were held in March 2000 and the selection team recommended Woolpert, LLP, based upon qualifications.

Phase I of the feasibility will evaluate the following issues: (1) floodplain/floodway regulations; (2) beneficial fill operations; (3) traffic impact analysis; (4) utility investigation; (5) cost benefit analysis; and, (6) wetlands evaluation. The costs of Phase I is $86,262.00.

If Phase I of the feasibility study indicates that the property is suitable for the uses described above, staff will request that City Council authorize the City Manager to sign a contract with Woolpert, LLP, to complete Phase II of the feasibility study and possibly the design of the site.

Woolpert, LLP proposes to use three sub-consultants in the project. One of the three are certified minority or women-owned businesses.

Staff recommends that City Council authorize the City Manager to execute a contract with Woolpert, LLP, to prepare Phase I of a feasibility study for the proposed Azalea Road development.

Discussion occurred regarding prior feasibility studies and the use of those studies with regard to this project.

Councilwoman Whitmire asked for a report on the amount of money spent to date by the City on this project. Parks and Recreation Director Irby Brinson said that $80,000 was spent for the survey and $10,000 for the option. He stated that he would put this information in a report form for Council.

Donation to Police K-9 Unit

Summary: The consideration of a resolution authorizing the City Manager to accept a donation from the Ingles Market Inc. and Milk-Bone of Nabisco Inc. and to adopt an associated budget ordinance amendment, in the amount of $5,000.

Ingles Market Inc. and Milk-Bone of Nabisco Inc. have donated $5,000 to support the Asheville Police Department's K-9 Unit. The funds are intended to provide training for two K-9 officers and their canines to enhance and improve their skills in providing police services to the citizens of Asheville.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to accept the donation; and (2) a budget ordinance amendment, in the amount of $5,000, to appropriate the funds in the Police Department's operating budget.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

BUDGET REQUEST FOR THE BUNCOMBE COUNTY ECONOMIC DEVELOPMENT COMMISSION

Mr. Ernest Ferguson reviewed with Council the history of the Buncombe County Economic Development Commission (EDC). He said that it was established in 1994 to stimulate private sector investment, economic growth and job creation within Buncombe County. It creates a focused effort to assist existing industry and to recruit new business and industry, which will have a positive impact on the economic health of the community. Mr. Ferguson briefed Council on the impact of the EDC on the community along with existing business and industry. He then reviewed the members of the Commission as well as the funding request for Fiscal Year 2000-01. The EDC is request the City of Asheville budget $50,000 which will allow them one voting member on the EDC.

Discussion surrounded the difference between what the EDC is doing and what the Chamber of Commerce is doing.

Councilwoman Field voiced concern about comments made by some EDC Board members and staff which publicly oppose major City policy.

Vice-Mayor Cloninger asked if the City of Asheville could have two voting members on the EDC rather than one – noting that one more member of the EDC would bring the total to 10 which may result in a tie vote in some instances. Mr. Ferguson said that he would take that request to the EDC Board and try to let City Council know before their next formal meeting on the budget on June 13, 2000.

Councilman Hay wanted to be assured that the $50,000 would be directly tied into some specific goal, activity or project that would fit into the City's sustainable economic development plan. He suggested that the money be allocated in the budget with the details to be worked out later. If no meaningful understanding could be worked out, then that money would be available for another use.

AUTHORITY TO EXECUTE NEW LEASES TO EXISTING TENANTS AT 5, 7-1/2, 9, 11 AND 13 BILTMORE AVENUE PRIOR TO DISPOSITION OF THE PROPERTIES

Mr. Ed Vess, Field Services Coordinator, said that this is the consideration of a resolution authorizing the negotiation of new leases to existing tenants of redevelopment properties at 5, 7-1/2, 9, 11 and 13 Biltmore Avenue prior to disposing of the properties.

The properties at 5, 7-1/2, 9, 11 & 13 Biltmore Avenue were acquired as part of the Pack Plaza Redevelopment Project. They are currently leased to commercial and non-profit tenants as retail and office space. The Annual Action Plan for Housing and Community Development approved by City Council on May 9, 2000, proposes disposition of the properties during Fiscal Year 2000/2001.

Although the properties are fully occupied at this time, all of the current leases expire on or before August 31, 2000. Advice from an MAI appraiser indicates that offering each of the current tenants a market rate lease would be appropriate as a first step towards marketing the properties. A lease term of three years would provide a purchaser with an assured income stream, while not significantly encumbering the property in case the purchaser desires eventually to occupy it. It would also enable the existing tenants to plan for relocation. The new monthly rents with incremental annual increases are estimated as follows:

Address (Area in sq ft.)	7/1/00 - 6/30/01	7/1/01 - 6/30/02	7/1/02 - 6/30/03
5 Biltmore Ave. (4,464)	$5,200.00	$5,400.00	$5,600.00
7-1/2 Biltmore Ave. (600)	$625.00	$650.00	$680.00
9 Biltmore Ave. (2,070)	$2,400.00	$2,500.00	$2,600.00
11 &13 Biltmore Ave. (4,141)	$4,800.00	$5,000.00	$5,200.00
8 S. Lexington (17 parking spaces)	$340.00	$350.00	$365.00

Approval of the resolution will authorize staff to negotiate market rate leases with the current tenants at 5, 7-1/2, 9, 11 & 13 Biltmore Avenue for a period not to exceed three years and then to offer the properties for sale through the bid and upset bid process.

Staff recommends adoption of the resolution.

Mr. Vess noted that funds generated by the sale of these properties have tentatively been allocated to help fund eight Community Development Block Grant projects.

Mr. Vess noted that Habitat for Humanity has asked that the City proceed under a different statute that would allow them to purchase 9, 11 and 13 Biltmore Avenue without going through the upset bid process. However, proceeding under this statute would require restrictive covenants to be placed on the property which would mean that the ownership of the property would always have to be by a non-profit organization. Staff is not supportive of this request in that the property should be sold through the upset bid process on the open market without restrictive covenants in place. To do what Habitat is requesting would reduce the fair market value of the property by approximately 50%.

After discussion between Councilman Hay and City Attorney Oast about the reading of the statutes, Councilman Hay requested that 9, 11 and 13 Biltmore Avenue be deleted from consideration at this time and to have staff work with Habitat for Humanity for the sale of properties without restrictive covenants.

Mr. Lew Kraus, Habitat for Humanity, stated that Habitat has been working with the City for the past two years in trying to find a way to buy this building without having to go through the upset bid process. Information was given to them by the City of a statute that would allow them to do this. The City then sent them the information including the restrictive covenants. He said they do understand the restrictive covenants and that they do, in fact, reduce the market value of the property. Habitat understood the original appraisal of $400,000 from two years ago. Habitat is willing to entertain talking in those terms with the City, but they are not willing to entertain that with restrictive covenants attached. They are prepared to make a fair market value offer on this property with the covenants attached with the full understanding that it remains as a use of a non-profit.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ENACTMENT OF GROSS RECEIPTS TAX ON RENTAL VEHICLES

Budget Director Ben Durant said that this is the consideration of a resolution establishing a gross receipts tax on rental or leased vehicles to replace lost property tax revenue resulting from the General Assembly's recent repeal of the property tax on leased on rented vehicles.

On May 17, the General Assembly passed Senate Bill 1076 which repealed the property tax on leased or rented vehicles. Prior to the enactment of this legislation, municipal and county governments had the authority to levy property taxes on short-term leased or rented vehicles. Senate Bill 1076 now excludes these vehicles from the property tax base. According to information provided by the Buncombe County Tax Department, the City of Asheville will lose approximately $55,000 in property tax revenue with enactment of this new law based on a current property tax rate of $.52.

Senate Bill 1076 does, however, allows municipal and county governments to replace the lost property tax revenue with a tax on the gross receipts of companies operating leased or rental vehicles. Each municipal and county government must pass a resolution establishing the

gross receipts tax for their districts. Municipal and county governments can tax leasing companies at one and one-half (1 ½) percent of gross receipts upon adoption of a resolution.

Buncombe County staff is recommending a resolution in June authorizing the County to tax the gross receipts of leasing companies at one and one-half (1 ½) percent of gross receipts to replace lost property tax revenue. Buncombe County recommends that all municipalities authorize the one and one-half (1 ½) percent gross receipts tax. Enactment of the gross receipts tax will allow the City of Asheville to replace the projected $55,000 loss in property tax revenue.

City staff recommends City Council adopt a resolution establishing a gross receipts tax on leasing companies for leased or rented vehicles.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RESOLUTION NO. 00-88 – RESOLUTION AMENDING THE INTERLOCAL AGREEMENT REGARDING LOCAL AIR POLLUTION CONTROL PROGRAM AND AGENCY

City Attorney Oast outlined the amendments as follows: (1) the name of the agency is changed to "Western North Caroling Regional Air Quality Agency;" (2) the agreement shall be effective "upon the later of July 1, 2000, or the date of certification by appropriate State agencies;" (3) with regard to finances, "the Agency's annual budget shall reflect and maintain a fund balance at least equal to 8% of the Agency's total annual operating budget;" and (4) with regard to the Clean Air Community Trust, "the City of Asheville will name two trustees to the Trust Board, and Buncombe County will name three trustees, including Professor Rick Maas, who shall be the convening and the initial chair of the Trust Board." In addition, "...the initial board of trustees shall unanimously elect two additional persons to serve on the board of trustees and the entire Board shall elect officers, except for the initial chair whose appointment is provided for above. Terms of the trustees will be for three years, and no person may serve more than two consecutive terms. Terms of officers will run concurrent with their terms as trustees."

Councilman Worley questioned the three year term of the Chair and wondered if the Chair term should be annually.

Vice-Mayor Cloninger moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Peterson and carried unanimously.

City Attorney Oast then read the resolution amending the Interlocal Agreement regarding the local air pollution control program and agency.

Mr. Jack Fobes spoke in favor of the amendments to the Interlocal Agreement.

Vice-Mayor Cloninger moved to adopt Resolution No. 00-88. This motion was seconded by Councilman Peterson and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 40

At 4:55 p.m., Mayor Sitnick adjourned the worksession to reconvene in the Council Chamber at 5:00 p.m.

PUBLIC HEARING ON THE 2000-01 ANNUAL OPERATING BUDGET AND CAPITAL IMPROVEMENTS PROGRAM

Mayor Sitnick opened the public hearing at 5:05 p.m.

Budget Director Ben Durant said that this public hearing was advertised on May 26 and June 2, 2000. He summarized the proposed budget and the changes that took place subsequent to the initial presentation. The budget was distributed to City Council on May 12, 2000, and on May 18, 200, a budget worksession was held. A special budget worksession on affordable housing was held on May 30, 2000. Adoption of the budget is schedule for June 13, 2000. The budget that was originally presented to City Council included a $0.2 tax rate increase to provide additional funding for an enhanced street maintenance and repair program. That tax rate which was proposed was $.54 per $100 of assessed valuation. During subsequent budget worksessions, revisions were made to the budget and City Council requested staff to add an addition $.02 for parks and recreation capital projects and for affordable housing initiatives. The budget at this time includes a tax rate of $.56 per $100 of assessed valuation compared to a current tax rate of $.52.

Vice-Mayor Cloninger requested that the current budget of $65,000 for traffic calming measures be increased to $100,000 and explained where the additional $35,000 could come from.

Councilman Hay explained his request that standing identified events at the Civic Center be exempt from paying the proposed increased set up and take down charges in the arena during hockey season. Mr. Durant said that the waiving of those fees will result in a loss of approximately $40,000 and staff will need direction from City Council on how to make up that loss.

Councilwoman Whitmire recommended funding the Buncombe Economic Development Commission not their requested funding of $50,000, but only $25,000. She then suggested $20,000 be allocated to the YWCA and $5,000 to the WNC Historical Association.

Councilman Peterson recommended $25,000 be allocated to the WNC Historical Association and approximately $20-25,000 to allocated to the YWCA.

It was suggested and agreed upon by Council that outside agency funding requests at one time during the next formal meeting when the budget is adopted.

The following individuals spoke in favor of the City Council establishing a housing trust fund:

Ms. Mimi Cecil, representing the Hospitality House
Mr. Alan Thornburg, speaking on behalf of the Hospitality House
Ms. Christy Carter, west Asheville resident and employee of Hospitality House
Mr. Richard Genz
Ms. Amy Ray, speaking as an individual but staff attorney at Pisgah Legal Services
Mr. Gene Bell
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Mr. Walter Plowie, member of the Carolina Real Estate Investment Association
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Ms. Joyce Harrison, speaking on behalf of the Homes for Asheville-Buncombe Task
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Ms. Beth Lazer, Chair of the Public Access Channel Commission, wanted to be assured, and was assured by City Manager Westbrook, that the $340,000 collected from InterMedia as a result from the franchise agreement, will be available for use by the Public Access Channel Commission when they are ready to purchase equipment.

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Ms. Beth Lazer, Chair of the Public Access Channel Commission, wanted to be assured, and was assured by City Manager Westbrook, that the $340,000 collected from InterMedia as a result from the franchise agreement, will be available for use by the Public Access Channel Commission when they are ready to purchase equipment.

Councilwoman Whitmire wanted to consider the $60,000 request from the Educational Access Channel Commission when the budget adoption is discussed next week.

The following individuals spoke in support of allocating funds to the WNC Historical Association to go toward the purchase of the former Biltmore High School into a Museum of Western North Carolina with will be devoted to the traditions, cultures and history of the region:

Mr. Kevin Westmoreland, representing the Biltmore School Alumni Association
Ms. Rebecca Lamb, Executive Director of the WNC Historical Association
Ms. Joanne Grimes, President of the WNC Historical Association
Mrs. Roger James, representing the Preservation Society of Asheville

Mr. Bob Stewart, President of the Beaverdam Run Condominium Association, urged City Council to continue its financial support of the Reems Creek Fire Station. He stressed that the community does not want to substitute the excellent service they receive from the Reems Creek Fire Station for service by the City of Asheville Fire Station No. 7 located on Merrimon Avenue.

Interim Fire Chief Robert Griffin explained that the contact in place with the Beaverdam Volunteer Fire Department was enacted five years ago as a result of annexation. State law requires cities to contract with the volunteer fire departments to replace their loss income for a period of five years. During that five year term, the volunteer fire department has the opportunity to adjust their budget, etc., to offset the loss of revenue. We have responded, along with the Beaverdam Volunteer Fire Department, to all calls in the City. Once the contract expires at the beginning of August, Chief Justice of the Reems Creek Fire Department, who provides the management for the Beaverdam Fire Department, has assured him that a mutual response pact will be drawn up that will include the County as well as the City for certain types of calls meeting criteria that will benefit the citizens of the County as well as the citizens of the City.

Mr. Gene Rainey, President of Our Next Generation, requested City Council to appropriate a one-time allocation of $5,000 to Teen Work. He explained that the program is to purchase five houses in the affordable range within the City limits of Asheville. He hope that this would be considered part of the affordable housing aspect of the budget. The houses will be refurbished by teenagers under the mentorship of a contractor.

Mr. Mickey McHaffee, representing Peacemakers, urged City Council to examine the budget carefully for places where cuts can be made. Salaries of some City employees continue to rise, however, the average annual wage in Asheville is under $25,000.

Ms. Shirley Dozier passed out a letter to Council which noted that she has not received a response from City staff regarding property at the Head of Montford. She requested the Mayor order them to respond to her by a date certain. She also said that a list of names and addresses were taken at a City Council meeting of race car fans and their families. She asked if those people were threatened because they did not show up at a protest meeting.

Councilwoman Whitmire responded that she was the only Council member who saw the names and addresses of those race fans and those were for her records only. She did not threaten anyone.

Mr. Chris Peterson, representing Citizens for Accountable Government, spoke in opposition of the 5% tax increase. He felt that City Council continues to overspend. He felt that City Council needs to cut 10% from the $83 Million budget. He felt Council should not allocate any money to non-profit organizations and instead allocate that money to streets, sidewalks and the water system. He made several suggestions on how the City could get out of their deficit, some being, but not limited to, not build the parking deck in the Grove Arcade area, get out of the business of the Civic Center, raise bus fares and cut routes, and implement a hiring freeze.

Mr. Fred English felt the Civic Center should be closed and the City should get out of the real estate/housing business. He felt residents should not have to pay to park and that's the reason people shop at the Malls and not downtown. He also noted that water bills continue to rise.

Ms. Holly Jones, Executive Director of the YWCA, asked City Council to appropriate funds to on-going program support to the YWCA because in terms of the strategic goals of the City, the YWCA is a true investment in the City.

Ms. Laurie Carroll, participant in a the YWCA program, spoke in support of the YWCA and their programs.

Mr. David Barker, President of the North Asheville Little League, spoke in favor of the one cent tax increase for parks and recreation. He expressed the need for ballfields in the north section of town.

Mr. Wayne Adams, Executive Director of Beverly Health Care of Asheville on Beaverdam Road, urged City Council to not discontinue the agreement with the Reems Creek Fire Station.

Mr. Steve Rasmussen and Ms. Dawn Humphries, representing Community Compassion, said that in the course of their advocacy work for compassion towards the medical and industrial use of marihuana and hemp, they raised questions regarding the City's Police Department budget, in particular the Metropolitan Enforcement Group. They feel tax dollars should go towards housing instead of harassing people to find drugs.

Ms. Ruth Summers, Executive Director of the Southern Highland Craft Guild, gave statistics of the large amount of economic benefit the Guild brings to the City of Asheville. She urged City Council to not raise fees from long-term users of the Civic Center.

Mayor Sitnick closed the public hearing at 7:08 p.m.

Mayor Sitnick said that City Council will consider adoption of the budget and capital improvements program at its regular meeting on June 13, 2000.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:12 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

211

Tuesday - June 13, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry M. Whitmire; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Peterson gave the invocation.

ADDITION TO THE AGENDA

Vice-Mayor Cloninger asked that an issue regarding the Public Access Channel Commission be added under "Other Business."

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JUNE 25-30, 2000, AS "WORLD BOTANIC GARDENS WEEK"

Mayor Sitnick read the proclamation proclaiming the week of June 25-30, 2000, as "World Botanic Gardens Week" in the City of Asheville. She presented the proclamation to Mr. Gerry Hardesty and Mr. George Briggs, who briefed City Council on some activities taking place during the week.

B. ANNUAL SAFETY AWARD FROM THE N.C. PUBLIC TRANSPORTATION ASSOCIATION

Transit Director Bruce Black said that the Asheville Transit System was the recipient of the annual safety award for Urban/Small Urban Fixed-Route Systems With Nine to Twenty Two Buses from the North Carolina Public Transportation Association at its annual meeting and conference in New Bern, North Carolina, on Monday, May 8, 2000. This award is in recognition of outstanding performance in traffic and pedestrian safety among transportation systems for the year 1999. There is one award in the state per category of transit system. This is the fifth time the City has won this award in the past seven years. The past awards were won in 1993, '95, '96, '97.

Mr. Black also advised Council that they received an award from the Asheville City Schools for appreciation of 30 years of service with virtually no accidents.

On behalf of City Council, Mayor Sitnick congratulated Mr. Black on the awards

C. MAYOR'S CUP RAFT RACE

Councilman Hay and Councilman Worley proudly announced that the City of Asheville won first place in the Mayor's Cup Raft Race held on June 4, 2000. They thanked the other crew members who were firefighters.

D. RECOGNITION OF PLAYERS AND COACHES FROM THE INVITATIONAL INTERNATIONAL BASKETBALL TOURNAMENT IN ASHEVILLE'S SISTER CITY SAUMUR, FRANCE

On behalf of City Council, Councilman Hay recognized the girls and boys basketball team and coaches from the Invitational International Basketball Tournament in Asheville's Sister City Saumur, France. The girls team won 2nd place and the boys team placed in 5th place.

E. RECOGNITION OF ASHEVILLE HIGH SCHOOL'S WOMEN'S SOCCER TEAM

On behalf of City Council, Councilman Hay was pleased to acknowledge Asheville High School's Women's Soccer Team.

F. RECOGNITION OF T.C. ROBERSON HIGH SCHOOL'S TEAMS AND INDIVIDUAL STATE CHAMPION

On behalf of City Council, Councilman Hay recognized some of the players of the T.C. Roberson High School's Girls' Track Team, Baseball Team, Girls' Cross Country Team, and Brad Pomeroy, State Individual Champion in Boys' Tennis.

II. CONSENT:

Vice-Mayor Cloninger requested Consent Agenda Item "J" be removed from the Consent Agenda.

Councilwoman Whitmire requested Consent Agenda Item "L" be removed from the Consent Agenda.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 23, 2000; THE COMMUNITY MEETING HELD ON MAY 30, 2000, AND THE WORKSESSION HELD ON JUNE 6, 2000

B. RESOLUTION NO. 00-89 - RESOLUTION AUTHORIZING THE NEGOTIATION OF NEW LEASES TO EXISTING TENANTS OF REDEVELOPMENT PROPERTIES AT 5 AND 7-1/2 BILTMORE AVENUE PRIOR TO DISPOSING OF THE PROPERTIES

Summary: The consideration of a resolution authorizing the negotiation of new leases to existing tenants of redevelopment properties at 5 and 7-1/2 Biltmore Avenue prior to disposing of the properties.

The properties at 5 and 7-1/2 Biltmore Avenue were acquired as part of the Pack Plaza Redevelopment Project. They are currently leased to commercial tenants as a music hall and retail space. The Annual Action Plan for Housing and Community Development approved by City Council on May 9, 2000, proposes disposition of the properties during Fiscal Year 2000/2001.

Although the properties are fully occupied at this time, the current leases expire on or before August 31, 2000. Advice from an MAI appraiser indicates that offering each of the current tenants a market rate lease would be appropriate as a first step towards marketing the properties. A lease term of three years would provide a purchaser with an assured income stream, while not significantly encumbering the property in case the purchaser desires eventually to occupy it. It would also enable the existing tenants to plan for relocation. The new monthly rents with incremental annual increases are estimated as follows:

Address (Area in sq ft.)	7/1/00 – 6/30/01	7/1/01 - 6/30/02	7/1/02 - 6/30/03
5 Biltmore Ave. (4,464)	$5,200.00	$5,400.00	$5,600.00
7-1/2 Biltmore Ave. (600)	$625.00	$650.00	$680.00

Approval of the resolution will authorize staff to negotiate market rate leases with the current tenants at 5 and 7 1/2 Biltmore Avenue for a period not to exceed three years and then to offer the properties for sale through the bid and upset bid process.

Staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 45

C. RESOLUTION NO. 00-90 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING REDEVELOPMENT PROPERTY AT 135 CHERRY STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer from Neighborhood Housing Services of Asheville, Inc. (NHS) for the purchase of 135 Cherry Street in the Head of Montford Redevelopment Project in the amount of $105,000.00.

135 Cherry Street is an Office zoned parcel located on Cherry Street about 150 feet east of Montford Avenue facing the Billy Graham Freeway. The property comprises a 0.16 acre lot improved with a 1,984 sq. ft. two story residential type structure along with a contiguous 0.046 acre parking lot encumbered by a non-exclusive parking easement for the adjoining property and including a non-exclusive access easement across the adjoining property. The Fair Reuse Value for the property is $105,000.00. The proposed use for the property is Office.

NHS has submitted a bid to purchase 135 Cherry Street in the amount of $105,000.00. NHS is the current tenant and plans to continue to occupy the building for the immediate future. The property is in good condition having been rehabilitated by NHS at the time of occupancy and no additional improvements are planned.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 46

D. RESOLUTION NO. 00-91 - RESOLUTION TO WITHDRAW FROM PUBLIC DEDICATION A PORTION OF OAK TERRACE DRIVE

Summary: The consideration of a resolution finding that a portion of the right-of-way known as Oak Terrace Drive is not part of an adopted street plan.

According to N. C. Gen. Stat. sec. 136-96, if a right-of-way is not utilized within 15 years of dedication, it can be abandoned through a recording of a Declaration of Withdrawal.

To proceed with this process, Matney & Associates, on behalf of Sweeten Creek Realty, LLC, which is the successor in interest to the original developer of Stadley Mountain Park where Oak Terrace Drive is located, has requested that the City of Asheville verify if the specific rights-of-way are or are not part of the City's adopted street plan. The statute requires that the City adopt a resolution stating whether the right-of-way to be abandoned is or is not part of a proposed street plan.

Public Works Department staff has determined that the right-of-way known as Oak Terrace Drive, beginning at the Northwest corner of Parcel Identification Number 9626-11-66-6108, and ending at the Southwest corner of Parcel Identification Number 9626-11-66-6422 as shown on plat book 12, page 7 is not part of an adopted street plan and is not a City maintained right-of-way.

City staff recommends City Council adopt the resolution finding that a portion of the right-of-way known as Oak Terrace Drive is not part of an adopted street plan.

RESOLUTION BOOK NO. 26 – PAGE 47

E. ORDINANCE NO. 2700 - BUDGET AMENDMENT FOR AN APPROPRIATION FROM THE COMMUNITY FOUNDATION OF WNC TO ASSIST WITH OPERATION COSTS OF THE YOUTH EMPLOYMENT SERVICES! 2000

Summary: The consideration of a budget amendment in the amount of $14,320 for an appropriation from the Community Foundation of Western North Carolina in the New Horizon Grant Program.

The City of Asheville applied for funds in February 2000 for the New Horizon Grant Program from the Community Foundation of Western North Carolina. The grant was recently awarded in the amount of $14,320 and designated to assist with operational costs of the Youth Employment Services! 2000.

City Council authorized Parks and Recreation on February 8, 2000 to apply for and enter into an agreement with the Community Foundation of Western North Carolina for a grant for $7,000. Since then, more elements were added to the project which increased the amount to $14,320.

Parks and Recreation is responsible for the management and operation of YES! 2000. The program is a result of a collaborative partnership between the City of Asheville, the Community Foundation, Job Link, the Asheville Housing Authority, and the Chamber of Commerce.

The Parks and Recreation Department recommends City Council approve the budget amendment in the amount of $14,320 to increase the budget for YES! 2000.

ORDINANCE BOOK NO. 18 – PAGE 241

F. RESOLUTION NO. 00-92 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR PEDESTRIAN STREETSCAPE IMPROVEMENTS ALONG THE URBAN TRAIL

Summary: The consideration of a resolution authorizing the City Manger to enter into an agreement with the N. C. Department of Transportation for pedestrian streetscape improvements along the Urban Trail, and associated budget amendment, in the amount of $422,934.

The 2000-2006 Transportation Improvement Program (TIP) identifies the Urban Trail as the recipient of Transportation Equity Act for the Twenty First Century (TEA-21) funds. The project area will be defined to the path of the Urban Trail with a total project cost of $422,934. The grant will provide a reimbursement to the City of up to eighty percent (80%) for a maximum of $337,234 for the project. TEA-21 guidelines stipulate a minimum match of twenty percent (20%). The City's matching contribution will be $85,700, $40,000 of which is currently budgeted in the Fiscal Year 1999-00 budget, with the balance being supplemented by an appropriation from contingency.

Upon completion of the project and review, the City will be reimbursed for expenses as outlined in the agreement.

City staff recommends City Council (1) adopt a resolution authorizing the City Manager to enter into a municipal agreement with N. C. Department of Transportation, and (2) adopt a budget amendment, in the amount of $422,934.

RESOLUTION BOOK NO. 26 – PAGE 48

G. ORDINANCE NO. 2701 - BUDGET AMENDMENT FOR THE N.C. DEPT. OF TRANSPORTATION FOR PEDESTRIAN STREETSCAPE IMPROVEMENTS ALONG THE URBAN TRAIL

Summary: See Consent Agenda Item "F" above.

ORDINANCE BOOK NO. 18 - PAGE 243

H. RESOLUTION NO. 00-93 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT WALDEN RIDGE DRIVE AS A PUBLIC RIGHT-OF-WAY AND PUBLICLY MAINTAINED STREET

Summary: The consideration of a resolution to accept Walden Ridge Drive as a public right-of-way and City maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Walden Ridge Drive is a newly constructed street serving office and institutional uses. The street has been constructed and inspected in accordance with the City of Asheville Standard Specifications and Details Manual. The street is located off of Hendersonville Road. The street is a cul-de-sac that is approximately 755 feet long.

Following City Council's approval of this resolution, Walden Ridge Drive will be added to the official Powell Bill list.

Staff request City Council accept Walden Ridge Drive as a public right-of-way and City maintained street.

RESOLUTION BOOK NO. 26 – PAGE 49

I. ORDINANCE NO. 2702 - BUDGET AMENDMENT TO REFLECT ADDITIONAL REVENUE AND OFFSETTING EXPENSES IN THE TRANSIT SERVICES DEPARTMENT BUDGET

Summary: The consideration of a budget amendment, in the amount of $117,710 to reflect additional revenue and offsetting expenses in the Transit Services Department budget.

The City of Asheville received additional funds from the state for the operation of Routes Six (Airport) and Seven (Enka-Candler). The City has also received funds from the Federal Government designated for capital projects (Bike Racks). Also revenue beyond the current budgeted amount was received from the sale of advertising, including a past due payment for advertising from Fiscal Year 1998-99. Additionally, several older buses were sold at auction during Fiscal Year 1998-99 and the revenue from that sale was not recognized in the current budget.

Offsetting expenses include some small adjustments to various administrative line items. The bulk of the offsetting expenses is reflected in the operating budget line item. This represents the increased cost of fuel, and the operations of routes Six and Seven funded by the state New Services grant.

City staff recommends City Council adopt the budget amendment, in the amount of $117,710, to reflect additional revenue and offsetting expenses in the Transit Services Department budget.

ORDINANCE BOOK NO. 18 – PAGE 246

J. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH MCGILL ASSOCIATES TO PREPARE SURVEY, DESIGN AND CONSTRUCTION DOCUMENTS FOR THE W.T. WEAVER ROADWAY AND GREENWAY PROJECT

Summary: This item was removed from the Consent Agenda.

K. RESOLUTION NO. 00-94 - RESOLUTION ACCEPTING THE RECOMMENDATIONS OF THE REGIONAL WATER AUTHORITY TO AWARD A PROFESSIONAL SERVICES CONTRACT TO PADGETT & FREEMAN FOR ARCHITECTURAL SERVICES IN CONCEPTUAL DESIGN AND OPINION OF COST FOR WATER MAINTENANCE COMPLEX RENOVATIONS

Summary: The consideration of a resolution confirming the award by the Regional Water Authority of a contract with Padgett & Freeman Architects, P.A., for conceptual design and an opinion of cost for renovating a portion of the Old Water Maintenance Building for the Water Resources Department.

In January 2000, the Water Resources staff presented to the Regional Water Authority a list of the most critical capital needs of the Water System. Among those needs identified was the renovation of the Water Maintenance facility on South Charlotte Street. The existing facility includes a prefabricated metal building currently housing the offices of the Water Maintenance Division, surrounded by a parking area for Division employees as well as the parking for the heavy equipment and service trucks which are used in the maintenance of the Water Distribution system. The metal building was built in the early 1970's and is in poor condition. The building was nearly condemned in 1993 (temporary repair was completed) due to a failure of a section of the roof after a large snowstorm.

Staff has performed a review of the entire facility to determine the best approach to take to renovate the facility. Problems which have been identified include the following: (1) the metal building must be either extensively renovated or abandoned in the near future due to its condition; (2) the site does not have sufficient space for parking for the construction equipment, service vehicles, and provide adequately for employee parking; (3) the site is surrounded and there is no room for site expansion, except for a small grassy area between the current employee parking area and Charlotte Street; and (4) Water Resources Administration and meter reading are located in City Hall but interact regularly with the Maintenance Division.

As part of the staff survey, the staff reviewed the current space allocation of the Old Water Maintenance Building, which is owned by the City of Asheville and is on the same site. About one-third of the floor area of this building is being used by the Asheville City Schools, but the remaining area is available with the relocation of some storage area being used by City Purchasing. The staff has determined that it is feasible to effectively combine Water Administration, Meter Reading, and Water Maintenance in the available space in the Old Water Maintenance Building, and combined with the demolition of the metal building, there will be adequate parking space. Given the high cost of land to develop a site elsewhere, and the need for Water Maintenance to remain close to the City Warehouse and Fleet Maintenance, the development of the Old Water Maintenance Building is the most cost-effective concept.

The recommended Water Fund budget for Fiscal Year 2000-2001 includes a recommendation that an $11.3 million revenue bond sale be held in early 2001. A sum of $1.0 million of the total is tentatively assigned to this project. At the present time, there is a need for a conceptual architectural plan to be developed to confirm if the concept of using the Old Water Maintenance Building will provide the present and future needs of the Water Resources Department and to provide a more detailed preliminary cost estimate for the upcoming revenue bond application.

Padgett and Freeman Architects, P.A., are already very familiar with the site, having been selected by the City of Asheville through an extensive consultant selection process in September 1996 for the renovation of the space now occupied by the Asheville City Schools. Padgett & Freeman's knowledge of the Old Water Maintenance Building, including the knowledge of the building, structure, plumbing, mechanical and electrical systems and capabilities, as well as the site and its stormwater conditions, allow Padgett & Freeman to offer the Authority economies in developing the conceptual plan for Water Resources. In addition, our review of their performance in renovating the area for the school was excellent. Staff has negotiated a fee not to exceed $17,150 to develop a conceptual floor plan, overall site plan with parking layout, and a budget opinion of cost to complete the project.

The Regional Water Authority approved award of a professional services contract to Padgett & Freeman, P.A., of Asheville, North Carolina in an amount not to exceed $17,150, on May 16, 2000.

City staff recommends City Council confirm the award by the Regional Water Authority of a professional services contract to Padgett & Freeman, P.A. of Asheville, North Carolina in an amount not to exceed $17,150.

RESOLUTION BOOK NO. 26 – PAGE 50

L. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH WOOLPERT, LLP, TO PREPARE PHASE I OF A FEASIBILITY STUDY FOR THE PROPOSED AZALEA ROAD DEVELOPMENT

This item was removed from the Consent Agenda.

M. RESOLUTION NO. 00-95 - RESOLUTION AUTHORIZING THE CITY TO LEVY A TAX ON GROSS RECEIPTS DERIVED FROM RETAIL SHORT-TERM LEASE OR RENTAL OF VEHICLES

Summary: The consideration of a resolution establishing a gross receipts tax on rental or leased vehicles to replace lost property tax revenue resulting from the General Assembly's recent repeal of the property tax on leased on rented vehicles.

On May 17, the General Assembly passed Senate Bill 1076 which repealed the property tax on leased or rented vehicles. Prior to the enactment of this legislation, municipal and county governments had the authority to levy property taxes on short-term leased or rented vehicles. Senate Bill 1076 now excludes these vehicles from the property tax base. According to information provided by the Buncombe County Tax Department, the City of Asheville will lose approximately $55,000 in property tax revenue with enactment of this new law based on a current property tax rate of $.52.

Senate Bill 1076 does, however, allows municipal and county governments to replace the lost property tax revenue with a tax on the gross receipts of companies operating leased or rental vehicles. Each municipal and county government must pass a resolution establishing the gross receipts tax for their districts. Municipal and county governments can tax leasing companies at one and one-half (1 ½) percent of gross receipts upon adoption of a resolution.

Buncombe County staff is recommending a resolution in June authorizing the County to tax the gross receipts of leasing companies at one and one-half (1 ½) percent of gross receipts to replace lost property tax revenue. Buncombe County recommends that all municipalities authorize the one and one-half (1 ½) percent gross receipts tax. Enactment of the gross receipts tax will allow the City of Asheville to replace the projected $55,000 loss in property tax revenue.

City staff recommends City Council adopt a resolution establishing a gross receipts tax on leasing companies for leased or rented vehicles.

RESOLUTION BOOK NO. 26 – PAGE 51

N. RESOLUTION NO. 00-96 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A DONATION FROM INGLES MARKETS INC. AND MILK-BONE/NABISCO INC. IN SUPPORT OF POLICE DEPARTMENT'S K-9 UNIT

Summary: The consideration of a resolution authorizing the City Manager to accept a donation from the Ingles Market Inc. and Milk-Bone of Nabisco Inc. and to adopt an associated budget ordinance amendment, in the amount of $5,000.

Ingles Market Inc. and Milk-Bone of Nabisco Inc. have donated $5,000 to support the Asheville Police Department's K-9 Unit. The funds are intended to provide training for two K-9 officers and their canines to enhance and improve their skills in providing police services to the citizens of Asheville.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to accept the donation; and (2) a budget ordinance amendment, in the amount of $5,000, to appropriate the funds in the Police Department's operating budget.

RESOLUTION BOOK NO. 26 – PAGE 55

O. ORDINANCE NO. 2703 - BUDGET AMENDMENT TO REFLECT A DONATION FROM INGLES MARKETS INC. AND MILK-BONE/NABISCO INC. IN SUPPORT OF POLICE DEPARTMENT'S K-9 UNIT

Summary: See Consent Agenda Item "N" above.

ORDINANCE BOOK NO. 18 – PAGE 249

P. MOTION SETTING A PUBLIC HEARING ON JUNE 27, 2000, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE IN ORDER TO REVISE THE MAXIMUM FOOTPRINT FOR ACCESSORY STRUCTURES IN RESIDENTIAL DISTRICTS

Q. MOTION SETTING A PUBLIC HEARING ON JUNE 27, 2000, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE IN ORDER TO REVISE THE APPROVAL PROCESS FOR PRELIMINARY PLATS FOR MAJOR SUBDIVISIONS

R. MOTION SETTING A PUBLIC HEARING ON JUNE 27, 2000, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE IN ORDER TO REVISE THE REVIEW AND APPROVAL PROCESS FOR DUPLEXES, TRIPLEXES AND QUADRAPLEXES IN SINGLE FAMILY ZONING DISTRICTS AND TO ESTABLISH NEW DEVELOPMENT STANDARDS FOR THESE USES

S. MOTION SETTING A PUBLIC HEARING ON JUNE 27, 2000, TO CONSIDER A PLANNED UNIT DEVELOPMENT OVERLAY ZONING FOR ARTISAN PARK LOCATED AT 1773 OLD HAYWOOD ROAD

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 00-97- RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH MCGILL ASSOCIATES TO PREPARE SURVEY, DESIGN AND CONSTRUCTION DOCUMENTS FOR THE W.T. WEAVER ROADWAY AND GREENWAY PROJECT

At the request of Vice-Mayor Cloninger, Councilwoman Field moved to excuse Vice-Mayor Cloninger from voting in Consent Agenda Item "J" due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with McGill Associates, P.A., to prepare design and construction documents for the W.T. Weaver roadway and greenway (Phase II) improvements.

In 1999, the City received the opportunity to use Transportation Improvement Funds from the North Carolina Department of Transportation (NCDOT) to construct Phase II of the W.T. Weaver greenway. In order for this project to be eligible for the grant, detailed construction plans must be completed according to the NCDOT guidelines. Staff solicited costs for the design of the roadway and greenway (according to NCDOT guidelines) from Genesis Group, who were currently under contract for the conceptual plans for the greenway. The costs for design significantly exceeded staff's expectations. Staff then solicited proposals from McGill Associates to perform the work.

The contract with McGill Associates consists of surveying, preparing construction drawings and construction documents for roadway improvements and greenway installation. The scope of the roadway design is to create a round-about at W.T. Weaver and Barnard Avenue (also known as Edgewood Road Extension.) This entrance will become the main entrance to the University of North Carolina – Asheville (UNC-A). The fee for the project is based on an hourly rate plus allowable expenses, not to exceed $91,750.

Plans should be completed by the middle of August with construction beginning early fall 2000.

Staff has coordinated this project with UNC-A staff and the neighborhood.

City staff recommends City Council authorize the City Manager to sign a contract with McGill Associates, P.A. to prepare design and construction documents for the W.T. Weaver roadway and greenway improvements.

Councilwoman Field moved for the adoption of Resolution No. 00-97. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 56

RESOLUTION NO. 00-98 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH WOOLPERT, LLP, TO PREPARE PHASE I OF A FEASIBILITY STUDY FOR THE PROPOSED AZALEA ROAD DEVELOPMENT

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Woolpert, LLP, to prepare Phase I of a feasibility study for the proposed Azalea Road development.

In 1999, a task force was created to evaluate the Azalea Road site. The direction of the task force was to make a recommendation to City Council as to whether the property should be purchased by the City for the primary uses a beneficial fill site and soccer fields. The task force consists of City staff, area residents and other interested stakeholders. Prior to making the recommendation to City Council on the property, the task force has recommended that Phase I of a feasibility study be completed to evaluate critical issues.

Staff developed a Request for Proposals (RFP) to select a consultant to prepare the feasibility study and design of the site. The RFP was completed in December 1999 and proposals were received in February 2000. Five firms submitted proposals. The selection team reviewed the proposals and narrowed the list to three firms: Woolpert, Vaughn and Melton, and

MA Engineers. Interviews were held in March 2000 and the selection team recommended Woolpert, LLP, based upon qualifications.

Phase I of the feasibility will evaluate the following issues: (1) floodplain/floodway regulations; (2) beneficial fill operations; (3) traffic impact analysis; (4) utility investigation; (5) cost benefit analysis; and, (6) wetlands evaluation. The costs of Phase I is $86,262.00.

If Phase I of the feasibility study indicates that the property is suitable for the uses described above, staff will request that City Council authorize the City Manager to sign a contract with Woolpert, LLP, to complete Phase II of the feasibility study and possibly the design of the site.

Woolpert, LLP proposes to use three sub-consultants in the project. One of the three are certified minority or women-owned businesses.

Staff recommends that City Council authorize the City Manager to execute a contract with Woolpert, LLP, to prepare Phase I of a feasibility study for the proposed Azalea Road development.

Vice-Mayor Cloninger moved for the adoption of Resolution No.00-98 . This motion was seconded by Councilwoman Field and carried on a 6-1 vote, with Councilwoman Whitmire voting "no."

RESOLUTION BOOK NO. 26 – PAGE 57

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING 23 CONGRESS STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

ORDINANCE NO. 2704 - ORDINANCE TO REZONE 23 CONGRESS STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT (CONDITIONAL USE ZONING)

ORDINANCE NO. 2705 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR 23 CONGRESS STREET

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to vote to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:41 p.m.

Mr. Scott Shuford, Planning & Development Director, submitted into the record Affidavit of Publication (City Exhibit 1), the Certification of Mailing of Notice to Property Owners (City Exhibit 2), and the Staff Report (City Exhibit 3).

He said that this is the consideration of rezoning property at 23 Congress Street from RS-8 Residential Single-Family High Density District to RM-8 Residential Multi-Family Medium Density District, and issuance of a conditional use permit (conditional use zoning).

The Planning and Zoning Commission, at their May 3, 2000, meeting, reviewed and recommended approval, with conditions, of the change in zoning of property located at 23 Congress from RS-8 to RM-8 CU. The applicants are Steve Tensi and Jennifer Scovill. Two structures are currently located on the half-acre lot. One of the structures is used as a duplex and the other is vacant. The applicant has submitted an application and a site plan indicating that the structure that is currently vacant will be used as a duplex. The site plan indicates an improved parking area and buffering and landscaping to meet the requirements of the City's landscape ordinance. In recommending approval of the conditional use district zoning for the property, the Planning and Zoning Commission recommended that the following conditions be attached to the conditional use permit:

- Identify the species and exact locations of proposed buffer plantings;
- Indicate street trees on the site plan;
- Remove trash from the open shed at the rear of the property;
- Remove the abandoned car at the rear of the property; and
- Two duplexes be consistent with the Minimum Housing Code within 90 days of the date of the approval of the Order granting conditional use zoning.

There was no public comment at the Planning and Zoning Commission hearing.

In taking action to approve the conditional use district zoning of the property, Council must take two actions:

- Approve a change in the official zoning maps to designate the property as an RM-8 CU zone; and
- Issue a conditional use permit for the two duplexes on the property.

The second action is a quasi-judicial action and all actions taken by the Council must comply with the procedural requirements for such actions.

The Planning and Zoning Commission voted 6 to 0 to recommend approval of the conditional use district zoning. The Planning and Development staff recommends approval of the zoning change.

Ms. Jennifer Scovill, property owner, said that they are only 30 days away from the Certificate of Occupancy and have already started adhering to the conditions of the conditional use permit.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 5:45 p.m.

Councilman Worley moved to adopt Ordinance No. 2704 to rezone 23 Congress Street from RS-8 Residential Single-Family High Density District to RM-8 CU Residential Multi-Family Medium Density District (conditional use zoning). This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 251

Vice-Mayor Cloninger moved to adopt Ordinance No. 2705 granting the conditional use permit for 23 Congress Street (conditional use zoning), with the following conditions: (1) Identify the species and exact locations of proposed buffer plantings; (2) Indicate street trees on the site plan; (3) Remove trash from the open shed at the rear of the property; (4) Remove the abandoned car at the rear of the property; and (5) Two duplexes be consistent with the Minimum Housing Code within 90 days of the date of the approval of the Order granting conditional use zoning. Said motion also instructs the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 252-A

B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR A TELECOMMUNICATIONS TOWER AT 200 TUNNEL ROAD

Summary: American Tower Corporation has withdrawn the application for a new telecommunications tower at 200 Tunnel Road (Kenilworth Knoll).

On September 28, 1999, City Council opened the public hearing to consider a conditional use permit for a telecommunications tower at 200 Tunnel Road. After numerous continuances, on March 28, 2000, the matter was continued indefinitely in order for the applicant to resolve technical issues that would allow them to co-locate on the existing tower on Kenilworth Knoll. Instead of building a new tower, the applicant will place antennae on the existing tower near the Sports Club of Asheville.

American Tower Corporation was the first application for a new telecommunications tower since the City adopted a new ordinance regulating telecommunications towers. The ordinance requires applicants to exhaust all options for co-location before building a new tower. The ordinance also encourages the use of concealed structures and new technologies as alternatives to new towers. The fact that this application will not result in a new tower speaks to the effectiveness of the new ordinance. The resolution of this matter without a public hearing can be largely credited to the City's consultant, Paul Rosa. Consulting fees were paid by the applicant, as provided in the ordinance.

It was the consensus of City Council to accept the withdrawal of the application by American Tower Corporation.

IV. UNFINISHED BUSINESS:

Annexation Ordinances and Services Plan

Planning & Development Director Scott Shuford said that this is the consideration of adopting ordinances that establish the City's commitment to serve the Phase I Annexation Plan areas and to set the effective date of annexation on June 30, 2001. Copies of the six areas proposed for annexation were passed out to City Council.

On May 23, 2000, City Council held a public hearing on the proposed annexation of six areas distributed across all quadrants of the City. Ordinances have been prepared that will complete the procedural part of the annexation process for each of these six areas. In addition, these ordinances adopt the Services Plan that lays out the City's commitment to provide these annexed areas with services reasonably similar to those received by other properties located within the City. Staff requests Council take separate action on each of these six ordinances.

In addition, staff recommends two changes to the Services Plan based on public comments we have received throughout the annexation process, as well as our own review. First, staff recommends that the septic system program proposed for portions of Annexation Area 01-C (Skyland area) be a no-fee program for those properties receiving this service. Second, we recommend the substitution of the entire agreement document with CP&L for the memorandum of understanding (Appendix 7).

Staff has also received five forms from property owners in both the Long Shoals and Old Shoals sections of Annexation Area 01-C requesting that the City provide sanitary sewer service in lieu of the septic system maintenance program. While these forms may not have been submitted in a timely fashion, staff has analyzed the requests for feasibility.

This analysis indicates that one property owner (315 Long Shoals Road) already has sewer service available to the rear of her property. Further discussion with this property owner indicates that she owns a parcel of approximately 30 acres in size and that her home is a considerable distance away from the sewer line, making it very expensive for her to connect to the sewer line. Her request is to be added to the septic system maintenance program. This is a very unusual circumstance and staff would have no problem modifying our policy for the provision of this service to accommodate individual single family residences that are physically located more than 1,000 feet away from a sanitary sewer line (even if their property is within 300 feet of such a line) to avail themselves of the septic system maintenance program. Staff requests City Council allow staff to modify the policies to reflect such circumstances like this in the future and to serve this property owner.

The other four locations are off Old Shoals Road (a private roadway) on the south side of Lake Julian. In considering these four requests, it appears to us that it would be difficult from an equity standpoint to provide sewer service to these four properties and not to the other surrounding properties. We feel that fairness dictates that we provide sanitary sewer service to the entire area around Old Shoals Road that would be covered by the proposed septic system maintenance program should Council direct us to positively consider these requests. The provision of sewer service to this area will cost approximately $756,000 due topographical considerations that require the wastewater to be pumped. Given the uncertainty of ultimate land use patterns in this area due the surrounding industrial land uses proximate to Old Shoals Road, staff does not recommend making this capital investment at this time. Additionally, staff does not feel that service consistency will be a negative consideration for these new residents from either a legal or ethical standpoint.

City staff recommends that Council separately adopt each of six ordinances annexing areas into the City's corporate boundaries. These ordinances reflect the recommended modifications to the City's Services Plan.

Upon inquiry of Councilwoman Field, Mr. Shuford said that he is unable to give a date in the future that the City may provide sewer to Area C because the City is waiting for the long range annexation phase plan from our consultant. Once we have that, then the City can look at the area in a more comprehensive way.

A. ORDINANCE NO. 2706 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE CHUNNS COVE ROAD/PINEY MOUNTAIN ROAD AREA (AREA 2001-A)

Mr. Shuford recommended that City Council adopt the ordinance to extend the corporate limits of the City of Asheville to include the Chunns Cove Road/Piney Mountain Road area (Area 2001-A).

Councilwoman Field stated that she received a call from a person who wanted to know why the City was not annexing further up on Chunns Cove Road. Mr. Shuford said that he would get the information from Councilwoman Field and contact the person to see if they would be interested in voluntary annexation.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2706. This motion was seconded by Councilman Worley and carried unanimously.

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B. ORDINANCE NO. 2707 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE AREA LOCATED NORTH OF U.S. HIGHWAY 70 BETWEEN RICEVILLE ROAD AND LOWER GRASSY BRANCH ROAD (AREA 2001-B)

Mr. Shuford recommended that City Council adopt the ordinance to extend the corporate limits of the City of Asheville to include the area located north of U.S. Highway 70 between Riceville Road and Lower Grassy Branch Road (Area 2001-B).

Upon inquiry of Ms. Eleanor Thomas, 112 Arnold Road, Mr. Shuford said that the City is allowed by the N. C. General Statutes to annex Parkway property. Mr. Rick Cowick, representative of Benchmark, then explained the qualifications of this area.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2707. This motion was seconded by Councilwoman Field and carried unanimously.

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C. ORDINANCE NO. 2708 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE AREA LOCATED NORTH AND SOUTH OF LONG SHOALS ROAD BETWEEN I-26 AND HENDERSONVILLE ROAD (AREA 2001-C)

Mr. Shuford recommended that City Council adopt the ordinance to extend the corporate limits of the City of Asheville to include the area located north and south of Long Shoals Road between I-26 and Hendersonville Road (Area 2001-C), as amended by City Attorney Oast below.

City Attorney Oast asked that the ordinance be amended to include the following paragraph to Section 3 of the ordinance: "That, for the properties identified on Exhibit X, attached hereto, the provision of sanitary sewer service is not economically feasible due to the unique topography of the area. For these properties, the City will provide septic system maintenance and repair services as permitted by N. C. G. S. 160A-47 (3) b., as set forth on pages C-21 and C-22 of the Annexation Services Plan, attached hereto."

Upon inquiry of Councilman Worley, City Attorney Oast said Exhibit X does not include the property on Long Shoals Road because we are only required to list the properties that we would be otherwise required to serve due to the unique topography of the area. However, the City is asking permission to modify the policies to serve the property with the septic system maintenance program.

Upon inquiry of Councilman Hay, Mr. Shuford said that new construction does not get the benefit of the septic system maintenance program or a sewerage system. He said that this applies only to existing property and new construction would be responsible for providing one or the other of those two systems on their own.

Mr. Alex Cochran asked if he would be permitted to build on his vacant lot in the future if there was no sewer service. Mr. John Echeverri, Assistant Director of Engineering, responded that he would be able to build using a septic tank, however, the City will not maintain the system.

Ms. Myrna Hendrix felt that the City should pay for maintenance of septic systems for new construction in the future because they will pay additional taxes to the City. Mr. Shuford said that the City doesn't do that for any other area in the City currently and we will be treating this annexation area the same as any other areas in the City.

Mr. Rick Cowick, representative of Benchmark, then explained the qualifications of this area.

When Councilman Peterson asked what is the size of the area that cannot be economically served by a sewer system out of the total acreage of 1492 acres, Mr. Shuford responded that probably less than 10% of the area would be eligible for the septic tank maintenance program.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hay moved for the adoption of Ordinance No. 2708. This motion was seconded by Councilwoman Field and carried unanimously.

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D. ORDINANCE NO. 2709 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE RIDGEFIELD BOULEVARD AND OAK TERRACE AREA (AREA 2001-D)

Mr. Shuford recommended that City Council adopt the ordinance to extend the corporate limits of the City of Asheville to include the Ridgefield Boulevard and Oak Terrace area (Area 2001-D).

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2709. This motion was seconded by Councilwoman Whitmire and carried unanimously.

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E. ORDINANCE NO. 2710 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE NEW LEICESTER HIGHWAY AREA (AREA 2001-E)

Mr. Shuford recommended that City Council adopt the ordinance to extend the corporate limits of the City of Asheville to include the New Leicester Highway area (Area 2001-E).

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Peterson moved for the adoption of Ordinance No. 2710. This motion was seconded by Councilman Worley and carried unanimously.

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F. ORDINANCE NO. 2711 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE ROCKY RIDGE ROAD/WEDGEFIELD DRIVE AREA (AREA 2001-F)

Mr. Shuford recommended that City Council adopt the ordinance to extend the corporate limits of the City of Asheville to include the Rocky Ridge Road/Wedgefield Drive area (Area 2001-F).

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2711. This motion was seconded by Councilman Worley and carried unanimously.

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Councilwoman Field said that the agreements between the City and CP&L, which are attached to the ordinances basically limits the amount that CP&L pays the City in a combination of property tax and franchise fee. This was a negotiation that happened several years ago and it's a piece of history that everyone should be aware of. That is, the amount of money that CP&L pays us doesn't increase because of our annexation. City Attorney Oast also noted that that was implemented by the legislature in 1995.

G. ORDINANCE APPROVING THE CROWELL FARMS MASTER PLAN

At the request of City staff, it was the consensus of City Council to postpone this action until June 27, 2000.

At 6:25 p.m., Mayor Sitnick announced a short break.

AGENDA ORDER CHANGE

At 6:50 p.m., Councilman Hay moved to advance New Business Item A next. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

CONSIDERATION OF A REQUEST TO WAIVE THE UNIFIED DEVELOPMENT ORDINANCE REQUIREMENT FOR A SIDEWALK ALONG 33 BROADVIEW DRIVE FOR ASHEVILLE CHURCH OF CHRIST

Mr. Oliver Gajda, Pedestrian and Bicycle Coordinator, said that this is the consideration of a resolution waiving the Unified Development Ordinance (UDO) requirement for a sidewalk along Broadview Drive for the Asheville Church of Christ building.

Section 7-11-6 of the UDO requires that new construction construct sidewalks as specified in the Asheville Standard Specifications & Details Manual along street rights-of-way or pay a fee in lieu of constructing the sidewalk. The Asheville Church of Christ has built a new church located at 33 Broadview Drive. Broadview Drive is a city-maintained street located in the Oakley community.

This development does not meet the requirements for a paying a fee in lieu of constructing the sidewalk due to the fact that is a moderately high volume of vehicular traffic on the street. This development has approximately 435 linear feet of frontage on a public street with two twenty-four foot wide driveways.

Staff does not recommend that City Council waive the requirement that the developer install sidewalk at the Asheville Church of Christ located at 33 Broadview Drive.

City staff requests that City Council not waive the requirement that a sidewalk be placed along Broadview Drive as required by the UDO Section 7-11-6 for the Asheville Church of Christ located at 33 Broadview Drive.

Reverend Joe Hickman, Asheville Church of Christ, requested City Council waive the requirement for a sidewalk and also requested that they not be required to pay the fee in lieu of building a sidewalk. His reasons being (1) the construction of a sidewalk on this site would be very much out of keeping with the setting and surroundings because none of the other properties near the Church has a sidewalk and looking from their property, no sidewalks can be seen; (2) the area around the Church has a more rural quality than an urban one; (3) the area has a very low volume of pedestrian traffic; and (4) construction of a sidewalk will increase the financial burden of building the Church.

Vice-Mayor Cloninger explained that this is a relatively new program of requiring sidewalks or in some instances letting people pay a fee in lieu of constructing sidewalks. He said that Council expects that in some of the early construction projects like this, it may look funny if you require a sidewalk in front of the property such as yours, but what the hope is that, over time as there is other development along a road such as yours that the additional sidewalks will be put in and this is not something that will happen overnight, but we are hopeful that over time it will be. He hopes that if Council doesn't waive the requirement, it is with that in mind. We hope that it will be a pedestrian friendly area.

Councilwoman Field asked about if there was any alternatives for sidewalks, like pervious materials, that might be more in character with the neighborhood. City Traffic Engineer Michael Moule said that up to this point, the City Engineer has not allowed other alternative-types for sidewalks. In addition, the sidewalks would have to be ADA compliant.

Upon inquiry of Councilman Worley, Mr. Gajda said that they would not have to put in curb and gutter, only a flat five foot sidewalk.

Mr. Earl Metcalf, member of the Asheville Church of Christ, urged Council to waive the requirement for a sidewalk for all the same reasons explained by Reverend Hickman.

Councilwoman Field explained that it would cost approximately $5,000 to construct the sidewalk and if they were required to pay a fee in lieu of construction, that would be substantially more.

Mr. Metcalf said that if Council does not waive the requirement for a sidewalk to be constructed, he asked if Council would grant them a five year grace period to install the sidewalk.

Upon inquiry of Vice-Mayor Cloninger, Mr. Moule said that it is his understanding that the sidewalk would have to be constructed by the time a Certificate of Occupancy is issued, except in instances such as weather or unforeseen circumstances.

Councilwoman Field felt this is an appropriate place for a sidewalk but wondered if there might be a way of allowing the Church additional time within which to build the sidewalk, based on a traffic study of the area. Mr. Moule said that he did see how that could be enforced at a later date.

Discussion then surrounded the residential nature of the area and the opportunity for additional growth in the area.

Reverend Hickman said that he discussed with the City Engineer the issuance of a temporary Certificate of Occupancy, however, the maximum time period is only 90 days. He asked City Council to allow them an extended period of time within which to construct the sidewalk because he felt it would not violate the intent or purpose of the ordinance.

City Attorney Oast said that as a procedural matter, City Council has the authority to delay implementation of the sidewalk.

Assistant City ~~Attorney~~ Manager mb Doug Spell said that in situations where landscaping cannot be accommodated at a certain time, there have been situations where a bond has been posted by the owner and it is their responsibility to post that bond in the amount of the improvement. That could typically be six months or a year and staff would work with them on that.

Councilwoman Field suggested this matter be remanded back to City staff to see if they can work something out.

Vice-Mayor Cloninger said that it seems like there is a consensus with Council that a sidewalk should be constructed at this location. Therefore, he suggested staff work with the Church to come up with some proposal as to when and how the sidewalk would be constructed.

Vice-Mayor Cloninger moved to deny the request to waive the UDO requirement for a sidewalk along 33 Broadview Drive and to instruct City staff go beyond normal circumstances and work with the Church officials on how and when the sidewalk will be constructed. If staff does not have the existing authority to accomplish the proposal, then staff is to report back to Council. This motion was seconded by Councilman Peterson and carried unanimously.

H. ORDINANCE NO. 2712 - ORDINANCE ADOPTING THE 2000-01 ANNUAL OPERATING BUDGET AND CAPITAL IMPROVEMENTS PROGRAM

Mayor Sitnick said that this public hearing was held on June 6, 2000.

Budget Director Ben Durant said that the Fiscal 2000/2001 Annual Operating Budget was presented to City Council on May 18, 2000. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the public hearing was published on May 26 and June 2, 2000. The City Council conducted a public hearing on the budget on June 6, 2000.

The Fiscal Year 2000/2001 Annual Operating Budget is balanced with a tax rate of $0.56 per $100 of assessed valuation which represents a $0.04 property tax rate increase over the current property tax rate. The $0.04 property tax rate increase breaks down to $0.02 being dedicated to street maintenance and repairs, $0.01 dedicated to parks and recreation capital projects and $0.01 dedicated to the establishment of a Housing Trust Fund. All essential City programs and services are maintained.

The Budget as currently presented to City Council includes a net budget of $84,042,652 and a General Fund appropriation of $63,116,468. This budget provides $1.6 million in new funding for an enhanced street maintenance and repair program, new parks and recreation capital projects, and the establishment of a Housing Trust Fund. Key items for Council's review are summarized and discussed below:

- An additional appropriation of $35,000 for traffic calming measures, which is balanced with a revised property tax revenue estimate, has been added to the Fiscal Year 2000/2001 Annual Operating Budget that is currently presented to Council.

- Outside Agency funding is presented in accordance with the Outside Agency Committee recommendations to allow most agencies that currently receive City funding to receive the same appropriation for Fiscal Year 2000/2001 as originally appropriated in Fiscal Year 1999/2000.

- Council requested additional information from the Economic Development Commission (EDC) regarding the number of voting seats the City would receive on EDC's board as part of the consideration of a $50,000 contribution from the City. A $50,000 appropriation to EDC is included in the budget that is currently presented to Council.

- Civic Center Fees have been drafted to reflect the waiving of increased arena changeover fees during hockey season for trades show tenants that have held shows each of the past three years. Based on staff's research, the shows that would be eligible for this consideration are the following: Spring Home Show, Boat Show, RV Show, Craft Fair of the Southern Highlands, and High Country Christmas Craft Fair.

  The estimated cost to the Civic Center for waiving the changeover fees is approximately $40,000. Thus, the Civic Center budget has been increased by $40,000 and is offset with an additional subsidy of $40,000 from the General Fund.

Staff requests that City Council review the Fiscal Year 2000/2001 Annual Operating Budget and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance.

Upon inquiry of Councilwoman Field, Mr. Durant said that the total outside agency funding request is $333,000.

Councilman Peterson supported the increased recycling program, however, he suggested City Council find another way to fund that program, other than increasing the fee.

City Manager Westbrook said that this increase was authorized by City Council on February 22, 2000, and that is not part of this budget proposal.

Civic Center Director David Pisha responded to questions from Councilwoman Whitmire regarding promotions at the Civic Center. In particular, she wanted to know how many events did the Chamber of Commerce book for the Civic Center.

With regard to outside agency funding requests, Councilwoman Whitmire explained her recommended changes: the Chamber of Commerce receive $85,000; the Economic Development Commission receive $25,000; Mountain Center for Substance Abuse Prevention receive $3,000; Asheville Area Arts Council receive $15,000; RiverLink receive $18,000; One Youth at a Time receive $8,000; Life on Life's Terms receive $5,000; Project STEAM receive $5,000; The Health Adventure receive $5,000; Sister Cities receive $2,000; YWCA receive $20,000; Our Next Generation receive $5,000; WNC Historical Association receive $15,000; and the Community Relations Council receive $63,000. Of the savings, $15,000 should go to promotions of the Civic Center and the reset to go back into the General Fund.

Vice-Mayor Cloninger felt that City Council has a good faith obligation to advise the agencies at least a year or two in advance that funding will be reduced or phased out entirely. He felt that for some of the new non-profits, if Council were to substantially reduce their funding without any notice to them so they have a chance to plan for it, it could really be a hardship and he didn't think that would be fair. He said that the Outside Agency Committee will be reviewing the funding guidelines for next year but this year he felt Council should stay with the status quo.

Mayor Sitnick said that she would look forward to seeing a recommendation from the Outside Agency Committee about funding the agencies differently next year. She did agree that we need to give agencies at least a year notice that monies might change. She would also like to consider that outside agency funding be for a year or two as seed money for some of these agencies and then let them find other ways to fund themselves so we might use that money to fund other projects that come along.

It was the consensus of City Council to discuss each outside agency funding request separately as follows:

Asheville-Buncombe Community Relations Council

Approved in 1999-00 - $63,000
Requested in 2000-01 - $63,000
Committee Recommended - $63,000

After discussion, it was the consensus of City Council to appropriate $63,000 to the Asheville-Buncombe Community Relations Council.

Asheville Area Arts Council

Approved in 1999-00 - $30,000
Requested in 2000-01 - $75,000
Committee Recommended - $30,000

After discussion, it was the consensus of City Council to appropriate $30,000 to the Asheville Area Arts Council. Councilwoman Whitmire recommended $15,000.

Asheville-Buncombe VISION Inc.

Approved in 1999-00 - $15,000
Requested in 2000-01 - $20,000
Committee Recommended - $15,000

After discussion, it was the consensus of City Council to appropriate $15,000 to the Asheville Buncombe VISION Inc. Councilwoman Whitmire and Councilman Peterson recommended no funding.

Visitor's Center

Approved in 1999-00 - Zero
Requested in 2000-01 - $100,000
Committee Recommended - $100,000

After discussion, it was the consensus of City Council to appropriate $100,000 to the Visitor's Center. Mayor Sitnick and Councilman Peterson recommended no funding and Councilwoman Whitmire recommended $85,000.

Buncombe County Economic Development Commission

Approved in 1999-00 - Zero
Requested in 2000-01 - $50,000
Committee Recommended - $50,000

In response to the June 6, 2000, worksession with City Council, Mr. Ernest Ferguson, Chair of the Buncombe County Economic Development Commission (EDC), asked City Council to consider the following: (1) $50,000 funding; (2) one voting member on the EDC; (3) in addition to the voting member, the EDC would extend to the Council one additional ex-officio non-voting member. In all, the City would have one voting member and three ex-officio non-voting members on the EDC; and (4) following adoption of the budget, the EDC and the City would identify mutually beneficial components of the Program of Work where the requested funds would be spent.

After discussion, it was the consensus of City Council to appropriate $50,000 to the Economic Development Commission, however, prior to making the payment, City Council would like to discuss with the EDC how the funding might be used with regard to the City's Sustainable Economic Development Strategic Plan. Mayor Sitnick and Councilman Peterson recommended no funding and Councilwoman Whitmire recommended $25,000.

Asheville Sister Cities Inc.

Approved in 1999-00 - $2,000
Requested in 2000-01 - $2,000
Committee Recommended - $2,000

After discussion, it was the consensus of City Council to appropriate $2,000 to the Asheville Sister Cities Inc.

Life on Life's Terms Inc.

Approved in 1999-00 - $5,000
Requested in 2000-01 - $20,000
Committee Recommended - $5,000

After discussion, it was the consensus of City Council to appropriate $5,000 to Life on Life's Terms Inc.

Mountain Center for Substance Abuse Prevention

Approved in 1999-00 - $30,000
Requested in 2000-01 - $39,500
Committee Recommended - $30,000

After discussion, it was the consensus of City Council to appropriate $30,000 to the Mountain Center for Substance Abuse Prevention. Councilwoman Field and Councilman Peterson recommended no funding and Mayor Sitnick stated that she wanted to cut the funding. Mayor Sitnick suggested reallocating the $30,000 between the YWCA and the WNC Historical Association Inc.

One Youth At A Time, Inc.

Approved in 1999-00 - $10,000
Requested in 2000-01 - $18,000
Committee Recommended - $10,000

After discussion, it was the consensus of City Council to appropriate $10,000 to One Youth At A Time Inc.

Project STEAM

Approved in 1999-00 - $5,000
Requested in 2000-01 - $25,000
Committee Recommended - $5,000

After discussion, it was the consensus of City Council to appropriate $5,000 to Project STEAM.

RiverLink Inc.

Approved in 1999-00 - $18,000
Requested in 2000-01 - $25,000
Committee Recommended - $18,000

After discussion, it was the consensus of City Council to appropriate $18,000 to RiverLink Inc.

The Health Adventure

Approved in 1999-00 - $5,000
Requested in 2000-01 - $20,000
Committee Recommended - $5,000

After discussion, it was the consensus of City Council to appropriate $5,000 to The Health Adventure. Councilwoman Whitmire recommended the $5,000 be reallocated to the YWCA.

Councilwoman Field spoke in support of the one-time funding of Our Next Generation.

Councilman Hay supported funding the YWCA, the WNC Historical Association Inc. and Our Next Generation. He suggested if City Council agreed with him, that Council agree upon an amount for the three and then set that aside to see if Council can find some extra funds to allocate to them.

Councilman Peterson spoke in support of the one-time funding of the WNC Historical Association Inc.

After discussion, it was the consensus of Council to fund the WNC Historical Association Inc. $20,000, the YWCA $15,000 and Our Next Generation $5,000.

Councilman Worley explained why he now advocates a two-cent property tax increase – one cent for the Housing Trust Fund and one cent for street and sidewalk maintenance. He felt that if we hold the increase to two cents, we can look forward to the additional revenues that will come in from annexation a year from now.

Vice-Mayor Cloninger stated that presentations by the Public Works Director noted that nothing short of two cents was going to adequately address our terrible road conditions. He supported the four cent tax increase noting that no one on Council wants or likes to raise taxes. He felt City Council will be doing a disservice to the residents if they don't start addressing some of the most pressing needs of the community.

Councilwoman Whitmire emphasized the cumulative effect of increases of fees and taxes. She did not support the meter increase from 60 cents to 75 cents, however, she did not oppose the increase in parking deck fees. She felt Council should cut the expense of the recycling program and postpone the development of a new parking deck. She felt the City needs to do more promotions of the Civic Center. With regard to cost savings, she proposed (1) delaying the filling of vacant positions for at least six months and use the cost savings to support street maintenance; and (2) cut the proposed permit increases by 50%. She was also opposed to the increase of $250 to $500 fee for flag football. She also felt the property tax increase should be held to two cents – one cent for the Housing Trust Fund and one cent for the streets and sidewalks maintenance program.

Councilman Peterson suggested reducing the General Fund operating costs to fund some part of the streets and sidewalks repair program. He did support increasing the property tax by two cents – one cent for the Housing Trust Fund and one cent for the parks and recreation programs.

Councilwoman Field said that the City does receive approximately $2.3 Million annually in Powell Bill money. About $1.3-$1.6 Million goes to pay off the debt service on the Street and Sidewalk Bonds from 1986. When those bonds are up, that money can go back into streets and sidewalks. If Council does raise taxes for streets and sidewalks, she would like to see Council set a policy of a sunset on that tax increase. She noted that in general, the ad valorem property taxes cover only the costs of police and fire and .everything else that the City does comes from other sources of revenue. She suggested raising the property tax by three cents and divide it up some reasonable way.

Councilman Hay spoke in support of the four cent tax increase and that decisions were made poorly in the past and now this Council is faced with making the tough decisions.

Mayor Sitnick stressed that prior administrations have passed the buck for years and she doesn't know of any business (other than CP&L) who has not raised their prices in the last ten years. The Water Authority started raising their rates three years ago in part because for years those who preceded the current Water Authority deferred raising rates incrementally to pay for the needs demanded by the water system. The increases proposed by City Council will address the needs of the community in order to keep the City healthy, vital and prosperous. She requested a complete review of the outside agency monies and a complete review of festivals. She stressed the need to review the Water Agreement to find areas where there can be cost savings to our taxpayers. She spoke in support of all three programs proposed by the four cent tax increase. She felt if City Council does not adopt this tax increase, they will pass along to the next administration a worse situation than they are having to deal with now.

Councilwoman Whitmire again stated that she did not support the meter increases from 60 cents to 75 cents. She suggested cutting one of the new enforcement positions to off-set the increase. After discussion, it was the consensus of City Council to leave the budget as it is currently presented. Councilwoman Whitmire did not support this.

Councilwoman Whitmire suggested the postponement of the development of the new parking deck. After discussion, it was the consensus of City Council to leave the budget as it is currently presented. Councilman Peterson and Councilwoman Whitmire did not support this.

Councilwoman Whitmire felt the City of Asheville should do their own promotions of the Civic Center. Councilman Hay explained that the Civic Center does not promote acts because of the risk factor, however, he did agree that the City should support marketing the Civic Center.

Councilwoman Whitmire requested the delay of filling vacant positions for six months and that those savings go into the streets and sidewalks maintenance program. City Manager Westbrook explained his reasoning why he would not recommend this suggestion.

When Councilwoman Whitmire requested the inspection fees be cut by 50%, Building Safety Director Terry Summey explained the fees are for commercial permits only.

When Councilwoman Whitmire spoke in opposition of raising the flag football entry fee from $250 to $500, Parks and Recreation Director Irby Brinson explained that it is their philosophy that adult athletic leagues pay for most of the costs associated with that program. The youth flag football do not pay anything. He explained the adult program is so successful that the teams almost tripled over the year. Therefore, the City had to increase their costs and this is just prorating the costs associated to cover this increase. Broken down it is $3 a game per person. After discussion, it was the consensus of City Council to leave the budget as it is currently presented. Councilman Peterson and Councilwoman Whitmire did not support this.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.;

City Manager Westbrook recommended that if City Council wanted to fund the WNC Historical Association Inc., the YWCA and Our Next Generation, that Council instruct staff to take that money out of Fund Balance.

Vice-Mayor Cloninger moved to adopt the 2000-01 Annual Operating Budget and Capital Improvements Program to include: (1) a $0.04 property tax rate increase over the current property tax rate; (2) adding $35,000 to traffic calming for a total of $100,000; (3) $50,000 for

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the Economic Development Commission (included in the outside agency funding requests), with the provision that prior to making the payment, City Council would like to discuss with the EDC how the funding might be used with regard to the City's Sustainable Economic Development Strategic Plan; and (4) changing the Civic Center fee schedule in the amount of $40,000 and offset that with an additional subsidy from the General Fund. This motion was seconded by Councilman Hay and carried on a 4-3 vote, with Mayor Sitnick, Vice-Mayor Cloninger, Councilwoman Field and Councilman Hay voting "yes".

ORDINANCE BOOK NO. 18 – PAGE

At 10:08 p.m., Mayor Sitnick announced short break.

V. NEW BUSINESS:

A. MOTION APPOINTING MEMBERS TO THE FUTURE OF THE CIVIC CENTER TASK FORCE

Councilman Hay, Chair of the Future of the Civic Center Task Force, said that it is necessary to appoint two new members to the Task Force and suggested appointing Mike Kryzanek to replace John Weinkenwerder and Tom Byers to replace Barbara Halton.

Councilman Worley moved to appoint Mike Kryzanek and Tom Byers as members to the Future of the Civic Center Task Force. This motion was seconded by Councilwoman Field and carried unanimously.

VI. OTHER BUSINESS:

A. PUBLIC ACCESS CHANNEL COMMISSION

As requested by Vice-Mayor Cloninger, it was the consensus of City Council to support the Public Access Channel Commission by agreeing to reimburse one of the members approximately $2,000 to cover their expenses of attending an important conference in July 2000.

B. SUSTAINABLE ECONOMIC DEVELOPMENT STRATEGIC PLAN IMPLEMENTATION TASK FORCE

Mayor Sitnick reminded City Council that if they had any names to suggested be added to the Sustainable Economic Development Strategic Plan Implementation Task Force that they give those names to her by June 16, 2000.

C. OUTSIDE AGENCY REQUESTS

Councilwoman Field moved to adjust $40,000 from Fund Balance for the three outside agency as follows: (a) WNC Historical Association Inc. - $20;000. (b) YWCA - $15,000; and (c) Our Next Generation - $5,000. This motion was seconded by Councilwoman Whitmire and carried on a 6-1 vote, with Vice-Mayor Cloninger voting "no". Vice-Mayor Cloninger stated again that he felt that before Council takes on new endeavors, that they should have their new policy in place.

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D. CLAIMS

The following claims were received by the City of Asheville during the period of May 12 – June 1, 2000: Paul M. Butler (Sanitation), Bell South (Water), Ricky B. Scott (Water), Wayne S. Robbins (Police), Lynn Austin (Water), Joyce Slagle (Police) and Rita Lunsford (Streets).

The following claims were received by the City during the period of June 2-8, 2000: Allen Rodderick (Water), Debra Franklin (Water), Helen Baird (Water) and Deborah Farmer (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

E. LAWSUITS

The City received the following Complaint on May 25, 2000: County of Buncombe v. Lillian Buckner and Jack Buckner, Stan Hawkins as Trustee, NationsCredit Financial Services Corp. and the City of Asheville. The nature of the proceeding is tax foreclosure proceedings for unpaid real estate taxes. This matter will be handled in-house.

The City received the following Complaint on May 30, 2000: William Robert Anderson, et al, v. City of Asheville and Crowell Properties, LLC. The nature of the proceeding is a protest petition relative to the rezoning of Crowell properties. The matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:20 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - June 20, 2000 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Terry Bellamy (formerly Whitmire) and Councilman Brian L. Peterson

CONSENT:

Budget amendment for Urban Trail Stations

Summary: The consideration of a budget amendment, in the amount of $45,250, to reflect increased project costs for three Urban Trail Stations, which increase will be covered by private donations and will not require any additional City funds.

Costs for the City of Asheville Urban Trail for Station #10-"Grove's Vision" were estimated to be $10,300. The scope of the project has been expanded so that the project costs are now estimated at $20,000, a net increase of $9,700.

Costs for Station #16-"Legacy of Design" were estimated to be $6,600. The decision was made to add not only a decorative bench, but also a sculpture of a young boy leaning against the bench. This increased the cost of the station to $25,000, an increase of $18,400.

Costs for Station #18-"Wolfe's Neighborhood" were estimated to be $9,000. Plans have been changed to create a more elaborate station, increasing the budget to $26,150, an increase of $17,150.

Donors have been identified and commitments received for the full amount of Stations #10 and #16 and part of #18. Efforts are under way to raise the additional funds for Station #18. No City funds will be required for the completion of any of these stations.

The Parks and Recreation Department is responsible for the maintenance, management and development of the Urban Trail. The program is a result of a collaborative partnership between the City of Asheville and many different private individuals, organizations, and foundations under the guidance of the Urban Trail Committee. Twenty-four of the thirty stations planned for the Trail are now completed. Three bronze cats are being designed for installation this summer on Wall Street as Station #9. Four other stations including the three for which increased funding is requested are under design and scheduled for completion by spring. Plans are still under discussion for Station #1, but it is anticipated that the entire Trail will be completed on schedule by the end of 2001. All of the artwork and plaques on the Trail have been funded by outside funds.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $45, 250, to increase the Urban Trail capital budget.

Budget Amendment regarding Municipal Building

Summary: The consideration of a budget amendment, in the amount of $471,676, to appropriate additional funds to the Municipal Building capital project from revenues received from Asheville City Schools, additional proceeds from the sale, plus interest earned on the proceeds of the Certificates of Participation (COPs).

In 1997, City Council appropriated $14,719,229 from COPs proceeds and anticipated interest earnings for the renovation of the Municipal Building, the Old Water Maintenance Building and the roof of City Hall. These projects were approved unanimously by City Council in an effort to address ongoing maintenance and upgrades needed for the facilities. Because of improvements to the Municipal Building, it was necessary for the Asheville City Schools to relocate from the Municipal Building to the Old Water Maintenance Building. Part of the agreement with Asheville City Schools included a reimbursement to the City of Asheville for improvements made to the Old Water Maintenance Building that were above and beyond what was required for them to occupy the space. A total of $49,350 revenue received from Asheville City Schools should be appropriated into the Municipal Building account in order to complete additional renovation to this facility. Additionally, an extra $273,032 was realized on the sale of the COPs and $149,294 has been earned in interest above the amounts included in the 1997 appropriations. Both of these sources are available for appropriation to the Municipal Building project at this time. These additional funds will allow for completion of the Municipal Building project without further appropriation by the City of Asheville through fund balance.

The Parks and Recreation Department requests approval of the budget amendment, in the amount of $471,676 , to be appropriated to the Municipal Building renovation project.

Budget Amendment regarding Grant for Broadway Greenway

Summary: The consideration of a budget amendment, in the amount of $21,940, for an appropriation from the Pigeon River Fund for the Broadway Greenway.

The City of Asheville applied for grant funds in March 2000 to the Pigeon River Fund. The grant was recently awarded in the amount of $21,940 and designated to pay for the cost to clean up 0.5 acre of private property along Reed Creek. The land will then be donated to the City for the Broadway Greenway.

On February 8, 2000, City Council authorized the Parks and Recreation Department to apply for and enter into an agreement with the Pigeon River Fund for a grant for $19,940. Since then, more elements were added to the project, which increased the amount to $21,940.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $21,940, to increase the budget for the Broadway Greenway.

Budget Amendment amending Regional Water Authority's 35 Fund

Summary: The consideration of a budget amendment for the 35 Fund to reflect the transfer of capital from the Fiscal Year 2000/2001 Water Fund Budget that was approved by the Authority on May 16, 2000, and to redistribute funds to better reflect the five-year Capital Improvements Plan.

The Fiscal Year 2000/2001 Water Fund Budget, which was adopted by the Regional Water Authority on May 16, 2000, and is effective July 1, 2000, includes $332,948 in Department-Wide expenses for projects to be performed in the Major Capital Projects Fund, broken down as follows:

Critical Needs State Grant Phase II – Final Matching Funds	$199,948
Master Plan Improvements	$100,000
Mills River Watershed Protection Project – Matching Funds	$ 33,000
(Third and Final Year of Match)	========
	$332,948

The budget amendment authorizes this $332,948 to be transferred effective July 1, 2000, from the new Fiscal Year 2000/01 Water Fund Budget to the Major Capital Projects Fund (Fund 35). The Critical Needs Grant Phase II Project and the Mills River Watershed Protection Project are already well into design and the transfer to Capital Projects Fund is needed early in the fiscal year. The funding under Master Plan Improvements will be set aside for oversizing and reimbursement agreements with developers so that water lines are built to meet sizing recommended by the Master Plan.

In addition to the transfer of funding for new Capital Projects from the Fiscal Year 2000/01 budget, the budget amendment also transfers $91,117 within the 35 Fund from its original designation to "Fiscal Year 1999/2000 Distribution System Improvements" and places these funds also in the Master Plan Improvements project. This better streamlines the program names in the fund without amending the purpose of the original appropriation.

The Fiscal Year 2000/2001 Water Fund Budget also will provide the revenue for the final payment of $68,599 on the N. C. Dept. of Transportation non-betterment project for Tunnel Road/South Tunnel Road. This project has already been appropriated to the 35 Fund but was designated to be funded by future revenues. In July 2000, the revenues for this payment will be transferred from the Water Fund to the 35 Fund, but this action does not require a new appropriation.

Staff recommends approval of the budget amendment to reflect an appropriation of the transfer to capital from the 30 Fund for Fiscal Year 2000/2001, in the amount of $332,948, and to redistribute funds to better reflect the five-year Capital Improvements Plan, effective July 1, 2000.

Budget Amendment for French Broad River Park IV

Summary: The consideration of a budget amendment, in the amount of $1,174,000, for the French Broad River Park IV as a result of grants and donations.

The Parks and Recreation Department and RiverLink are in partnership to implement an ambitious fundraising plan to build the first phase of French Broad River Park IV. Staff has developed an overall budget of $1,174,000 to develop the first phase of the park. In recent months, we have been successful in acquiring $621,500 in grants and donations. We anticipate raising the remaining funds in the next six to nine months through additional grants and donations. Please see a summary of our fundraising activities below.

City of Asheville:
Parks and Recreation Trust Fund $250,000
Private Donation $500

RiverLink:
Janirve Foundation $300,000
Pigeon River Fund $20,000
Winterberry Fund $50,000
French Broad River Garden Club $1,000

Pending:
Land and Water Conservation Fund $350,000
TEA21 $203,000

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $1,174,000 to increase the budget commencing the development of French Broad River Park IV.

Confirmation to Minority Business Commission

Summary: The consideration of a resolution confirming the appointment of Debra Flack Weaver, representative of the Minority Business Alliance, on the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The composition of the Minority Business Commission consists of 13 members from various groups. Each group provides a nominee for consideration and appointment by both the City Council and the Buncombe County Board of Commissioners.

Bonnie Love, representing the Minority Business Alliance, has resigned. The Minority Business Alliance has nominated Debra Flack Weaver to represent them on the Minority Business Commission. Ms. Weaver would serve the unexpired term of Ms. Love, term to expire August 1, 2001, or until her successor has been appointed.

City staff recommends City Council adopt the resolution confirming the appointment of Debra Flack Weaver on the Minority Business Commission.

Allowing the Possession and Consumption of Alcohol and Unfortified Wine at "Jammin With Classes of the 60's" Alumni Reunion on July 7, 2000

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the "Jammin With Classes of the 60's" Alumni Reunion on July 7, 2000.

The Asheville Parks and Recreation Department is submitting this request on behalf of "Jammin With Classes of the 60's" Alumni Reunion, a group unaffiliated with the City of Asheville and not co-sponsored, that the possession of open containers of malt beverages and/or unfortified wine and the consumption of malt beverages and/or unfortified wine be allowed at the "Jammin With Classes of the 60's" Alumni Reunion on July 7, 2000, from 6:00 p.m. to 11:00 p.m.

"Jammin With Classes of the 60's" Alumni Reunion is a celebration of High School Alumni at City-County Plaza on July 7, 2000. Entertainment, food, and vendor displays will be available.

The Asheville Parks and Recreation Department is submitting this request on behalf of "Jammin With Classes of the 60's" Alumni Reunion, for approval of the possession and consumption of malt beverages and/or unfortified wine at the "Jammin With Classes of the 60's" Alumni Reunion on July 7, 2000.

Allowing the Possession and Consumption of Alcohol and Unfortified Wine at Bele Chere Festival on July 28-29, 2000

Summary: The consideration of a resolution making provisions for the possession and consumption of open containers of malt beverages and/or unfortified wine at the Bele Chere Festival at the time and location shown on the resolution.

The Bele Chere Festival is a community celebration produced by the City of Asheville's Parks and Recreation Department and the Bele Chere Board of Directors.

The Asheville Parks and Recreation Department recommends approval of the resolution at the times and dates as stated in the resolution.

Police Grant – Community Policing Geographic Information System Project

Summary: The consideration of (1) a resolution authorizing the City Manager to accept a grant award from the North Carolina Department of Crime Control and Public Safety, Division of the Governor's Crime Commission, in support of a community policing Geographic Information System (GIS) Project and an associated budget amendment.

The Governor's Crime Commission has awarded the City of Asheville a grant in the amount of $63,465 in support of a community policing GIS Project. A local match of $21,155 is required which will be appropriated from Contingency. The purpose of this project is to enable consolidation of most of the City's geographic information systems data and coordinate this application in support of the City's Community Oriented Government program.

City staff recommends City Council adopt the resolution authorizing the City Manager to accept the grant award and that Council adopt a budget amendment, in the amount of $63,465, to appropriate funds to the Police Department's budget.

Police Grant – Social Work and Employee's Partnership Project

Summary: The consideration of a resolution authorizing the City Manager to accept a grant award from the North Carolina Department of Crime Control and Public Safety, Division of the Governor's Crime Commission, in support of a social work and employee's partnership project and an associated budget amendment.

The Governor's Crime Commission has awarded the City of Asheville a two-year grant in the amount of $85,900 in support of a social work and employee's partnership project. The first year's grant is $44,400 and a local match of $14,800 is required which will be appropriated from Contingency. The purpose of this project is to reduce family violence issues contributing to chronic juvenile runaway behavior.

City staff recommends City Council adopt the resolution authorizing the City Manager to accept the grant award and that Council adopt a budget amendment, in the amount of $44,400, to appropriate funds to the Police Department's budget.

Request to N.C. Dept. of Transportation to Provide Raised Landscaped Median in Long Shoals Road Improvement Project

Summary: The consideration of a resolution requesting the N. C. Department of Transportation (NCDOT) provide a raised landscaped median in the Long Shoals Road improvement project.

The NCDOT is preparing plans to widen Long Shoals Road in accordance with the Transportation Improvement Program (TIP). The preliminary plans are for a five lane facility like Hendersonville Road. The Metropolitan Planning Organization (MPO) has asked that the NCDOT substitute a raised landscaped median for the unrestricted center turn lane. Staff is now requesting City Council to join the MPO in supporting a design change that would incorporate a raised landscaped median.

This design will have numerous benefits over the NCDOT's current plan. These benefits include:

- An improved appearance befitting a major City gateway;
- Improved traffic handling capacity due to fewer left turns;
- Improved opportunities for better land use management;
- Improved safety.

Additionally, the proposed raised median would be consist with the "gateway" concept discussed with and approved by Council earlier in the year.

As a final note, we have a verbal commitment from the Biltmore Park development to maintain the median landscaping proximate to their property. The NCDOT may ask the City to assume landscape maintenance over the remaining portions of the median within the City limits.

City staff recommends that Council approve the resolution requesting that the NCDOT amend its plans for Long Shoals Road to include a raised landscaped median.

Grant for Master Street Tree Plan Phase III

Summary: The consideration of a resolution authorizing the City Manager to apply for and enter into an agreement with the N. C. Department of Environment and Natural Resources for a grant to develop Phase III of the Master Street Tree Plan.

The Parks and Recreation Department is responsible for developing a Master Street Tree Plan (MSTP) for street trees on City right-of-ways located within the city limits of Asheville. The existing inventory is over fifteen years old and no longer accurately reflects the trees of the city. Phase III of the process will specifically identify the location, size, condition, and site conditions of trees located in the west district of Asheville. Phases I and II inventoried over 7,000 trees in the central and south districts, and were funded by the Urban and Community Forestry Grant Program. The MSTP will help serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community organizations.

The Parks and Recreation Department is requesting $9,873 in grant funds which requires a 100% match. The in-kind match is located in the Parks Division budget and will include supplies, transportation, volunteer hours, and project management.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for the grant funds through the N.C. Department of Environment and Natural Resources in the Urban and Community Forestry Grant Program to assist with implementing the Master Street Tree Plan Phase III.

Accept Recommendations from Regional Water Authority to Award Construction Contracts for Critical Needs Phase I Water System Improvements

Summary: The consideration of resolutions confirming the award by the Regional Water Authority of a construction contract to Hobson Construction Company for Contract A; Cooper Construction Company for Contract B; and with Buckeye Construction Company for Contract 4 for the Critical Needs Phase I Water System Improvements.

Sealed bids were received and opened on Wednesday, May 24, 2000 for the Authority's Critical Needs Phase I / Contracts A, B & 4. Four (4) bids were received for Contract A with Hobson Construction Company submitting the low bid of $ 1,027,847.00. Contract A includes the installation of approximately 2,600 lf of 8-inch and 14,400 lf of 6-inch waterline. A complete list of bidders is provided below.

Three (3) bids were received for Contract B with Cooper Construction Company submitting the low bid of $ 836,459.00 Contract B includes the installation of approximately 13,500 lf of 6-inch and 1,600 lf of 4-inch waterlines. A complete list of bidders is provided below.

Three (3) bids were received for Contract 4 with Buckeye Construction Company submitting the low bid of $ 624,016.29. Contract 4 includes the installation of approximately 6,060 lf of 16-inch, 6,900 lf of 6-inch and 960 lf of 4-inch waterlines. A complete list of bidders is provided below.

Critical Needs Contract A - Engineer's Estimate: **$ 1,228,837**

COMPANY	BID
Hobson Construction Company, Arden, N.C.	$ 1,024,727.50
Cooper Construction Company, Hendersonville, N.C.	$ 1,230,233.00
Steppe Construction Company, Mill Spring, NC.	$ 1,369,735.00
J & L Specialty Equipment Company	$ 1,822,855.91

Critical Needs Contract B - Engineer's Estimate: **$ 1,029,257.00**

COMPANY	BID
Cooper Construction Company, Hendersonville, N.C.	$ 836,459.00
Steppe Construction Company, Mill Spring, N.C.	$ 1,020,105.00
Hobson Construction Company, Arden, N.C.	$ 1,052,180.00

Critical Needs Contract 4 - Engineer's Estimate: **$ 783,381**

COMPANY	BID
Buckeye Construction Company, Canton, N.C.	$ 624,016.29
Hobson Construction Company, Arden, N.C.	$ 675,927.50
Cooper Construction Company, Hendersonville, N.C.	$ 719,982.00

These three (3) projects comprise the Authority's Critical Needs Phase I program and are funded by the $ 3 million high unit cost grant the Authority received last year. These projects are focused on locations where our existing infrastructure is old, leaking and inadequate to maintain high levels of customer service.

These bids have been reviewed by the Office of Minority Affairs and this office has approved the award of each contract to the low bidder. McGill Associates, the project engineers for Contracts A & B, have recommended award of these contracts to the low bidder. The City Engineer's Office prepared Contract 4 and has recommended award of the low bid for that contract.

Each Contract has a liquidated damages clause of $ 250.00 per day for failure to complete the project in the time allocated.

The Policies and Priorities Committee of the RWA approved staff's recommendation for award of these construction contracts to the respective low bidders. The full Authority will consider their recommendation on June 20, 2000. City Staff recommends that City Council confirm the award by the Regional Water Authority.

Councilman Worley said that the Water Authority is given broad powers under the Water Agreement to carry out its duties, except in some instances, and the Authority's decisions and contract awards are binding without the necessity of City Council's approval. He felt these issues should be removed from Council's agenda. He asked the City Attorney to research this issue and report back to City Council at their next formal meeting.

Accept New Street Name of Carlyle Way

Summary: The consideration of a resolution accepting the new proposed street name "Carlyle Way."

Sweeten Creek Apartments, LLC, has petitioned the City of Asheville to accept the street name "Carlyle Way." The new street will be a cul-de-sac beginning at Sweeten Creek Road (US 25-A).

City staff recommends adoption of the resolution.

Accept New Street Name of Boddington Court

Summary: The consideration of a resolution accepting the new proposed street name "Boddington Court."

Southoaks of Buncombe, LLC., owners of lots in Southoaks Subdivision, has petitioned the City of Asheville to accept the street name "Boddington Court." The new street will be a cul-de-sac beginning at Racquet Club Road.

City staff recommends adoption of the resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PRESENTATION BY PACK SQUARE TASK FORCE ON THE REDESIGN OF PACK SQUARE

Ms. Carol King, Chair of the Asheville Downtown Commission, updated City Council on the events of the Downtown Commission and Pack Square Task Force with connection with the redesign of Pack Square, discussed where the Task Force will go from here, and requested City Council's support for them to continue with the project.

Mr. Jim Samsel, representing the Pack Square Task Force, presented Council with the comprehensive design concept of the redesign of Pack Square.

Ms. King and Mr. Samsel answered various questions from Council noting that this design concept has a lot of support from the community and the tourist industry.

Mayor Sitnick wanted to make sure that there was coordination with the Tree Commission, particularly with Dr. Orbison, when work commended on the City-County Plaza because there is a treasured dawn redwood tree in the Plaza area.

On behalf of City Council, Mayor Sitnick was grateful to all the people who have put so much time and effort in this wonderful project.

It was the consensus of City Council to have the Pack Square Task Force continue with this project.

UPDATE ON DIRECTIONAL SIGNS TO THE PARKING GARAGES

City Engineer Cathy Ball said that in December 1998, City Council adopted a comprehensive parking study that included over 60 recommendations to improve parking in Downtown Asheville, Biltmore Village and West Asheville. One of these recommendations was to install color-coded directional signs to the parking garages to encourage hourly and daily parking in the garages.

Ms. Ball said that in the Fall of 1999, she was selected to participate in Leadership Asheville. Each year Leadership Asheville requires that participants complete a project in an area of their choice. She, along with eight other participates, participated on the "Infrastructure Committee." The committee consisted of Yates Pharr with Biltmore Farms, Inc., John Oswald III with Mills Manufacturing Corp., Ellen Williams with Mission Hospital, Ian Robertson with Warren Wilson College, Charlotte Caplan with the City of Asheville, Scott Shealy with Citizens Fuel Company, Eric Barbour with BASF Corp., and Gary Roberts with Buncombe County.

The committee selected the project of designing the color-coded directional signs to the parking garages and identifying where the signs should be placed. The committee met several times from October 1999 to May 2000 to work on the project. The final product was a design for the sign and a map suggesting locations for the signs.

Along with the directional signs, banners will be placed on parking garages that match the assigned color. For instance, all signs leading to the Rankin Street Garage will be burgundy as well as the banners located on the garage.

This project was estimated to cost $85,000. City Council approved $45,000 for this project in the Fiscal Year 1999-00 budget and $40,000 in the Fiscal Year 2000-01 budget.

On behalf of City Council, Mayor Sitnick thanked the Leadership Asheville Committee for their work on this very important project.

UDO AMENDMENT REVIEWS

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which are scheduled on June 27, 2000. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Revision to Approval Process for Preliminary Plats for Major Subdivisions

Urban Planner Dan Baechtold said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to revise the process for approval of preliminary plats for major subdivisions.

In response to direction provided by the Fast Trackers Development Review Team and the Sustainable Economic Development Plan, Planning and Development staff reviewed current processes to identify streamlining opportunities. The proposed preliminary plat review process change was identified as a way to improve the development review processes of the City. The Planning and Zoning Commission, at their May 3, 2000, meeting, reviewed and recommended approval of an amendment to the UDO to revise the approval process for preliminary plats for major subdivisions. Major subdivisions are those subdivisions that require the construction of new streets and/or utilities or the dedication of new easements or rights-of-way. Under the current preliminary plat review process, the preliminary plat is reviewed and approved by the Planning and Zoning Commission following review and recommendation by the Technical Review Committee (TRC). The approval process currently requires approximately four weeks. The TRC would be authorized to review and approve preliminary plats for major subdivisions by the proposed amendment. Time required for review and approval of preliminary plats would be reduced to two weeks. Public notification of proposed subdivisions would be provided prior to the TRC meetings and the meetings are open to the public. The proposed ordinance amendment would streamline and improve the preliminary plat review process with no reduction in the quality of the review process.

The Planning and Zoning Commission voted 6-0 to recommend approval of the wording amendment regarding the preliminary plat approval process for major subdivisions. The Planning and Development staff recommends approval of the wording amendment.

Mayor Sitnick stressed that since the TRC is being given more approval authority, it is very important that more publicity be given to their meeting schedule and that every possible means of notification be given for projects before the TRC.

Revision for Maximum Footprint for Accessory Structures in Residential Districts

Mr. Baechtold said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to revise the maximum footprint for accessory structures in residential districts.

Approximately 2-½ years ago, City Council approved an amendment to the UDO establishing a maximum footprint of 600 square feet for accessory structures in residential districts. Staff has received comments from the public that the current size limit for accessory structures is too restrictive. Staff reviewed the current standards, spoke with citizens regarding the standards, and worked with the Planning and Zoning Commission in revising the standards. The Planning and Zoning Commission at their May 3, 2000, meeting recommended the proposed ordinance amendment for approval. Maximum footprints for accessory structures in residential districts proposed by the ordinance amendment are:

Lot Size	Single Structure	Total – All Structures
< 1 acre	770 sq ft	1,000 sq ft
1 – 3 acres	1,200 sq ft	1,600 sq ft
> 3 acres	No limit	No limit

The other standards for accessory structures in residential districts (setback, building height, etc.) would remain unchanged. The proposed standards would meet the needs of the community for accessory structures adequate to meet their storage needs while protecting neighboring residential properties from obtrusive structures.

The Planning and Zoning Commission voted 6-0 to recommend approval of the wording amendment establishing revised maximum footprints for accessory structures. The Planning and Development staff recommends approval of the wording amendment.

Revision to Approval and Review Process for Duplexes, Triplexes and Quadraplexes in Single Family Zoning Districts and to Establish New Development Standards for these units

Planning and Development Director stated that a lot of innovative and creative information has come in from the community regarding this proposed amendment and City staff would like the opportunity to review that information. A revised ordinance will then be presented to the Planning & Zoning Commission for their recommendation to City Council. Therefore, he requested that City Council consider postponing (at their June 27, 2000, formal meeting) this public hearing until August 8, 2000.

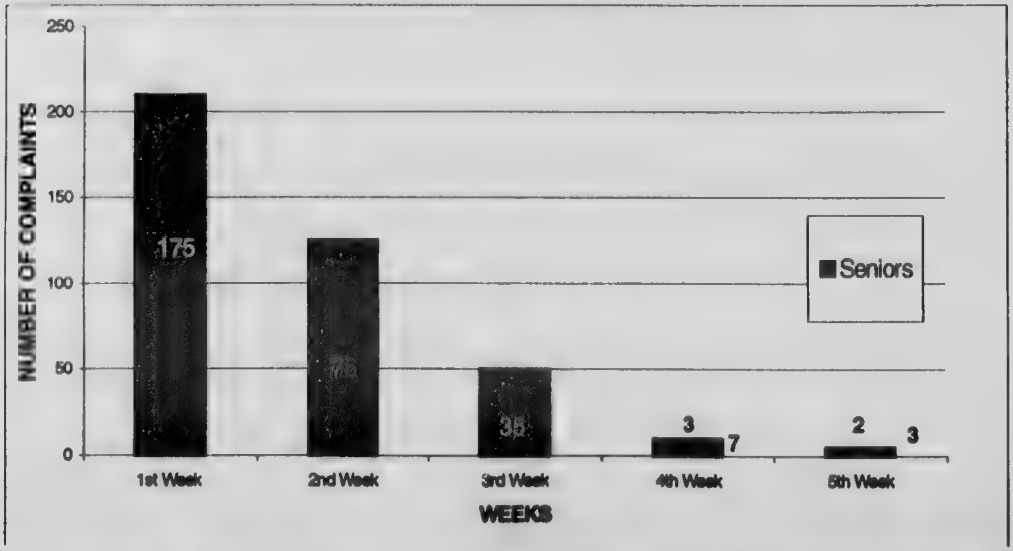
Councilman Worley mentioned a concern regarding the minimum lot size and asked that Mr. Shuford review it prior to submitting the ordinance back to the Planning & Zoning Commission.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearings on June 27, 2000.

REPORT ON AUTOMATED SIDE LOADER PILOT PROGRAM

Public Works Director Mark Combs updated City Council on the new pilot automated side-loading program which began on April 3, 2000.

On April 3, 2000, the Sanitation Division began servicing 3,332 households utilizing two each one-man automated side loading trucks and City-issued 96-gallon roll out carts. Since the implementation of the program staff has received approximately 400 calls or inquiries related to the pilot program. Additionally, one newspaper commentary and several letters to the editor were published in two local newspapers. All were related to level of service and roll out cart maneuverability. Approximately 270 (68%) of the callers identified themselves as elderly and were concerned with the bulk and potential weight of the roll out containers. In each case staff followed up on each complaint and visited callers at their residences, as necessary, and implemented or suggested innovative solutions to unique problems. By using a chart, Mr. Combs showed that there was a high anxiety from the senior population relative to the program;



however, complaints related to cart manipulation and volume have significantly decreased since the program's start. The volume of concerns/ complaints has remained low (approximate to week 5 levels).

Staff identified a need for smaller containers for special situations, elderly people and low volume waste households. Two hundred 66-gallon containers have been ordered to meet these needs. Expected delivery is late June or early July.

Other service complaints related to volume (one 96-gallon container versus maximum six 30 gallon containers) have come from duplexes, triplexes and quadraplexes related to the additional $2.50 per month container fee. To date, only 57 households (1.7%) ordered one additional container. This indicates to staff that the majority of pilot area customers have sufficient volume for the scheduled service frequency. Additionally, curbside recycling services will be expanded in July to include mixed paper which will further save potential solid waste volumes. A maximum of six recycling bins are allowed per household.

Information from other communities who have implemented similar programs indicate a pattern of initial concern from customers over the viability of such service (and equipment). Staff will continue to be proactive in providing information to customers and seeking solutions to their problems.

Mr. Combs answered several questions from Council regarding the pilot program.

AUTHORITY TO DEMOLISH FIRE DAMAGED CITY BUILDING AT AIRPORT

Mr. John Miall, Risk Manager, said that this is the consideration of a resolution (1) authorizing the demolition of the remaining structure known as the FAA building on the southeast side of Airport Road across from the Asheville Regional Airport, (2) authorizing the City Manager to accept the actual cash value after applicable deductible from the City's carrier for the property loss, and (3) authorizing the use of net proceeds from insurance settlement for professional assessment and planning services to prepare plans for potential use of clean site for economic development purposes; and an associated budget amendment.

In the 1960's the City constructed a wood frame structure of approximately 1152 square feet. Said structure was valued for replacement cost under the City's property insurance program at approximately $125,000.

Since the building was constructed it has housed by way of a lease agreement the Regional offices and shop facilities for the FAA at a monthly rate of $747. Negotiations were, as of December 1999, under way to increase that rent upon renewal to a market rate of $817 per month. FAA had agreed in principal to that rate.

On December 30, 1999, a fire in that building caused serious damage necessitating the FAA to relocate its offices and repair shop to facilities on the airport property in space managed by the Airport Authority. Members of the Asheville-Buncombe Arson Task Force concluded the likely cause of the fire was overheated ballast in a fluorescent light fixture.

Templeton Construction Company was asked to prepare a written estimate to repair the damage to the building and a claim for damages was made with the City's property insurance carrier. Based upon the estimate of Templeton Construction Company, it was determined that repairs would cost approximately $82,627.14.

The City's coverage form allows for the replacement cost of structures lost due to insured perils is subject to a $10,000 deductible. Assuming the Templeton estimate is accurate the City could rebuild the building subject to the deductible being paid by the City.

Following conversations with the City Manager, City Attorney, and the Director of Economic Development it was decided that the continued leasing of that facility to the FAA at the previously agreed to rental amount would not be in the best interest of the City. It is believed that the subject property has developable commercial value far in excess of the continued rental and can serve as a resource to support future economic development activity.

Due to a provision in the City's insuring agreement, the City may opt not to rebuild the subject building and recover from the carrier its loss on a depreciated value the net sum after applicable deductible of $50,150.43.

Templeton Construction Company was asked to prepare a demolition estimate on the remaining structure. Including the cost of removing asbestos floor tiles in two of the rooms and disposing of them in a legally prescribed manner the total cost to demolish is $18,510. Net recovery after a settlement on actual cash value and demolition would be $31,640.43.

This resolution will authorize the City Manager to accept $50,150.43 actual cash value after applicable deductible from the City's carrier for the property loss. Eighteen thousand, five hundred and ten dollars ($18,510) from said recovery will be used to demolish and clean up the site. A budget amendment, in the amount of $50,150.43, is needed to demolish and clean up the site with the balance to be used for economic development of the site.

Based on the above facts, it is the recommendation of staff to accept the actual cash value settlement of $50,150.43 and to demolish the remaining structure and to use the net proceeds to secure appropriate professional services to determine the development potential of said property to its highest and best use.

When Mayor Sitnick hoped that the City would not have to spend the $31,000 on consultant fees to advise the City what to do with the property, City Manager Westbrook said that the City may not need a consultant at all.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

SMART GROWTH DEFINITION AND POLICIES

Planning and Development Director Scott Shuford said that as an outgrowth of the Sustainable Economic Development Task Force findings and City Council direction regarding Smart Growth development patterns, staff has been charged with creating a definition for Smart Growth that meshes with the City of Asheville's needs and characteristics.

He reviewed the draft Smart Growth Definition and Policies outlines issues relating to Smart Growth and sustainable development, provides a definition for Smart Growth based on local conditions and characteristics, and suggests several interim policies to guide staff in making land use and transportation decisions while the 2010 Plan is being updated and the Unified Development Ordinance is being amended.

City staff recommends that Council receive a presentation on Smart Growth and provide direction regarding the proposed definition and policies.

Discussion surrounded how the policies will guide staff in the day to day operations of City government.

Mr. Jim Bannon, Interim Project Director of Smart Growth Partners, and Mr. David Stewart, President of Smart Growth Partners, felt it was useful for the City and their organization to work together. They presented City Council with their principles for smart growth adopted on March 27, 2000.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REVISIONS TO CITY COUNCIL'S RULES OF PROCEDURE

It was the consensus of City Council to instruct the City Attorney to proceed with eliminating the requirement that City Council set public hearings in all applicable sections of the City Code and in all applicable sections of City Council's Rules of Procedure.

City Attorney Oast said that the actual setting of the public hearings will be handled administratively and a procedure will be set up to notify City Council when certain public hearings have been established. He said that he will work on the amendments and bring those back to Council for consideration.

NOISE ORDINANCE

City Attorney Oast said that in 1998 the City undertook a review of the noise ordinance, which was last revised in 1994. This was done largely in response to community concerns about the difficulty of enforcing the current ordinance. The review process included a well-attended community meeting, meetings among City staff, and with citizen representatives.

The problems that were identified included:

1) Difficulty in getting police response to noise complaints;
2) Even when citations are issued, courts are not receptive to enforcement; and
3) Some noises (barking dogs, boom boxes) are not sufficiently regulated.

There were also some matters that needed to be addressed legally.

The revised noise ordinance has several important features:

1. The basic "unreasonably loud and raucous" standard is retained. This has been upheld in State and federal cases, including the United States Supreme Court.

2. Certain types of activities are identified as tending to produce loud and disturbing noises or noise levels. The City cannot ban or regulate these activities except to the extent that they actually do constitute a disturbance, but they are enumerated for the purpose of putting the public on notice that certain activities are prone to generating complaints in certain circumstances.

3. Certain types of activities are exempted from the noise ordinance. This was done in recognition that such activities (a) may be necessary for the public health and safety; (b) are non-recurring and of limited duration; (c) are associated with civic or community-wide events; or (d) are subject to constitutional or other legal protection.

4. Civil penalty for violation. Under the current ordinance, the only means of enforcement are by criminal penalty ($50.00 fine/imprisonment) for misdemeanor infraction, or by equitable remedies (injunctions, etc.). There was no provision for civil penalty, and research discloses that this was specifically removed from a previous revision. As a practical matter, this means that the ordinance can only be enforced by the police, by a citizen swearing out a criminal warrant, or by the City initiating a civil action for injunctive relief. The use of civil penalties allows for escalating fines for repeat offenders.

5. Noise ordinance appeals board. To address the problems of "he said/she said," and to allow citizens an informal, but official, way of addressing noise based disputes, the ordinance establishes a hearing board with the power to adjudicate complaints and issue civil citations, and the power to consider appeals from citations issued by City staff. Appeals from the noise ordinance appeals board are to the City Manager.

6. Responsibility. The ordinance provides that the owner or occupant of property where a violation occurs may be liable for violations. Notice is required for owners who do not live on the premises.

If City Council agrees with the proposed revisions, adoption of the ordinance is recommended.

At the request of Councilman Hay, City Attorney Oast said that he would again review the basic "unreasonably loud and raucous" standard, with regard to the use of "raucous".

At the request of Councilman Worley, City Attorney Oast would amend Section 10-85 (m) to address public utilities working at night due to traffic considerations.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REQUEST TO GOVERNOR HUNT TO DISMISS THE ENVIRONMENTAL PROTECTION AGENCY'S LAWSUIT REGARDING THE IMPLEMENTATION OF AIR POLLUTION REDUCTION STANDARDS

Mayor Sitnick said that in 1999, North Carolina had the third highest number of violations of health standards for ozone pollution, just behind California and Texas. The Great Smoky Mountains National Park is now considered the most polluted National Park due to air pollution. She stressed that this air pollution crisis is having serious effects on our health, our natural resources, and our economy.

She explained why Governor Hunt's suing the Environmental Protection Agency (EPA) is not the way to go about cleaning up the air. She stated that she has received several letters from the medical community who support the City of Asheville doing something about our air quality. She asked if City Council would consider sending a resolution to Governor Hunt opposing North Carolina's actions against the EPA.

After discussion and at the suggestion of Vice-Mayor Cloninger, it was the consensus of City Council to investigate this issue further by obtaining additional information and to instruct the City Manager to arrange for Mr. Hugh Morton and a representative from the N. C. Department of Environment and Natural Resources to discuss this issue with City Council at an upcoming City Council formal meeting.

OTHER BUSINESS:

ORDINANCE NO. 2713 – ORDINANCE AUTHORIZING THE CITY OF ASHEVILLE TO LEVY A TAX ON GROSS RECEIPTS DERIVED FROM RETAIL SHORT-TERM LEASE OR RENTAL OF VEHICLES

City Attorney Oast said that at the City Council meeting last week, June 13, 2000, City Council adopted Resolution No. 00-95 which authorized the City of Asheville to levy a tax on gross receipts derived from retail short-term lease or rental of vehicles. He explained that instead of a resolution, the proper format should have been an ordinance. He therefore asked City Council to adopt the same language, only in ordinance form.

Councilman Worley moved to suspend the rules and take formal action on this item at this meeting. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

Mayor Sitnick said that members of Council have previously been furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved to adopt Ordinance No. 2713. This motion was seconded by Councilman Hay and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 379

ASHEVILLE CIVIC CENTER – REGIONAL RESPONSIBILITY

At the request of Mayor Sitnick, it was the consensus of City Council to instruct the City Manager to arrange a meeting with representatives from UNC-Asheville, some local organizations and businesses, and representatives from the surrounding counties including Jackson, Haywood, Madison, Henderson, Transylvania and Buncombe, for the purpose of discussing the needs of the Asheville Civic Center and to discuss feelings towards cooperation for the Civic Center's needs.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:25 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - June 27, 2000 - 5:00 p.m.

Regular Meeting

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	Councilman Edward C. Hay Jr. and Councilwoman Terry Bellamy

INVOCATION

Councilman Worley gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JULY 2000 AS "NATIONAL RECREATION AND PARKS MONTH"

Vice-Mayor Cloninger read the proclamation proclaiming July, 2000, as "National Recreation and Parks Month" in the City of Asheville. She presented the proclamation to Ms. Susan Roderick, who briefed City Council on some activities taking place during the month.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 13, 2000

B. RESOLUTION NO. 00-99 - RESOLUTION AWARDING THE BID FOR 135 CHERRY STREET TO NEIGHBORHOOD HOUSING SERVICES INC.

Summary: The consideration of a resolution authorizing the Mayor to execute necessary documents for the conveyance of 135 Cherry Street (Disposal Parcels 6D) the Head of Montford Redevelopment Project Area to Neighborhood Housing Services Inc. in the amount of $105,000.

On June 13, 2000 the City Council directed the City Clerk to advertise for upset bids on 135 Cherry Street. The advertisement ran in the Asheville Citizen-Times on June 16, 2000, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Neighborhood Housing Services of Asheville Inc. in the amount of $105,000 was not upset and the sale to Neighborhood Services of Asheville Inc. should be approved.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 58

C. ORDINANCE NO. 2714 - BUDGET AMENDMENT TO REFLECT INCREASED PROJECT COSTS FOR THREE URBAN TRAIL STATIONS, WHICH INCREASE WILL BE COVERED BY PRIVATE DONATIONS

Summary: The consideration of a budget amendment, in the amount of $45,250, to reflect increased project costs for three Urban Trail Stations, which increase will be covered by private donations and will not require any additional City funds.

Costs for the City of Asheville Urban Trail for Station #10-"Grove's Vision" were estimated to be $10,300. The scope of the project has been expanded so that the project costs are now estimated at $20,000, a net increase of $9,700.

Costs for Station #16-"Legacy of Design" were estimated to be $6,600. The decision was made to add not only a decorative bench, but also a sculpture of a young boy leaning against the bench. This increased the cost of the station to $25,000, an increase of $18,400.

Costs for Station #18-"Wolfe's Neighborhood" were estimated to be $9,000. Plans have been changed to create a more elaborate station, increasing the budget to $26,150, an increase of $17,150.

Donors have been identified and commitments received for the full amount of Stations #10 and #16 and part of #18. Efforts are under way to raise the additional funds for Station #18. No City funds will be required for the completion of any of these stations.

The Parks and Recreation Department is responsible for the maintenance, management and development of the Urban Trail. The program is a result of a collaborative partnership between the City of Asheville and many different private individuals, organizations, and foundations under the guidance of the Urban Trail Committee. Twenty-four of the thirty stations planned for the Trail are now completed. Three bronze cats are being designed for installation this summer on Wall Street as Station #9. Four other stations including the three for which increased funding is requested are under design and scheduled for completion by spring. Plans are still under discussion for Station #1, but it is anticipated that the entire Trail will be completed on schedule by the end of 2001. All of the artwork and plaques on the Trail have been funded by outside funds.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $45, 250, to increase the Urban Trail capital budget.

ORDINANCE BOOK NO. 18 – PAGE 383

D. RESOLUTION NO. 00-100 - RESOLUTION CONFIRMING THE APPOINTMENT OF DEBRA FLACK WEAVER, REPRESENTATIVE OF THE MINORITY BUSINESS ALLIANCE, TO THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the appointment of Debra Flack Weaver, representative of the Minority Business Alliance, on the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The composition of the Minority Business Commission consists of 13 members from various groups. Each group provides a nominee for consideration and appointment by both the City Council and the Buncombe County Board of Commissioners.

Bonnie Love, representing the Minority Business Alliance, has resigned. The Minority Business Alliance has nominated Debra Flack Weaver to represent them on the Minority Business Commission. Ms. Weaver would serve the unexpired term of Ms. Love, term to expire August 1, 2001, or until her successor has been appointed.

City staff recommends City Council adopt the resolution confirming the appointment of Debra Flack Weaver on the Minority Business Commission.

RESOLUTION BOOK NO. 26 – PAGE 59

E. RESOLUTION NO. 00-101 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2000 BELE CHERE FESTIVAL JULY 28-29, 2000

Summary: The consideration of a resolution making provisions for the possession and consumption of open containers of malt beverages and/or unfortified wine at the Bele Chere Festival at the time and location shown on the resolution.

The Bele Chere Festival is a community celebration produced by the City of Asheville's Parks and Recreation Department and the Bele Chere Board of Directors.

The Asheville Parks and Recreation Department recommends approval of the resolution at the times and dates as stated in the resolution.

RESOLUTION BOOK NO. 26 – PAGE 60

F. ORDINANCE NO. 2715 - BUDGET AMENDMENT FOR THE MUNICIPAL BUILDING

Summary: The consideration of a budget amendment, in the amount of $471,676, to appropriate additional funds to the Municipal Building capital project from revenues received from Asheville City Schools, additional proceeds from the sale, plus interest earned on the proceeds of the Certificates of Participation (COPs).

In 1997, City Council appropriated $14,719,229 from COPs proceeds and anticipated interest earnings for the renovation of the Municipal Building, the Old Water Maintenance Building and the roof of City Hall. These projects were approved unanimously by City Council in an effort to address ongoing maintenance and upgrades needed for the facilities. Because of improvements to the Municipal Building, it was necessary for the Asheville City Schools to relocate from the Municipal Building to the Old Water Maintenance Building. Part of the agreement with Asheville City Schools included a reimbursement to the City of Asheville for improvements made to the Old Water Maintenance Building that were above and beyond what was required for them to occupy the space. A total of $49,350 revenue received from Asheville City Schools should be appropriated into the Municipal Building account in order to complete additional renovation to this facility. Additionally, an extra $273,032 was realized on the sale of the COPs and $149,294 has been earned in interest above the amounts included in the 1997 appropriations. Both of these sources are available for appropriation to the Municipal Building project at this time. These additional funds will allow for completion of the Municipal Building project without further appropriation by the City of Asheville through fund balance.

The Parks and Recreation Department requests approval of the budget amendment, in the amount of $471,676 , to be appropriated to the Municipal Building renovation project.

ORDINANCE BOOK NO. 18 – PAGE 385

G. RESOLUTION NO. 00-102 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS TO DEMOLISH THE FIRE DAMAGED CITY-OWNED BUILDING AT THE ASHEVILLE AIRPORT

Summary: The consideration of a resolution (1) authorizing the demolition of the remaining structure known as the FAA building on the southeast side of Airport Road across from the Asheville Regional Airport, (2) authorizing the City Manager to accept the actual cash value after applicable deductible from the City's carrier for the property loss, and (3) authorizing the use of net proceeds from insurance settlement for professional assessment and planning services to prepare plans for potential use of clean site for economic development purposes; and an associated budget amendment.

In the 1960's the City constructed a wood frame structure of approximately 1152 square feet. Said structure was valued for replacement cost under the City's property insurance program at approximately $125,000.

Since the building was constructed it has housed by way of a lease agreement the Regional offices and shop facilities for the FAA at a monthly rate of $747. Negotiations were, as of December 1999, under way to increase that rent upon renewal to a market rate of $817 per month. FAA had agreed in principal to that rate.

On December 30, 1999, a fire in that building caused serious damage necessitating the FAA to relocate its offices and repair shop to facilities on the airport property in space managed by the Airport Authority. Members of the Asheville-Buncombe Arson Task Force concluded the likely cause of the fire was overheated ballast in a fluorescent light fixture.

Templeton Construction Company was asked to prepare a written estimate to repair the damage to the building and a claim for damages was made with the City's property insurance carrier. Based upon the estimate of Templeton Construction Company, it was determined that repairs would cost approximately $82,627.14.

The City's coverage form allows for the replacement cost of structures lost due to insured perils is subject to a $10,000 deductible. Assuming the Templeton estimate is accurate the City could rebuild the building subject to the deductible being paid by the City.

Following conversations with the City Manager, City Attorney, and the Director of Economic Development it was decided that the continued leasing of that facility to the FAA at the previously agreed to rental amount would not be in the best interest of the City. It is believed that the subject property has developable commercial value far in excess of the continued rental and can serve as a resource to support future economic development activity.

Due to a provision in the City's insuring agreement, the City may opt not to rebuild the subject building and recover from the carrier its loss on a depreciated value the net sum after applicable deductible of $50,150.43.

Templeton Construction Company was asked to prepare a demolition estimate on the remaining structure. Including the cost of removing asbestos floor tiles in two of the rooms and disposing of them in a legally prescribed manner the total cost to demolish is $18,510. Net recovery after a settlement on actual cash value and demolition would be $31,640.43.

This resolution will authorize the City Manager to accept $50,150.43 actual cash value after applicable deductible from the City's carrier for the property loss. Eighteen thousand, five hundred and ten dollars ($18,510) from said recovery will be used to demolish and clean up the site. A budget amendment, in the amount of $50,150.43, is needed to demolish and clean up the site with the balance to be used for economic development of the site.

Based on the above facts, it is the recommendation of staff to accept the actual cash value settlement of $50,150.43 and to demolish the remaining structure and to use the net proceeds to secure appropriate professional services to determine the development potential of said property to its highest and best use.

RESOLUTION BOOK NO. 26 – PAGE 63

H. ORDINANCE NO. 2716 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FROM AN INSURANCE SETTLEMENT FROM THE FIRE DAMAGED CITY-OWNED BUILDING AT THE ASHEVILLE AIRPORT TO BE USED FOR DEMOLITION AND CLEAN UP OF THE SITE WITH THE BALANCE BEING USED FOR ECONOMIC DEVELOPMENT OF THE SITE

Summary: See Consent Agenda Item "G" above.

ORDINANCE BOOK NO. 18 – PAGE 387

I. RESOLUTION NO. 00-103 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT A GRANT APPLICATION TO THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY, GOVERNOR'S CRIME COMMISSION, IN SUPPORT OF A COMMUNITY POLICING GEOGRAPHIC INFORMATION SYSTEM PROJECT

Summary: The consideration of (1) a resolution authorizing the City Manager to accept a grant award from the North Carolina Department of Crime Control and Public Safety, Division of the Governor's Crime Commission, in support of a community policing Geographic Information System (GIS) Project and an associated budget amendment.

The Governor's Crime Commission has awarded the City of Asheville a grant in the amount of $63,465 in support of a community policing GIS Project. A local match of $21,155 is required which will be appropriated from Contingency. The purpose of this project is to enable consolidation of most of the City's geographic information systems data and coordinate this application in support of the City's Community Oriented Government program.

City staff recommends City Council adopt the resolution authorizing the City Manager to accept the grant award and that Council adopt a budget amendment, in the amount of $63,465, to appropriate funds to the Police Department's budget.

RESOLUTION BOOK NO. 26 – PAGE 64

J. ORDINANCE NO. 2717 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FROM A GRANT FOR A COMMUNITY POLICING GEOGRAPHIC INFORMATION SYSTEM PROJECT

Summary: See Consent Agenda Item "I" above.

ORDINANCE BOOK NO. 18 – PAGE 389

K. **RESOLUTION NO. 00-104 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT A GRANT APPLICATION TO THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY, GOVERNOR'S CRIME COMMISSION, IN SUPPORT OF A SOCIAL WORK AND POLICE PARTNERSHIP PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to accept a grant award from the North Carolina Department of Crime Control and Public Safety, Division of the Governor's Crime Commission, in support of a social work and employee's partnership project and an associated budget amendment.

The Governor's Crime Commission has awarded the City of Asheville a two-year grant in the amount of $85,900 in support of a social work and employee's partnership project. The first year's grant is $44,400 and a local match of $14,800 is required which will be appropriated from Contingency. The purpose of this project is to reduce family violence issues contributing to chronic juvenile runaway behavior.

City staff recommends City Council adopt the resolution authorizing the City Manager to accept the grant award and that Council adopt a budget amendment, in the amount of $44,400, to appropriate funds to the Police Department's budget.

RESOLUTION BOOK NO. 26 – PAGE 65

L. **ORDINANCE NO. 2718 - BUDGET AMENDMENT TO APPROPRIATE FUNDS FROM A GRANT FOR A SOCIAL WORK AND POLICE PARTNERSHIP PROJECT**

Summary: See Consent Agenda Item "K" above.

ORDINANCE BOOK NO. 18 – PAGE 392

M. **RESOLUTION NO. 00-105 - RESOLUTION REQUESTING THE N.C. DEPT. OF TRANSPORTATION PROVIDE FOR A RAISED LANDSCAPED MEDIAN IN THE LONG SHOALS ROAD IMPROVEMENT PROJECT**

Summary: The consideration of a resolution requesting the N. C. Department of Transportation (NCDOT) provide a raised landscaped median in the Long Shoals Road improvement project.

The NCDOT is preparing plans to widen Long Shoals Road in accordance with the Transportation Improvement Program (TIP). The preliminary plans are for a five lane facility like Hendersonville Road. The Metropolitan Planning Organization (MPO) has asked that the NCDOT substitute a raised landscaped median for the unrestricted center turn lane. Staff is now requesting City Council to join the MPO in supporting a design change that would incorporate a raised landscaped median.

This design will have numerous benefits over the NCDOT's current plan. These benefits include:

- An improved appearance befitting a major City gateway;
- Improved traffic handling capacity due to fewer left turns;
- Improved opportunities for better land use management;
- Improved safety.

Additionally, the proposed raised median would be consist with the "gateway" concept discussed with and approved by Council earlier in the year.

As a final note, we have a verbal commitment from the Biltmore Park development to maintain the median landscaping proximate to their property. The NCDOT may ask the City to assume landscape maintenance over the remaining portions of the median within the City limits.

City staff recommends that Council approve the resolution requesting that the NCDOT amend its plans for Long Shoals Road to include a raised landscaped median.

RESOLUTION BOOK NO. 26 – PAGE 66

N. RESOLUTION NO. 00-106 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT FOR THE MASTER STREET TREE PLAN PHASE III FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES IN THE DIVISION OF FOREST RESOURCES IN THE URBAN AND COMMUNITY FORESTRY GRANTS PROGRAM

Summary: The consideration of a resolution authorizing the City Manager to apply for and enter into an agreement with the N. C. Department of Environment and Natural Resources for a grant to develop Phase III of the Master Street Tree Plan.

The Parks and Recreation Department is responsible for developing a Master Street Tree Plan (MSTP) for street trees on City right-of-ways located within the city limits of Asheville. The existing inventory is over fifteen years old and no longer accurately reflects the trees of the city. Phase III of the process will specifically identify the location, size, condition, and site conditions of trees located in the west district of Asheville. Phases I and II inventoried over 7,000 trees in the central and south districts, and were funded by the Urban and Community Forestry Grant Program. The MSTP will help serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community organizations.

The Parks and Recreation Department is requesting $9,873 in grant funds which requires a 100% match. The in-kind match is located in the Parks Division budget and will include supplies, transportation, volunteer hours, and project management.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for the grant funds through the N.C. Department of Environment and Natural Resources in the Urban and Community Forestry Grant Program to assist with implementing the Master Street Tree Plan Phase III.

RESOLUTION BOOK NO. 26 – PAGE 67

O. ORDINANCE NO. 2719 - BUDGET AMENDMENT FROM THE PIGEON RIVER FUND FOR THE BROADWAY GREENWAY

Summary: The consideration of a budget amendment, in the amount of $21,940, for an appropriation from the Pigeon River Fund for the Broadway Greenway.

The City of Asheville applied for grant funds in March 2000 to the Pigeon River Fund. The grant was recently awarded in the amount of $21,940 and designated to pay for the cost to clean up 0.5 acre of private property along Reed Creek. The land will then be donated to the City for the Broadway Greenway.

On February 8, 2000, City Council authorized the Parks and Recreation Department to apply for and enter into an agreement with the Pigeon River Fund for a grant for $19,940. Since then, more elements were added to the project, which increased the amount to $21,940.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $21,940, to increase the budget for the Broadway Greenway.

ORDINANCE BOOK NO. 18 – PAGE 395

P. REVIEW OF THE RECOMMENDATIONS OF THE REGIONAL WATER AUTHORITY TO AWARD A CONTRACT TO HOBSON CONSTRUCTION COMPANY INC. FOR CONTRACT A; COOPER CONSTRUCTION COMPANY FOR CONTRACT B; AND BUCKEYE CONSTRUCTION COMPANY INC. FOR THE CONTRACT 4 FOR THE PROJECT KNOWN AS CRITICAL NEEDS PHASE I WATER SYSTEM IMPROVEMENTS

Summary: The consideration of reviewing the award by the Regional Water Authority of a construction contract to Hobson Construction Company for Contract A; Cooper Construction Company for Contract B; and with Buckeye Construction Company for Contract 4 for the Critical Needs Phase I Water System Improvements.

Sealed bids were received and opened on Wednesday, May 24, 2000 for the Authority's Critical Needs Phase I / Contracts A, B & 4. Four bids were received for Contract A with Hobson Construction Company submitting the low bid of $ 1,027,847.00. Contract A includes the installation of approximately 2,600 lf of 8-inch and 14,400 lf of 6-inch waterline. A complete list of bidders is provided below.

Three bids were received for Contract B with Cooper Construction Company submitting the low bid of $ 836,459.00 Contract B includes the installation of approximately 13,500 lf of 6-inch and 1,600 lf of 4-inch waterlines. A complete list of bidders is provided below.

Three bids were received for Contract 4 with Buckeye Construction Company submitting the low bid of $ 624,016.29. Contract 4 includes the installation of approximately 6,060 lf of 16-inch, 6,900 lf of 6-inch and 960 lf of 4-inch waterlines. A complete list of bidders is provided below.

Critical Needs Contract A - Engineer's Estimate: **$ 1,228,837**

COMPANY	BID
Hobson Construction Company, Arden, N.C.	$ 1,024,727.50
Cooper Construction Company, Hendersonville, N.C.	$ 1,230,233.00
Steppe Construction Company, Mill Spring, N.C.	$ 1,369,735.00
J & L Specialty Equipment Company	$ 1,822,855.91

Critical Needs Contract B - Engineer's Estimate: **$ 1,029,257.00**

COMPANY	BID
Cooper Construction Company, Hendersonville, N.C.	$ 836,459.00

Steppe Construction Company, Mill Spring, N.C.	$ 1,020,105.00
Hobson Construction Company, Arden, N.C.	$ 1,052,180.00

Critical Needs Contract 4 - Engineer's Estimate: **$ 783,381**

COMPANY	**BID**
Buckeye Construction Company, Canton, N.C.	$ 624,016.29
Hobson Construction Company, Arden, N.C.	$ 675,927.50
Cooper Construction Company, Hendersonville, N.C.	$ 719,982.00

These three projects comprise the Authority's Critical Needs Phase I program and are funded by the $ 3 million high unit cost grant the Authority received last year. These projects are focused on locations where our existing infrastructure is old, leaking and inadequate to maintain high levels of customer service.

These bids have been reviewed by the Office of Minority Affairs and this office has approved the award of each contract to the low bidder. McGill Associates, the project engineers for Contracts A & B, have recommended award of these contracts to the low bidder. The City Engineer's Office prepared Contract 4 and has recommended award of the low bid for that contract.

Each contract has a liquidated damages clause of $ 250.00 per day for failure to complete the project in the time allocated.

The Policies and Priorities Committee of the RWA approved staff's recommendation for award of these construction contracts to the respective low bidders. The full Authority will consider their recommendation on June 20, 2000. City Staff recommends that City Council confirm the award by the Regional Water Authority.

As a result of a legal opinion by City Attorney Oast, Councilman Worley felt it appropriate for City Council to oversee Water Authority contracts, with respect to some aspects of some contracts, in order to protect the City's interests, and to insure that the Water Authority is observing applicable legal and other limitations.

Q. ORDINANCE NO. 2720 - BUDGET AMENDMENT TO AMEND THE WATER 35 FUND TO AUTHORIZES TRANSFERS FROM THE WATER 30 FUND TO CAPITAL IMPROVEMENTS EFFECTIVE JULY 1, 2000

Summary: The consideration of a budget amendment for the 35 Fund to reflect the transfer of capital from the Fiscal Year 2000/2001 Water Fund Budget that was approved by the Authority on May 16, 2000, and to redistribute funds to better reflect the five-year Capital Improvements Plan.

The Fiscal Year 2000/2001 Water Fund Budget, which was adopted by the Regional Water Authority on May 16, 2000, and is effective July 1, 2000, includes $332,948 in Department-Wide expenses for projects to be performed in the Major Capital Projects Fund, broken down as follows:

Critical Needs State Grant Phase II – Final Matching Funds	$199,948
Master Plan Improvements	$100,000

Mills River Watershed Protection Project – Matching Funds (Third and Final Year of Match)	$ 33,000
	========
	$332,948

The budget amendment authorizes this $332,948 to be transferred effective July 1, 2000, from the new Fiscal Year 2000/01 Water Fund Budget to the Major Capital Projects Fund (Fund 35). The Critical Needs Grant Phase II Project and the Mills River Watershed Protection Project are already well into design and the transfer to Capital Projects Fund is needed early in the fiscal year. The funding under Master Plan Improvements will be set aside for oversizing and reimbursement agreements with developers so that water lines are built to meet sizing recommended by the Master Plan.

In addition to the transfer of funding for new Capital Projects from the Fiscal Year 2000/01 budget, the budget amendment also transfers $91,117 within the 35 Fund from its original designation to "Fiscal Year 1999/2000 Distribution System Improvements" and places these funds also in the Master Plan Improvements project. This better streamlines the program names in the fund without amending the purpose of the original appropriation.

The Fiscal Year 2000/2001 Water Fund Budget also will provide the revenue for the final payment of $68,599 on the N. C. Dept. of Transportation non-betterment project for Tunnel Road/South Tunnel Road. This project has already been appropriated to the 35 Fund but was designated to be funded by future revenues. In July 2000, the revenues for this payment will be transferred from the Water Fund to the 35 Fund, but this action does not require a new appropriation.

Staff recommends approval of the budget amendment to reflect an appropriation of the transfer to capital from the 30 Fund for Fiscal Year 2000/2001, in the amount of $332,948, and to redistribute funds to better reflect the five-year Capital Improvements Plan, effective July 1, 2000.

ORDINANCE BOOK NO. 18 – PAGE 397

R. RESOLUTION NO. 00-107 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "BODDINGTON COURT" LOCATED OFF OF RACQUET CLUB ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Boddington Court."

Southoaks of Buncombe, LLC., owners of lots in Southoaks Subdivision, has petitioned the City of Asheville to accept the street name "Boddington Court." The new street will be a cul-de-sac beginning at Racquet Club Road.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 68

S. RESOLUTION NO. 00-108 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "CARLYLE WAY" LOCATED OFF OF SWEETEN CREEK ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Carlyle Way."

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Sweeten Creek Apartments, LLC, has petitioned the City of Asheville to accept the street name "Carlyle Way." The new street will be a cul-de-sac beginning at Sweeten Creek Road (US 25-A).

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 69

T. ORDINANCE NO. 2721 - BUDGET AMENDMENT FOR THE FRENCH BROAD RIVER PARK IV

Summary: The consideration of a budget amendment, in the amount of $1,174,000, for the French Broad River Park IV as a result of grants and donations.

The Parks and Recreation Department and RiverLink are in partnership to implement an ambitious fundraising plan to build the first phase of French Broad River Park IV. Staff has developed an overall budget of $1,174,000 to develop the first phase of the park. In recent months, we have been successful in acquiring $621,500 in grants and donations. We anticipate raising the remaining funds in the next six to nine months through additional grants and donations. Please see a summary of our fundraising activities below.

City of Asheville: Parks and Recreation Trust Fund $250,000; and Private Donation $500

RiverLink: Janirve Foundation $300,000; Pigeon River Fund $20,000; Winterberry Fund $50,000; and French Broad River Garden Club $1,000

Pending: Land and Water Conservation Fund $350,000; and TEA21 $203,000

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $1,174,000 to increase the budget commencing the development of French Broad River Park IV.

ORDINANCE BOOK NO. 18 – PAGE 399

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A PLANNED UNIT DEVELOPMENT OVERLAY ZONING FOR ARTISAN PARK LOCATED AT 1773 OLD HAYWOOD ROAD

ORDINANCE NO. 2722 - ORDINANCE AMENDING THE ZONING FOR A PLANNED UNIT DEVELOPMENT OVERLAY ZONING FOR ARTISAN PARK LOCATED AT 1773 OLD HAYWOOD ROAD

Mayor Sitnick opened the public hearing at 5:12 p.m.

Mr. Dan Baechtold, Urban Planner, said that this is the consideration of a Planned Unit Development (PUD) overlay designation for 41.53 acres in the Extraterritorial Jurisdiction (ETJ). This public hearing was advertised on June 16 and June 23, 2000.

On June 7, 2000, the Planning and Zoning Commission voted unanimously to recommend approval of a PUD overlay designation for property located at 1773 Old Haywood Road. The property is located near Lakeside Drive in the general area behind the new Lowe's on Patton Avenue. The property is a mostly wooded site with some meadows and an old lakebed that currently contains no water.

The existing zoning of the property is RS4 – Residential Single-Family Medium Density. Under the current zoning, the property could be developed with a maximum of 166 single-family homes. Realistically, the property could not be developed to that density under the current zoning because some of the land area would be needed for street rights-of-way.

The proposed PUD designation would provide incentives to develop the property in a way that provides beneficial elements such as increased open space, tree preservation, affordable housing, and preservation of natural features such as steep slopes and wetlands. The incentives are in the form of density bonuses and flexible development standards. The total amount of the achievable density bonus varies based on the unique features of a particular site.

The Planning and Zoning Commission and the Planning and Development staff determined that this site is an appropriate location to apply the PUD designation. This is a site near the urban fringe of Asheville in a mostly developed area. The site contains woodlands and possible wetlands areas. The Technical Review Committee (TRC) determined that the water, sewer, and street infrastructure in the area are adequate to serve development on this site. The development of this property as a PUD provides an opportunity to further the goals of smart growth and accomplish the following purposes of the PUD District:

1. Encourage better design and management of open space by creating more functional active and passive open space areas within a new development;
2. Retain natural features such as floodplains or steep slopes, and encourage developments that will be compatible with environmentally sensitive areas;
3. Facilitate more affordable housing by providing possibilities for savings in infrastructure, installation costs, and energy costs through clustering of dwellings;
4. Provide an effective use of the transit system within and adjacent to the development by effective organization of uses and the orientation of pedestrian and vehicular facilities; and
5. Encourage pedestrian circulation within and adjacent to the PUD.

The Planning and Zoning Commission also unanimously approved a master plan associated with the proposed PUD that meets the aforementioned purposes. The City Council is not being asked to take action on the master plan. The approval of the master plan by the Planing and Zoning Commission is a final action unless it is appealed to City Council.

The approved master plan proposes a mixed-use development containing a mixture of housing types and small-scale commercial and civic uses to serve the residents of the development. The master plan indicates that mixed-use buildings will be organized in a pedestrian-oriented, village core and surrounded by other residential uses. The master plan also proposes several community buildings for public or institutional use, including a charter school and daycare. The plan proposes a total of 197 residential dwelling units. The plan proposes a system of internal pedestrian circulation through a combination of sidewalks and walking trails. The plan also proposes to dedicate approximately 17 of the 43 acres to a homeowners association to be preserved as common open space.

The TRC and the Planning and Zoning Commission reviewed the impacts of the proposed master plan and determined that this development is appropriate for the site. The developer prepared and submitted a Traffic Impact Analysis (TIA) as required by the City. The TIA analyzed traffic impacts based on the development proposed in the master plan. The analysis shows that there will be some increase in delay at surrounding intersections as a result of this development. The report concludes, however, that the impact is not enough to warrant improvements to the intersections. Michael Moule, City Traffic Engineer, and Ken Putnam of the N. C. Department of Transportation reviewed the TIA and concur with the findings.

The Planning and Development staff recommends approval of the PUD overlay designation for this parcel of 41.53 acres located at 1773 Old Haywood Road in the Extraterritorial Jurisdiction.

Upon inquiry of Mayor Sitnick, City Attorney Oast said that the question before City Council is whether the application of the PUD overlay zoning classification is appropriate for this particular property. City Council will probably see some representations of specific plans for the property, however, Council should view those with an indication of what can be done, but not what will be done with the property. Again, Council should consider whether this particular zoning classification, with the types of density bonuses and opportunities for implementation of smart growth ideas, is appropriate for this piece of property. Even though the master plan has been approved by the Planning and Zoning Commission, is subject to change,

Mr. Marty Kocot, Engineer of record with Land Design representing Artisan House Inc., gave a brief history of the property along with outlining the topographic features of the property. The stressed that the plan was developed using smart growth and is a classic planned unit development. He explained how the intent of the plan is to meet the five purposes outlined in the UDO for a PUD. The then described how the plan is the best fit for the property. Their intent is to create a close knitted community to what is already located in the Old Haywood Road area. The best feature of the PUD is that it will preserve the natural features, reduce the amount of grading and impacts to the environment, and create an artist related community that is interconnected where a person might shop, live and work.

Upon inquiry of Councilman Peterson, Mr. Kocot said that Appalachian Way is a recorded, but never built right-of-way for a street. He then explained the plan that they have for Appalachian Way.

Upon inquiry of Councilwoman Field, Mr. Kocot said that since this property is within the extraterritorial jurisdiction, there is no City bus service. However, there are plans to add bus service in the future and they will incorporate that into the project.

Mr. Kocot and City staff then responded to questions about buffering on the property.

Upon inquiry of Mr. Fred English, Mayor Sitnick said that the specifics of who will live in the apartments and their price range have not been determined at this point.

Ms. Betty Fagan, President of the neighborhood association in the area, stated that the owners have worked with the community. She did question the amount of units that could be built on the property with the PUD overlay. She hoped that the trees on the property could be preserved and that adequate buffering will be required. She voiced concern over the traffic that the new units will cause on the two lane street and also questioned the dam and overflow of the area. She stated that the majority of the area feels that the master plan will be an asset to the community and hoped that the approved master plan would not change.

City Attorney Oast said that the master plan that the Planning and Zoning Commission approved is pretty close to final form. There can be no significant changes unless it goes back to the Planning and Commission, which will require another public hearing.

Mr. Jim Fagan pointed out that a condition was placed on the master plan that the Metropolitan Sewerage District (MSD) has to upgrade the downstream sewer line. Mr. Baechtold explained that MSD is in the process of doing that upgrade.

Mr. David Peifer, 15 East Starnes Cove Road, was concerned about the number of apartments and commercial things being built on the southeast corner of the development which surround the RS-4 community. He also stated concerns about buffering, particularly in that area where that community will take the brunt of the impact of the development.

Mr. Evan Beverage spoke in support of the overlay and stated that they have worked very hard with the terrain to accomplish the density that will make the development economically feasible to incorporate all the concepts contained within the PUD.

Mayor Sitnick closed the public hearing at 6:08 p.m.

Upon inquiry of Councilman Peterson about if there is some limitation on how much commercial space would be permitted, City Attorney Oast said that was considered in connection with the master plan which has already been approved. The Planning and Zoning Commission has made the findings with respect to that plan that are listed in the UDO with regard to other development standards and the combination of uses, lot sizes, lot widths, lot setbacks, etc.

Mayor Sitnick asked that whatever the plan is, can City Council require that the old growth trees remain in the southeast corner of the development. City Attorney Oast said that making that finding is inappropriate because this is a rezoning. However, he did point out that preservation of existing vegetation is one of the features of the more specific development standards that would be attached to the master plan approval.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2722. This motion was seconded by Councilwoman Field and carried unanimously.

Mayor Sitnick said that she met the Beverages several years ago when they first came to Asheville. One thing that attracted them to this property was the trees. At that time she felt sure they would do everything they could to work with the neighborhood to preserve the trees and make their concept to create a community appropriate for the area.

ORDINANCE BOOK NO. 18 – PAGE 401

B. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE IN ORDER TO REVISE THE MAXIMUM FOOTPRINT FOR ACCESSORY STRUCTURES IN RESIDENTIAL DISTRICTS

ORDINANCE NO. 2723 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE IN ORDER TO REVISE THE MAXIMUM FOOTPRINT FOR ACCESSORY STRUCTURES IN RESIDENTIAL DISTRICTS

Mayor Sitnick opened the public hearing at 6:10 p.m.

Mr. Gerald Green, Senior Planner, said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to revise the maximum footprint for accessory structures in residential districts. This public hearing was advertised on June 16 and June 23, 2000.

Approximately 2-½ years ago, City Council approved an amendment to the UDO establishing a maximum footprint of 600 square feet for accessory structures in residential districts. Staff has received comments from the public that the current size limit for accessory structures is too restrictive. Staff reviewed the current standards, spoke with citizens regarding the standards, and worked with the Planning and Zoning Commission in revising the standards. The Planning and Zoning Commission at their May 3, 2000, meeting recommended the proposed ordinance amendment for approval. Maximum footprints for accessory structures in residential districts proposed by the ordinance amendment are:

Lot Size	Single Structure	Total – All Structures
< 1 acre	770 sq ft	1,000 sq ft
1 – 3 acres	1,200 sq ft	1,600 sq ft
> 3 acres	No limit	No limit

The other standards for accessory structures in residential districts (setback, building height, etc.) would remain unchanged. The proposed standards would meet the needs of the community for accessory structures adequate to meet their storage needs while protecting neighboring residential properties from obtrusive structures.

The Planning and Zoning Commission voted 6-0 to recommend approval of the wording amendment establishing revised maximum footprints for accessory structures. The Planning and Development staff recommends approval of the wording amendment.

City staff recommends City Council consider an amendment to the UDO to establish revised maximum footprints for accessory structures.

Mayor Sitnick closed the public hearing at 6:17 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2723. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 403

C. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE IN ORDER TO REVISE THE APPROVAL PROCESS FOR PRELIMINARY PLATS FOR MAJOR SUBDIVISIONS

ORDINANCE NO. 2724 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE IN ORDER TO REVISE THE APPROVAL PROCESS FOR PRELIMINARY PLATS FOR MAJOR SUBDIVISIONS

Mayor Sitnick opened the public hearing at 6:18 p.m.

Mr. Gerald Green, Senior Planner, said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to revise the process for approval of preliminary plats for major subdivisions. This public hearing was advertised on June 16 and June 23, 2000.

In response to direction provided by the Fast Trackers Development Review Team and the Sustainable Economic Development Plan, Planning and Development staff reviewed current processes to identify streamlining opportunities. The proposed preliminary plat review process change was identified as a way to improve the development review processes of the City. The Planning and Zoning Commission, at their May 3, 2000, meeting, reviewed and recommended approval of an amendment to the UDO to revise the approval process for preliminary plats for major subdivisions. Major subdivisions are those subdivisions that require the construction of new streets and/or utilities or the dedication of new easements or rights-of-way. Under the current preliminary plat review process, the preliminary plat is reviewed and approved by the Planning and Zoning Commission following review and recommendation by the Technical Review Committee (TRC). The approval process currently requires approximately 4 weeks. The TRC would be authorized to review and approve preliminary plats for major subdivisions by the proposed amendment. Time required for review and approval of preliminary plats would be reduced to two weeks. Public notification of proposed subdivisions would be provided prior to the TRC meetings and the meetings are open to the public. The proposed ordinance amendment would streamline and improve the preliminary plat review process with no reduction in the quality of the review process.

The Planning and Zoning Commission voted 6-0 to recommend approval of the wording amendment regarding the preliminary plat approval process for major subdivisions. The Planning and Development staff recommends approval of the wording amendment.

City staff recommends City Council consider an amendment to the UDO regarding the preliminary plat approval process for major subdivisions.

Mr. Green answered various questions from Councilman Peterson relative to the thresholds for residential development. Mr. Green explained that Level I is up to 8 units, Level II is from 8 units to 50 units, and Level III is more than 50 units. Currently Level I projects can receive final approval by the TRC; Level II projects receive final approval by the Planning and Zoning Commission, after TRC recommendation; and, Level III projects receive review by the TRC, Planning and Zoning Commission and City Council makes final approval. This amendment would allow the TRC to give final approval on both Level I and Level II projects and Level III approvals would still need to go to City Council for approval.

Mr. Gerry Hardesty felt that there is very little opportunity for public input in this process. He felt that since the TRC is made up of City employees or City agencies, there is no input from the public other than what the TRC will entertain from the public at those meetings. He doesn't think that the public has the opportunity to give input on these kinds of major developments, especially with the approval process only being two weeks.

Upon inquiry of Vice-Mayor Cloninger, Mr. Green explained that when you're talking about preliminary plats, the review process is a technical review process. The UDO sets out certain specific technical requirements that those plats have to meet and the process is to determine whether or not the plat meets those technical requirements – it is not in the nature of a discretionary review. He said that the review ensures that those standards that are set forth are met.

Mayor Sitnick said since we are cutting the review process by two weeks, there should be a little more outreach with regard to public notification. Even though the public does not have an opportunity to change the technical requirements, the notification process should go beyond

400 feet --so that if someone wants to come to a TRC meeting and express a concern, that at least it will be in the record so it won't be overlooked. Mr. Green said that staff will look at the notification procedures for all developments and report back to Council at a later date. Currently all notification requirements are standard, regardless of the type of development.

Planning & Development Director Scott Shuford stressed that subdivision plat review deals with things like lot sizes, water and sewer line sizes, locations of roads, etc., which are very technical. He would hate to see us separate having a more stringent public notification process for something that is basically a use by right. He did state that they would look at the notification procedures.

City Attorney Oast suggested the following addition to Section 7-5-8 (a) (8) (a) which may address Council's concern: "Appeals may be taken by other parties aggrieved by actions of the Technical Review Commission. Appeals shall be taken to the Planning and Zoning Commission which, for this purpose, is designated to perform the functions of the Board of Adjustment. Appeals must be taken within 30 days."

Upon inquiry of Councilman Peterson, Mr. Green said that, to his knowledge, the Planning and Zoning Commission has never denied a preliminary plat review after it was approved by the TRC. In addition, he did not recall the public ever providing input to the TRC that they were not already aware of.

Mayor Sitnick closed the public hearing at 6:31 p.m.

Councilman Worley felt that the more we can do to cut the cost of some developments, the more we can do to create affordable housing. He stated that preliminary plats must meet the technical requirements of the UDO and if those requirements are met, then it is approved - if it doesn't meet those requirements, then it is not approved.

Councilman Peterson was concerned that for developments of up to 49 units there is only public input at the TRC meeting. He agreed that Level I final approvals from the TRC are fine. However, if the development is more than 8 units, then we should continue the current process because the public may make a point at the TRC meeting and the TRC doesn't have enough information to make an informed decision. It is only at the Planning & Zoning Commission meeting that the public will actually know what the developer is proposing. Again, he felt that the gap between 8 and 49 units is too much and there should be Planning & Zoning Commission approval necessary.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2724, with the following addition to Section 7-5-8 (a) (8) (a): "Appeals may be taken by other parties aggrieved by actions of the Technical Review Commission. Appeals shall be taken to the Planning and Zoning Commission which, for this purpose, is designated to perform the functions of the Board of Adjustment. Appeals must be taken within 30 days." This motion was seconded by Councilman Worley and carried on a 4-1 vote, with Councilman Peterson voting "no".

Mayor Sitnick said that if it is brought to her attention that there is not enough opportunity for public input, then she will ask that this ordinance be revised

City Attorney Oast said that since this ordinance amendment did not pass by a 2/3 vote, it will require a second reading which will occur at Council's next formal meeting on July 11, 2000.

ORDINANCE BOOK NO. 18 – PAGE 405

D. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE IN ORDER TO REVISE THE REVIEW AND APPROVAL PROCESS FOR DUPLEXES, TRIPLEXES AND QUADRAPLEXES IN SINGLE FAMILY ZONING DISTRICTS AND TO ESTABLISH NEW DEVELOPMENT STANDARDS FOR THESE USES

At the request of City staff, Councilman Worley moved to continue this public hearing until August 8, 2000. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2725 - ORDINANCE APPROVING THE CROWELL FARMS MASTER PLAN

City Attorney Oast said that this is the consideration of an ordinance adopting an order approving the master plan for Crowell Farms development.

On April 25 and 26, 2000, City Council held a public hearing and adopted Planned Unit Development Overlay Zoning for approximately 71 acres located in the extraterritorial jurisdiction and known as Crowell Farms. The Planning and Zoning Commission had previously approved the Master Plan for the PUD. That approval was appealed by other residents of the area around the proposed Crowell Farms development. City Council held a public hearing on that appeal on May 23, 2000, wherein evidence was presented by City staff, persons opposed to and persons in support of the development. At the close of this public hearing, City Council voted to approve the Master Plan, and directed City staff to prepare an Order for consideration.

If City Council approves of the findings and conclusions set forth in the Order, adoption of the ordinance approving it is recommended.

City Attorney asked that the following two additions (underlined) be added to the Order: "Accordingly, the City Council hereby APPROVES the Master Plan for Crowell Farms, subject to the conditions approved by the Planning and Zoning Commission and subject to compliance with other applicable provisions of the Asheville City Code, including all subdivision regulations, and subject to the following additional conditions: (1) That significant trees, stands of trees, and buffers be preserved and protected during the construction and development of the Project, as required by Section 7-11-2 (c) of the Unified Development Ordinance; and (2) That walking trails be easily accessible from all developed portions of the Project, including public streets, parking areas, and children's play areas."

City Attorney Oast also suggested an amended Finding 9 (g) as follows: "If developed as proposed, a substantial number of the existing trees on the site having a six-inch caliper measurement, and at least 20 such trees, will be preserved, in addition to the trees that the developer proposes to plant."

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2725, with the three amendments outlined by the City Attorney above. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

V. NEW BUSINESS:

A. RESOLUTION NO. 00-109 - RESOLUTION ADOPTING THE SMART GROWTH DEFINITION AND POLICIES

Mr. Scott Shuford, Planning & Development Director, said that this is the consideration of a resolution adopting Smart Growth Definition and Policies.

As an outgrowth of the Sustainable Economic Development Task Force findings and City Council direction regarding Smart Growth development patterns, staff has been charged with creating a definition for Smart Growth that meshes with the City of Asheville's needs and characteristics.

The Smart Growth Definition and Policies outlines issues relating to Smart Growth and sustainable development, provides a definition for Smart Growth based on local conditions and characteristics, and suggests several interim policies to guide staff in making land use and transportation decisions while the 2010 Plan is being updated and the Unified Development Ordinance is being amended.

City staff recommends that Council approve the resolution on Smart Growth that establishes a Smart Growth definition and implementation policies consistent with the document entitled Smart Growth Definition and Policies.

He explained that Asheville is faced with several threats to its character and quality of life. Those include: air quality, expensive housing, outdated infrastructure, sprawl development trends, disconnected roadway system, shortage of developable land, and limited regional growth management.

Smart growth is a proposed City of Asheville development pattern that makes efficient use of our limited land; fully utilizes our urban services and infrastructure; promotes a wide variety of transportation and housing options; absorbs and effectively serves a significant portion of the future population growth of Buncombe County and Western North Carolina, protects the architecture and environmental character of the City through compatible, high quality and environmentally-sensitive development practices; and recognizes the City's role as a regional hub of commerce and employment. He said that smart growth must be implemented through comprehensive, consistent and effective policies, regulations, capital projects and incentives.

Smart growth land use policies include mixed use, "vertical density" infill, sustainability, traditional neighborhood patterns, supported by housing investment, industrial land reservation, environmentally-sensitive land preservation, and strengthen existing neighborhoods through a comprehensive approach.

Smart growth transportation policies include new development supports a connected street network, implement bike and pedestrian plan, make multi-modal connections, new development supports mass transit, implement transit plan, monitor and maintain traffic capacity, maintain an interconnected street network, and use traffic calming.

Vice-Mayor Cloninger felt that there should be some addition to the policies regarding making Asheville more walkable and more bicycling. Mr. Shuford suggested the following amendment to the transportation policies: "Strongly encourage improvements that make Asheville a premier walking and biking community including the use of evaluative and regulatory tools and capital improvements."

Mayor Sitnick said that a letter has been written to the N. C. Dept. of Transportation asking them to do a better job of maintaining their streets, keeping them clean, repairing the traffic islands, etc. – all which benefit a walkable community.

Mr. Fred English, 17 Pressley Road, said that sidewalks should be built if Asheville wants to be a walkable community.

Mr. Jim Bannon, representative of Smart Growth Partners, generally spoke in support of this issue and encouraged Council to continue in their efforts.

Mayor Sitnick requested that the City advise the public of this direction through available means of public contact. Councilman Worley suggested educating the public by some type of panel discussion on the Government Channel.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Resolution No. 00-109, as amended above by Planning & Development Shuford. This motion was seconded by Councilwoman Field and carried unanimously.

Councilwoman Field said that City Council is setting some policies that could have a major affect on how Asheville looks and how Asheville continues to develop and re-develop with the small amount of land we have left. She suggested that we take a hard look at what happens when these policies come into conflict, i.e. a developer wants to build another development with a cul-de-sac and we are encouraging connecting streets. We need to study how we set our policies - to either encourage or possibly provide incentives to make Asheville grow the way we want it to grow.

RESOLUTION BOOK NO. 26 – PAGE 70

B. ORDINANCE NO. 2726 - ORDINANCE REGULATING NOISE IN THE CITY OF ASHEVILLE

City Attorney Oast said that this is the consideration of a revision of the City's noise ordinance.

In 1998 the City undertook a review of the noise ordinance, which was last revised in 1994. This was done largely in response to community concerns about the difficulty of enforcing the current ordinance. The review process included a well-attended community meeting, meetings among City staff, and with citizen representatives.

The problems that were identified included:

1) Difficulty in getting police response to noise complaints;
2) Even when citations are issued, courts are not receptive to enforcement; and
3) Some noises (barking dogs, boom boxes) are not sufficiently regulated.

There were also some matters that needed to be addressed legally.

The revised noise ordinance has several important features:

1. The basic "unreasonably loud and raucous" standard is retained. This has been upheld in State and federal cases, including the United States Supreme Court.

2. Certain types of activities are identified as tending to produce loud and disturbing noises or noise levels. The City cannot ban or regulate these activities except to the extent that they actually do constitute a disturbance, but they are enumerated for the purpose of putting the public on notice that certain activities are prone to generating complaints in certain circumstances.

3. Certain types of activities are exempted from the noise ordinance. This was done in recognition that such activities (a) may be necessary for the public health and safety; (b) are non-recurring and of limited duration; (c) are associated with civic or community-wide events; or (d) are subject to constitutional or other legal protection.

4. Civil penalty for violation. Under the current ordinance, the only means of enforcement are by criminal penalty ($50.00 fine/imprisonment) for misdemeanor infraction, or by equitable remedies (injunctions, etc.). There was no provision for civil penalty, and research discloses that this was specifically removed from a previous revision. As a practical matter, this means that the ordinance can only be enforced by the police, by a citizen swearing out a criminal warrant, or by the City initiating a civil action for injunctive relief. The use of civil penalties allows for escalating fines for repeat offenders.

5. Noise ordinance appeals board. To address the problems of "he said/she said," and to allow citizens an informal, but official, way of addressing noise based disputes, the ordinance establishes a hearing board with the power to adjudicate complaints and issue civil citations, and the power to consider appeals from citations issued by City staff. Appeals from the noise ordinance appeals board are to the City Manager.

6. Responsibility. The ordinance provides that the owner or occupant of property where a violation occurs may be liable for violations. Notice is required for owners who do not live on the premises.

If City Council agrees with the proposed revisions, adoption of the ordinance is recommended.

City Attorney Oast suggested the following amendments to the proposed noise ordinance Council which is based on comments from the Council's worksession to the present:

1. Change catchline of Section 10-83 from "General Prohibition" to "General Regulation"

2. Change catchline of Section 10-84 from "Specific Prohibitions" to "Noise producing activities; frequent sources of complaint; noise sensitive areas."

3. Change first paragraph of Section 10-84 to read: "In addition to the general regulation set forth above, the following activities are recognized as having historically been frequent sources of noise complaint, and as tending to constitute noise disturbances when conducted or permitted in an unreasonable manner."

4. Change last paragraph of Section 10-84 to read: "It is further recognized that certain uses, including churches, synagogues and other places of worship, medical and convalescent facilities, schools and courthouses are particularly sensitive to sound and

noise. Noise-producing activities, including those specified above, may become noise disturbances when conducted in the immediate vicinity of those uses during their hours of operation."

5. Change paragraph 10-85 (i) to read: "Sound emanating from regularly scheduled athletic events at city or county parks, athletic facilities, public or private schools, and McCormick Field;"

6. Change paragraph 10-85 (l) to read: "Unamplified noncommercial speeches made from a fixed location, provided such speeches are made in a non-residentially zoned area."

7. Change paragraph 10-85 (m) to read: "Sound or noise emanating from construction or repair work and regulated activities of utilities regulated by the North Carolina Utilities Commission."

8. Add paragraph 10-85 (o): "Sound or noise emanating from aircraft flight activity at the Asheville Regional Airport, provided said activities are conducted in accordance with FAA regulations."

Councilwoman Field asked if the issue of conflicting activities in downtown been addressed. City Attorney Oast said that there always is going to be some friction when there are two different uses in the same building or in close proximity. It may be something more appropriately resolved by the Noise Ordinance Appeals Board.

At the request of Mayor Sitnick, it was the consensus of City Council to amend Section 10-85 (g) to read: "Lawnmowers and agricultural equipment operated between the hours of 8:00 a.m. and 9:00 p.m. when operated in accordance with manufacturer's specifications and with all standard noise reducing equipment in place and in proper condition;"

Discussion surrounded the hours of operation of refuse collection vehicles in Section 10-84 (n). She felt that the commercial garbage trucks are unbelievably noisy and they start as early as 5:00 a.m. and sometimes earlier. City Manager Westbrook said that there are some difficult situations making refuse collection vehicles to operate either in the wee hours of the morning or late at night, e.g., it is the only time they can get into an area with difficult parking situations like in the downtown area, or when pedestrians are not walking by.

Mr. Fred English asked that City Council prohibit tractor trailers using their engine brakes in the City of Asheville. City Attorney Oast said that he was not sure the City of Asheville could regulate that, however, he would look into it.

Mr. Meredith Hunt, representing Life Advocates, said that on the surface, this proposed ordinance maintains much of the current ordinance and adds to it other complicated layers of enforcement, penalties and potential subjective interpretations. He asked in what other municipalities has the Noise Ordinance Appeals Board been used and has it worked. He questioned why the existing Buncombe County ordinance (which requires a decibel test) and the proposed City ordinance is so different. He also wondered how an animal control is qualified to determine if an amplified human voice is too loud. With regard to the exception to City sponsored events, in theory, the City is allowed to put on loud rock concerts at Bele Chere but a private individual would come under scrutiny for doing the same thing on his own property or even on public property. He understands that some kind of workable governing ordinance or method is needed for public noise, while at the same time, he believes that free speech must be protected. He felt that how the picketing ordinance was written in 1995 may be a good process model for working on a revised noise ordinance. He proposed a creation of a task force consisting of interested citizens, members of organizations who would be affected by a noise ordinance, and pertinent representatives from the City of Asheville. Also, the attorneys from the American Liberties Institute have offered to contribute to ensuring that the ordinance is constitutional as far as free speech is concerned. This would give key parties an opportunity to learn about the proposed ordinance and to offer ideas and amendments and hopefully come to a consensus on its major points.

Upon inquiry of Councilman Peterson, City Attorney Oast explained why this proposed ordinance does not rely on a decibel limitation. But, he said this ordinance doesn't prohibit the use of decibel equipment – it is one tool that enforcement people can use. He pointed out that calibrated decibel meters are expensive to buy, it involves training officers, and, in a lot of respects, it is more cumbersome to administer. In addition, you have to try to get rid of ambient noise and the noise may have stopped by the time to get a meter to the place. He pointed out that the three cases in North Carolina that have been decided by our state courts have all upheld standards similar to our proposed ordinance.

Councilman Peterson felt the use of decibel equipment should be used in conjunction with the other enforcement measures in the ordinance.

Mayor Sitnick said that people have contacted her about the constant noise of large trucks and buses left running for hours. City Attorney Oast said that may be an issue for the Noise Ordinance Appeals Board.

City Attorney Oast said that the Noise Ordinance Appeals Boards was a recommendation from the committee who worked on this proposed ordinance and he didn't see any reason why the Board would not work.

At the request of Councilman Peterson, it was the consensus of Council to amend Section 10-89 (a) to add that the first violation is $50.00.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Peterson moved for the adoption of Ordinance No. 2726, with the 8 amendments outlined by City Attorney Oast above, the amendment to Section 10-85 (g) as recommended by Mayor Sitnick, and the amendment to Section 10-89 (a) to state that the first violation is $50.00. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 412

C. RESOLUTION WAIVING CONFLICT OF INTEREST AND PERMITTING VAN WINKLE, BUCK, WALL, STARNES AND DAVIS, P.A., TO FILE ACTIONS OF EMINENT DOMAIN ON BEHALF OF THE CITY OF ASHEVILLE

RESOLUTION AUTHORIZING THE FILING FOR CONDEMNATION OF WATER LINE EASEMENTS ALONG A PRIVATE ACCESS ROAD KNOWN AS UPPER MOFFITT BRANCH BROAD TO THE EXTENT THAT ADJACENT PROPERTY OWNERS IDENTIFIED AS LARRY AND ROBIN BROOKS AND MARGARET BROOKS HAVE INTEREST

City Manager Westbrook said that Larry & Robin Brooks and Margaret Brooks have signed the easement agreements for the right-of-way needed on Upper Moffitt Branch Road. Therefore, City staff requests this item be pulled from City Council consideration.

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of June 9-15, 2000: BellSouth (Water), BellSouth (Water), Geraldine Jerome (Water), Kathy Feeney (Water), A-B Tech (Fire) and Karen Franklin (Water).

The following claims were received by the City during the period of June 16-22, 2000: Geneva Fate (Parks and Recreation), Philip Constable (Inspections), Sheril Chanbers (Water) and Rita Kay (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUITS

The City received the following Petition for Writ of Certiorari on May 15, 2000, which is generally described as follows: Malcolm M. Malloy III and Pioneer Welding Supply v. Zoning Board of Adjustment – Seeking reversal of Board of Adjustment's decision that a new 9,000 gallon liquefied oxygen storage tank (replacing old 3,000 gallon tank) constituted an expansion of a non-conforming use. This matter will be handled in-house.

The City filed the following Complaint on June 16, 2000, which is generally described as follows: City of Asheville v. Robert Penland and Teresa Penland – Complaint for injunction from placing a mobile home in an RM-8 District and for money judgment in the nature of civil penalty for violation of City Code Section 7-8-6. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Street Addresses

Mayor Sitnick urged residents and businesses to have their street numbers on the front of their property.

Comments by Fred English

Mr. Fred English commented on the number of events that have left the City of Asheville area.

Closed Session

At 8:07 p.m., Councilman Peterson moved to go into closed session for the following reasons. (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations - statutory authority is contained in G.S. 143-318.11(a)(4); (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease - statutory authorization is contained in G.S. 143-318.11(a)(5); and (3) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Morris Communications, Inc. d/b/a Fairway Outdoor Communications; Lamar OCI – South Corp.; Maple Cove, Inc.; Carl and Janis Ricker; Asheville Board of Adjustment; and City of Asheville. -

The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Worley and carried unanimously.

At 9:15 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:15 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - July 11, 2000 - 5:00 p.m.

Regular Meeting

Present:	Mayor Leni Sitnick, Presiding; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	Vice-Mayor M. Charles Cloninger

INVOCATION

Councilwoman Bellamy gave the invocation.

ADDITIONS TO THE AGENDA

Mayor Sitnick said that she would like to introduce a resolution concerning the planning process for the I-26 Connector under "Other Business." In addition, she would like to announce the upcoming design forum format on July 20-22, 2000.

I. PROCLAMATIONS:

A. RECOGNITION OF THE CITY OF ASHEVILLE BEING DESIGNATED AS NO. 6 IN AMERICA'S TOP 25 ART DESTINATIONS AS POLLED BY *AMERICANSTYLE* MAGAZINE

Ms. Marilyn Patton from Grovewood Gallery presented the City of Asheville with a plaque in recognition of being designated as No. 6 in America's Top 25 Art Destinations as polled by *AmericanStyle* Magazine.

Mayor Sitnick recognized Mr. Tucker Cooke. Mr. Cooke is the Chair of the Asheville Public Art Board and active member of the Urban Trail Design Review Committee. He is responsible for the design of several of the stations on the Urban Trail. In addition Mr. Cooke is the Chair of the Art Department at UNCA and a local artist.

Mayor Sitnick also recognized Ms. Oralene Simmons. Ms. Simmons is the Cultural Arts Supervisor for the City and Director of the YMI Cultural Center. She is a member of the Urban Trail Committee and is responsible for the various YMI Galleries and exhibits.

B. PROCLAMATION PROCLAIMING JULY 26, 2000, AS THE "10TH ANNIVERSARY OF THE AMERICANS WITH DISABILITIES ACT"

Mayor Sitnick read the proclamation proclaiming July 26, 2000, as the "10th Anniversary of the Americans with Disabilities Act" in the City of Asheville. She presented the proclamation to Mr. Bart Floyd and Mr. James Stirewalt, representatives from the Western Alliance Center for Independent Living, who thanked Council for their support.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 20, 2000, AND THE WORKSESSION HELD ON JUNE 27, 2000

2.27

B. RESOLUTION NO. 00-110 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE HERITAGE PRESERVATION AND THE SMITHSONIAN MUSEUM OF ART TO ASSESS THE CONDITION OF THE "ENERGY LOOP" LOCATED IN THE CITY-COUNTY PLAZA

Summary: The consideration of a resolution to apply for and enter into an agreement with the Heritage Preservation and the Smithsonian Museum of American Art to assess the condition of the "Energy Loop" located in the City-County Plaza.

The Parks and Recreation Department is responsible for managing public art through the newly developed Public Art Program with assistance from the Public Art Board. The "Energy Loop", located in City-County Plaza, was installed in the early 1980s and has experienced substantial damage that threatens its long-term survival. It is suffering from severe corrosion, especially at its base where the sculpture comes in direct contact with the ground, and consequently with moisture. Because of the damage, and because this sculpture was the first public art officially acquired by the City of Asheville, the Public Art Board has identified its conservation as a top priority.

The Parks and Recreation Department is requesting $850 in non-matching grant funds to hire a conservator to assess the sculpture, prepare a detailed condition report, and a proposal for treatment. If successful, the City of Asheville will then consider applying for a Save Our Sculpture! conservation grant to implement the treatment.

The Parks and Recreation Department recommends the City of Asheville apply for and enter into an agreement for grant funds through the Heritage Preservation and the Smithsonian Museum of American Art in Save Our Sculpture! to assess the condition of the "Energy Loop" located in City-County Plaza.

RESOLUTION BOOK NO. 25 – PAGE 75

C. RESOLUTION NO. 00-111 - RESOLUTION AUTHORIZING THE CITY MANAGER TO RENEW THE CONTRACT WITH DAP SECURITY INC. FOR SCHOOL CROSSING GUARDS FOR SCHOOL YEARS 2000-01 AND 2001-02

Summary: The consideration of a resolution authorizing the City Manager to contract with DAP Security, Inc. for the provision of school crossing guards for the school years 2000/2001 and 2001/2002.

The Asheville Police Department, through the use of a private contractor, provides school crossing guards for 12 schools located in the City of Asheville. The contracted cost is $80,233.20 annually. The prior years' contract covering the 1998/99 and 1999/00 school years was $74,527.20 for each year. The reason for the increase from the prior year's contract is the three additional school crossing guards, in addition to incremental cost increases.

Funds are allocated in the Police Department budget in the Professional Services line item.

City staff recommends adoption of the resolution authorizing the City Manager to enter into an agreement with DAP Security, Inc. to provide the services of school crossing guards for the school years 2000/2001 and 2001/2002.

RESOLUTION BOOK NO. 25 – PAGE 76

D. RESOLUTION NO. 00-112 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER FOR UPSET BIDS REGARDING DISPOSAL PARCEL 104 IN THE EAST END COMMUNITY IMPROVEMENT AREA

Summary: The consideration of a resolution establishing a minimum price of $5,900 for Disposal Parcel 104 in the East End/Valley Street Community Improvement Program and authorizing the City Clerk to advertise for upset bids.

Disposal Parcel 104 is a residential lot near the corner of Ridge Street and Hazzard Street comprising 5,227 square feet. The assessed tax value on the lot is $5,900.00. The bid from Queen E. Young for Disposal Parcel 104 includes the proposal to construct a single-family home on the property at an estimated cost of $57,475.00. The home proposed will contain 3 bedrooms and 2 baths. She estimates that construction will be completed within six to eight weeks after conveyance of the property. Ms. Young, if she is the successful bidder, will be eligible for the Incentive Housing Program Lot Purchase Subsidy.

The advertisement for upset bids, if approved by Council, will require that upset bids include the proposal to begin construction of an affordable single family home on the lot within three months and complete construction within six months.

Approval of the resolution will establish the minimum price for Disposal Parcel 104 at $5,900.00 and initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 – PAGE 77

E. ORDINANCE NO. 2727 - ORDINANCE AMENDING SECTION 6-2 (FIRE PREVENTION CODE) TO ELIMINATE FIRE DISTRICT NO. 3

Summary: The consideration of an ordinance eliminating the remaining area of Fire District No. 3.

The North Carolina Building Code, Appendix F, Fire District outlines the requirements for a fire district. A fire district is established in areas meeting certain requirements for occupancy, construction type, building height, and building density to prevent the spread of a major fire.

Asheville has three fire districts. Major renovation and rehabilitation of buildings in Fire District No. 3 have been undertaken to a point where no significant fire protection purpose is served by leaving those structures in a fire district. The attached ordinance eliminates all of Fire District No. 3.

The Interim Fire Chief recommends adoption of an ordinance that would eliminate Fire District No. 3 in the Asheville Fire Prevention Code.

ORDINANCE BOOK NO. 18 – PAGE 420

F. MOTION SETTING A PUBLIC HEARING ON JULY 25, 2000, TO CONSIDER THE REZONING OF PROPERTY ON ROBERTS STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CB-1 COMMUNITY BUSINESS I DISTRICT, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

G. MOTION SETTING A PUBLIC HEARING ON JULY 25, 2000, TO CONSIDER THE REZONING OF PROPERTY ON CARSON CREEK DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2724 – SECOND READING OF AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE IN ORDER TO REVISE THE APPROVAL PROCESS FOR PRELIMINARY PLATS FOR MAJOR SUBDIVISIONS

Mayor Sitnick said that on June 27, 2000, Ordinance No. 2724 was adopted on its first reading and because it did not pass by a 2/3 vote of City Council, it is required to come back to City Council for a second reading.

Senior Planner Gerald Green briefly reviewed the amended ordinance stating that the proposed preliminary plat review process change was identified as a way to improve the development review processes of the City. Under the current preliminary plat review process, the preliminary plat is reviewed and approved by the Planning and Zoning Commission following review and recommendation by the Technical Review Committee (TRC). The approval process currently requires approximately 4 weeks. The TRC would be authorized to review and approve preliminary plats for major subdivisions by the proposed amendment. Time required for review and approval of preliminary plats would be reduced to two weeks. Public notification of proposed subdivisions would be provided prior to the TRC meetings and the meetings are open to the public. The proposed ordinance amendment would streamline and improve the preliminary plat review process with no reduction in the quality of the review process.

Councilman Peterson felt that the gap between 8 and 49 units is too much and there should be Planning & Zoning Commission approval necessary.

Councilwoman Field and Councilmen Hay and Worley all felt since that this approval is not a judgment or policy decision in that the requirements that need to be met are technical in nature.

Mayor Sitnick was concerned about public notification and understood that Planning staff will look at the notification procedures and report back to Council at a later date. In addition, she asked the City Manager to develop some information to educate the public on the development process, e.g., when a protest petition is appropriate, what has time deadlines and what are they, what is the next step if a development is approved or denied, how to items get submitted into the record, etc.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it will not be read.

Councilman Worley moved for the adoption of Ordinance No. 2724 on it's second and final reading. This motion was seconded by Councilwoman Field and carried on a 5-1 vote, with Councilman Peterson voting "no".

ORDINANCE BOOK NO. 18 – PAGE 405

V. NEW BUSINESS:

A. ORDINANCE NO. 2728 - ORDINANCE AUTHORIZING CRIMINAL HISTORY CHECKS ON ALL FINAL APPLICANTS FOR POSITIONS WITH THE CITY OF ASHEVILLE DEFINED AS FULL AND PART TIME REGULAR EMPLOYMENT

Mr. Kevin Wilson, Assistant Director of Human Resources, said that this is the consideration of an ordinance that would provide all City departments the ability to conduct pre-employment criminal history checks in all 100 North Carolina counties.

In North Carolina, local governments only have the authority to conduct pre-employment criminal history checks through local law enforcement agencies when there is North Carolina General Statute requiring such a check. Certain job classes, such as police officers and daycare providers, are examples of positions where the North Carolina General Assembly has approved statewide criminal history checks. Absent of such General Statute, local governments must adopt a local ordinance that will provide the entity legal access to the North Carolina State Bureau of Investigation's Division of Criminal Investigation (DCI) terminal.

Adoption of this ordinance will enable the City of Asheville to conduct statewide criminal history checks through the City/County Identification Bureau at no cost to the City of Asheville. In addition, the turnaround time for this type of check can be completed in less than 24 hours. The City of Asheville is currently conducting criminal history checks in some of the City departments through the Buncombe County Clerk of Court. However, this type of check only checks criminal history for Buncombe County.

Most local governments across North Carolina are taking steps to provide a more comprehensive pre-employment criminal history screening process in order to help prevent employer liability. By conducting statewide checks, it will help insure that the top candidates hired for positions with the City of Asheville do not pose any direct threat to the safety of the employees and citizens of the City of Asheville.

The State of North Carolina Attorney General's Office, along with the State Bureau of Investigation, have reviewed and given initial approval of the draft ordinance as is required by law.

City staff recommends adoption of this ordinance.

When Councilwoman Bellamy asked what happens with the information received if the applicant is not hired, Mr. Wilson said the information is treated like any other employment record in that it cannot be released.

Councilwoman Field wanted to make sure that we do not use this criminal check as a way to discriminate against someone who, if they did commit a crime, went through the rehabilitation process. Mr. Wilson responded that the City will not be involved in anything that would preclude someone from being hired on a biased or prejudiced basis.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hay moved for the adoption of Ordinance No. 2728. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 421

VI. OTHER BUSINESS:

A. RESOLUTION NO. 00-113 – RESOLUTION CONCERNING THE PLANNING PROCESS FOR THE I-26 CONNECTOR

Mayor Sitnick announced the design forum format for the I-26 Connector Project, which forum begins on July 20-July 22, 2000. She then asked City Council to consider the following resolution concerning the planning process for the I-26 Connector: "The Federal Highway Administration and the North Carolina Department of Transportation currently plan to connect the new and existing portions of Interstate 26 through the City of Asheville in Project I-2513. The design of this road project is of critical importance to the City of Asheville, in terms of traffic safety, traffic management, air quality, affordable housing economic consequences, and other areas. The Asheville City Council, based on concerns expressed by citizens of the City of Asheville concerning the design of said project, resolved in December of 1999 to hold a community design forum for the purpose of obtaining further public input on the design of said project and developing alternative design(s) which can then be further evaluated during environmental studies for the project. The Community Design Forum has been planned by City Planning staff, the N.C. Dept. of Transportation, and a Community Coordinating Committee, and has been preceded in June of 1999 by an educational meeting attended by several hundred citizens. The Community Design Forum is currently scheduled for July 21st and July 22nd, 2000. The Asheville City Council requests that the N. C. Dept. of Transportation and the Federal Highway Administration give thorough, consideration and evaluation to all feasible possibilities resulting from the Community Design Forum."

Councilman Hay moved to adopt the proposed resolution as read by Mayor Sitnick. This motion was seconded by Councilman Peterson.

Councilman Worley suggested some wording amendments to the proposed resolution. Discussion then surrounded the amendments and it was agreed upon by Council to amend the resolution (underlining denotes changes) as follows: "The Federal Highway Administration and the North Carolina Department of Transportation currently plan to connect the new and existing portions of Interstate 26 through the City of Asheville in Project I-2513. The design of this road project is of critical importance to the City of Asheville and Western North Carolina, in terms of traffic safety, traffic management, air quality, affordable housing economic consequences, and other areas. The Asheville City Council (deleted language) resolved in December of 1999 to hold a community design forum for the purpose of obtaining further public input on the design of said project and developing alternative design(s) which can then be further evaluated during environmental studies for the project. The Community Design Forum has been planned by City Planning staff, the N.C. Dept. of Transportation, and a Community Coordinating Committee, and has been preceded in June of 1999 by an educational meeting attended by several hundred citizens. The Community Design Forum is currently scheduled for July 21st and July 22nd, 2000. The Asheville City Council commends the N. C. Dept. of Transportation and the Federal Highway Administration for participating in the Community Design Forum and supports and requests the consideration and evaluation of all feasible possibilities resulting from the Community Design Forum."

Ms. Betty Lawrence, representative of the I-26 Connector Awareness Group, stated that they are excited about the possibilities of the design forum. She appreciated and supported the resolution proposed by Council. She said this kind of public participation for the N.C. Dept. of Transportation and the City of Asheville is new and crucial.

Councilman Hay and Councilman Peterson accepted the proposed amendments. The motion to adopt the amended resolution carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 78

B. CONDITIONAL USE PERMITS – SAYLES BLEACHERIES SITE

Upon inquiry of several Council members, City Attorney Oast said that if Council wishes to acknowledge letters, e-mails and phone calls relative to the conditional use permit coming before Council soon on the Sayles Bleacheries site, he advised them to thank the citizen for expressing their concerns and state that Council's decision will be based on information submitted at the public hearing.

It was the consensus of City Council to tour the site with Planning Department staff.

C. WNC REGIONAL AIR QUALITY AGENCY

City Attorney Oast said that he received a letter today from Mr. Jim Siemens requesting City Council consider their appointments to the WNC Regional Air Quality Agency in advance of the certification that is being sought. City Attorney Oast reminded Council that the Interlocal Agreement previously considered by Council provided for the current board members, Nelda Holder and Arlis Queen, to continue serving on the new board, but that since the agreement had been amended, Council could confirm its intention regarding those appointments, anticipating the approval and re-certification of the amended agreement, which is pending before the EMC, and that any further action, if necessary, would be after the certification had been received. Councilman Hay felt that the appointments should be included in the next quarterly appointment process. In the interim, however, Councilman Hay moved to appoint Nelda Holder and Arlis Queen as the City representatives on the WNC Regional Air Quality Agency. This motion was seconded by Councilman Peterson and carried unanimously.

D. CLAIMS

The following claims were received by the City of Asheville during the period of June 23-29, 2000: Dale Heizer (Sanitation), City Development (City Development), Ken Timmerman (Water), Donald Trask (Sanitation) and Virginia Baird (Water).

The following claims were received by the City during the period of June 30-July 6, 2000: Lee Ewart (Streets), Jeremy French (Streets) and Laura Webb (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Closed Session

At 6:20 p.m., Councilman Hay moved to go into closed session for the following reasons: (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations - G.S. 143-318.11(a)(4); (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease - G.S. 143-318.11(a)(5); and (3) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Betty Donoho, County of Buncombe, Western North Carolina Air Pollution Control Agency, and City of Asheville - G.S. 143-318.11(a)(3). This motion was seconded by Councilman Peterson and carried unanimously.

At 8:10 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Mayor Sitnick and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:10 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - July 18, 2000 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

New Street Name Approval – Nettlewood Drive

Summary: The consideration of a resolution accepting the new proposed street name "Nettlewood Drive."

Nettlewood, Assoc. LLC., owners of lots in Nettlewood Professional Park, has petitioned the City of Asheville to accept the street name "Nettlewood Drive." The new street will begin at Hendersonville Road (U.S. Hwy 25) and end at U.S. 25.

City staff recommends adoption of the resolution.

Contract for Social Work and Police Partnership Grant

Summary: The consideration of a resolution authorizing the City Manager to contract with Blue Ridge Center for the provision of a social worker to work with the police in carrying out the activities of the Social Work and Police Partnership Grant.

The Asheville Police Department has received a grant through the North Carolina Department of Crime Control and Public Safety, Governor's Crime Commission for a Social Work and Police Partnership Project. The grant calls for the City to contract with Blue Ridge Center to carry out project activities. The grant provides $49,000 as a professional service fee for the City to pay to Blue Ridge Center for the provision of a social worker. The social worker will work with juveniles to reduce runaway behavior.

Funds are allocated in the Police Department Professional Services Budget, 115-3502-421-3010.

City staff recommends the adoption of the resolution authorizing City Manager to enter into the contract with Blue Ridge Center.

Unattended Fuel Facility

Summary: The consideration of a resolution authorizing installation and operation of an unattended fuel facility at Sam's Club Membership Warehouse on Patton Avenue.

Sam's Club Membership Warehouse will operate an unattended service station at 645 Patton Avenue. They have asked for Fire Department assistance with meeting fire code standards so that the motor fuel pumps at the service station can be operated by vehicle drivers without an attendant.

The Interim Fire Chief recommends City Council authorize installation and operation of an unattended fuel facility at Sam's Club Membership Warehouse through adoption of the resolution.

Budget Amendment Regarding Transit Services

Summary: The consideration of a budget amendment in the amount of $110,000 to reflect additional revenue and offsetting expenses in the Transit Services operating budget.

The City of Asheville received additional funds from North Carolina Department of Transportation for operation of a transit system. These funds were received in the FY 1999/2000 fiscal year. In order to appropriately account for these funds in the fiscal year in which they were received, it is necessary to amend the FY 1999/2000 budget. This amendment will take effect before FY 1999/2000 is officially closed.

City staff recommends City Council adopt the budget amendment in the amount of $110,000 to reflect additional revenue and offsetting expenses in the Transit Department budget.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

CONDITIONAL USE PERMIT PROCESS

City Attorney Oast and Planning & Development Director Scott Shuford reviewed with Council the conditional use permit process.

Prior to the public hearing City Attorney Oast suggested Council not discuss details of the project with the developer or with citizens. If Council must answer questions or correspondence, please do so in a generic fashion; sample language: "This project involves a special type of hearing – a quasi-judicial hearing – where we have to basically sit as judges and base our decision on information presented at the hearing. We cannot receive information outside of the hearing that might affect our ability to make an impartial decision at the hearing. If we heard what you had to say, it might jeopardize our ability to make an impartial decision and may keep a decision that supports your point of view from being upheld if that decision ever went to court. Please come to the public hearing and tell us your position – we do want to hear from you."

He suggested Council visit the site - this is especially effective if the entire Council (or a large part of the Council) attends as a group with Planning & Development staff serving as "tour guides." However, Council should decline invitations for site visits or on-site meetings with the developer or citizens. If Council does visit the site, in connection with the application, Council should disclose this information at the beginning of the public hearing.

He suggested Council ask questions of staff. Staff will make sure any information you receive will likewise be received by other Council members.

During the public hearing, he advised Council to listen to all speakers and ask questions. He suggested Council allow an opportunity for questioning of any speakers and staff members by anyone present if requested. A suggested method for allowing this to occur in an organized fashion is as follows: Open public hearing; presentation by staff; presentation by developer; persons in support; persons in opposition; rebuttal and questions by persons in support; rebuttal and questions by persons in opposition; rebuttal and questions by developer; and close public hearing.

An applicant for a conditional use permit should be allowed sufficient time to present their application to the Council, and this may mean that the usual time limits cannot be strictly observed. Similarly, if there is organized opposition, sufficient time should be allowed for a presentation of relevant information. General public comment may be held at the usual limits, and Council may take appropriate steps to move a presentation along, or avoid repetition.

City Council should base their decision on information received at the public hearing. State your reasons for support or opposition in terms of the standards for approval of conditional use permits. If you need assistance, staff will assist you in making any motion, in developing conditions for approval, or in stating your rationale for denial. A practice that has been working well is for staff to develop the written order, and submit it to Council at a later meeting.

Mr. Shuford said that this information will be put into the development material that can be distributed to the public.

BELE CHERE PRESENTATION

On behalf of the Bele Chere Board and Festival staff, Councilman Worley, 2000 Bele Chere Festival, presented City Council with this year's Bele Chere T-shirt and other Bele Chere items.

BOARDS AND COMMISSIONS

City Council instructed the City Clerk to arrange interview for various boards and commissions.

At the request of City Attorney Oast, Councilman Worley moved to waive the rules and take official action at this meeting. This motion was seconded by Councilwoman Bellamy and carried unanimously. Councilman Worley then moved to confirm and ratify the appointment of (1) Arlis Queen to the WNC Regional Air Quality Agency to serve until March 20, 2002, or until his successor has been appointed; and (2) Nelda Holder to the WNC Regional Air Quality Agency to serve until June 15, 2004, or until her successor has been appointed. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

OTHER BUSINESS

Conditional Use Permit – Old Sayles Bleachery Site

It was the consensus of City Council to hold the public hearing on the conditional use permit for Riverbend Marketplace (i.e. Walmart) at the Asheville Civic Center. City Manager Westbrook said that he will investigate the use of either the Banquet Room or the Thomas Wolfe Auditorium.

I-26 Connector Design Forum

Mayor Sitnick invited Council to the I-26 Connector Design Forum which will be held July 20-22, 2000, at the Radisson Hotel, Asheville, N.C.

Comment by Mickie MaHaffey

Mr. Mickie MaHaffey was concerned about the number of people running the red light on Biltmore Avenue between Pack Place and Café on the Square.

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ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 4:30 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - July 25, 2000 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor M. Charles Cloninger, Presiding; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Leni Sitnick

INVOCATION

Councilman Peterson asked for a moment of silence for Asheville Firefighter Danko Maurice McQueen who died in a motorcycle accident on Sunday, July 23, 2000; and Mr. and Mrs. Taylor Odom and three of their six children who died in a car accident on Monday, July 24, 2000.

ADDITIONS TO THE AGENDA

City Manager Westbrook asked that the following items be added to the agenda: (1) two resolutions authorizing subordination of City-backed loans on Mountainside Apartments under the Consent Agenda; and (2) a resolution conferring the Mayor's powers and duties upon the Vice-Mayor in the absence of the Mayor under Other Business.

I. PROCLAMATIONS:

II. CONSENT:

Councilman Hay asked that Consent Agenda Item H be pulled from the Consent Agenda for discussion.

City Manager Westbrook said that the developer of Nettlewood Professional Park has asked that Consent Agenda Item C be deleted from the agenda. It was the consensus of City Council to removed that item from the agenda.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 11, 2000, AND THE WORKSESSION HELD ON JULY 18, 2000

B. RESOLUTION NO. 00-114 - RESOLUTION AWARDING THE BID FOR DISPOSAL PARCEL 104 IN THE EAST END COMMUNITY IMPROVEMENT PROJECT

Summary: The consideration of a resolution authorizing the Mayor to execute the necessary documents for the conveyance of Disposal Parcel 104 of the East End/Valley Street Community Improvement Project to Queen E. Young in the amount of $5,900.

On July 11, 2000, the City Council directed the City Clerk to advertise for upset bids on Disposal Parcel 104. The advertisement ran in the Asheville Citizen-Times on July 14, 2000, as provided in N. C. Gen. Stat. sec. 160A-269.. No response was received. Therefore, the offer to purchase from Queen E. Young in the amount of $5,900 was not upset and the sale to Queen E. Young should be approved.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 79

C. RESOLUTION ACCEPTING THE NEW STREET NAME OF "NETTLEWOOD DRIVE"

This item was deleted from the Consent Agenda.

D. RESOLUTION NO. 00-115 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BLUE RIDGE CENTER TO PROVIDE A SOCIAL WORKER TO WORK WITH THE ASHEVILLE POLICE DEPARTMENT

Summary: The consideration of a resolution authorizing the City Manager to contract with Blue Ridge Center for the provision of a social worker to work with the police in carrying out the activities of the Social Work and Police Partnership Grant.

The Asheville Police Department has received a grant through the North Carolina Department of Crime Control and Public Safety, Governor's Crime Commission for a Social Work and Police Partnership Project. The grant calls for the City to contract with Blue Ridge Center to carry out project activities. The grant provides $49,000 as a professional service fee for the City to pay to Blue Ridge Center for the provision of a social worker. The social worker will work with juveniles to reduce runaway behavior.

Funds are allocated in the Police Department Professional Services Budget, 115-3502-421-3010.

City staff recommends the adoption of the resolution authorizing City Manager to enter into the contract with Blue Ridge Center.

RESOLUTION BOOK NO. 26 – PAGE 80

E. RESOLUTION NO. 00-116 - RESOLUTION AUTHORIZING INSTALLATION AND OPERATION OF AN UNATTENDED SERVICE STATION FACILITY BY SAM'S CLUB MEMBERSHIP WAREHOUSE

Summary: The consideration of a resolution authorizing installation and operation of an unattended fuel facility at Sam's Club Membership Warehouse on Patton Avenue.

Sam's Club Membership Warehouse will operate an unattended service station at 645 Patton Avenue. They have asked for Fire Department assistance with meeting fire code standards so that the motor fuel pumps at the service station can be operated by vehicle drivers without an attendant.

The Interim Fire Chief recommends City Council authorize installation and operation of an unattended fuel facility at Sam's Club Membership Warehouse through adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 81

F. **ORDINANCE NO. 2729 - BUDGET AMENDMENT TO REFLECT ADDITIONAL REVENUE AND OFFSETTING EXPENSES IN THE TRANSIT SERVICES OPERATING BUDGET**

Summary: The consideration of a budget amendment in the amount of $110,000 to reflect additional revenue and offsetting expenses in the Transit Services operating budget.

The City of Asheville received additional funds from North Carolina Department of Transportation for operation of a transit system. These funds were received in the FY 1999/2000 fiscal year. In order to appropriately account for these funds in the fiscal year in which they were received, it is necessary to amend the FY 1999/2000 budget. This amendment will take effect before FY 1999/2000 is officially closed.

City staff recommends City Council adopt the budget amendment in the amount of $110,000 to reflect additional revenue and offsetting expenses in the Transit Department budget.

ORDINANCE BOOK NO. 18 – PAGE 423

G. **RESOLUTION NO. 00-117 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT TO METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, N.C., ACROSS PROPERTY OWNED BY THE CITY OF ASHEVILLE KNOWN AS MALVERN HILLS PARK**

Summary: The consideration of a resolution authorizing the Mayor to execute an easement to the Metropolitan Sewerage District to install a sewer line across City-owned property located in Malvern Hills Park.

Staff has been working with representatives of the Metropolitan Sewerage District, in coordinating consideration of the installation of a sewer line, using trenches construction running through a parking area near the tennis courts at Malvern Hills Park. There are no trees, landscaping or improvements in the area, only pavement for parking and a paved walking trail. The Parks and Recreation Department staff have agreed that the easement, along with special provisions agreed to by MSD, will in no way limit the potential use of the property for a park.

City staff recommends that the Mayor grant an easement for an existing sewer line to the Metropolitan Sewerage District in order to install a sewer line across City- owned property located in Malvern Hills Park.

RESOLUTION BOOK NO. 26 – PAGE 84

H. **MOTION SETTING A PUBLIC HEARING ON AUGUST 8, 2000, TO CONSIDER A CONDITIONAL USE PERMIT FOR RIVERBEND MARKETPLACE FOR DEVELOPMENT ON THE OLD SAYLES BLEACHERIES SITE LOCATED AT 437 SWANNANOA RIVER ROAD**

This item was removed from the Consent Agenda for discussion.

I. **RESOLUTION NO. 00-118 - RESOLUTION AUTHORIZING THE MAYOR OR VICE-MAYOR, THE CITY ATTORNEY AND THE CITY CLERK TO EXECUTE AN AGREEMENT SUBORDINATING THE DEED OF TRUST GRANTED BY ASHEVILLE-MOUNTAINSIDE, L.L.C., FOR THE BENEFIT OF THE CITY OF ASHEVILLE FOR A LOAN MADE PURSUANT TO THE HOME INVESTMENT PARTNERSHIP PROGRAM**

Summary: The consideration of two resolutions authorizing subordination of City-backed loans on Mountainside Apartments.

Asheville-Mountainside LLC is the owner of McCormick Heights Apartments (previously known as Mountainside Apartments), a low/moderate income apartment complex. Asheville Mountainside undertook extensive renovation work on the apartments (100 units). The work was financed in part with loans through the HOME and CARROT programs administered by the City's Community Development office, and the City holds Deeds of Trust as security for the loans. Neither loan is a first tier loan. Wachovia Bank holds the first tier construction loan.

The construction work has now been completed, and Asheville Mountainside wishes to obtain permanent financing by paying off the Wachovia construction loan, and obtaining financing from Mechanics and Farmers Bank. They have requested that the City subordinate its deeds of trust from the HOME and CARROT loans to the deed of trust that will secure the permanent financing.

This is a routine request in federally subsidized housing rehab work, and grows out of a requirement by the Mechanics and Farmers Bank as a condition of obtaining permanent financing; the HOME loan specifically contemplates subordination. The City's position with respect to its loans will not be materially impaired.

If Council agrees for subordination of the HOME and CARROT loans, adoption of the resolutions is recommended.

RESOLUTION BOOK NO. 26 – PAGE 85

J. **RESOLUTION NO. 00-119 - RESOLUTION AUTHORIZING THE MAYOR OR VICE-MAYOR, THE CITY ATTORNEY AND THE CITY CLERK TO EXECUTE AN AGREEMENT SUBORDINATING THE DEED OF TRUST GRANTED BY ASHEVILLE-MOUNTAINSIDE, L.L.C., FOR THE BENEFIT OF THE CITY OF ASHEVILLE FOR A LOAN MADE PURSUANT TO THE C.A.R.R.O.T. PROGRAM**

Summary: See Consent Agenda Item "I" above.

RESOLUTION BOOK NO. 26 – PAGE 87

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

ITEM PULLED FROM THE CONSENT AGENDA

MOTION SETTING A PUBLIC HEARING ON AUGUST 8, 2000, TO CONSIDER A CONDITIONAL USE PERMIT FOR RIVERBEND MARKETPLACE FOR DEVELOPMENT ON THE OLD SAYLES BLEACHERIES SITE LOCATED AT 437 SWANNANOA RIVER ROAD

Chief Planner Gerald Green said that on July 24, 2000, the developers for Riverbend Marketplace requested the Board of Adjustment continue their request for a variance until they had an opportunity to work with City staff. The Board of Adjustment continued the variance request until the Board's September 25, 2000, meeting. However, the Board is considering holding a special meeting to consider this request sooner than it's September 25 meeting date. The developer has also requested City Council postpone their public hearing on the issuance of the conditional use permit until after the Board of Adjustment renders a decision on their variance request.

Even though the City Council would like to move forward with consideration of this matter as quickly as possible, it was agreed that City Council should not hold their public hearing until after the Board of Adjustment renders it's opinion and more information from staff is received.

Councilwoman Field asked the City Attorney to research how other communities have banned large structures, like a Super Walmart, in their area.

With regard to the August 1, 2000, tour of the Sayles Bleacheries site, it was the consensus of City Council to postpone that tour until a public hearing date is set to consider the conditional use permit. The tour will be a special meeting of City Council and the public can be present, however, no comments from the public will be taken.

It was the consensus of City Council to hold their August 8, 2000, formal City Council meeting in the Council Chamber, 2nd Floor of the City Hall Building – not at the Asheville Civic Center as previously discussed.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY ON ROBERTS STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CB-1 COMMUNITY BUSINESS I DISTRICT, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

ORDINANCE NO. 2730 - ORDINANCE TO REZONE PROPERTY ON ROBERTS STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CB-1 COMMUNITY BUSINESS I DISTRICT

ORDINANCE NO. 2731 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY ON ROBERTS STREET (CONDITIONAL USE ZONING)

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to vote to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Vice-Mayor Cloninger opened the public hearing at 5:15 p.m.

Mr. Gerald Green, Chief Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), and City Exhibit 3 (Staff Report). This public hearing was advertised on July 14 and July 21, 2000.

Mr. Green said that this is the consideration of (1) an ordinance to rezone one lot of 1.65 acres on Roberts Street from RM-8 Residential Multi-Family Medium Density District to Community Business I - CU (Conditional Use); and (2) issuance of a Conditional Use Permit for an artist studio, workshop, gallery and three upstairs apartments at this location.

On July 5, 2000, the Planning and Zoning Commission voted unanimously to recommend approval of this rezoning request. The applicant, Sam Stark, wishes to build a new building on a currently vacant lot (PIN No. 9638.08-98-1689) and use the building for his glass blowing workshop and gallery. Planning staff feels that this type of request is a good use of the conditional use zoning tool.

The property is currently zoned RM-8 and is part of an RM-8 District that covers the "Chicken Hill" area of the West End/Clingman neighborhood. The property is currently vacant. The property across the street is a large vacant tract of land zoned Commercial Industrial (map used is part of City Exhibit 3) . The Commercial Industrial property has the potential to be developed to a high intensity use. Therefore, a transition area is needed between the very high intensity use and the low intensity residential use. The proposed use of the property as an artist studio and gallery serves this purpose. With conditional use zoning, the site plan and building design are regulated to ensure that this use is low-impact, and provides the desired transition area.

The proposed site plan and building elevation shows a two-story building with a pedestrian-oriented street front façade (map used is part of City Exhibit 3). The plan proposes a mix of uses by including one upstairs apartment and the potential for two additional upstairs apartments on a third story. Roberts Street could eventually contain a mix of small-scale commercial and residential uses that serve and blend in with the existing neighborhood. A master plan for the area is now underway that might identify some of these possibilities.

Mr. Green said that since the time of the Planning and Zoning Commission meeting to consider this request, the applicant has added a catering kitchen to the list of his proposed uses as part of this development. That would be a low intensity use and staff is supportive of that request.

Planning and Development staff recommends approval of a motion to rezone property located on Roberts Street from RM-8 to Community Business I -CU and approval of a conditional use permit with the following conditions: 1) Uses will be limited to an artist studio, workshop, gallery, a catering kitchen, and three upstairs apartments; and 2) Site alterations will be limited to the proposed site development plans and building elevation drawings, with the potential for an addition of a third-story to incorporate additional apartments.

Councilman Peterson asked what limitation would there be on the applicant if, in the future, he wanted to convert the entire building into some sort of retail space, thus removing the mixed uses. City Attorney Oast explained that it would have to come back to City Council for an amendment to the conditional use permit.

Mr. Sam Stark, applicant, spoke in support of this request and stressed that he had every intention on keeping the mixed uses in the building.

There being no request from the applicant for rebuttal, Vice-Mayor Cloninger closed the public hearing at 5:27 p.m.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilwoman Field moved to adopt Ordinance No. 2730 to rezone property on Roberts Street from RM-8 Residential Multi-Family Medium Density District to CB-1 Community Business I District (conditional use zoning). This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 425

Councilman Worley moved to adopt Ordinance No. 2731 granting the conditional use permit for property on Roberts Street (conditional use zoning), with the following conditions: (1) Uses will be limited to an artist studio, workshop, gallery, a catering kitchen, and three upstairs apartments; and (2) Site alterations will be limited to the proposed site development plans and building elevation drawings, with the potential for an addition of a third-story to incorporate additional apartments. Said motion also instructs the City Attorney to prepare the Order for the Mayor's signature reflecting the findings that the Code requires regarding conditional use standards and reflecting information presented by staff and subject to the conditions suggested by staff. This motion was seconded by Councilwoman Field and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY ON CARSON CREEK DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

ORDINANCE NO. 2732 - ORDINANCE TO REZONE PROPERTY ON CARSON CREEK DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT

ORDINANCE NO. 2733 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY ON CARSON CREEK DRIVE (CONDITIONAL USE ZONING)

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to vote to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Vice-Mayor Cloninger opened the public hearing at 5:30 p.m.

Ms. Stacy Merten, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), and City Exhibit 3 (Staff Report). This public hearing was advertised on July 14 and 21, 2000.

Ms. Merten said that this is the consideration of (1) an ordinance to rezone a lot at 627 Carson Creek Drive from RM-16 Residential Multi-Family High Density District to Office District, and (2) issuance of a conditional use permit.

The Planning and Zoning Commission, at their July, 5, 2000, meeting, reviewed and recommended approval to conditionally rezone a 1.64 acre tract located on Carson Creek Drive near the Turtle Creek and Carson Creek apartments. The subject property (PIN No. 9655.05-18-4838) is located in an RM-16 zoning district that is adjacent to a HB zoning district. The site is currently vacant. The proposal is to construct a small office park, to be known as Travis Office Park, consisting of three buildings with a total of 9,600 square feet (map is part of City Exhibit 3).

This site fits the criteria for office zoning as it is located in a transition areas between high density residential and commercial uses. Staff has worked with the developer to design a project that will fit into the character of the area and the site as the conditional use zoning allows. The buildings will be of log cabin construction to better blend with the natural surroundings. The building closest to the street will be two stories, but will appear as one from the front. The developer will strive to save as many large existing trees as feasible in the buffer areas and will plant additional trees and shrubs as may be required to meet the 20 ft. 'B' buffer requirement. Parking areas will not be readily visible from the street.

The Planning and Zoning Commission voted unanimously to recommend approval of the conditional use rezoning with the following conditions: (1) prior to the issuance of a Level I zoning permit, the following items must be addressed: (a) Easements for the private sewer lines must be submitted - this may affect the landscape plan; (b) Drawings must be revised so that no parking is located within a required setback; (c) The Planning Director and the City Engineer have determined that sidewalks are required and should be shown on the site plans; (d) Accessible paths of travel from the parking areas to the buildings must be shown on the site plan; (e) All requirements for stormwater and erosion control must be met; (f) A wastewater allocation from MSD must be obtained; (g) The development will need to tie into the water main on Hendersonville Road; and (h) The final building plans must be sealed by a licensed architect and meet all NC building code requirements, including those for accessibility.

The Planning and Development staff recommends approval of the conditional use rezoning.

Councilman Hay was concerned that this property is zoned for multi-family housing and we're giving that up for an office use.

Ms. Merten said that that 26 units could be provided on this 1.64 acre site and actually the concern of the neighborhood was more to preserve the existing trees, which this development does.

Mr. John Fisher, Architect who prepared the site plan, said that the building is a log-style home to be placed on the site. He emphasized that they are proposing a low density residential type development and are being conservative with the site. The total square footage is 9,600 feet vs. if you did build 26 units on this site at 1,200 sq. feet per unit it would be 31,000 sq. feet. In addition, their parking is 39 cars vs. 26 units at two cars per unit it would be 52 cars. And, he noted, they are trying to preserve as many trees as possible.

Dr. Gerald Travis said that this is a proposal for his office as a child psychiatrist. His goal is to develop an atmosphere that is non-intimidating and actually has a residential feel for children and families that he sees in his practice. The design and intent is a different approach than a typical medical complex for the type of practice that he has.

Councilman Hay wondered why this property has not been developed as residential in the past. Dr. Travis said that he heard this was a piece of property that was part of a foreclosure from Turtle Creek Apartments.

There being no request from the applicant for rebuttal, Vice-Mayor Cloninger closed the public hearing at 5:42 p.m.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Worley moved to adopt Ordinance No. 2732 to rezone property on Carson Creek Drive from RM-16 Residential Multi-Family High Density District to Office District (conditional use zoning). This motion was seconded by Councilwoman Field.

Councilman Hay said that he would vote in favor of the rezoning, however, he has a real concern about loss of opportunities for housing. He did feel that his project was great and is consistent with the kind of development City Council wants to see. But, this property is zoned for multi-family residential which is something we are struggling to find more opportunities for in the City. He said he would vote in favor of the rezoning, operating under the assumption that this property is not easily developable for multi-family or else it would have been developed by now.

Councilwoman Field said that, as an architect, looking at how small the lot is, she didn't think a developer would come in and develop that small an area multi-family. A developer would probably be looking to be much more efficient and develop more units in order to get the price at a reasonable level. That's probably why it hasn't been developed into multi-family housing. She agreed with Councilman Hay with regard to the loss of multi-family zoned property and Council really needs to be mindful of that.

Vice-Mayor Cloninger and Councilman Peterson both agreed with Councilman Hay stating that the City does need to be mindful of preserving as much of multi-family zoned property as it can.

The motion to rezone this property made by Councilman Worley and seconded by Councilwoman Field carried unanimously.

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Councilwoman Field moved to adopt Ordinance No. 2733 granting the conditional use permit for property on Carson Creek Drive (conditional use zoning), with the following conditions: (1) prior to the issuance of a Level I zoning permit, the following items must be addressed: (a) Easements for the private sewer lines must be submitted - this may affect the landscape plan; (b) Drawings must be revised so that no parking is located within a required setback; (c) The Planning Director and the City Engineer have determined that sidewalks are required and should be shown on the site plans; (d) Accessible paths of travel from the parking areas to the buildings must be shown on the site plan; (e) All requirements for stormwater and erosion control must be met; (f) A wastewater allocation from MSD must be obtained; (g) The development will need to tie into the water main on Hendersonville Road; and (h) The final building plans must be sealed by a licensed architect and meet all NC building code requirements, including those for accessibility. Said motion also instructs the City Attorney to prepare the Order for the Mayor's signature reflecting the findings that the Code requires regarding conditional use standards and reflecting information presented by staff and subject to the conditions suggested by staff. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 434

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION WAIVING CONFLICT OF INTEREST AND PERMITTING VAN WINKLE, BUCK, WALL, STARNES AND DAVIS, P.A., TO FILE ACTIONS OF EMINENT DOMAIN ON BEHALF OF THE CITY OF ASHEVILLE

RESOLUTION NO. 00-120 - RESOLUTION AUTHORIZING THE FILING FOR CONDEMNATION OF A WATER LINE EASEMENT ALONG A PRIVATE ACCESS ROAD KNOWN AS SPRING STREET TO THE EXTENT THAT ADJACENT PROPERTY OWNERS HAVE INTEREST

City Attorney Oast requested no action will be taken the resolution waiving the conflict of interest and permitting Van Winkle, Wall, Starnes and Davis, P.A., to file actions of eminent domain on behalf of the City of Asheville. He said that some issues have been raised by Council members in which he needs to get more information on and he is not prepared to go forward with that issue that this time.

City Attorney Oast said that at this time, staff is requesting Council's authorization to proceed with the filing of a condemnation of a waterline easement along a private access road known as Spring Street to the extent that adjacent property owners have interest.

Summary: As City Council is aware, the Regional Water Authority received a $3 million grant from the State of North Carolina in July 1999 to construct some critical improvements to the City-owned water distribution system. Design has been completed, right-of-way has been underway since February 2000, construction bids have been received and contracts were awarded by the Water Authority on June 20, 2000, and construction is scheduled for August 2000 through February 2001.

Despite significant efforts by staff to acquire an easement along Spring Street, northwest of the City of Asheville, we have been unable to obtain the signatures of Ms. Lavanda Rutan of Conestee, South Carolina, and Ms. Darlene M. Waters and husband, Richard G. Waters of Conestee, South Carolina. A third heir, Mr. Danny Mathis, Single, of Asheville, North Carolina has signed the easement. Title work obtained by the Water Authority's attorney identified these individuals as the surviving heirs of Ama L. Henderson, who owned the property but is now deceased. All owners of other property on Spring Street and Wolfe Park Circle have signed easements.

A survey and appraisal has been performed on these two properties, and the Regional Water Authority recommended on July 18, 2000, that the City Council authorize the Authority's attorney to exercise the Council's authority of eminent domain to obtain water line easements in the access road where the interests of these three owners in common of this property exist. These easements must be obtained for the Authority to proceed with the completion of the $3 million of water system improvements.

City staff and the Regional Water Authority recommend the City Council adopt the resolution authorize the filing of condemnation of a water line easement on the property described above, and the City Attorney recommends the City Council adopt the resolution waiving conflict of interest with Van Winkle, Buck, Wall, Starnes, and Davis, P. A. (attorney for the Water Authority) to file these actions of eminent domain on behalf of the City of Asheville.

Vice-Mayor Cloninger said that members of Council have been previously furnished with copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 00-120. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 89

VI. OTHER BUSINESS:

A. RESOLUTION NO. 00-121 – RESOLUTION CONFERRING MAYOR'S POWERS AND DUTIES UPON VICE-MAYOR

City Attorney Oast read the following resolution: G.S. 160A-70 provides for the election of a Mayor pro tempore, and further provides for the powers and duties of the Mayor to be conferred by Council upon the Mayor pro tempore, in the absence of the Mayor, and Sec. 10 of the Asheville City Code, and Rule 10 of City Council's Rules of Procedure provide to similar effect with respect to the office of Vice-Mayor; and, Mayor Sitnick is absent from the City and is not anticipated to return until August 7, 2000. Now, therefore, be it resolved by the City Council of the City of Asheville that the powers and duties of Mayor are hereby conferred upon the Vice-Mayor, effective immediately and continuing until 8:00 a.m. on August 8, 2000, or until such sooner time as the City Manager is advised that the Mayor is no longer absent.

Councilman Hay moved for the adoption of Resolution No. 00-121. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 90

B. CLAIMS

The following claims were received by the City of Asheville during the period of July 7-20, 2000: Lewis Rathburn Center (Water), City Development, McNutt Service (Fleet Management) and Rebecca Keil (Parks & Recreation).

These claims have been referred to Asheville Claims Corporation for investigation.

C. LAWSUITS

The City received the following complaint on July 5, 2000: Betty Donoho v. City of Asheville, Buncombe County and WNC Air Pollution Control Agency. The nature of the proceeding is a complaint for injunction from paying any excess funds held by the WNC Air Pollution Control Agency to the Clean Air Community Trust and to order these funds to be paid to the School Board. This matter will be handed in-house.

The City received the following Charter Services Complaint on July 11, 2000: Travel Professionals Inc., Young Transportation Inc. and NC Motorcoach Association Inc. vs. Asheville Transit System. The nature of the proceeding is a determination that festival bus shuttle services are "charter service" and should be privatized; to enjoin the Asheville Transit System from providing the festival shuttle services; and order Asheville Transit System to pay compensatory damages in an amount in excess of $10.000. This matter will be handled in-house.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Vice-Mayor Cloninger adjourned the meeting at 5:52 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - August 1, 2000 - 3:00 p.m.

Worksession

Present: Vice-Mayor M. Charles Cloninger, Presiding; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Leni Sitnick

CONSENT:

Critical Needs List for Water System Improvements – For City Council Information Only

Summary: The review of a Critical Needs List which identifies critical improvements needed to the Water System.

In July 1999 the Regional Water Authority adopted a Critical Needs List for the first time. This list included a prioritized listing of critical improvements needed to the Water System as developed by the Water Resources Department staff. The first list included a total of $16,872 million of improvements needed to correct problems such as frequently leaking water lines, undersized water lines causing low service pressure, water quality problems, and/or water lines which can no longer serve additional customers. At that time, the Regional Water Authority agreed that this list should be updated annually.

This is the second edition of this Critical Needs List for the City Council's review. The list this year identifies $227,000 of critical need improvements completed within the last year, $7,304,430 of improvements scheduled for construction in the next twelve months ($5,000,000 of which is funded by grants received from the State), and an additional $15,574,200 of improvements needed but not yet scheduled. The total list of projects on this year's list totals $23,105,630. Those projects not yet scheduled are grouped in order of first, second and third priority.

The adoption of a Critical Needs List serves several purposes: (1) identifying the scope of critical problems in the Water System for budgeting and planning purposes; (2) assists in reviewing customer complaints and providing effective information to customers wanting service in these areas of the Water System; and (3) positions us to take advantage of outside funding opportunities in a timely manner. The first Critical Needs List adopted in 1999 was invaluable to the process of applying for State grant funding which resulted in our successful award of $5 million from the State.

The Regional Water Authority unanimously approved the 2000 Critical Needs List for Water System Improvements at their July 18, 2000, meeting.

Staff recommends that the City Council review this report for information purposes.

Raftelis Financial Consulting Inc. Cost of Service Water Rate Study – For City Council Information Only

Summary: The review of a resolution authorizing the Chairman to sign a contract with Raftelis Financial Consulting to perform a cost of service rate study.

At their meeting on June 20, 2000, the Budget/Finance Committee reviewed a proposal from Raftelis Financial Consulting (RFC) to perform a cost of service study. Staff recommended that the Authority enter a contract with RFC to begin a cost of service study as soon as possible in order to have an accurate review of the rate structure in place before next budget year. The Authority has previously approved this study as part of its five-year capital improvement plan and funding has been appropriated in the Fiscal Year 2000/2001 Water Fund Budget.

Development of a cost of service study will involve the following tasks: (1) Collection of relevant data for analysis including determining capacity factors associated with customer classes and performing a bill frequency analysis; (2) Calculation of rates and charges over the next five years for each customer class using a conceptual design that includes a new wholesale customer class. This task includes comparing the newly developed rates and charges with those of similar utilities, with the exception of the wholesale rate; (3) Presentation of proposed cost of service rates to explain to interested groups the rate setting methodology and projected rates and charges; and (4) Preparation of a final report detailing analysis and results.

Mr. Raftelis, of RFC, has served over 300 government utilities in his 25-year career. In particular, he has extensive experience in performing financial feasibility evaluations for various municipalities across the country. He has previously assisted the Authority in the water cost of service and rate study performed in 1995 and the financial feasibility analysis performed in 1996. He is very familiar with our organization and the political atmosphere of this community. Given RFC's prior work on the 1996 Bond Issue and his recent assistance to review the Authority's five-year financial plan, he was able to reduce fees substantially below the amount he billed for the 1995 Cost of Service study.

The Regional Water Authority agreed with staff's recommendation and on July 18, 2000, unanimously approved a resolution authorizing the Chairman to enter a contract with RFC to conduct a cost of service study, that will include the newly created wholesale customer class, in an amount not to exceed $37,900.

Staff recommends that the City Council review this report for information purposes.

Vice-Mayor Cloninger hoped that this study will go into more detail that a prior study performed by RFC.

Acceptance of $2 Million Grant for Phase II – Critical Needs

Summary: The consideration of a resolution authorizing the Regional Water Authority to formally accept a $2 million high unit cost grant offer from the North Carolina Department of Environment and Natural Resources ("DENR").

In September 1999 the Regional Water Authority applied for a second grant with DENR to continue improvements to the Regional Water Distribution System. The Authority had already been awarded a $3 million grant from DENR in July 1999 from an earlier round of applications. Areas of the water system were prioritized according to the State's criteria for grant points, including areas where water pressures to customers were low and areas where water leak repairs were frequent.

On March 15, 2000, the Water Resources Department was notified that DENR had selected the Authority for a $2 million grant from the September application, conditioned on the design being completed and approved by DENR by July 7, 2000. This was completed on July 5, 2000.

DENR will formally request the Authority accept the grant sometime in August 2000. Pursuant to the Water Agreement, the Authority needs the approval of the County of Buncombe and the City of Asheville to formally accept this grant. Adoption of the resolution by the Council will provide the required approval of the City.

Water Resources Department staff recommend City Council adopt the resolution.

Skyland Fire Protection Service District Agreement

Summary: The consideration of a resolution authorizing the City Manager to sign a fire protection agreement with Buncombe County for the Skyland Fire Protection Service District.

The City of Asheville entered into an agreement to provide fire protection for the "Skyland Fire Protection Service District" in 1995. This area is primarily the Biltmore Estate property. The new contract was requested by Buncombe County to standardize contracts for fire protection with all fire departments in Buncombe County.

The Interim Fire Chief recommends City Council authorize the City Manager to sign the fire protection agreement with Buncombe County for the Skyland Fire Protection Service District.

New Street Name – Dawson Place

Summary: The consideration of a resolution accepting the new proposed street name "Dawson Place."

Ron Moser Inc., owner of lots in Glendale Avenue Subdivision, has petitioned the City of Asheville to accept the street name "Dawson Place." The new street will be a cul-de-sac off of Glendale Avenue.

City staff recommends adoption of the resolution.

Contract for Traffic Optimization Study in Central Business District

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Kimley-Horn Associates in the amount of $63,000 to prepare a traffic optimization study for traffic signals in the Central Business District in downtown Asheville.

In December 1998 City Council adopted a parking study of the downtown, Biltmore Village and West Asheville areas. One of the recommendations of the parking study was to optimize the traffic signals in the downtown area. In 1988, four closed loop systems were installed in the downtown area. Since then the timing of the overall system has not been revised.

This study will recommend improvements to the timing of the traffic signal system in downtown that will reduce traffic congestion, reduce air pollution and improve conditions for pedestrians.

Funds for this project are budgeted in the Fiscal Year 2000-2001 budget.

Staff recommends that City Council authorize the City Manager to sign a contract with Kimley-Horn Associates in the amount of $63,000 to prepare a traffic optimization study for traffic signals in the Central Business District in downtown Asheville.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which is scheduled on August 22, 2000. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Ancillary Non-Residential Uses

Urban Planner Dan Baechtold said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to establish a definition for ancillary non-residential uses, to establish ancillary non-residential uses as a conditional use in residential zoning districts, and to establish development standards for this use.

On July 20, 2000, the Planning and Zoning Commission voted unanimously to recommend approval of this wording amendment to the UDO. The Commission directed staff to prepare this amendment to address cases where it may not be appropriate to rezone property from residential to commercial, but it might be appropriate to allow parking, landscaping, or stormwater detention facilities in a residential zoning district.

This proposed amendment establishes parking, landscaping, and stormwater detention for non-residential uses as conditional uses in all residential zoning districts and establishes standards for these uses. The ordinance contains two parts. The first part establishes a definition of ancillary non-residential uses. The second part of the ordinance establishes standards to be used in the review of these uses.

This ordinance adds another tool to the toolbox to be used in evaluating specific development proposals. Each application will be reviewed by the Technical Review Committee and City Council, and must be issued a conditional use permit. Adjacent property owners will be notified as specified in Section 7-5-20 of the UDO. The review of these uses will be site specific. In each case, City Council will have the option to deny the request, approve the request, or to add specific conditions to the approval. It this ordinance is approved, staff will also prepare the necessary wording to amend section 7-8 of the UDO.

Planning and Development staff recommends City Council approve the amendment to the UDO.

Mr. Baechtold noted two changes to the standards in the ordinance City Council has before them today. City Council felt the changes were appropriate and instructed him to revise the ordinance prior to the public hearing.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearing on August 22, 2000.

STATUS REPORT ON PARKING STUDY IMPLEMENTATION

Traffic Engineer Michael Moule said that this is the review of an updated Status Report Spreadsheet used to track the progress of the Parking Study Implementation.

The City's Comprehensive Parking Study was adopted by the City Council in December 1998. The Parking Study Implementation Team was formed and the LX Team Charter was signed in June 1999. The study made about 60 recommendations for potential changes that would improve parking issues within the City. In addition, a few other recommendations have been made by other groups including the Asheville Downtown Association and the Implementation Team itself. A total of 67 recommendations have been incorporated into a single Status Report Spreadsheet. This spreadsheet is used to track the Parking Study Implementation progress on evaluating and implementing the recommendations. Beginning in July 1999, updates are being provided to the City Council twice each year; once in July and once in January.

The following summarizes the current status: Many issues surrounding downtown parking issues have been completed in the past six months. City staff met several times with a group of concerned business owners and residents to discuss downtown parking issues. These meetings were very important in the development of several changes recently approved by City Council including; the parking fee changes, new enforcement personnel, and the new on-street permit parking program. The Finance Department has completed several other changes in 2000, including the installation of electronic parking meters throughout downtown and the installation of new revenue control equipment. Several other major projects are in progress. These include downtown traffic signal optimization, installation of directional signs to the parking garages, and the development of a design for the Battery Park area. The spreadsheet outlines the continuing work being done by employees from several departments to implement many of the remaining recommendations.

Mr. Moule responded to several questions from City Council regarding the study and noted that he would look into some of Council's suggestions.

RESOLUTION NO. 00-122 – RESOLUTION TO AWARD BID FOR ELECTRICAL WORK AT THE CIVIC CENTER

At the request of Vice-Mayor Cloninger, Councilman Hay moved to excuse Vice-Mayor Cloninger from participating in this issue due to a conflict of interest. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Civic Center David Pisha said that this is the consideration of approval to proceed with the buss duct project at the Civic Center.

Failure of the buss duct earlier this spring caused the electrical service at the Center to be interrupted throughout the building. The buss duct is the main electrical feed into the Civic Center. Because of the timing of the incident, it had little effect on events occurring at the facility. There is a minimum lead-time to build a new buss duct of five weeks. Another 3-5 days is required to install it. This installation cannot be undertaken when ice is in the building. It is imperative that this work be completed prior to the Center's busy fall and winter schedule.

Staff has received three quotes for the scope of the work. Following is an overview of the quotes received for this work:

-	$39,500	Emory Electric Inc.
-	$50,270	Electrics of Asheville Inc.
-	$72,360	Grigg Electric Company Inc.

A fourth quote was received but did not comply with the specifications for the project.

Based on current information, we have the time to proceed with the project and complete it in late September. Council has already appropriated the funds for it. The quote staff recommends accepted is under budgeted funds.

The fourth quote was less than the one recommended by staff. It does not replace the buss duct with the same brand of equipment that is currently in place. It is important, however, to replace the existing equipment with a like item. This is because of fault current rating of the switch gear. Changing to a cheaper brand could result in a change of our fault current rating and the existing switch gear could also have to be replaced at considerable extra cost.

Staff recommends City Council accept the bid from Emory Electric, in the amount of $39,500, be accepted.

Councilman Worley moved to suspend the rules and take formal action at this meeting. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Councilwoman Field moved to adopt Resolution No. 00-122. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 91

BELE CHERE 2000

Councilman Worley, 2000 Bele Chere Chair, praised City staff for their work to make the 2000 Bele Chere Festival a success.

RECREATION BOARD MEMBERSHIP

It was the consensus of City Council to ask the Recreation Board and Parks and Recreation Director Irby Brinson their thoughts on expanding the Recreation Board from seven members to either nine or eleven members in order to improve the ethnic diversity of the Board. It was also the consensus of City Council that if there is no opposition to increasing the membership that the candidates be chosen from the current resource list.

BOARD AND COMMISSION APPOINTMENTS

Councilman Worley moved to waive the rules and take formal action on the board and commission vacancies below. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION NO. 00-123 - RESOLUTION APPOINTING A MEMBER TO THE ABC BOARD

Charles Worley has resigned as a member of the ABC Board leaving an unexpired term until November 13, 2000. This appointment will be to fill the unexpired term of Mr. Worley, and appoint the member to serve an additional three year term, term to expire November 13, 2003.

Councilwoman Field moved to appoint Deborah Holmes-Young to serve as a member on the ABC Board to serve the unexpired term of Mr. Worley until November 13, 2000, and then to serve an additional three year term, term to expire November 13, 2003, or until her successor has been appointed. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 92

RESOLUTION NO. 00-124 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

The term of Robert Turner as a member on the Asheville Regional Airport Authority expired on June 30, 2000. Mr. Turner is eligible for reappointment.

Councilman Hay moved to reappoint Mr. Turner, as a member on the Asheville Regional Airport Authority, to serve an additional four year term, term to expire June 30, 2004, or until his successor is appointed. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 93

RESOLUTION NO. 00-125 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE AREA CIVIC CENTER COMMISSION

The terms of J. Howard Collins, Nancy Williams, Chris Slusher and Douglas Haldane, as members on the Civic Center Commission, expired on June 30, 2000.

On July 25, 2000, City Council interviewed Mr. Peter Crosa, Mr. Doc Halliday, Mr. Kent Wolfe, and Mr. Robert Dungan. Ms. Lisa Michie was unable to attend the interview. Mr. Michael Kryzanek was not interested in this vacancy.

By a show of hands, Mr. Crosa received 3 votes, Doc Halliday received 3 votes, Mr. Wolfe received 6 votes, Mr. Dungan received 6 votes and Ms. Michie received 6 votes. Therefore, Councilman Worley moved to appoint Kent Wolfe, Robert Dungan and Lisa Michie as members of the Civic Center Commission, to each serve a three year term respectively, terms expiring on June 30, 2003, or until their successors are appointed. This motion was seconded by Councilman Peterson and carried unanimously.

As a result of the tie votes of Mr. Crosa and Mr. Halliday, it was the consensus of City Council to place the remaining vacancy on the August 15, 2000, worksession agenda when Mayor Sitnick would be present to vote.

In addition, because Mr. Halliday is also interested in serving on the Tree Commission, it was the consensus of City Council to postpone any action on that vacancy until the August 15, 2000, worksession agenda as well.

RESOLUTION BOOK NO. 26 – PAGE 94

RESOLUTION NO. 00-126 - RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD

The term of William Fulp, as a member on the Civil Service Board, expired on May 21, 2000.

Councilwoman Bellamy moved to appoint Ms. Sophie Dixon, as a member of the Civil Service Board, to serve a two year term, term to expire May 21, 2002, or until her successor has been appointed. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 95

RESOLUTION NO. 00-127 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Martha Fawbush has resigned as a member of the Asheville-Buncombe Community Relations Council, leaving an unexpired term until December 31, 2000.

On July 25, 2000, City Council interviewed Mr. Ken Fulford, Ms. Clara Jeter, Mr. Michael Burkhead and Mr. Doc Halliday. Rev. D. M. Maureen Killoran could not be reached by telephone and did not respond to interview letter written.

City Council noted that all candidates had excellent credentials and it was hard for them to make a decision.

Councilman Worley moved to appoint Clara Jeter to the Asheville-Buncombe Community Relations Council to fill the unexpired term of Ms. Fawbush and a full three year term, term to expire December 31, 2003, or until her successor is appointed. This motion was seconded by Councilwoman Bellamy and carried unanimously.

City Council instructed the City Clerk to forward the City's resource list to the Buncombe County Board of Commissioners and the Chair of the Community Relations Council so when their vacancies occur, they would have an additional list of interested members of the community.

RESOLUTION BOOK NO. 26 – PAGE 96

RESOLUTION NO. 00-128 - RESOLUTION APPOINTING MEMBERS TO THE POLICE OFFICERS AND FIREFIGHTERS DISABILITY REVIEW BOARD

The terms of Stephanie Cooper, Michael Keleher and James Lewis, as members on the Police Officers and Firefighters Disability Review Board, expired on July 19, 2000.

Councilman Hay moved to reappoint Ms. Cooper, Dr. Keleher and Mr. Lewis to each serve an additional two year term, respectfully. All terms will expire on July 19, 2002, or until their successors have been appointed and qualified. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 97

RESOLUTION NO. 00-129 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ELECTRICAL EXAMINERS

The terms of Eugene Presley, Ronnie McAbee, Terry Ponder, Joe Enderle and Harold Garland expired on July 1, 2000.

Mr. Tom Donoho was a candidate for the electrical contractor vacancy but was not interviewed.

Councilman Worley moved to reappoint Ronnie McAbee (journeyman electrician), Terry Ponder (utility representative), Joe Enderle (licensed engineer) and Harold Garland (layman) to serve a three year terms, respectfully. All terms will expire on July 1, 2003, or until their successors have been duly appointed. This motion was seconded by Councilman Hay and carried unanimously.

By a show of hands, Mr. Presley received one vote and Mr. Donoho received five votes. Therefore, Mr. Tom Donoho was appointed to the Board of Electrical Examiners to serve in the capacity of electrical contractor for a three year term, term to expire July 1, 2003, or until his successor has been appointed.

RESOLUTION BOOK NO. 26 – PAGE 98

RESOLUTION NO. 00-130 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION

Steve Rice and Connie Barnette have each resigned from the Asheville-Buncombe Fair Housing Commission leaving unexpired terms until December 31, 2001.

Councilman Worley moved to appoint Ms. Christiana Tugman to serve the unexpired term of Mr. Rice, term to expire December 31, 2001, or until her successor has been appointed. This motion was seconded by Councilwoman Bellamy and carried unanimously.

The City Clerk was instructed to re-advertise for the vacant seat left by Ms. Barnette.

RESOLUTION BOOK NO. 26 – PAGE 99

RESOLUTION NO. 00-131 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

The terms of Pam Nickless and Shirley Early expired on July 1, 2000. In addition, Chris Knorr has resigned from the Commission, thus leaving an unexpired term until July 1, 2001.

On July 25, 2000, City Council interviewed Frank Thomson, Curtis Walk, Kevan Frazier, and Doc Halliday. Mr. Scott Riviere was very interested in the vacancy, however, he was scheduled to be out of town on the interview date. Mr. John Best called on July 27, 2000, and said that he was out of town, however, he was still interested in being considered for the vacancy.

By a show of hands, Mr. Thomson received 4 votes, Mr. Walk received 4 votes, and Mr. Frazier received 4 votes, Mr. Riviere received 4 votes and Mr. Best received 2 votes. Another show of hands was taken as follows: Mr. Thomson received 6 votes, Mr. Walk received 6 votes, Mr. Frazier received 4 votes and Mr. Riviere received 2 votes. Therefore, Councilwoman Bellamy moved to appoint Mr. Thomson and Mr. Walk as members to the Asheville-Buncombe Historic Resources Commission to each serve a three year term, terms to expire July 1, 2003, and Mr. Frazier was appointed to serve the unexpired term of Mr. Knorr, term to expire July 1, 2001. All terms are until their successors have been appointed. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 100

APPOINTMENT TO THE HOUSING AUTHORITY BOARD OF DIRECTORS

City Clerk Burleson said that the term of Helen Branson, as a member on the Housing Authority Board of Directors, expired on June 11, 2000.

On July 18, 2000, Mayor Sitnick reappointed Ms. Branson to serve a five year term, term to expire on June 11, 2005, or until her successor has been appointed.

RESOLUTION NO. 00-132 - RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ART BOARD

Judith Barber and Caroline Mason have resigned as members on the Public Art Board.

Councilwoman Field moved to (1) appoint Tina McGuire to serve the unexpired term of Ms. Barber, term to expire December 31, 2003, and (2) appoint Kenn Kotara to serve the unexpired term of Ms. Mason, term to expire on December 31, 2000, and then to serve an additional four year term, term to expire on December 31, 2004. Both terms are until their successors have been appointed. This motion was seconded by Councilman Worley and carried unanimously.

It was the consensus of City Council to place the vacancy recently left by Ms. Judy Swan into the next quarterly appointment process.

RESOLUTION BOOK NO. 26 – PAGE 101

RESOLUTION NO. 00-133 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD

The terms of Thomas McMahon, Frank Fishburne, Thomas House and Samuel Camp, as members on the Recreation Board, expired on June 30, 2000.

On July 25, 2000, City Council interviewed Ms. Susan Sparboe. In addition, Mr. James Grant and Mr. Jim Drummond were candidates for the vacancies but were not interviewed.

Councilman Hay moved to reappoint Thomas McMahon, Frank Fishburne, and Thomas House to each serve a three year term, terms to expire June 30, 2003, or until their successors have been appointed. This motion was seconded by Councilwoman Field and carried unanimously.

By a show of hands, Ms. Sparboe received 0 votes, Mr. Grant received 4 votes, Mr. Drummond received 2 votes. Therefore, Mr. James Grant is appointed to serve a three year term, term to expire June 30, 2003, or are until his successor has been appointed.

The City Clerk was instructed to contact Ms. Sparboe and Mr. Drummond to let them know that their applications would receive the highest priority when action is taken to expand the membership on the Recreation Board.

RESOLUTION BOOK NO. 26 – PAGE 102

RESOLUTION APPOINTING A MEMBER TO THE TREE COMMISSION

On November 23, 1999, City Council appointed six members to the seven member Tree Commission. The City Clerk was instructed to advertise for the vacancy in the next quarterly appointment process. This is the second quarterly process this vacancy has been advertised.

On July 25, 2000, City Council interviewed Doc Halliday.

Because Mr. Halliday is also interested in serving on the Civic Center Commission, it was the consensus of City Council to postpone any action on this vacancy until the August 15, 2000, worksession agenda.

NEXT COMMUNITY MEETING

It was the consensus of City Council to hold their next community meeting on Tuesday, August 29, 2000, beginning at 7:00 p.m. at the North Asheville Community Center located at 37 E. Larchmont Road, Asheville, N.C.

REQUEST FOR REPORTS

Councilman Peterson asked for a report on the Tourism Development Authority's recent report on the convention/conference facility. Councilman Hay said that the Future of the Civic Center Task Force will be reviewing the report and will report to Council as soon as possible.

When Councilman Peterson asked for an update on the Grove Arcade renovation project, Vice-Mayor Cloninger said that there will be some information provided in approximately two weeks on this project.

CLOSED SESSION

At 4:22 p.m., Councilman Hay moved to go into closed session to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations - G.S. 143-318.11(a)(4). This motion was seconded by Councilman Worley and carried unanimously.

At 4:47 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

ADJOURNMENT:

Vice-Mayor Cloninger adjourned the meeting at 4:47 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - August 8, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Hay gave the invocation.

ADDITIONS TO THE AGENDA

With the consensus of City Council, Mayor Sitnick added a resolution authorizing the City Manager enter into an encroachment agreement with the N. C. Dept. of Transportation for pedestrian improvements along US 25A (Brook and Lodge Streets) under the Consent Agenda.

Mayor Sitnick asked that the issue the public hearing for consideration of a conditional use permit for Riverbend Marketplace (i.e. Walmart) be discussed under Other Business.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 25, 2000, AND THE WORKSESSION HELD ON AUGUST 1, 2000

B. MOTION SETTING A PUBLIC HEARING ON AUGUST 22, 2000, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH A DEFINITION FOR ANCILLARY NON-RESIDENTIAL USES, TO ESTABLISH ANCILLARY NON-RESIDENTIAL USES AS A CONDITIONAL USE IN RESIDENTIAL ZONING DISTRICTS, AND TO ESTABLISH DEVELOPMENT STANDARDS FOR THIS USE

C. RESOLUTION NO. 00-134 – RESOLUTION AUTHORIZING THE ACCEPTANCE OF A $2 MILLION HIGH UNIT COST GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR CONTINUED IMPROVEMENTS TO THE REGIONAL WATER DISTRIBUTION SYSTEM

Summary: The consideration of a resolution authorizing the Regional Water Authority to formally accept a $2 million high unit cost grant offer from the North Carolina Department of Environment and Natural Resources ("DENR").

In September 1999 the Regional Water Authority applied for a second grant with DENR to continue improvements to the Regional Water Distribution System. The Authority had already been awarded a $3 million grant from DENR in July 1999 from an earlier round of applications. Areas of the water system were prioritized according to the State's criteria for grant points, including areas where water pressures to customers were low and areas where water leak repairs were frequent.

On March 15, 2000, the Water Resources Department was notified that DENR had selected the Authority for a $2 million grant from the September application, conditioned on the design being completed and approved by DENR by July 7, 2000. This was completed on July 5, 2000.

DENR will formally request the Authority accept the grant sometime in August 2000. Pursuant to the Water Agreement, the Authority needs the approval of the County of Buncombe and the City of Asheville to formally accept this grant. Adoption of the resolution by the Council will provide the required approval of the City.

Water Resources Department staff recommend City Council adopt the resolution.

RESOLUTION BOOK NO. 26 – PAGE 103

D. RESOLUTION NO. 00-135 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "DAWSON PLACE" OFF OF GLENDALE AVENUE

Summary: The consideration of a resolution accepting the new proposed street name "Dawson Place."

Ron Moser Inc., owner of lots in Glendale Avenue Subdivision, has petitioned the City of Asheville to accept the street name "Dawson Place." The new street will be a cul-de-sac off of Glendale Avenue.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 104

E. RESOLUTION NO. 00-136 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE TO SCHEDULE A CITY COUNCIL COMMUNITY MEETING ON TUESDAY, AUGUST 29, 2000, BEGINNING AT 7:00 P.M. AT THE NORTH ASHEVILLE COMMUNITY CENTER LOCATED AT 37 E. LARCHMONT ROAD, ASHEVILLE, N.C.

RESOLUTION BOOK NO. 26 – PAGE 105

F. RESOLUTION NO. 00-137 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY FOR THE SKYLAND FIRE PROTECTION SERVICE DISTRICT

Summary: This is the consideration of a resolution authorizing the City Manager to sign a fire protection agreement with Buncombe County for the Skyland Fire Protection Service District.

The City of Asheville entered into an agreement to provide fire protection for the "Skyland Fire Protection Service District" in 1995. This area is primarily the Biltmore Estate property. The new contract was requested by Buncombe County to standardize contracts for fire protection with all fire departments in Buncombe County.

The Interim Fire Chief recommends City Council authorize the City Manager to sign the fire protection agreement with Buncombe County for the Skyland Fire Protection Service District.

RESOLUTION BOOK NO. 26 – PAGE 106

G. RESOLUTION NO. 00-138 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH KIMLEY-HORN ASSOCIATES TO PERFORM A TRAFFIC OPTIMIZATION STUDY IN THE CENTRAL BUSINESS DISTRICT

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Kimley-Horn Associates in the amount of $63,000 to prepare a traffic optimization study for traffic signals in the Central Business District in downtown Asheville.

In December 1998 City Council adopted a parking study of the downtown, Biltmore Village and West Asheville areas. One of the recommendations of the parking study was to optimize the traffic signals in the downtown area. In 1988, four closed loop systems were installed in the downtown area. Since then the timing of the overall system has not been revised.

This study will recommend improvements to the timing of the traffic signal system in downtown that will reduce traffic congestion, reduce air pollution and improve conditions for pedestrians.

Funds for this project are budgeted in the Fiscal Year 2000-2001 budget.

Staff recommends that City Council authorize the City Manager to sign a contract with Kimley-Horn Associates in the amount of $63,000 to prepare a traffic optimization study for traffic signals in the Central Business District in downtown Asheville.

RESOLUTION BOOK NO. 26 – PAGE 107

H. RESOLUTION NO. 00-139 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR PEDESTRIAN IMPROVEMENTS ALONG US 25A (BROOK AND LODGE STREETS)

Summary: The consideration of a resolution authorizing the City Manager to enter into an Encroachment Agreement with the N. C. Department of Transportation (NC DOT) for pedestrian improvements along US 25A (Brook and Lodge Streets).

Metropolitan Sewerage District (MSD) has recently improved a sanitary sewer line within the Biltmore Village area. With the Asheville-Buncombe Historic Resource Commission's approval, staff has proposed pedestrian improvements ancillary to MSD's resurfacing of Brook and Lodge Street (US25A). The proposed improvement would aid pedestrians crossing Brook and Lodge Streets (US25A) with the addition of three (3) pedestrian refuge islands, four (4) high visibility crosswalks, and one (1) curb extension (bulbout).

In order to install these improvements along a roadway maintained by the NC DOT, the City must enter into an encroachment agreement with the NC DOT for the improvements within the right-of-way.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a encroachment agreement with N. C. Department of Transportation.

RESOLUTION BOOK NO. 25 – PAGE 108

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and ordinances and they would not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE IN ORDER TO REVISE THE REVIEW AND APPROVAL PROCESS FOR DUPLEXES, TRIPLEXES AND QUADRAPLEXES IN SINGLE FAMILY ZONING DISTRICTS AND TO ESTABLISH NEW DEVELOPMENT STANDARDS FOR THESE USES

Planning and Development Director Scott Shuford said that the Planning and Development Department is requesting that the public hearing scheduled in order to receive comments on the ordinance amendment revising standards for duplexes, triplexes, and quadraplexes in single family zoning districts be postponed indefinitely.

The UDO currently permits duplexes, triplexes, and quadraplexes in single family zoning districts as conditional uses. City Council must review requests for these uses and issue a conditional use permit for them. An amendment to the ordinance was proposed that would revise the review process and establish more rigorous design standards for these small-scale multi-family structures in single family zoning districts. This amendment was reviewed by the Planning and Zoning Commission and initially recommended for approval.

Subsequent to the Planning and Zoning Commission's initial review of this ordinance amendment, concerns were expressed by the community regarding the provisions of the ordinance amendment. The Planning and Zoning Commission and the Planning and Development staff are responding to these concerns by continuing to review the ordinance to identify whether revisions are required and, if so, what these revisions should be. In light of this continued review of the ordinance, holding a public hearing to receive input on the proposed amendment is not necessary at this time.

The Planning and Development staff requests that the public hearing be continued indefinitely.

Council members were concerned with the matter being postponed indefinitely because the issue does need to be resolved. It was their consensus to only table the issue with the understanding that Mr. Shuford would be providing them with updates as appropriate.

Therefore, at the request of City staff, Councilwoman Bellamy moved to table this public hearing. This motion was seconded by Councilman Hay and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 00-140 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ENKA FIRE DEPARTMENT FOR FIRE PROTECTION SERVICES

Interim Fire Chief Robert Griffin said that this is the consideration of a resolution authorizing the City Manager to sign a fire protection agreement with the Enka Fire Department.

The City of Asheville entered into an agreement with the Enka Fire Department to provide fire protection services in the west area of the City originally in 1991. This was in conjunction with Ordinance No. 1883 for annexation of an area known as West II and became effective in 1994. The City and the Enka Fire Department agree that there are benefits to the City and Enka Fire Department in maintaining a fire protection agreement. The amendment will extend the contract for an additional five years or until 2004. The amendment will update a fire code enforcement provision and a drug free workplace provision.

The Interim Fire Chief recommends City Council authorize the City Manager to sign the fire protection agreement with the Enka Fire Department.

Interim Fire Chief Griffin responded to various questions from Council, some being, but are not limited to: what is the difference between this fire station and the one in north Asheville, what is the timetable for moving the Enka Fire Station, and does the fire station on Haywood Road have to be closed once the new station is built.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 00-140. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 109

B. RESOLUTION NO. 00-141 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT FROM THE U.S. DEPARTMENT OF JUSTICE, UNDER THE LOCAL LAW ENFORCEMENT BLOCK GRANT PROGRAM, TO FUND A PROGRAM DESIGNED TO REDUCE CRIME AND IMPROVE PUBLIC SAFETY

Police Chief Will Annarino said that this is the consideration of a resolution authorizing the City Manager to submit a grant application to the U. S. Department of Justice, Bureau of Justice Assistance, to fund a program designed to reduce crime and improve public safety.

The City of Asheville is eligible to apply for a federal project in the amount of $139,346. The federal grant is in the amount of $125,411. The purpose of the grant is to fund programs designed to reduce crime and improve public safety. The nature of the program using these funds will be determined by the City with public input after the grant award. A 10% local match ($13,935) is required which match will come out of Contingency from the 110-0601-414-5097 line item.

Staff recommends the adoption of the resolution authorizing City Manager to apply for the grant through the U. S. Department of Justice, Bureau of Justice Assistance.

Upon inquiry of Councilman Peterson, Police Chief Annarino explained what kinds of things the grant could be used for.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Bellamy moved for the adoption of Resolution No. 00-141. This motion was seconded by Councilman Peterson and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 110

VI. OTHER BUSINESS:

A. RIVERBEND MARKETPLACE (WALMART) CONDITIONAL USE PERMIT PUBLIC HEARING

Planning and Development Director Scott Shuford said that the Board of Adjustment will consider a variance for the Riverbend Marketplace project on September 5, 2000, in a special meeting. The developer has asked that the conditional use permit for the project be held as soon as possible after the variance hearing due to project timing issues.

At Council's meeting on July 25, 2000, Council asked that staff get the project before them as soon as possible, but in order to avoid public inconvenience, Council suggested the public hearing not be set until after the Board of Adjustment acts on the variance. There is also the issue of holding the hearing in a separate venue (e.g., the Civic Center) to accommodate a large crowd.

Given all these circumstances, he asked Council if they would be interested in setting the conditional use permit public hearing in advance of the Board of Adjustment hearing. The advantage would be a quicker consideration of the conditional use permit as the hearing could be set for as early as September 12 – the first formal meeting after the Board of Adjustment meeting. The disadvantage of doing this is that the Board of Adjustment may continue the variance hearing or not approve the variance, necessitating the revision of the site plan or withdrawal of the project.

After discussion, it was the consensus of City Council to place a motion setting a public hearing on the conditional use permit for Riverbend Marketplace on Council's agenda for August 22, 2000. On August 22, 2000, the motion will be to schedule the public hearing at 5:30 p.m. on Tuesday, September 19, 2000, in the Stephens-Lee Community Center located on Carver Street. This public hearing will be after the 3:00 regular worksession in the First Floor Conference Room of the City Hall Building.

Upon inquiry of Councilwoman Field, City Attorney Oast suggested that City Council vote on September 19, 2000, to either issue or deny the permit and then at the next formal meeting, City staff will come back to Council with a draft order.

Mayor Sitnick asked that the public be made aware that they must be at the public hearing for their letters and comments to be entered into the record.

B. COMMENTS BY JAN HOWARD REGARDING RESERVOIR ROAD

Ms. Jan Howard, resident on Reservoir Road, said that she has been trying to get Reservoir Road (which she alleges is her driveway) closed for the past 8 years and passed out documents which she says supports her cause.

Mayor Sitnick said that she would contact Ms. Howard to set up a meeting.

C. COMMENTS BY C.D. WILLIAMS REGARDING THE UNIFIED DEVELOPMENT ORDINANCE

Mr. C. D. Williams, resident on Weaver Boulevard, hoped that City Council carefully considers each Unified Development Ordinance amendment since it took over a year and many, many hours of discussion to arrive at the adopted document.

D. COMMENTS BY MICKIE MAHAFFEY

Mr. Mickie MaHaffey, representing Peacemakers, suggested that a flashing light be placed on the traffic signal on Biltmore Avenue between Café on the Square and Pack Place to bring attention to motorists that the light is changing.

Mr. MaHaffey also spoke about his concern about air pollution in our area and suggested the City study the types of vehicles they own and operate.

Mayor Sitnick responded to Mr. MaHaffey by stating several ways in which this present Council and the last sitting Council has shown that they are environmentally-minded and sensitive to the environment.

E. COMMENTS BY JOHN QUIGLEY

Mr. John Quigley, member of the Jackson Park/Woolsey Neighborhood Association, was concerned that the project by John Eflen in their area was larger than agreed upon. Planning and Development Director Scott Shuford said that he would meet with Mr. Quigley to investigate their concerns.

F. COMMENTS BY OCTAVIA FIELDER

Ms. Octavia Fielder, President of the Jackson Park/Woolsey Neighborhood Association, supported the City carefully reviewing amendments to the Unified Development Ordinance so as not to destroy the intent of the Ordinance. She also was concerned about the air pollution in Asheville.

Mayor Sitnick invited City Council to a meeting with representatives from the Tennessee Valley Authority on Friday, August 18, 2000, regarding air pollution in the Smokies.

G. COMMENTS BY PETER DAWES REGARDING BUNCOMBE COUNTY FRIENDS FOR ANIMALS

Mr. Peter Dawes alerted City Council that someone offered the Buncombe County Friends for Animals $1 Million to build a new shelter if they would open their books for public inspection. He said that they refused. Since the City contracts with Buncombe County Friends for Animals, he felt they should be made aware of the situation and hoped that the City included verbiage in their contract to view the records of the agencies they contract with.

H. RECOGNITION OF GENE BELL

Councilwoman Bellamy congratulated Mr. Gene Bell who has recently received one of Governor Hunt's Community Service Awards. Mr. Bell is Chair of the Civil Service Board and is involved with several other civic activities.

I. CLAIMS

The following claims were received by the City of Asheville during the period of July 21-27, 2000: Jehru Sullivan (Parks and Recreation), Donald Peek (Water), Larry Crawford (Water), Joyce Sorrells (Parks and Recreation) and Christy Baker (Streets).

The following claims were received by the City during the period of July 28-August 3, 2000: Herston Ownby (Water), Ralph P. Presley (Water), Alamo Rent-A-Car (Fire) and Trina Lee (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

J. LAWSUITS

The City was served with the following Complaint on July 31, 2000: John Foster v. City of Asheville, Ross Dillingham and John Does. The nature of the proceeding is a claim for malicious prosecution; abuse of process; assault and subsequent illegal restraint; compensatory damages and punitive damages. This matter will be handled by an outside attorney.

The City was served with the following Civil Complaint on July 31, 2000: Burley's Rink Supply Inc. v. City of Asheville. The nature of the proceeding is a claim for money owed for work performed on chiller and rink piping equipment located at the Civic Center ice rink. This matter will be handled in-house.

The City was served with the following Notice of Trustee's Foreclosure Sale of Real Property on August 2, 2000: In the matter of foreclosure of Deed of Trust, Robert M. Janney and wife, Sara Belle Krueger dated 6-2-98, recorded on 6-2-98, at Book 1955 at page 169 in the Buncombe County Registry. The nature of the proceeding is default in payment of indebtedness secured by Deed of Trust. This matter will be handled in house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:04 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - August 15, 2000 - 3:00 p.m.

Worksession

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

CONSENT:

The Consent Agenda item regarding withdrawal of dedication of portion of Steele Avenue was removed from the agenda.

Consumption and Possession of Alcoholic Beverages at 2000 Goombay Festival

Summary: The consideration of a resolution to allow alcoholic beverages on August 25-27, 2000, at the 2000 Goombay Festival.

N. C. Gen. Stat. sec. 18B-300 (c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and/or unfortified wine on public streets, and on property owned, occupied or controlled by the City of Asheville. The City Council has adopted an ordinance pursuant to that statutory authority. Section 11-11 of the Code of Ordinances provides that City Council may adopt a resolution making other provisions at a special event or community festival.

The Parks and Recreation Department recommends City Council adopt a resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the 2000 Goombay Festival to include the areas as described in the resolution.

Carter Cove Road Sewer Project Change Order

Summary: The consideration of a resolution authorizing the City Manager to sign a change order with Cooper Construction Company for the installation of a sanitary sewer line on Carter Cove Road and Blackberry Lane in the amount of $117,830.76 and a budget amendment in the amount of $162,782 appropriating the full amount of revenue from MSD reimbursement for this project.

In December of 1998, City Council awarded a contract to Cooper Construction Company to install a sanitary sewer line and water line in the Carter Cove Road and Blackberry Lane area of North Asheville. This project was known as Beaverdam Annexation Area Carter Cove Sanitary Sewer Improvements. The original amount of the contract was $442,278. Two changes orders have previously been approved by City Council for this project in the amounts of $13,156.20 and $11,134.50 respectively, bringing the current project total to $466,568.70.

The first change order was due to increases in material costs from the time the project was bid until the time the Notice to Proceed was issued. The second change order was issued to provide for additional tree removal on the project.

This final change order request in the amount of $117,830.76 is largely due to the amount of material that had to be removed from the sewer trench. Most of the earth material removed from the trench for the installation of the sanitary sewer line in Carter Cove Road was not suitable for backfill. Additionally, several underground springs were encountered and had to be drained prior to backfilling. With this change order, the final total cost of the project will be $584,399.46.

The budget amendment in the amount of $162,782 to cover the change order and provide contingency funds will be funded with an appropriation of reimbursement revenues received from MSD for installation of sanitary sewer in the annexed areas.

Staff recommends that City Council authorize the City Manager to sign a change order with Cooper Construction Company in the amount of $117,830.76 for the installation of a sewer line on Carter Cove Road and Blackberry Lane. Staff also requests that City Council approve the budget amendment in the amount of $162,782 appropriating funds from MSD reimbursement for this project.

Councilman Worley stated that even though he lives on Carter Cove Road, the City Attorney has advised him that he does not have a conflict of interest on this matter.

Contract with Buckeye Construction Company for Brevard Road Annexation Area Phase 3, Contract 2

Summary: The consideration of a resolution awarding the contract for Brevard Road Annexation Area Phase III Contract "2" to Buckeye Construction Company, Inc., in the amount of $169,794.10.

This project is part of the Brevard Road annexation that occurred in the early 1990's. It is called the Brevard Road Annexation Area Phase III- Contract "2" Sanitary Sewer System Improvements and consists of the installation of approximately 3,528 linear feet of eight inch (8") diameter sanitary sewer line and 660 linear feet of four inch (4") diameter sanitary sewer service line and related appurtenances.

The Engineering Department received and publicly opened five (5) bids on Thursday, August 3, 2000, at 2:00 p.m. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, Buckeye Construction Company, Inc., was found to be the lowest responsible bidder with a total bid of $169,794.10. The Engineer's estimate for this project was $ 211,175.00.

Funding for this project is included in the fiscal year 2000/2001 Capital Improvement Program (CIP) and will be financed through the issuance of two-thirds bonds.

Buckeye Construction Company, Inc., has performed several projects of this nature in the past without any major problems.

The construction time for this project is identified as 90 calendar days in the contract documents. The contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

Staff recommends that City Council adopt a resolution awarding the bid for Brevard Road Annexation Area - Phase III - Contract "2" Sewer System Improvements to Buckeye Construction Company, Inc., the responsible low bidder, and authorize the City Manager to execute all necessary agreements and contracts.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

COMMUNITY DIALOGUE – ASHEVILLE-BUNCOMBE VISION INC.

Mr. Gregg Starney, representing Asheville-Buncombe VISION, Inc., showed Council a promotional video entitled "Let's Talk! Dialogues for Our Future" which promotes community dialogue. Their goal is to encourage discussion among diverse residents in order to promote understanding of how local issues affect different segments of our community, and to encourage citizens to collaborate on efforts that benefit the whole community.

CITY FUNDING OF ECONOMIC DEVELOPMENT COMMISSION – USE OF CITY FUNDS

Mr. Dave Porter, Vice-President of the Buncombe County Economic Development Commission explained the proposed uses of the City of Asheville's $50,000: Information and Technology Industry (knowledge based industry) - $35,000; Commercial/Industrial/Office Market Analysis and Marketing Piece - $10,000; and Local Business and Industry Resource Guide - $5,000.

Mayor Sitnick suggested the Commission appoint a retiree advisory board who have personal contacts in the fields we are looking to target. This would be a great way to utilize their knowledge.

Mayor Sitnick also suggested that since the Asheville Film Board is very industry based, the Commission might consider working with them to create a local business guide.

On behalf of City Council, Mayor Sitnick thanked Mr. Porter for their efforts to recruit and establish new or expanded business activity, which has a positive impact on the economic health of the community.

UDO AMENDMENT REVIEWS

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which are scheduled on September 12, 2000. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Definition of Signs

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to revise the definition of sign to exclude certain art and works of art from the definition of sign.

The definition of sign currently found in the UDO is worded so that art and works of art are considered signs. As a result of this definition, the use of art and works of art by businesses is limited. Because art and works of art can be considered a sign, the placement of art and works of art at a business can limit the amount of signage that the business can display. Rather than limit their signage, businesses typically decide to abandon plans for incorporating art or works of art into their development.

With this proposed ordinance amendment, the Planning and Zoning Commission is endorsing a more whimsical approach to the incorporation of art and works of art by businesses in their building and site design. The City of Asheville is recognized as an arts city; this amendment acknowledges this recognition and removes a significant impediment to the placement of art and works of art throughout the City by private businesses. While loosening the restrictions on the incorporation of art and works of art in building and site design, the proposed amendment continues to identify distinctions between art and signs:

- The art or works of art cannot include logos in their traditional form;
- The art or works of art cannot include the name of the business; and
- The art or works of art cannot be an obvious portrayal of a product or service provided by the business.

With these limitations, the ability of businesses to incorporate art and works of art in their building and site design is increased while an appropriate distinction between signs and art remains.

The Planning and Zoning Commission voted 6 – 0 to recommend adoption of the ordinance amendment. The Planning and Development Department staff supports the ordinance amendment and recommends that a public hearing be scheduled to solicit public comment on the ordinance amendment.

After discussion, it was the consensus of City Council to delete the restriction that the art or works of art cannot be an obvious portrayal of a product or service provided by the business.

Standards for A-Frame Signs

Chief Planner Gerald Green said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to establish standards for A-Frame signs in the Central Business District.

A-frame signs are currently prohibited in all zoning districts by the UDO. As a result of requests from downtown businesses, the Downtown Commission developed general standards for A-frame signs and requested the Planning and Development staff to consider preparation of an ordinance amendment that would permit the signs in the downtown area and establish standards for them. In developing the proposed ordinance amendment, the Planning and Development staff reviewed the general guidelines developed by the Downtown Commission and obtained standards from other cities. Staff also inspected downtown sidewalks to ensure that A-frame signs could be placed on the sidewalks without restricting accessibility. The draft ordinance recommended for adoption by the Planning and Zoning Commission defines A-frame signs, permits them in the Central Business District, and establishes standards for them. The proposed standards address the following:

- Minimum and maximum sizes for the signs;
- Number of A-frame signs each business may have;
- Location/placement requirements for the signs;
- Safety standards for A-frame signs;
- Insurance requirements for the business placing the sign(s); and
- Permit requirements for A-frame signs.

The intent of the proposed ordinance amendment is to permit the use of A-frame signs by downtown businesses as an additional means of advertising the business and/or the goods and services provided by the business. By identifying certain standards for the signs, pedestrian accessibility and general safety issues will be addressed. The Downtown Commission and the Merchants Action Coalition have endorsed the ordinance amendment.

The Planning and Zoning Commission voted 6 – 0 to recommend adoption of the ordinance amendment. The Planning and Development Department staff supports the ordinance amendment and recommends that a public hearing be scheduled to solicit public comment on the ordinance amendment.

At the request of Councilman Peterson, it was the consensus of City Council that the temporary sign permit be for six months initially, and then the renewal can be valid for one year.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearings on September 12, 2000.

RECOMMENDATIONS FOR INCREASED FUNDING FOR PARKS AND RECREATION CAPITAL IMPROVEMENTS

Parks and Recreation Director Irby Brinson said that the Parks and Recreation Department is recommending City Council approve projects for Fiscal Year 2001 from the one-cent tax increase dedicated for capital improvements for Parks and Recreation.

Parks and Recreation staff, through a community input session, has developed an initial list of projects which could be funded from the one-cent tax increase for Parks and Recreation capital improvements. This initial list was shared with a citizen group who had participated in the development of the Parks and Greenway Master Plans. In addition, members of the Parks and Recreation Advisory Board, Greenway Commission, Public Art Board, and Parks and Greenway Foundation were invited to a meeting on July 24, 2000, at the Public Works Building. An overview of the process was discussed with the group which resulted in a recommendation that the total $400,000 be used for specific projects in this fiscal year instead of using the $400,000 to pay debt service towards borrowing approximately $4 million. The overall justification for this decision is we need one year to determine whether a future bond referendum will be considered. We do not want to dedicate the $400,000 over a long-term period to pay debt service without having general consensus about pursuing a bond referendum.

Staff identified projects that would be highly visible, geographically and economically distributed, address needs identified in the master plans which would be completed within the fiscal year, and partnered with other funding to increase the impact to the community. He reviewed each of the top six projects:

1.	French Broad River Park Phase IV	estimated cost	$	70,000
2.	Burton Street Playground	estimated cost	$	50,000
3.	Ira B. Jones Ballfield	estimated cost	$	125,000
4.	Broadway Greenway Master Plan	estimated cost	$	75,000
5.	Royal Pines Park Demolition	estimated cost	$	30,000
6.	Reid Recreation Center Renovations	estimated cost	$	50,000
	Total		$	400,000

The Parks and Recreation staff is prepared to begin immediately with the implementation of this list upon approval by City Council.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RE-DESIGNATION OF STATE DEVELOPMENT ZONE

Economic Development Director Mac Williams said that this is the consideration of a resolution approving the re-designation of the State Development Zone as proposed.

The City of Asheville has been notified by the NC Department of Commerce that our municipal State Development Zone will expire December 31, 2000. Application for re-designation is due before September 30, 2000, and will take effect January 1, 2001.

In 1998, the State of North Carolina created Development Zones to encourage and enhance economic development within areas of high poverty. Qualifying enterprises and activities receive significant tax credits for job creation and investment in machinery and equipment. In 1999, the State amended the legislation increasing the benefits but tightening the criteria controlling the size and location of the zone. As stated, the existing zone will expire on December 31, 2000.

Upon notification by the Department of Commerce about zone re-designation, a Task Force was assembled to determine the new zone according to the new criteria established by the State. The team included the following city staff: Mac Williams, Economic Development Director; Charlotte Caplan, Community Development Director; Gerald Green, Chief Planner; and, Mike Matteson, City Development Director. Others representing interested agencies included: Denise Fall, Asheville Area Chamber of Commerce; Sam Powers, AdvantageWest; Ray Burrows, NC Department of Commerce – Business & Industry Division; Jeff Fischbach, NC Dept. of Commerce – Community Development Division; Marvin Vierra, Cherokee Native American Business Development Center; Karen Cragnolin, Riverlink; Rich Olejniczak, Blue Ridge Center; and, Jim Stokoe, Land of Sky Regional Council.

The goal was to identify a zone, based on the new state-imposed criteria, which would encompass areas of high poverty (the total zone must have a minimum of 20% population below the poverty level) and also, areas with reasonable opportunities for economic development / redevelopment.

Staff recommends City Council approve the re-designation of the State Development Zone as proposed.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RESULTS OF BUSINESS CLIMATE SURVEY

Economic Development Director Mac Williams said that this is a presentation of the business climate survey conducted in July 2000.

The Economic Development Division conducted a survey in July 2000 of nearly 1000 businesses licensed in the City of Asheville. Almost 200 businesses replied. This survey was one means to better communicate with and get feedback from the business community. The survey is the initial effort of what is hoped will become a semi-annual survey. The purpose is to provide City Council, administration, and staff with regular information in order to improve the City's business climate and services.

An intern from Western Carolina University assisted the Economic Development Director. In addition, WCU's Mountain Resource Center, located in Asheville, provided technical assistance in tabulating the results.

The purpose of the study is threefold: first, to gather some general information about the businesses operating in the City of Asheville; second, to gauge the sentiment of those businesses about current and future conditions; and third, to provide an opportunity for businesses to identify issues they may have working with and/or conducting business in the City of Asheville.

It is the goal of the Economic Development Division to eventually survey every business operating within the City of Asheville. As of June 2000, there were approximately 6,300 individual business licenses on file with the City Business License Office. For several reasons, it was decided to survey approximately 1000 businesses every six months; thus, it will require approximately three years before all licensed firms are surveyed. Businesses were identified from the database in alphabetical order to assure a random selection of business type, size, location, etc.

The survey instrument was modeled on a similar questionnaire which has been used successfully in the City of Greensboro, N.C., for more than ten years. The survey package included a cover letter, survey, and postage paid Business Reply return envelope.

In June 2000, 930 surveys were distributed. 199 valid replies were returned which translates to a response rate of 21.4%.

The following is a general summary of the findings of this initial survey. It is hoped that, over time, with consistency of effort and increased participation, this survey can become a useful information tool to assist the City of Asheville in being more responsive to the needs of our business community.

Survey results confirm the well-known characteristic of the Asheville business base as being small business oriented and heavily weighted in the service and retail sectors. These two business sectors combined represented 59% of the responses. Nearly 70% of the respondents employed less than 10 people and 93% employed less than 50 people.

Most respondents reported that both gross revenues and net profits were either about the same, slightly better, or much better than during the same period of the previous year. However, in both revenues and profits, the respondents were about evenly split between "about the same" and "slightly better" suggesting that businesses held their own during the period but did not significantly increase their revenues or profits.

It follows then that most respondents (73%) foresee maintaining (vs. expanding or reducing) current levels of employment and facility operations over the next six months. It should be added however that, of those businesses that did indicate a change in the next six months, 18.5% indicated they would be adding employees vs. 3.5 % decreasing their workforce. Similarly, 5.5% responded they would enlarge or renovate their facility while 6.5% said they would sell or relocate. (Reasons for selling and places of relocation were neither asked nor offered).

The stability of the business community was indicated by the fact that 48% of the respondents had been in business between 5 – 20 years while another 19% had been in business more than 21years. Businesses less than 5 years old represented nearly 28% of the responses but only 3.5% of those had been in business less than one year.

Participants were afforded an opportunity to provide any general comments. The categories receiving the most attention (in no particular order) included: Parking Concerns, Sign Issues, Traffic & Highway Issues, Civic /Convention Center, Suggested Business Focus areas, City Services, City Fees, and comments directed to City Council.

The Economic Development Division wishes to acknowledge the assistance and support of the following in the development and implementation of the survey process and this report:

The City of Asheville Business Licensing Office and Information Services Division provided the database and technical support necessary in producing the mailing list. The City's Print Shop was utilized to produce some of the survey materials. As noted earlier, this was the initial effort to undertake a survey project of this nature. This required developing, coordinating, and administering a new system for data collection as well as for preparation, tabulation, and reporting of the results. This service was ably provided by an intern from Western Carolina University with assistance by WCU staff through its Mountain Resource Center.

This is intended as a report of an activity and does not require any formal action.

PASSENGER RAIL SERVICE TO WESTERN NORTH CAROLINA

City Manager Westbrook said that this is a request for Council to appoint a Passenger Rail Service Action Committee to advise City Council on upcoming policy issues regarding the passenger rail service to Western North Carolina.

As you know for the past several years, the North Carolina Department of Transportation (NCDOT) has been studying various rail routes across North Carolina. Of particular concern to Asheville as a destination city is when we will receive the passenger rail service, and where the rail station will be located. Recently the North Carolina General Assembly appropriated funding to NCDOT to conduct a study of the feasibility of providing rail service to Western North Carolina. The study will include the following: (1) A phased project timetable for the implementation of passenger service to Western North Carolina; (2) The cost of implementing each phase; and (3) Specific interim goals and performance measures to be used to determine the success in implementing this plan.

The report shall be submitted on or before March 1, 2001, to the chairs of the Senate Appropriations Subcommittee on Transportation, to the chairs of the House Appropriations Subcommittee on Transportation, and to the Fiscal Research Division.

Because some funding has now been appropriated and the process has started with that authorization, he feels it is in the City's best interest to formally appoint a committee to advise the City Council on issues that NCDOT will be studying. Furthermore, he believes NCDOT wants substantial local input on all the factors that will be covered by the study. The action committee will provide the City with a method of seeking public input, organizing and formalizing our recommendations to NCDOT.

Staff recommends that City Council appoint a Passenger Rail Service Action Committee. The committee should include a member of City Council. Staff appointments to the committee should be Transportation Planner Ron Fuller, City Engineer Cathy Ball, City Planner Stacy Merten, Transit Services Director Bruce Black, Economic Development Director Mac Williams, and City Manager Jim Westbrook. It is also recommended that the committee include Bradley Hix with the Asheville Area Chamber of Commerce (who is also involved with the WNC Rail Committee) as well as appropriate representatives of other "interested parties" such as Buncombe County, Tourism Development Authority and RiverLink.

At the suggestion of Mayor Sitnick, it was the consensus of Council to appoint a representative from Biltmore Village to the Committee. In addition, it was the consensus of City Council to appoint Vice-Mayor Cloninger as the member of Council on the Committee.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BOARD AND COMMISSION APPOINTMENTS

Vice-Mayor Cloninger reviewed the next quarterly appointment process with Council.

Vice-Mayor Cloninger said that on July 25, 2000, City Council interviewed Peter Crosa and Doc Halliday for a vacancy on the Civic Center Commission. It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Mr. Crosa to the Civic Center Commission to serve a three year term, term to expire June 30, 2003, or until his successor is appointed.

Vice-Mayor Cloninger said that on July 25, 2000, City Council interviewed Doc Halliday for a vacancy on the Tree Commission. It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Mr. Halliday to the Tree Commission to serve a three year term, term to expire December 31, 2003, or until his successor is appointed.

Councilman Worley reported that the Recreation Board recommended the Board membership be increased from seven to nine members. It was the consensus of City Council to place the resolution increasing the membership on the next formal meeting agenda. In addition, it was the consensus of City Council to appoint Ms. Susan Sparboe and Mr. James Drummond to the Recreation Board at the next formal meeting as well.

CLOSED SESSION

At 4:58 p.m., Councilman Worley moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Frances C. Briggs; Myrna R. Hendrix; Rose Investments, a North Carolina General Partnership; Travis M. Bach; Haywood Plott and wife, Ruth Plott; Howard W. Meece and wife, Doris B. Meece; Mary Ann Hicklin; Quarngesser; Allyn Family Real Estate Limited Partnership; Thantex Specialties, Inc.; Hubbell Realty Development Corp.; Alliance-Carolina Tool & Mold Corporation; Medical Action Industries, Inc.; Cutler-Hammer, Inc.; Eaton Corporation; Ridgefield Properties, L.L.C.; Ridgefield Women's Cancer Center Properties, L.L.C.; Continental Teves, Inc.; Asheville Endocrinology Properties, L.L.C.; Ridgefield Business Center Property Owners Association, Inc.; George W. Beverly, Jr.; Highwoods Realty Limited Partnership; Highwoods Forsyth Limited Partnership; AP Southeast Portfolio Partners, L.P.; Carolina Power & Light Company; and City of Asheville. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

At 5:55 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Mayor Sitnick and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:55 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - August 22, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Sitnick gave the invocation.

ADDITION TO THE AGENDA

At the request of City Manager Westbrook, it was the consensus of City Council to add a resolution finding that a portion of the right-of-way known as Steele Avenue is not part of an adopted street plan on the Consent Agenda.

I. PROCLAMATIONS:

A. RECOGNITION OF HUD BEST PRACTICES AWARD FOR CONSOLIDATED PLAN

Mayor Sitnick recognized Community Development Director Charlotte Caplan, Will Kennedy, Mike Sobol, Steering Committee Vice-Chair Althea Goode, and the Chairs for the four focus groups: Beth Maczka, Amy Ray, Peter Larouche, and Mary Robertson for their work on assisting the City of Asheville receiving the HUD Best Practices Award for our consolidated plan. The City received this national award for the way it involved citizens in the preparation of a key plan for its housing and community development programs.

The award, presented to the City by the US Department of Housing and Urban Development (HUD), at its "Best Practices Symposium" in Washington DC, recognizes the City for its exemplary planning process.

B. PROCLAMATION RECOGNIZING THE QUALITY PROGRAMMING CHOSEN BY WLOS-ABC

Mayor Sitnick read the proclamation recognizing WLOS/ABC for choosing quality programming in airing the PRISM Awards 2000 which recognizes entertainment productions that accurately depict drug, alcohol and tobacco use and addiction. She presented the proclamation to Ms. Velinda Fisher, representative of WLOS/ABC.

II. CONSENT:

At the request of Councilman Peterson, Consent Agenda Item "I" was pulled for discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 8, 2000, AND THE WORKSESSION HELD ON AUGUST 15, 2000

B. RESOLUTION NO. 00-142 - RESOLUTION APPROVING THE RE-DESIGNATION OF THE STATE DEVELOPMENT ZONE

Summary: The consideration of a resolution approving the re-designation of the State Development Zone as proposed.

The City of Asheville has been notified by the NC Department of Commerce that our municipal State Development Zone will expire December 31, 2000. Application for re-designation is due before September 30, 2000, and will take effect January 1, 2001.

In 1998, the State of North Carolina created Development Zones to encourage and enhance economic development within areas of high poverty. Qualifying enterprises and activities receive significant tax credits for job creation and investment in machinery and equipment. In 1999, the State amended the legislation increasing the benefits but tightening the criteria controlling the size and location of the zone. As stated, the existing zone will expire on December 31, 2000.

Upon notification by the Department of Commerce about zone re-designation, a Task Force was assembled to determine the new zone according to the new criteria established by the State. The team included the following city staff: Mac Williams, Economic Development Director; Charlotte Caplan, Community Development Director; Gerald Green, Chief Planner; and, Mike Matteson, City Development Director. Others representing interested agencies included: Denise Fall, Asheville Area Chamber of Commerce; Sam Powers, AdvantageWest; Ray Burrows, NC Department of Commerce – Business & Industry Division; Jeff Fischbach, NC Dept. of Commerce – Community Development Division; Marvin Vierra, Cherokee Native American Business Development Center; Karen Cragnolin, Riverlink; Rich Olejniczak, Blue Ridge Center; and, Jim Stokoe, Land of Sky Regional Council.

The goal was to identify a zone, based on the new state-imposed criteria, which would encompass areas of high poverty (the total zone must have a minimum of 20% population below the poverty level) and also, areas with reasonable opportunities for economic development / redevelopment.

Staff recommends City Council approve the re-designation of the State Development Zone.

RESOLUTION BOOK NO. 26 – PAGE 111

C. RESOLUTION NO. 00-143 - RESOLUTION APPOINTING A PASSENGER RAIL SERVICE ACTION COMMITTEE

Summary: The consideration of appointing a Passenger Rail Service Action Committee to advise City Council on upcoming policy issues regarding the passenger rail service to Western North Carolina.

For the past several years, the North Carolina Department of Transportation (NCDOT) has been studying various rail routes across North Carolina. Of particular concern to Asheville as a destination city is when we will receive the passenger rail service, and where the rail station will be located. Recently the North Carolina General Assembly appropriated funding to NCDOT to conduct a study of the feasibility of providing rail service to Western North Carolina. The study will include the following: (1) A phased project timetable for the implementation of passenger service to Western North Carolina; (2) The cost of implementing each phase; and (3)

Specific interim goals and performance measures to be used to determine the success in implementing this plan.

The report shall be submitted on or before March 1, 2001, to the chairs of the Senate Appropriations Subcommittee on Transportation, to the chairs of the House Appropriations Subcommittee on Transportation, and to the Fiscal Research Division.

Because some funding has now been appropriated and the process has started with that authorization, he feels it is in the City's best interest to formally appoint a committee to advise the City Council on issues that NCDOT will be studying. Furthermore, he believes NCDOT wants substantial local input on all the factors that will be covered by the study. The action committee will provide the City with a method of seeking public input, organizing and formalizing our recommendations to NCDOT.

Staff recommends that City Council appoint a Passenger Rail Service Action Committee. At the August 15, 2000, City Council worksession, it was the consensus of City Council that the Chair of the committee be Vice-Mayor Cloninger. Staff appointments to the committee should be Transportation Planner Ron Fuller, City Engineer Cathy Ball, City Planner Stacy Merten, Transit Services Director Bruce Black, Economic Development Director Mac Williams, and City Manager Jim Westbrook. It is also recommended that the committee include Bradley Hix with the Asheville Area Chamber of Commerce (who is also involved with the WNC Rail Committee) as well as appropriate representatives of other "interested parties" such as Buncombe County, Tourism Development Authority, RiverLink and Biltmore Village.

RESOLUTION BOOK NO. 26 – PAGE 112

D. **MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 12, 2000, TO CONSIDER A MODIFICATION FROM THE SUBDIVISION STANDARDS THAT REQUIRE EACH LOT ABUT A PUBLIC STREET FOR ROCKING PORCH SUBDIVISION LOCATED OFF OF WATERS ROAD**

E. **MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 12, 2000, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY COLLEGES AND UNIVERSITIES, VOCATIONAL AND TRAINING SCHOOLS AS A PERMITTED USE IN THE INDUSTRIAL DISTRICT**

F. **MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 12, 2000, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE DEFINITION OF SIGN TO EXCLUDE CERTAIN ART AND WORKS OF ART FROM THE DEFINITION OF SIGN**

G. **MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 12, 2000, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH STANDARDS FOR A-FRAME SIGNS IN THE CENTRAL BUSINESS DISTRICT**

H. **RESOLUTION NO. 00-144 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2000 GOOMBAY FESTIVAL ON AUGUST 25-27, 2000**

Summary: The consideration of a resolution to allow alcoholic beverages on August 25-27, 2000, at the 2000 Goombay Festival.

N. C. Gen. Stat. sec. 18B-300 (c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and/or unfortified wine on public streets, and on property owned, occupied or controlled by the City of Asheville. The City Council has adopted an ordinance pursuant to that statutory authority. Section 11-11 of the Code of Ordinances provides that City Council may adopt a resolution making other provisions at a special event or community festival.

The Parks and Recreation Department recommends City Council adopt a resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the 2000 Goombay Festival to include the areas as described in the resolution.

RESOLUTION BOOK NO. 26 – PAGE 113

I. MOTION SETTING A PUBLIC HEARING ON TUESDAY, SEPTEMBER 19, 2000, AT 5:30 P.M. IN THE STEPHENS-LEE COMMUNITY CENTER LOCATED ON CARVER STREET TO CONSIDER A CONDITIONAL USE PERMIT FOR RIVERBEND MARKETPLACE (I.E. WALMART) FOR DEVELOPMENT ON THE OLD SAYLES BLEACHERIES SITE LOCATED AT 437 SWANNANOA RIVER ROAD

This item was removed from the Consent Agenda for discussion.

J. RESOLUTION NO. 00-145 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER FOR THE CARTER COVE ROAD SEWER PROJECT

Summary: The consideration of a resolution authorizing the City Manager to sign a change order with Cooper Construction Company for the installation of a sanitary sewer line on Carter Cove Road and Blackberry Lane in the amount of $117,830.76 and a budget amendment in the amount of $162,782 appropriating the full amount of revenue from MSD reimbursement for this project.

In December of 1998, City Council awarded a contract to Cooper Construction Company to install a sanitary sewer line and water line in the Carter Cove Road and Blackberry Lane area of North Asheville. This project was known as Beaverdam Annexation Area Carter Cove Sanitary Sewer Improvements. The original amount of the contract was $442,278. Two changes orders have previously been approved by City Council for this project in the amounts of $13,156.20 and $11,134.50 respectively, bringing the current project total to $466,568.70.

The first change order was due to increases in material costs from the time the project was bid until the time the Notice to Proceed was issued. The second change order was issued to provide for additional tree removal on the project.

This final change order request in the amount of $117,830.76 is largely due to the amount of material that had to be removed from the sewer trench. Most of the earth material removed from the trench for the installation of the sanitary sewer line in Carter Cove Road was not suitable for backfill. Additionally, several underground springs were encountered and had to be drained prior to backfilling. With this change order, the final total cost of the project will be $584,399.46.

The budget amendment in the amount of $162,782 to cover the change order and provide contingency funds will be funded with an appropriation of reimbursement revenues received from MSD for installation of sanitary sewer in the annexed areas.

Staff recommends that City Council authorize the City Manager to sign a change order with Cooper Construction Company in the amount of $117,830.76 for the installation of a sewer line on Carter Cove Road and Blackberry Lane. Staff also requests that City Council approve the budget amendment in the amount of $162,782 appropriating funds from MSD reimbursement for this project.

RESOLUTION BOOK NO. 26 – PAGE 116

K. ORDINANCE NO. 2734 - BUDGET AMENDMENT FOR CARTER COVE ROAD SEWER PROJECT

Summary: See Consent Agenda "J" above.

ORDINANCE BOOK NO. 18 – PAGE 438

L. RESOLUTION NO. 00-146 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BUCKEYE CONSTRUCTION COMPANY FOR BREVARD ROAD ANNEXATION AREA, PHASE 3, CONTRACT 2

Summary: The consideration of a resolution awarding the contract for Brevard Road Annexation Area Phase III Contract "2" to Buckeye Construction Company, Inc., in the amount of $169,794.10.

This project is part of the Brevard Road annexation that occurred in the early 1990's. It is called the Brevard Road Annexation Area Phase III- Contract "2" Sanitary Sewer System Improvements and consists of the installation of approximately 3,528 linear feet of eight inch (8") diameter sanitary sewer line and 660 linear feet of four inch (4") diameter sanitary sewer service line and related appurtenances.

The Engineering Department received and publicly opened five (5) bids on Thursday, August 3, 2000, at 2:00 p.m. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, Buckeye Construction Company, Inc., was found to be the lowest responsible bidder with a total bid of $169,794.10. The Engineer's estimate for this project was $ 211,175.00.

Funding for this project is included in the fiscal year 2000/2001 Capital Improvement Program (CIP) and will be financed through the issuance of two-thirds bonds.

Buckeye Construction Company, Inc., has performed several projects of this nature in the past without any major problems.

The construction time for this project is identified as 90 calendar days in the contract documents. The contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

Staff recommends that City Council adopt a resolution awarding the bid for Brevard Road Annexation Area - Phase III - Contract "2" Sewer System Improvements to Buckeye

Construction Company, Inc., the responsible low bidder, and authorize the City Manager to execute all necessary agreements and contracts.

RESOLUTION BOOK NO. 26 – PAGE 117

M. RESOLUTION NO. 00-147 - RESOLUTION EXPANDING MEMBERSHIP OF THE RECREATION BOARD FROM SEVEN TO NINE MEMBERS

Summary: City Council feels it is in the best interest of the City of Asheville to expand the membership of the Recreation Board from seven to nine members.

RESOLUTION BOOK NO. 26 – PAGE 124

N. RESOLUTION NO. 00-148 – RESOLUTION FINDING THAT THE RIGHT-OF-WAY KNOWN AS STEELE AVENUE IS NOT PART OF THE ADOPTED STREET PLAN

Summary: A consideration of a resolution finding that a portion of the right-of-way known as Steele Avenue is not part of the Street Plan adopted under N. C. Gen. Stat. sec. 136-66.2

According to N. C. Gen. Stat. sec. 136-96, upon request, a City shall adopt a Resolution indicating that the dedication described in a declaration of withdrawal is or is not part of the street plan adopted under N. C. Gen. Stat. sec. 136-66.2.

To proceed with this process, George Goosman, attorney at law, has submitted a letter on behalf of Ronald Moser, Inc. William Holt and Mirian D. Holt certifying that there has been compliance with N. C. Gen. Stat. sec. 136-96 in that:

1. The portion of Steele avenue in question was dedicated for public use;
2. The described dedication of withdrawal has never been opened nor used by the public in the past 15 years;
3. His clients are predecessors in title from the original dedicator to the described dedication; and
4. The certification is grounded under applicable law.

Public Works Department staff has determined that a portion of the right-of-way known as Steele Avenue from the southernmost end of PIN No. 9657.06-39-9705 and the southernmost end of PIN No. 9657.06-39-6817 and continuing said abandonment to the end of said right-of-way, including the cul-de-sac at the northernmost end of Steele Avenue as shown on Plat Book 40, Page 91, is not part of the street plan adopted under N. C. Gen. Stat. sec. 136-66.2 and is not a City maintained right-of-way. There is a water line located within the dedicated portion and an easement will be conveyed to the City for its continued maintenance.

City staff recommends City Council adopt the resolution finding that the portion of the right-of-way known as Steele Avenue described within the withdrawal is not part of the street plan adopted under N. C. Gen. Stat. sec. 136-66.2.

RESOLUTION BOOK NO. 26 – PAGE 125

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

ITEM PULLED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

MOTION SETTING A PUBLIC HEARING ON TUESDAY, SEPTEMBER 19, 2000, AT 5:30 P.M. IN THE STEPHENS-LEE COMMUNITY CENTER LOCATED ON CARVER STREET TO CONSIDER A CONDITIONAL USE PERMIT FOR RIVERBEND MARKETPLACE (I.E. WALMART) FOR DEVELOPMENT ON THE OLD SAYLES BLEACHERIES SITE LOCATED AT 437 SWANNANOA RIVER ROAD

Councilman Peterson said that since it is anticipated that this public hearing will draw a lot of comments, he suggested City Council set a time in which the public hearing on September 19, 2000, will end and perhaps set a second date to continue the public hearing.

Discussion surrounded other dates City Council would be available if the public hearing was continued and who should be allowed to speak first.

Vice-Mayor Cloninger felt that Council should plan to have the entire public hearing on September 19 and then deliberate at a different meeting. If two public hearing dates are set, then people may decide to chose the second meeting date and possibly it may not be necessary to have that meeting, thus not being able to voice their comments. In addition, if a person decides to go to one hearing and not the other, they will not have the benefit of hearing all the comments.

Councilwoman Field felt it was possible to get through this public hearing on September 19. If it turns out that it cannot be accomplished, then Council can continue it. She felt that after the first several comments, the important points will have been covered and it can be announced that only new points need to be brought before Council. She stated that just by their presence alone, they are making a statement. She agreed with Vice-Mayor Cloninger that we should try to get through the public hearing in one day.

Councilman Worley felt Council's goal should be to get the public hearing in on one date. He agreed with Councilman Peterson that it would be a good idea to stop at a time certain, take a poll of how many others would like to speak, and then determine whether the hearing can be concluded that night or be continued to another date.

Councilman Hay said that, based on past experience, he felt the public hearing could be concluded on one date – especially since this is the only issue Council will be hearing. He suggested City Council be clear that not everyone needs to speak if they have a representative from a group.

Councilman Peterson asked if the public hearing was continued to another date, how would the procedure of allowing cross examination be affected. City Attorney Oast explained that City Council does have the power to subpoena in situations like this, however, he has been working with Planning & Development Director Scott Shuford on some guidelines that will streamline the process to where that will hopefully not be necessary.

After discussion, it was the consensus of City Council to (1) have two microphones set up so people can form a line and be ready to speak; (2) have a sign-in sheet at the door for people who wish to speak; (3) pause the hearing at 11:00 p.m. and take a show of hands of how many others wish to speak and then determine whether the hearing can be concluded by Midnight or 12:30 a.m. or to continue the hearing to another date; (4) let representatives of groups speak first; and (5) make sure that all speakers are sworn in by the City Clerk prior to making comments.

Vice-Mayor Cloninger moved to set a public hearing on Tuesday, September 19, 2000, at 5:30 p.m. in the Stephens-Lee Community Center located on Carver Street to consider a conditional use permit for Riverbend Marketplace (i.e. Walmart) for development on the old Sayles Bleacheries site located at 437 Swannanoa River Road. This motion was seconded by Councilman Worley and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH A DEFINITION FOR ANCILLARY NON-RESIDENTIAL USES, TO ESTABLISH ANCILLARY NON-RESIDENTIAL USES AS A CONDITIONAL USE IN RESIDENTIAL ZONING DISTRICTS, AND TO ESTABLISH DEVELOPMENT STANDARDS FOR THIS USE

ORDINANCE NO. 2735 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH A DEFINITION FOR ANCILLARY NON-RESIDENTIAL USES, TO ESTABLISH ANCILLARY NON-RESIDENTIAL USES AS A CONDITIONAL USE IN RESIDENTIAL ZONING DISTRICTS, AND TO ESTABLISH DEVELOPMENT STANDARDS FOR THIS USE

Mayor Sitnick opened the public hearing at 5:40 p.m.

Urban Planner Dan Baechtold said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to establish a definition for ancillary non-residential uses, to establish ancillary non-residential uses as a conditional use in residential zoning districts, and to establish development standards for this use. This public hearing was advertised on August 11 and August 18, 2000.

The Planning & Zoning Commission directed staff to prepare this amendment to address cases where it may not be appropriate to rezone property from residential to commercial, but it might be appropriate to allow parking, landscaping, or stormwater detention facilities in a residential zoning district. On July 20, 2000, the Planning & Zoning Commission voted unanimously to recommend approval of this wording amendment to the UDO.

At the worksession on August 1, 2000, City Council instructed the Planning staff to work with the City Attorney's office to finalize language changes in the wording amendment.

This proposed amendment establishes parking, landscaping, and stormwater detention for non-residential uses as conditional uses in all residential zoning districts and establishes standards for these uses. This ordinance adds another tool to the toolbox to be used in evaluating specific development proposals. Each application will be reviewed by the Technical Review Committee and City Council, and must be issued a conditional use permit. Adjacent property owners will be notified as specified in Section 7-5-20 of the UDO. The review of these uses will be site specific. In each case, City Council will have the option to deny the request, approve the request, or to add specific conditions to the approval.

Ms. Lola LaFey was concerned about relaxing our zoning laws in the City making it easier for businesses to come in and ruin the quality of life in our neighborhoods. Mr. Baechtold responded that this would be mostly limited to small scale expansions and only for parking, landscaping and stormwater detention.

Mayor Sitnick closed the public hearing at 5:50 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2735. This motion was seconded by Councilwoman Field.

Councilman Peterson felt that because this is not a rezoning of property, property owners do not have the added protection of using the protest petition. He felt that there are some benefits to the adjacent property owners, but thinks that with the new conditional use process, that is the procedure that should be followed. He felt this amendment will actually make it much easier to change property from a residential use to a more commercial use. This amendment appears to him to be a creeping rezoning of property without actually having to go through rezoning process.

The motion made by Vice-Mayor Cloninger and seconded by Councilwoman Field carried on a 6-1 vote, with Councilman Peterson voting "no".

ORDINANCE BOOK NO. 18 - PAGE 440

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 2736 - BUDGET AMENDMENT ESTABLISHING CAPITAL PROJECTS FOR PARKS AND RECREATION CAPITAL IMPROVEMENTS

Parks and Recreation Director Irby Brinson said that the Parks and Recreation Department is recommending City Council approve projects for Fiscal Year 2001 from the one-cent tax increase dedicated for capital improvements for Parks and Recreation.

Parks and Recreation staff, through a community input session, has developed an initial list of projects which could be funded from the one-cent tax increase for Parks and Recreation capital improvements. This initial list was shared with a citizen group who had participated in the development of the Parks and Greenway Master Plans. In addition, members of the Parks and Recreation Advisory Board, Greenway Commission, Public Art Board, and Parks and Greenway Foundation were invited to a meeting on July 24, 2000, at the Public Works Building. An overview of the process was discussed with the group which resulted in a recommendation that the total $400,000 be used for specific projects in this fiscal year instead of using the $400,000 to pay debt service towards borrowing approximately $4 million. The overall justification for this decision is we need one year to determine whether a future bond referendum will be considered. We do not want to dedicate the $400,000 over a long-term period to pay debt service without having general consensus about pursuing a bond referendum.

Staff identified projects that would be highly visible, geographically and economically distributed, address needs identified in the master plans which would be completed within the fiscal year, and partnered with other funding to increase the impact to the community. The top six projects are listed as follows:

1.	French Broad River Park Phase IV	estimated cost	$ 70,000
2.	Burton Street Playground	estimated cost	$ 50,000
3.	Ira B. Jones Ballfield	estimated cost	$ 125,000
4.	Broadway Greenway Master Plan	estimated cost	$ 75,000
5.	Royal Pines Park Demolition	estimated cost	$ 30,000
6.	Reid Recreation Center Renovations	estimated cost	$ 50,000
	Total		$ 400,000

He reviewed each of the top six projects in detail noting that staff is prepared to begin immediately with the implementation of this list upon approval by City Council.

The Parks and Recreation staff requests City Council approval of the top priority projects.

Mr. Brinson stated that these projects are not in anticipation of a bond. He said that the Parks and Recreation Advisory Board and the Parks and Greenway Foundation have discussed a bond, however, nothing final has been decided.

Councilwoman Field said that even though human services and social services are not part of City government, she felt that by building the infrastructure to provide parks and recreational areas for our children is an excellent investment.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved to adopt Ordinance No. 2736 and approve the top priority projects. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 443

B. RESOLUTION NO. 00-149 - RESOLUTION APPOINTING A MEMBER TO THE CIVIC CENTER COMMISSION

Vice-Mayor Cloninger said that this is the consideration of appointing a member to the Civic Center Commission.

The term of Douglas Haldane, as a member on the Civic Center Commission, expired on June 30, 2000, and on July 25, 2000, City Council interviewed Mr. Peter Crosa and Mr. Doc Halliday.

Councilwoman Field moved to appoint Mr. Peter Crosa to the Civic Center Commission to serve a three year term, term to expire June 30, 2003, or until his successor has been appointed. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 128

C. RESOLUTION NO. 00-150 - RESOLUTION APPOINTING A MEMBER TO THE TREE COMMISSION

Vice-Mayor Cloninger said that this is the consideration of appointing a member to the Tree Commission.

There currently exists a vacancy on the Tree Commission. On July 25, 2000, City Council interviewed Mr. Doc Halliday.

Councilwoman Bellamy moved to appoint Mr. Doc Halliday to the Tree Commission to serve a three year term, term to expire December 31, 2003, or until his successor has been appointed. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 129

D. RESOLUTION NO. 00-151 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD

Vice-Mayor Cloninger said that on August 22, 2000, City Council felt it was in the best interest of the City of Asheville to expand the membership of the Recreation Board from seven to nine members.

On July 25, 2000, City Council interviewed Ms. Susan Sparboe. Mr. Jim Drummond was a candidate, however, City Council did not request he be brought in for an interview.

Councilman Worley moved to appoint (1) Ms. Susan Sparboe to serve a three year term, term to expire June 30, 2003; and (2) Mr. Jim Drummond to serve an initial two year term, term to expire June 30, 2002. Both appointments are until their successors have been appointed. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 130

VI. OTHER BUSINESS:

A. COMMENTS BY MS. LOLA LaFEY

Ms. Lola LaFey voiced concern over the large budget of the Asheville Police Department and federal funding in contrast to other budgeted departments of the City, i.e. Parks and Recreation. She urged City Council to instruct the Police Department to cease videotaping Asheville citizens for their political beliefs.

B. COMMENTS BY MR. DAVID THUNDERSHIELD

Mr. David Thundershield suggested City Council revise their agenda so that public comments could be heard at the beginning of the meetings and not at the end.

Mr. Thundershield asked that City Council instruct the Police Department to stop videotaping citizens based purely on their political beliefs. He said that this violates national police accreditation standards and they are doing it on a regular basis. He also felt the Police Department is over-funded while other worthwhile departments go under-funded. He felt we should be putting money into preventing crime and giving citizens a better start. He was also concerned about abuses by certain police officers that have gone unmitigated in the past.

C. CLAIMS

The following claims were received by the City of Asheville during the period of August 4-10, 2000: Paul Stergion (Water), Garry C. Sayles (Water), Timbers Condos (Sanitation), Ron Norris (Water), Amy Simon (Water) and Steve Britt (Water).

The following claims were received by the City during the period of August 11-17, 2000: BellSouth (Water), Jessica Maddox (Water), Joel Neilson (Water) and Mary Narsiff (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

D. LAWSUITS

The following Petition for Review of Annexation Ordinance was received by the City on August 11, 2000: Frances C. Briggs, et al., v. City of Asheville. The nature of the proceeding is to declare the annexation ordinance for Annexation Area 2001-D to be null and void and to declare Annexation Area 2001-D not eligible for annexation by the City of Asheville. This matter will be handled by outside attorney William F. Slawter.

The following Petition for Review was received by the City on August 11, 2000: Carolina Power & Light Company v. City of Asheville. The nature of the proceeding is to review the annexation proceedings of the Long Shoals annexation Area C. This matter will be handled by outside attorney William F. Slawter.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:32 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – August 29, 2000
North Asheville Community Center
37 East Larchmont Road

7:00 p.m. - Community Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

The following topics were raised by residents and addressed by City Council and City staff: speeding traffic on Kimberly Avenue and what can the residents do to make speeders slow down; City needs to work more aggressively with the N. C. Dept. of Transportation to improve Merrimon Avenue; need for traffic calming devises on Kimberly Avenue; request for update on Edgewood Road re-design; Unified Development Ordinance amendment relative to duplexes, triplexes and quadraplexes in single-family zoning districts and standards for those uses; is there an operation clean sweep in the Police Department; how are grants used by the Police Department; is there an excess of police cars; size of Police Department budget; what is Police Department's policy on videotaping citizens; need for more enforcement of large trucks travelling on Kimberly Avenue, which is prohibited; is Weaver Boulevard on the list for traffic calming devices; what is the noise ordinance in the City and does it apply to UNC-Asheville; request for assistance from City in getting a natural gas line; request for sidewalk repair on Merrimon Avenue sidewalk that leads onto greenway; and need to fix our infrastructure and traffic problems before further development of the City.

Mayor Sitnick adjourned the meeting at 9:00 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - September 5, 2000 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor M. Charles Cloninger

CONSENT:

Statewide Emergency Management Mutual Aid Agreement

Summary: The consideration of a resolution authorizing the City Manager to sign a statewide emergency management mutual aid agreement with the North Carolina Department of Crime Control and Public Safety, and its Division of Emergency Management.

As a result of Hurricane Fran in 1996, Governor Hunt commissioned a Task Force to address the State's recovery effort. The Task Force made 84 recommendations that would enhance communication, coordination and recovery efforts, and help provide the resources needed to respond and recover from a disaster. One of the recommendations was for the League of Municipalities and the North Carolina Association of County Commissioners to draft a statewide mutual aid agreement. North Carolina Emergency Management serves as the repository for this statewide mutual aid agreement. This voluntary agreement means that the City may request assistance during a disaster, or Asheville may be asked to provide assistance to another city or town. The needs of Asheville residents are the first priority and the City may decline to provide assistance when the resources are needed in the City of Asheville. The multi-purpose agreement provides efficient and effective assistance among governments, faster reimbursement from the Federal Emergency Management Agency and covers liability and insurance concerns.

The Interim Fire Chief recommends City Council authorize the City Manager to sign a statewide emergency management mutual aid agreement with the North Carolina Department of Crime Control and Public Safety, and its Division of Emergency Management.

Public Auction

Summary: The consideration of a resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction on Saturday, October 7, 2000, at 10:00 a.m. in the Public Works Complex located at 161 S. Charlotte Street.

The resolution authorizes the City's Purchasing Division to hold a public auction to dispose of motor vehicles, off-road equipment, and other miscellaneous property declared as surplus by various City departments. The auction is scheduled to be held Saturday, October 7, 2000, at 10:00 a.m. in the Public Works Complex, 161 S. Charlotte Street.

City staff requests City Council's approval of the resolution.

Budget Amendment re: $2 Million High Unit Cost Grant

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 82-25 (35 Fund) to reflect the increase in revenue from the $2 Million High Unit Cost Grant and the increase to the Critical Needs Phase II appropriation.

By Resolution 82-25 dated October 5, 1982, the Regional Water Authority authorized and budgeted for various capital projects to be funded by Contribution From Other Funds and Appropriated Fund Balance.

In September 1999 the Regional Water Authority applied for a second grant with the N.C. Dept. of Environment and Natural Resources (DENR) to continue improvements to the regional water distribution system. The Authority had already been awarded a $3 million grant from DENR in July 1999 from an earlier round of applications. Areas of the water system were prioritized according to the State's criteria for grant points, including areas where water pressures to customers were low and areas where water leak repairs were frequent.

On March 15, 2000, the Water Resources Department was notified that DENR had selected the Authority for a $2 Million grant from the September application, conditioned on the design being completed and approved by DENR by July 7, 2000. This was completed on July 5, 2000.

Pursuant to the Water Agreement, the City of Asheville and Buncombe County formally accepted the grant in early August.

The Regional Water Authority approved an amendment to Capital Project Ordinance 82-25 at the August 15, 2000, meeting to reflect the increase in revenue from the $2 Million High Unit Cost Grant and the increase to the Critical Needs Phase II appropriation.

The Regional Water Authority recommends approval of a budget amendment for Capital Project Ordinance 82-25 to reflect the increase in revenue from the $2 Million High Unit Cost Grant and the increase to the Critical Needs Phase II appropriation.

FAA Grant Offer

Summary: The consideration of a resolution approving a grant from the Federal Aviation Administration in an amount not to exceed $500,000.

The Federal Aviation Administration (FAA) has offered a grant agreement to the Asheville Regional Airport. This grant, in an amount not to exceed $500,000, consists of the following projects: Rehabilitate Runway 16/34 Lights (HIRLS); and Improve Runway 16/34 Runway Safety Area and Taxiway Safety Area.

Staff recommends adoption of the resolution and authorize the Mayor to execute the grant agreement for Project No. 3-37-0005-24.

Offer to Purchase Disposal Parcel 76 in the East End/Valley Street Community Improvement Area

Summary: The consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase Disposal Parcel 76 in the East End/Valley Street Community for the tax value of $300.

Disposal Parcel 76 is a fragment lot located on the east side of Martin Luther King Jr. Drive at the intersection with South Beaumont Street comprising 566 square feet. The lot is irregular in shape and mostly flat about street level. The bid from Dorothy Dean includes the proposal to combine the property with adjoining property currently owned by Ms. Dean on South Beaumont Street. No construction is planned.

Approval of the resolution will establish the tax value of $300 as the minimum price and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

Provisions for Possession and Consumption of Alcoholic Beverages at 2000 Greek Festival

Summary: The consideration of a resolution to allow alcoholic beverages on October 6-8, 2000 at the 2000 Greek Festival.

N. C. Gen. Stat. sec. 18B-300 (c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and/or unfortified wine on public streets, and on property owned, occupied or controlled by the City of Asheville. The City Council has adopted an ordinance pursuant to that statutory authority. Section 11-11 of the Code of Ordinances provides that City Council may adopt a resolution making other provisions at a special event or community festival.

The Parks and Recreation Department recommends City Council adopt a resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the 2000 Greek Festival to include the areas as described in the resolution.

Provisions for Possession and Consumption of Alcoholic Beverages at 4th Annual Brewgrass Festival

Summary: The consideration of a resolution to allow alcoholic beverages on September 16, 2000 at the 4th Annual Brewgrass Festival.

N. C. Gen. Stat. sec. 18B-300 (c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and/or unfortified wine on public streets, and on property owned, occupied or controlled by the City of Asheville. The City Council has adopted an ordinance pursuant to that statutory authority. Section 11-11 of the Code of Ordinances provides that City Council may adopt a resolution making other provisions at a special event or community festival.

The Parks and Recreation Department recommends City Council adopt a resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the 4th Annual Brewgrass Festival to include the areas as described in the resolution.

Declaration of Withdrawal for Portion of Sunset Terrace

Summary: The consideration of a resolution finding that a portion of the right-of-way known as Sunset Terrace is not part of an adopted street plan.

According to N. C. Gen. Stat. sec. 136-96, if a right-of-way is not utilized within 15 years of dedication, it can be abandoned through a recording of a Declaration of Withdrawal.

To proceed with this process, Claxton Law Firm, on behalf of Peter and Jasmin Gentling, has conducted an extensive title research and determined that they are the rightful persons to claim under the dedicator and to make and record a declaration of withdrawal pursuant to North Carolina General Statute sec. 136-96 and has requested that the City of Asheville verify if the specific rights-of-way are or are not part of the City's adopted street plan. The statute requires that the City adopt a resolution stating whether the right-of-way to be abandoned is or is not part of a proposed street plan.

Public Works Department staff has determined that a portion of the right-of-way known as Sunset Terrace, beginning at the southeast corner of PIN No. 9649-08-88-3098, and ending at the southwest corner of PIN No. 9649-08-87-4827 as shown on Plat Book 14, Page 70, is not part of an adopted street plan and is not a City maintained right-of-way.

City staff recommends City Council adopt the resolution finding that a portion of the right-of-way known as Sunset Terrace is not part of an adopted street plan.

Budget Amendment for Pritchard Park

Summary: The consideration of a budget amendment, in the amount of $38,312.53, to appropriate funds received from reimbursement by the Transportation Advisory Committee for the Downtown Traffic Evaluation Plan for Pritchard Park.

In May of 1999, City Council approved the development of a Traffic Evaluation Plan for downtown as it related to the improvements at Pritchard Park. This particular proposal requested reimbursement of this Plan by the Transportation Advisory Committee for the MPO Transportation Planning Work Program budget. The upfront costs of this study were paid out of the Pritchard Park budget with the understanding that, once funds were received as part of the MPO, reimbursement would be made to this account.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $38,312.53, to reimburse the Pritchard Park renovation account for the development of the Downtown Traffic Evaluation Plan.

Upon inquiry of Councilwoman Bellamy, Parks and Recreation Director Irby Brinson said that the park renovation should be completed no later than December 15, 2000.

Annual Report of the Minority Business Program

Summary: Presentation of the Minority Business Program Annual Report for Fiscal Year 1999 - 2000.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan was subsequently amended in November 1998 and December 1999, to clarify provisions of the Plan and to expand participation in the Mentor-Protégé Program.

The Plan requires the Office of Minority Affairs to present to the City Council and County Commissioners an Annual Report on the effectiveness of implementation of the Plan. The Report includes, but is not limited to: the number of minority businesses; percentage of minority businesses contracting with the County and City either as a prime contractor or as a subcontractor; percentage of overall reported contracts awarded to minority businesses; percentage of contractors complying with good faith efforts; percentage of goals achieved and goals waived.

The Annual Report for Fiscal Year 1999 – 2000 has been reviewed by the Minority Business Commission and approved at its meeting on August 24, 2000.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UPDATE FROM THE FUTURE OF THE CIVIC CENTER TASK FORCE

Councilman Hay, Chair of the Future of the Civic Center Task Force, said that over the last several months, the Task Force on the Future of the Civic Center has made fresh progress in identifying future uses of the Asheville Civic Center. Our present Civic Center serves as a convention center, sports arena, and performing arts center. In the future, each facility will meet a unique community need, has its own prospects for success, and has its own funding mechanisms. The Task Force thinks that each should complement the others, but they also believe that each has merit in its own right, regardless of the feasibility of the others.

The Task Force created three different sub-committees; each assigned a different component to investigate. The sub-committees have completed their initial research and have made reports to the Task Force. The reports are as follows:

Convention/Conference Center

In cooperation with the Task Force, the Tourism Development Authority commissioned a study on the need for additional convention center space in Asheville. The result was the Highland Group Report, which questioned the need for additional space and did not support the idea of developing a convention center.

The Task Force believes compelling arguments exist for a convention/conference center downtown, but also acknowledge that without the full support of the hospitality industry, the primary beneficiary of a new convention center, the emphasis for the present should be on the performing arts center and the sports arena. Nonetheless, the Task Force believes that efforts should also be ongoing to explore convention center possibilities with partners such as UNC-A.

Sports Arena

The sub-committee exploring the option of a sports arena has been meeting almost weekly to identify possible locations for the arena and have reviewed a total of 25 – 30 locations. Meetings have included property owners, staff, and others associated with the different locations. The sub-committee has narrowed the locations down to three possibilities: the existing location, a site behind City Hall, and the UNC-A campus. A location on the river was also identified as a strong fourth choice.

In the course of its study, the sub-committee was hearing from operators interested in locating sports teams in Asheville. (As was reported in the Asheville Citizen-Times last week, the NBA is one of those interested parties). Each has encouraged us to look first at upgrading the existing facility. Also, problems identified early in our process with access and parking will now be addressed head-on with the new parking deck on Battery Hill and the realignment of the Broadway exchange.

As a result, the Task Force determined that it should resolve once and for all the question of whether the existing sports arena can be feasibly upgraded to a modern facility, capable of meeting the needs of a variety of new sports and entertainment tenants. Therefore, the sub-committee has developed a Request for Proposal (RFP) for an architectural feasibility study of the Civic Center, with an emphasis on the arena. They are now asking for City Council approval to proceed with the RFP process.

Performing Arts Center

This sub-committee, headed by Herb Smith from the Asheville Symphony, has been visiting performing arts centers throughout the Southeast, including the Peace Center in Greenville, S.C., the Spartanburg Auditorium in Spartanburg, S.C., the Roanoke Performing Arts Center in Roanoke, VA, the Blumenthal Center in Charlotte and the Stephens Center in Winston-Salem, N.C. They have reported on each of these visits and recommend that the entire Task Force visit the Peace Center and the Spartanburg Auditorium to get a first-hand look at the two facilities, which represent renovated and newly constructed centers. These visits will be planned in the near future.

The Task Force feels that they are making substantial progress in finding the right mix of uses for our Civic Center. They were somewhat disheartened in January when the report from our consultants at Hunter Interests was released, but we now feel that it has given them a different perspective and a fresh way of looking at things. The recent NBA interest in our City is an indicator of what the future holds for the Asheville Civic Center. They look forward to finding the perfect equation for our community and adding new, exciting entertainment venues for all of Western North Carolina.

A brief discussion surrounded how the Civic Center would be funded, i.e., fully public funded, fully privately funded or funded in a public/private nature.

Upon inquiry of Councilwoman Bellamy, it was discussed that the best ballpark guess of the RFP would be in the range of $60-100,000 and it would come from contingency or fund balance. Councilwoman Field explained that the more clear the RFP is, it will cost less.

Councilwoman Field wanted to make sure that the consultant knows that the community is attached to the present facility. She personally feels that it is cheaper and better to recycle what we have than to build a new facility, unless the facility is completely inappropriate for the task in the future or the building is unsound.

It was the consensus of City Council to instruct the Task Force to proceed with the RFP for an architectural feasibility study of the Civic Center, with an emphasis on the arena. The Task Force will then review the RFP's and report back to City Council with a request for an appropriation.

DETAILS ON HOUSING TRUST FUND

Ms Charlotte Caplan, Community Development Director, said that this is the consideration of a resolution approving policies and procedures for the Housing Trust Fund, and the request for proposals for Fiscal Year 2000-2001 projects.

On June 13, 2000, City Council approved an allocation of $400,000 in the Fiscal Year 2000-2001 City Budget to create a Housing Trust Fund. This report proposes:

1) General policies and procedures for the management and use of the Fund;

2) A request for proposals (RFP) for FY 2000/01 from developers of new housing for rent or for homeownership.

These documents have been developed by staff after discussion with stakeholders, including housing non-profits, real estate professionals, and developers, and have been approved by the Housing and Community Development Committee.

The key features are mainly as proposed to Council before the creation of the Trust Fund, and include:

- Creating a permanent fund to assist in developing and preserving affordable housing;
- Allowing a wide range of eligible uses in principle, with more specific targeting in each year's RFP;
- Project selection to support the Consolidated Plan and Smart Growth policies;
- Assistance in the form of loans, not grants, with flexible repayment terms;
- No Trust Funds to be used for administration, at least for the first year;
- General oversight and project selection by the Housing and Community Development Committee .

City staff recommends City Council approve the resolution adopting policies and procedures for the Housing Trust Fund and the types of projects to be the subject of a request for proposals this year.

Upon inquiry of Councilman Worley, it was the consensus of City Council to add sole proprietorships to the types of entities that will be eligible to apply for assistance from the Fund.

Councilman Worley expressed concern that second mortgage assistance to home buyers is not precluded by eligible home buyers.

Councilwoman Bellamy was concerned that the City itself is able to operate projects assisted by the Fund and personally did not support that.

Councilwoman Field said that the Housing and Community Development Committee will make recommendations to City Council and the Council will have final approval authority over the projects.

It was the consensus of City Council that the Housing and Community Development Committee have the authority to vary the terms of the loans.

Councilwoman Field hoped that when other entities decide to participate monetarily for affordable housing, that the City be willing and flexible to work with them.

Mayor Sitnick suggested that after adoption of these polices and procedures Ms. Caplan contact Buncombe County to see if they can work with the City.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REVISIONS TO THE TAXICAB ORDINANCE

Revenue Manager Deborah Crowder said that this is the consideration of a revision of the current taxicab ordinance including the implementation of a new rate table.

N.C. Gen. Stat. sec. 160A-304 allows a city to license and regulate all vehicles operated for hire in the city.

Ms. Crowder said that staff has reviewed Sec. 18 of the City of Asheville Code which sets forth the provision for regulation of taxicab businesses and drivers and several minor changes have been made to bring the Code up-to-date. For example, the current language of the Code requires a vehicle to have seat belts and heaters. The revision changes the language to terms like standard safety devices, and also includes the provision for air conditioners. Other terminology changes are *medallion* to *insignia*, *Motor Transport* to *Fleet Management*, etc. She noted that the most significant change in the text of the ordinance is the driver's renewal period has been changed from the December 31 and June 30 dates to allow expiration one year from the date of issue.

The taxicab rate schedule, formerly included in the City's Fees and Charges Manual, has been revised and moved to the Appendix of the City Code. The last rate change was approved in 1987. The schedule is removed from the Fees and Charges Manual because taxicab rates are not fees paid to the city. They are amounts paid, by the customer, to the business. The Fees and Charges Manual retains those amounts paid to the city, by the business or driver, that are associated with the regulation of taxicab businesses and drivers.

City staff recommended that the insurance provision be revised from currently $25,000/person; $50,000/accident; and $15,000/property be increased to $100,000/person; $300,000/accident; and $50,000/property.

Ms. Crowder then reviewed a taxicab rate comparison of eight cities. City staff recommended $1.70 drop; $1.60 per mile; and $4.10/1.5 trip. Staff also recommended that the minimum total fare shall not be less than $3.00.

City staff recommends Council adopt the revised ordinance and rate schedule.

Ms. Crowder said that there has been numerous complaints from the taxi drivers about Airport rules which prohibit them from waiting for return rides on Airport property. She passed out a copy of the Airport's commercial ground transportation regulations. She recommended the Mayor write a letter to the Airport Authority indicating that the City of Asheville is interested in reviewing and resolving the ground transportation issue at the Asheville Regional Airport.

When Councilman Peterson asked what the City could do to require taxicab stands at the Airport, City Attorney Oast said that he is researching that issue.

Mr. Mike Armour, Airport Director, said that in the past they have had difficulty in getting cabs to respond to calls for late night arrivals. In addition, the Airport has very limited curbside capacity. He noted that the contract with Airport Ground Transportation is not an exclusive contract and they do have the ability to enter into other agreements, however, the current ground transportation carries a total of less than 3% of their passengers. He said that the Authority is currently reviewing their Master Plan process and ground transportation is very much a part of that process. He said that the Authority is willing to work with City Council to see if they can come to a solution.

Mr. Spiro Aliferis said that the Airport doesn't mind taxicabs taking customers out there, however, they aren't willing to let them take passengers back. He felt that with the higher insurance recommendations by staff, the per mile figure should be $1.80.

When Councilman Peterson asked what kind of improvements might the public see if Council raised their rates, Mr. Aliferis said that hopefully they can find more drivers and there would be more cabs on the streets.

Mr. Joe Hall noted that the Airport Ground Transportation shuttle charges $20/person to be taken to the Grove Park Inn, whereas, a taxicab is $20 but it holds more people.

After discussion, it was the consensus of City Council to raise the rates to $1.80/drop; $1.70 per mile; and $4.35/1.5 trip. In addition, the minimum total fare shall not be less than

$3.00. In addition, it was the consensus of Council to raise the insurance requirement to $100,000/person; $300,000/accident; and $50,000/property.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which is scheduled on September 12, 2000. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Identify Colleges and Universities, Vocation and Training Schools as a Permitted Use in Industrial District

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to identify colleges and universities, vocational and training schools, and business incubation as permitted uses in the Industrial District.

He said that uses in the Industrial District are currently limited to manufacturing and related uses. While this limited range of uses preserves industrially zoned property for industrial uses, it is not flexible enough to meet the needs of technological changes and new approaches to the uses of industrial sites. This limitation is exemplified by the proposed use of land donated by BASF to Asheville-Buncombe Technical Community College (A-B Tech) . The property is located adjacent to the BASF plant and is zoned Industrial. A-B Tech plans to locate classrooms and a business incubation center in the existing building. The classrooms would be used primarily for vocational education. The business incubation center would provide an area for start up businesses to locate, share resources, and receive assistance in the first years of their existence, helping to ensure their success. Currently, the Industrial District does not permit either of these uses. The proposed ordinance amendment would allow these uses by listing colleges and universities, vocational and training schools, and business incubation as permitted uses in the Industrial District. Future efforts such as that proposed by A-B Tech would be permitted by the proposed ordinance amendment, helping to strengthen the area's economy.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearing on September 12, 2000.

GENERAL OBLIGATION TWO-THIRD BONDS

Finance Director Bill Schaefer said that this is the consideration of resolutions related to the issuance of $1,970,000 City of Asheville General Obligation Two-Thirds Bonds.

In most instances, the least expensive financing source available to municipalities is the issue of General Obligation (GO) Bonds; especially when the GO bonds can be issued without the expense and uncertainty of conducting a referendum to authorize their issue. N.C. General Statutes allow the issue of GO bonds without a referendum in a maximum amount equaling two-thirds of the amount by which the City's outstanding GO debt was reduced in the prior fiscal year. As a result, the City of Asheville may issue up to $1,973,333 in Two-Thirds Bonds in Fiscal Year 2000-2001.

The City of Asheville budget for Fiscal Year 2000-2001 includes $1,300,000 for sewer projects and $800,000 for an aerial ladder fire truck. The budget called for the sewer projects to be financed by Two-Thirds Bonds and the fire truck through an installment purchase. After financing of the sewer projects, the City would still have $670,000 of Two-Thirds Bond capacity which staff proposes be used to finance the majority of the fire truck; with the balance of only $130,000 to be financed by the more expensive lease purchase.

The City's Bond Counsel, in consultation with the Local Government Commission (LGC) and City staff, has established a tentative calendar of events leading to a sale date of December 5, 2000, for the City's Two-Thirds Bonds. In order to meet that schedule, City Council needs to adopt the first four enabling resolutions at the September 12, 2000, formal meeting. The following summarizes each of the resolutions:

1. *Resolution Directing the Publication of Notice of Intention to Apply to the LGC for Approval of Bonds*: Directs the City Clerk to have published on September 13, 2000, a notice of the City's intent to apply to the LGC to issue $1,300,000 bonds for sewer projects and $670,000 bonds for the purchase of a fire truck.

2. *Resolution Authorizing the Finance Director to Prepare an Application to the LGC ...*: Directs the Finance Director to submit the necessary application and associated information regarding the City and its financial condition and to request LGC's approval of the City's use of Parker, Poe, Adams & Bernstein L.L.P. as the City's Bond Counsel.

3. *Resolution Making Certain Statements of Fact Concerning Proposed Bond Issues:* Documents Council's findings of fact as to the following:
   A. The proposed bonds are necessary and expedient;
   B. The amounts of the bonds are adequate and not excessive;
   C. The City's debt management policies have been carried out in compliance with law;
   D. The City's budgetary and fiscal management policies have been carried out in compliance with law; and
   E. The schedule for issuing the bonds does not require a property tax increase and calls for all of the bonds to be issued in December, 2000.

4. *Resolution Declaring the Intent of the City to Reimburse Itself for Capital Expenditures Incurred in Connection With the Extension of Sanitary Sewer Lines From Proceeds of Certain Tax-Exempt Bonds ...*: On August 22, 2000, Council authorized the City Manager to enter into a contract for a portion of the sewer projects which are to be financed by Two-Thirds Bonds. In order for the City to be able to reimburse itself from the proceeds of the Bonds for a construction contract executed prior to the sale of the Bonds, the City must publicly document its intent prior to or within 90 days following the execution of the contract. This resolution documents the City's intent.

City staff recommends City Council adopt the four resolutions.

Mr. Schaefer responded to a question by Councilman Peterson about how much the City will be saving.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

ENGAGEMENT OF UNDERWRITERS

Finance Director Bill Schaefer said that this is the consideration of a resolution authorizing the engagement of underwriters for the issue of Water Revenue Bonds and Certificates of Participation.

The City of Asheville Budget for Fiscal Year 2000-2001 calls for the issue of $11,300,000 of Water Revenue Bonds to finance various improvements to the water system and the issue of $11,200,000 tax-exempt Certificates of Participation (COPs) for the City's portion of the Battery Park Parking Deck. (An additional taxable portion of the COPs issue, currently estimated as $4,000,000, will be required to finance the private partner's portion of the project. The debt service for the taxable portion is to be provided, in its entirety, by the private partners.) The services of an underwriting firm will be required for the structuring and sale of both the Water Revenue Bonds and the COPs.

The City requested separate proposals for the Water Revenue Bond issue and the COPs issue from six investment banking firms. In response, we received five proposals to underwrite the Water Revenue Bonds and all six firms provided proposals to underwrite the COPs. City staff members evaluated the proposals based on: experience with similar financings in North Carolina; suggested alternatives for the structuring of the financing; firm's personnel dedicated to the financing; underwriter's counsel; compliance with the City's drug free workplace policies: fee structure; etc.

Based on the results of the evaluation of proposals, City staff recommends the engagement of Robinson-Humphrey, LLC, to underwrite the City's issue of Water Revenue Bonds and both the tax-exempt and taxable COPs.

City staff recommends City Council adopt the resolution which engages underwriters for the issue of Water Revenue Bonds and Certificates of Participation.

Mr. Schaefer responded to various questions from Councilman Peterson.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REQUEST FOR PROPOSALS FOR EAST END PLACE SUBDIVISION

Mr. Randall Barnett, Rehab Loan Specialist, said that this is the consideration of a resolution establishing the minimum price and directing the City Clerk to advertise a Request for Proposals regarding the development of East End Place Subdivision.

The Community Development Division has prepared a plan for the sale and redevelopment of land located in the East End/Valley Street Community Improvement Area known as East End Place and seeks authorization to advertise a Request for Proposals for sealed bids.

East End Place is a proposed subdivision located on a two acre tract on Martin Luther King Jr. Drive. The subdivision plan comprises seven lots and a short cul-de-sac. The plan has been approved by the Technical Review Committee.

The proposed lots have been appraised at $77,000, which is the amount proposed as the minimum price for the land.

The successful redeveloper will be required to pay not less than the minimum price established for the lots; to construct the infrastructure, i.e. street, sidewalk, water lines, sewer and storm drainage; and to build an affordable home on each lot with a projected sale price not to exceed $90,000. The homes proposed must contain at a minimum 960 square feet, 3 bedrooms and 1 1/2 baths. The project must be started within three months and completed within twenty-four months after conveyance of the property. The City through allocated Community Development Block Grant funds will provide $78,000 toward the cost of the infrastructure.

The homes must be sold to households with incomes not exceeding 80% of the area median income. The City through allocated Community Development Program Income will provide secondary financing to the buyers in an amount not to exceed $11,000 per lot.

The advertisement for sealed bids, if approved by Council, will include the provision that proposals will be evaluated on the Redeveloper's qualifications and the quality of the proposed homes as well as the amount bid.

Approval of the resolution will establish the minimum price for East End Place at $77,000 and initiate the sale of the property through the sealed bid process as provided in N. C. Gen. Stat. sec. 160A-268.

Community Development staff recommends adoption of the resolution.

At the request of Councilwoman Bellamy, Mr. Barnette said that he would be happy to meet with the residents in the area and discuss the proposed subdivision plan, addressing any concerns they may have especially with regard to building on the embankment and the proximity of the proposed subdivision with their homes.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

OTHER BUSINESS

It was the consensus of City Council to cancel the October 17, 2000, worksession since there will not be a majority of City Council in town. However, Council instructed the City Manager to wait until closer to the October 17, 2000, worksession date to see if the worksession should be rescheduled to Wednesday, October 18, 2000, or just cancelled entirely for that week.

It was the consensus of City Council to cancel their community meeting for Tuesday, October 31, 2000.

City Council instructed the City Clerk to arrange interviews or prepare paperwork to make appointments to the following boards and commissions: ADA Compliance Committee, Greenway Commission, Minority Business Commission, Opportunity Corporation, Planning and Zoning Commission, River District Design Review Committee, Tourism Development Authority, Victoria of Asheville Board of Directors, and Water Authority.

After discussion regarding the process for appointing Council members to different boards, it was the consensus of City Council to appoint Councilman Hay to the Buncombe County Economic Development Commission.

Mayor Sitnick said that she has had a request to have City Council ask the Public Art Board to discuss the possibility of having a poet laureate for the City of Asheville. Councilwoman Field (liaison to the Public Art Board) said that she would be happy to bring that proposal before the Board.

City Attorney Oast announced that he was just notified that the variance request by Riverbend Marketplace (i.e. Walmart) to construct a Walmart Superstore at the old Sayles Bleacheries site at 437 Swannanoa River Road was denied by the Board of Adjustment.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:30 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - September 12, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy (left meeting at 7:15 p.m.); and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilwoman Bellamy gave the invocation.

ADDITIONS TO THE AGENDA

Councilwoman Field requested that a brief discussion be held about the enforcement of political signs under "Other Business."

Councilman Hay asked that he and Councilwoman Bellamy report on a VISION meeting under "Other Business."

I. PROCLAMATIONS:

A. RESOLUTION NO. 00-152 - RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE BETTY SAMS

City Manager Westbrook read a resolution of appreciation to Betty Sams who has been employed by the City of Asheville for 20 years. Ms. Sams has requested retirement from her position as Elevator Operator in the Parks & Recreation Department.

Resolution No. 00-152 was adopted by acclamation.

RESOLUTION BOOK NO. 26 - PAGE 131

B. PROCLAMATION PROCLAIMING THE WEEK OF SEPTEMBER 10-16, 2000, AS "IMPROVING END OF LIFE CARE WEEK"

Mayor Sitnick read the proclamation proclaiming September 10-16, 2000, as "Improving End of Life Care Week" in the City of Asheville. She presented the proclamation to Tina Holmes, Carolyn Geister, Debbie Aiton, Kathi Peterson, and Jennifer Atkinson from Williams Funeral Home, who briefed City Council on some activities taking place during the week.

C. PROCLAMATION PROCLAIMING THE WEEK OF SEPTEMBER 24-30, 2000, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Mayor Sitnick read the proclamation proclaiming September 24-30, 2000, as "Minority Enterprise Development Week" in the City of Asheville. She presented the proclamation to Mr. Mariana Raigo, Vice-President of the Asheville Latin Americans for Advancement Society, who briefed City Council on some activities taking place during the week.

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D. **RESOLUTION NO. 00-153 – RESOLUTION IN SUPPORT OF HIGHER EDUCATION BONDS TO ASSIST NORTH CAROLINA'S COMMUNITY COLLEGE AND UNIVERSITIES IN MEETING THEIR FACILITY NEEDS AND ACCOMMODATING THEIR STUDENTS**

Mayor Sitnick read the proclamation which said that higher education historically has played a tremendous role in building the State of North Carolina into the thriving economic, cultural and social leader that it is today. North Carolina's community colleges and universities allow citizens of this State to learn the skills necessary to compete in today's and tomorrow's competitive economy. North Carolina's systems of higher education are acclaimed as being among the best in the country. In the next decade, our community colleges expect more than 57,000 new students to enroll, and our universities' enrollment will grow by more than 48,000 students. Our higher education campuses must upgrade and construct academic, residential and administrative facilities, including critical laboratory and classroom space, to accommodate the growing numbers of students. The $3.1 billion bond package approved by the General Assembly will assist our community colleges and universities in meeting their significant facility needs. $49.9 million has been allocated for the University of North Carolina at Asheville and $14 million has been allocated for Asheville-Buncombe Technical Community College. The bonds are subject to voter approval on the November 2000 ballot and deserve rightful consideration by the citizens of this state. The Asheville City Council strongly supports the higher education bond proposal because it will enable our systems of higher education to better educate tomorrow's students and maintain North Carolina's place as the national leader in higher education learning and training. The Asheville City Council pledges to work to educate and inform the citizens of our State about the importance of the bonds in improving our community colleges and universities, and pledges to encourage voters to approve the bonds this November.

She then recognized Dr. Jim Mullen, Chancellor from UNC-Asheville, and Mr. Ray Bailey, President of Asheville-Buncombe Technical Community College, who spoke in favor of Council's consideration of this resolution.

Councilman Worley moved for the adoption of Resolution No. 00-153. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 132

II. CONSENT:

A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 22, 2000, THE COMMUNITY MEETING HELD ON AUGUST 29, 2000, AND THE WORKSESSION HELD ON SEPTEMBER 5, 2000**

B. **RESOLUTION NO. 00-154 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A STATEWIDE EMERGENCY MANAGEMENT MUTUAL AID AGREEMENT WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY**

Summary: The consideration of a resolution authorizing the City Manager to sign a statewide emergency management mutual aid agreement with the North Carolina Department of Crime Control and Public Safety, and its Division of Emergency Management.

As a result of Hurricane Fran in 1996, Governor Hunt commissioned a Task Force to address the State's recovery effort. The Task Force made 84 recommendations that would enhance communication, coordination and recovery efforts, and help provide the resources needed to respond and recover from a disaster. One of the recommendations was for the League of Municipalities and the North Carolina Association of County Commissioners to draft a statewide mutual aid agreement. North Carolina Emergency Management serves as the repository for this statewide mutual aid agreement. This voluntary agreement means that the City may request assistance during a disaster, or Asheville may be asked to provide assistance to another city or town. The needs of Asheville residents are the first priority and the City may decline to provide assistance when the resources are needed in the City of Asheville. The multipurpose agreement provides efficient and effective assistance among governments, faster reimbursement from the Federal Emergency Management Agency and covers liability and insurance concerns.

The Interim Fire Chief recommends City Council authorize the City Manager to sign a statewide emergency management mutual aid agreement with the North Carolina Department of Crime Control and Public Safety, and its Division of Emergency Management.

RESOLUTION BOOK NO. 26 – PAGE 133

C. RESOLUTION NO. 00-155 - RESOLUTION AUTHORIZING THE PURCHASING DIRECTOR TO DISPOSE OF CITY-OWNED PERSONAL PROPERTY BY PUBLIC AUCTION ON SATURDAY, OCTOBER 7, 2000, AT 10:00 A.M. IN THE PUBLIC WORKS COMPLEX LOCATED AT 161 SOUTH CHARLOTTE STREET

Summary: The consideration of a resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction on Saturday, October 7, 2000, at 10:00 a.m. in the Public Works Complex located at 161 S. Charlotte Street.

The resolution authorizes the City's Purchasing Division to hold a public auction to dispose of motor vehicles, off-road equipment, and other miscellaneous property declared as surplus by various City departments. The auction is scheduled to be held Saturday, October 7, 2000, at 10:00 a.m. in the Public Works Complex, 161 S. Charlotte Street.

City staff requests City Council's approval of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 134

D. ORDINANCE NO. 2737 - BUDGET AMENDMENT TO INCREASE REVENUE FROM THE $2 MILLION HIGH UNIT COST GRANT AND INCREASE THE WATER CRITICAL NEED PHASE II APPROPRIATION

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 82-25 (35 Fund) to reflect the increase in revenue from the $2 Million High Unit Cost Grant and the increase to the Critical Needs Phase II appropriation.

By Resolution 82-25 dated October 5, 1982, the Regional Water Authority authorized and budgeted for various capital projects to be funded by Contribution From Other Funds and Appropriated Fund Balance.

In September 1999 the Regional Water Authority applied for a second grant with the N.C. Dept. of Environment and Natural Resources (DENR) to continue improvements to the regional water distribution system. The Authority had already been awarded a $3 million grant from DENR in July 1999 from an earlier round of applications. Areas of the water system were

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prioritized according to the State's criteria for grant points, including areas where water pressures to customers were low and areas where water leak repairs were frequent.

On March 15, 2000, the Water Resources Department was notified that DENR had selected the Authority for a $2 Million grant from the September application, conditioned on the design being completed and approved by DENR by July 7, 2000. This was completed on July 5, 2000.

Pursuant to the Water Agreement, the City of Asheville and Buncombe County formally accepted the grant in early August.

The Regional Water Authority approved an amendment to Capital Project Ordinance 82-25 at the August 15, 2000, meeting to reflect the increase in revenue from the $2 Million High Unit Cost Grant and the increase to the Critical Needs Phase II appropriation.

The Regional Water Authority recommends approval of a budget amendment for Capital Project Ordinance 82-25 to reflect the increase in revenue from the $2 Million High Unit Cost Grant and the increase to the Critical Needs Phase II appropriation.

ORDINANCE BOOK NO. 18 – PAGE 445

E. RESOLUTION NO. 00-156 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A FEDERAL AVIATION ADMINISTRATION GRANT

Summary: The consideration of a resolution approving a grant from the Federal Aviation Administration in an amount not to exceed $500,000.

The Federal Aviation Administration (FAA) has offered a grant agreement to the Asheville Regional Airport. This grant, in an amount not to exceed $500,000, consists of the following projects: Rehabilitate Runway 16/34 Lights (HIRLS); and Improve Runway 16/34 Runway Safety Area and Taxiway Safety Area.

Staff recommends adoption of the resolution and authorize the Mayor to execute the grant agreement for Project No. 3-37-0005-24.

RESOLUTION BOOK NO. 26 – PAGE 154

F. MOTION SETTING A PUBLIC HEARING FOR SEPTEMBER 26, 2000, TO CONSIDER A CONDITIONAL USE PERMIT FOR A PARKING LOT ASSOCIATED WITH MILKO INC. TO BE LOCATED ON PROPERTY ZONED RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AT THE INTERSECTION OF DEAVERVIEW ROAD AND BEAR CREEK ROAD

G. MOTION SETTING A PUBLIC HEARING FOR SEPTEMBER 26, 2000, TO CONSIDER REZONING SEVEN LOTS LOCATED ON ACTON CIRCLE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT, HIGHWAY BUSINESS AND NEIGHBORHOOD BUSINESS TO HIGHWAY BUSINESS, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

H. MOTION SETTING A PUBLIC HEARING FOR SEPTEMBER 26, 2000, TO CONSIDER REZONING PROPERTY AT CLINGMAN AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

I. RESOLUTION NO. 00-157 - RESOLUTION ESTABLISHING MINIMUM PRICE AND AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE DISPOSAL PARCEL 76 IN THE EAST END/VALLEY STREET COMMUNITY IMPROVEMENT AREA FOR THE TAX VALUE OF $300

Summary: The consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase Disposal Parcel 76 in the East End/Valley Street Community for the tax value of $300.

Disposal Parcel 76 is a fragment lot located on the east side of Martin Luther King Jr. Drive at the intersection with South Beaumont Street comprising 566 square feet. The lot is irregular in shape and mostly flat about street level. The bid from Dorothy Dean includes the proposal to combine the property with adjoining property currently owned by Ms. Dean on South Beaumont Street. No construction is planned.

Approval of the resolution will establish the tax value of $300 as the minimum price and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 155

J. RESOLUTION NO. 00-158 - RESOLUTION MAKING PROVISIONS FOR THE CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2000 GREEK FESTIVAL ON OCTOBER 6-8, 2000

Summary: The consideration of a resolution to allow alcoholic beverages on October 6-8, 2000 at the 2000 Greek Festival.

N. C. Gen. Stat. sec. 18B-300 (c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and/or unfortified wine on public streets, and on property owned, occupied or controlled by the City of Asheville. The City Council has adopted an ordinance pursuant to that statutory authority. Section 11-11 of the Code of Ordinances provides that City Council may adopt a resolution making other provisions at a special event or community festival.

The Parks and Recreation Department recommends City Council adopt a resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the 2000 Greek Festival to include the areas as described in the resolution.

RESOLUTION BOOK NO. 26 – PAGE 156

K. RESOLUTION NO. 00-159 - RESOLUTION MAKING PROVISIONS FOR THE CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 4TH ANNUAL BREWGRASS FESTIVAL SEPTEMBER 16, 2000

Summary: The consideration of a resolution to allow alcoholic beverages on September 16, 2000 at the 4th Annual Brewgrass Festival.

N. C. Gen. Stat. sec. 18B-300 (c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and/or unfortified wine on public streets, and on property owned, occupied or controlled by the City of Asheville. The City Council has adopted an ordinance pursuant to that statutory authority. Section 11-11 of the Code of Ordinances provides that City Council may adopt a resolution making other provisions at a special event or community festival.

The Parks and Recreation Department recommends City Council adopt a resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the 4th Annual Brewgrass Festival to include the areas as described in the resolution.

RESOLUTION BOOK NO. 26 – PAGE 158

L. RESOLUTION NO. 00-160 - RESOLUTION FINDING THAT A PORTION OF THE RIGHT-OF-WAY KNOWN AS SUNSET TERRACE IS NOT PART OF AN ADOPTED STREET PLAN

Summary: The consideration of a resolution finding that a portion of the right-of-way known as Sunset Terrace is not part of an adopted street plan.

According to N. C. Gen. Stat. sec. 136-96, if a right-of-way is not utilized within 15 years of dedication, it can be abandoned through a recording of a Declaration of Withdrawal.

To proceed with this process, Claxton Law Firm, on behalf of Peter and Jasmin Gentling, has conducted an extensive title research and determined that they are the rightful persons to claim under the dedicator and to make and record a declaration of withdrawal pursuant to North Carolina General Statute sec. 136-96 and has requested that the City of Asheville verify if the specific rights-of-way are or are not part of the City's adopted street plan. The statute requires that the City adopt a resolution stating whether the right-of-way to be abandoned is or is not part of a proposed street plan.

Public Works Department staff has determined that a portion of the right-of-way known as Sunset Terrace, beginning at the southeast corner of PIN No. 9649-08-88-3098, and ending at the southwest corner of PIN No. 9649-08-87-4827 as shown on Plat Book 14, Page 70, is not part of an adopted street plan and is not a City maintained right-of-way.

City staff recommends City Council adopt the resolution finding that a portion of the right-of-way known as Sunset Terrace is not part of an adopted street plan.

RESOLUTION BOOK NO. 26 – PAGE 160

M. RESOLUTION NO. 00-161 - RESOLUTION DIRECTING THE PUBLICATION OF NOTICE OF INTENTION TO APPLY TO THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF BONDS

Summary: The consideration of resolutions related to the issuance of $1,970,000 City of Asheville General Obligation Two-Thirds Bonds.

In most instances, the least expensive financing source available to municipalities is the issue of General Obligation (GO) Bonds; especially when the GO bonds can be issued without the expense and uncertainty of conducting a referendum to authorize their issue. N.C. General Statutes allow the issue of GO bonds without a referendum in a maximum amount equaling two-thirds of the amount by which the City's outstanding GO debt was reduced in the prior fiscal year. As a result, the City of Asheville may issue up to $1,973,333 in Two-Thirds Bonds in FY 2000-2001.

The City of Asheville Budget for Fiscal Year 2000-2001 includes $1,300,000 for sewer projects and $800,000 for an aerial ladder fire truck. The Budget called for the sewer projects to be financed by Two-Thirds Bonds and the fire truck through an installment purchase. After financing of the sewer projects, the City would still have $670,000 of Two-Thirds Bond capacity which staff proposes be used to finance the majority of the fire truck; with the balance of only $130,000 to be financed by the more expensive lease purchase.

The City's Bond Counsel, in consultation with the Local Government Commission (LGC) and City Staff, has established a tentative calendar (Atch.1) of events leading to a sale date of December 5, 2000, for the City's Two-Thirds Bonds. In order to meet that schedule, City Council needs to adopt the first four enabling resolutions for the Two-Thirds Bonds and a Budget Ordinance Amendment specifying the fire truck financing at the September 12, 2000, Formal Session. The following summarizes each of the Two-Thirds Bonds resolutions:

1. *Resolution Directing the Publication of Notice of Intention to Apply to the LGC for Approval of Bonds*: Directs the City Clerk to have published on September 13, 2000, a notice of the City's intent to apply to the LGC to issue $1,300,000 bonds for sewer projects and $670,000 bonds for the purchase of a fire truck.

2. *Resolution Authorizing the Finance Director to Prepare an Application to the LGC ...*: Directs the Finance Director to submit the necessary application and associated information regarding the City and its financial condition and to request LGC's approval of the City's use of Parker, Poe, Adams & Bernstein L.L.P. as the City's Bond Counsel.

3. *Resolution Making Certain Statements of Fact Concerning Proposed Bond Issues:* Documents Council's findings of fact as to the following:

    A. The proposed bonds are necessary and expedient;
    B. The amounts of the bonds are adequate and not excessive;
    C. The City's debt management policies have been carried out in compliance with law;
    D. The City's budgetary and fiscal management policies have been carried out in compliance with law; and
    E. The schedule for issuing the bonds does not require a property tax increase and calls for all of the bonds to be issued in December, 2000.

4. *Resolution Declaring the Intent of the City to Reimburse Itself for Capital Expenditures Incurred in Connection With the Extension of Sanitary Sewer Lines From Proceeds of Certain Tax-Exempt Bonds ...:* On August 22, 2000, Council authorized the City Manager to enter into a contract for a portion of the sewer projects which are to be financed by Two-Thirds Bonds. In order for the City to be able to reimburse itself from the proceeds of the Bonds for a construction contract executed prior to the sale of the Bonds, the City must publicly document its intent prior to or within 90 days following the execution of the contract. This resolution documents the City's intent.

City staff recommends City Council adopt the four resolutions and the budget amendment.

RESOLUTION BOOK NO. 26 – PAGE 161

N. RESOLUTION NO. 00-162 - RESOLUTION AUTHORIZING THE FINANCE DIRECTOR TO PREPARE AN APPLICATION TO THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF THE CITY'S PROPOSED BOND FINANCING AND TO SUBMIT SUCH APPLICATION TO THE LOCAL GOVERNMENT COMMISSION

Summary: See Consent Agenda Item "M' above.

RESOLUTION BOOK NO. 26 – PAGE 162

O. RESOLUTION NO. 00-163 - RESOLUTION MAKING CERTAIN STATEMENTS OF FACT CONCERNING PROPOSED BOND ISSUES

Summary: See Consent Agenda Item "M" above.

RESOLUTION BOOK NO. 26 – PAGE 163

P. RESOLUTION NO. 00-164 - RESOLUTION DECLARING THE INTENT OF THE CITY TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE EXTENSION OF SANITARY SEWER LINES FROM PROCEEDS OF CERTAIN TAX EXEMPT BONDS TO BE ISSUED IN THE YEAR 2000

Summary: See Consent Agenda Item "M" above.

RESOLUTION BOOK NO. 26 - PAGE 165

Q. ORDINANCE NO. 2738 - BUDGET AMENDMENT FOR PURCHASE OF FIRE TRUCK AND REALLOCATION OF FINANCING SOURCES

Summary: See Consent Agenda Item "M" above. Ordinance BK 18- pg 447

R. RESOLUTION NO. 00-165 - RESOLUTION APPROVING UNDERWRITERS FOR THE ISSUANCE OF WATER REVENUE BONDS AND CERTIFICATES OF PARTICIPATION

Summary: The consideration of a resolution authorizing the engagement of underwriters for the issue of Water Revenue Bonds and Certificates of Participation.

The City of Asheville Budget for Fiscal Year 2000-2001 calls for the issue of $11,300,000 of Water Revenue Bonds to finance various improvements to the water system and the issue of $11,200,000 tax-exempt Certificates of Participation (COPs) for the City's portion of the Battery Park Parking Deck. (An additional taxable portion of the COPs issue, currently estimated as $4,000,000, will be required to finance the private partner's portion of the project. The debt service for the taxable portion is to be provided, in its entirety, by the private partners.) The services of an underwriting firm will be required for the structuring and sale of both the Water Revenue Bonds and the COPs.

The City requested separate proposals for the Water Revenue Bond issue and the COPs issue from six investment banking firms. In response, we received five proposals to underwrite the Water Revenue Bonds and all six firms provided proposals to underwrite the COPs. City staff members evaluated the proposals based on: experience with similar financings in North Carolina; suggested alternatives for the structuring of the financing; firm's personnel dedicated to the financing; underwriter's counsel; compliance with the City's drug free workplace policies: fee structure; etc.

Based on the results of the evaluation of proposals, City staff recommends the engagement of Robinson-Humphrey, LLC to underwrite the City's issue of Water Revenue Bonds and both the tax-exempt and taxable COPs.

City Council adopt the resolution which engages underwriters for the issue of Water Revenue Bonds and Certificates of Participation.

RESOLUTION BOOK NO. 26 – PAGE 167

S. ORDINANCE NO. 2739 - BUDGET AMENDMENT FOR PRITCHARD PARK PROJECT

Summary: The consideration of a budget amendment, in the amount of $38,312.53, to appropriate funds received from reimbursement by the Transportation Advisory Committee for the Downtown Traffic Evaluation Plan for Pritchard Park.

In May of 1999, City Council approved the development of a Traffic Evaluation Plan for downtown as it related to the improvements at Pritchard Park. This particular proposal requested reimbursement of this Plan by the Transportation Advisory Committee for the MPO Transportation Planning Work Program budget. The upfront costs of this study were paid out of the Pritchard Park budget with the understanding that, once funds were received as part of the MPO, reimbursement would be made to this account.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $38,312.53, to reimburse the Pritchard Park renovation account for the development of the Downtown Traffic Evaluation Plan.

ORDINANCE BOOK NO. 18 – PAGE 449

T. RESOLUTION NO. 00-166 - RESOLUTION CONFIRMING MEMBERS TO THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the appointment of six members to the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The composition of the Minority Business Commission consists of 13 members, 10 of whom are nominated by various groups and three of whom are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointment by both the City Council and County Commission.

Mr. Ronnie Blythe, representing Asheville Business Development Center, and Ms. Grace Dorn, representing the National Association for the Advancement of Colored People, both of whom are completing terms on the Commission, have been nominated by their respective organizations for new terms which will extend through August, 2002. Additionally, Ms. Claudia

Thomas, owner of CAT Network Systems, is completing her term and has again been nominated by the Minority Business Commission for a new term through August, 2002.

Ms. Gráinne Brophy, owner of Altura Environmental, Inc., has been nominated by the Minority Business Commission to replace Ms. Vickie Gaddy whose term ended August, 2000. Ms. Brophy's term would run through August, 2002.

Mr. Gene Presley, representing the Council of Independent Business Owners (CIBO), and Ms. Katherine DeBrow, owner of DeBrow Construction, have resigned. Ms. Vonna Cloninger has been nominated by CIBO to serve Mr. Presley's unexpired term through August, 2001. The Minority Business Commission has nominated Ms. Ann Fulcher, owner of Carolina Mountain Construction, Inc., to serve the unexpired term of Ms. DeBrow through August, 2001.

City staff recommends City Council adopt the resolution confirming the appointments of six members of the Minority Business Commission.

RESOLUTION BOOK NO. 25 – PAGE 168

U. RESOLUTION NO. 00-167 - RESOLUTION CANCELING PUBLIC HEARING SET FOR SEPTEMBER 19, 2000, AT 5:30 P.M. AT STEPHENS-LEE COMMUNITY CENTER TO CONSIDER A CONDITIONAL USE PERMIT FOR RIVERBEND MARKETPLACE (I.E. WALMART) FOR DEVELOPMENT OF THE OLD SAYLES BLEACHERIES SITE LOCATED AT 437 SWANNANOA RIVER ROAD DUE TO DEVELOPER'S WITHDRAWAL OF REQUEST FOR PUBLIC HEARING

Summary: Pursuant to Asheville City Code sec. 7-5-5(e), the Asheville City Council has scheduled a public hearing for September 19, 2000, at 5:30 p.m. in the Stephens-Lee Community Center to consider the application for a Conditional Use Permit for the Riverbend Marketplace Shopping Center proposed for the old Sayles Bleacheries site at 437 Swannanoa River Road.

The applicant and the City's planning director have both advised the City Council that, as a result of a decision by the Asheville Board of Adjustment, the status of an essential element of the project is uncertain, and the Conditional Use Permit application is not ripe for consideration, and have accordingly withdrawn the request for a public hearing.

In the event that a new public hearing is scheduled, re-notification and re-advertisement will be required in accordance with City Code secs. 7-5-5(f) and 7-5-20.

Therefore, the public hearing by the City Council scheduled for September 19, 2000, at 5:30 p.m. in the Stephens-Lee Community Center to consider the application for a Conditional Use Permit for the Riverbend Marketplace Shopping Center at 437 Swannanoa River Road, is hereby cancelled.

If a public hearing on the same Conditional Use Permit application is scheduled again, the applicant shall pay all of the costs associated with re-advertisement and re-notification of said public hearing.

If no public hearing is requested on or before December 15, 2000, on said application, it shall be deemed withdrawn.

Upon inquiry of Councilman Peterson, City Attorney Oast said that no special consideration or preferential treatment is being given to this applicant and that if any similar situation would come before City Council, the City would handle it in a similar way.

RESOLUTION BOOK NO. 26 – PAGE 170

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A MODIFICATION FROM THE SUBDIVISION STANDARDS FOR ROCKING PORCH ROAD SUBDIVISION

Mayor Sitnick opened the public hearing at 5:37 p.m.

Urban Planner Carl Ownbey said that this is the consideration of a motion approving a modification of the subdivision standards to permit a subdivision on Rocking Porch Road to be served by a privately maintained road. This public hearing was advertised on September 1 and September 8, 2000.

The owners, Kenny and Kevin Osley, of the property on Rocking Porch Road (PIN No. 9659.18-42-9085) are requesting a modification of the subdivision standards (7-15-1.k.2.d) to permit a subdivision to be served by a privately maintained street.

Although City Council recently adopted a wording amendment to change the review process for major subdivisions, the ordinance did not amend the requirements for modifications to the development standards. The City Code requires that modifications to the subdivision standards be approved by City Council after a recommendation from the Technical Review Committee (TRC) and the Planning & Zoning Commission. The subdivision standards require that all residential lots abut a publicly maintained street and the owners are proposing residential development from a privately maintained street.

On June 5, 2000, the City was presented with a preliminary plat for a 10 lot subdivision. The plat indicated a private street extension approximately 500 feet in length that will be constructed to City standards. This subdivision is within the extra-territorial jurisdiction and will be served by private wells and septic tanks.

On June 19, 2000, the TRC reviewed the preliminary plat and identified several concerns that needed to be addressed. On July 5, 2000, the Planning and Zoning Commission reviewed the preliminary plat and concurred. After their reviews, both TRC and the Planning & Zoning Commission recommended the modification to the subdivision requirements and approval of the preliminary plat with the conditions.

On August 15, 2000, the owners submitted the revised preliminary plat indicating that the technical revisions to the preliminary plat had been made.

The Planning and Development staff, the Technical Review Committee, and the Planning and Zoning Commission recommend that City Council approve the modification to the subdivision requirements to permit the subdivision of the 12 acre tract of land from a privately maintained roadway.

Mayor Sitnick closed the public hearing at 5:42 p.m.

Vice-Mayor Cloninger moved to approve the modification from the subdivision standards to permit a subdivision on Rocking Porch Road to be served by a privately maintained road. This motion was seconded by Councilman Worley and carried unanimously.

B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY COLLEGES AND UNIVERSITIES, VOCATIONAL AND TRAINING SCHOOLS, AND BUSINESS INCUBATION AS A PERMITTED USE IN THE INDUSTRIAL DISTRICT

ORDINANCE NO. 2740 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY COLLEGES AND UNIVERSITIES, VOCATIONAL AND TRAINING SCHOOLS, AND BUSINESS INCUBATION AS A PERMITTED USE IN THE INDUSTRIAL DISTRICT

Mayor Sitnick opened the public hearing at 5:43 p.m.

Chief Planner Gerald Green said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to identify colleges and universities, vocational and training schools, and business incubation as permitted uses in the Industrial District. This public hearing was advertised on September 1 and 8, 2000.

Uses in the Industrial District are currently limited to manufacturing and related uses. While this limited range of uses preserves industrially zoned property for industrial uses, it is not flexible enough to meet the needs of technological changes and new approaches to the uses of industrial sites. This limitation is exemplified by the proposed use of land donated by BASF to Asheville-Buncombe Technical Community College. The property is located adjacent to the BASF plant and is zoned Industrial. A-B Tech plans to locate classrooms and a business incubation center in the existing building. The classrooms would be used primarily for vocational education. The business incubation center would provide an area for start up businesses to locate, share resources, and receive assistance in the first years of their existence, helping to ensure their success. Currently, the Industrial District does not permit either of these uses. The proposed ordinance amendment would allow these uses by listing colleges and universities, vocational and training schools, and business incubation as permitted uses in the Industrial District. Future efforts such as that proposed by A-B Tech would be permitted by the proposed ordinance amendment, helping to strengthen the area's economy.

Mr. Green also read the definition for business incubation which is included in the ordinance amendment.

Upon inquiry of Councilwoman Field on why the ordinance excluded dormitories and other living quarters from the list permitted uses in the Industrial District, Mr. Ray Bailey, President of A-B Tech, said that they are prohibited from having dormitories by state statute.

Mr. Bailey said that there is bus service to Westridge Shopping Center and they would like to work with the City to see if they can get some bus service to this property which is located just across the road from the Shopping Center.

Ms. Patsy Meldrum, attorney representing A-B Tech, spoke in support of the amendment in that it fits within the purposes of the Industrial District.

Mayor Sitnick closed the public hearing at 5:50 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2740. This motion was seconded by Councilman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 451

C. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE DEFINITION OF SIGN TO EXCLUDE CERTAIN ART AND WORKS OF ART FROM THE DEFINITION OF SIGN

ORDINANCE NO. 2741 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE DEFINITION OF SIGN TO EXCLUDE CERTAIN ART AND WORKS OF ART FROM THE DEFINITION OF SIGN

Mayor Sitnick opened the public hearing at 5:50 p.m.

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to revise the definition of sign to exclude certain art and works of art from the definition of sign. This public hearing was advertised on September 1 and 8, 2000.

The definition of sign currently found in the UDO is worded so that art and works of art are considered signs. As a result of this definition, the use of art and works of art by businesses is limited. Because art and works of art can be considered a sign, the placement of art and works of art at a business can limit the amount of signage that the business can display. Rather than limit their signage, businesses typically decide to abandon plans for incorporating art or works of art into their development.

With this proposed ordinance amendment, the Planning and Zoning Commission is endorsing a more whimsical approach to the incorporation of art and works of art by businesses in their building and site design. The City of Asheville is recognized as an arts city; this amendment acknowledges this recognition and removes a significant impediment to the placement of art and works of art throughout the City by private businesses. While loosening the restrictions on the incorporation of art and works of art in building and site design, the proposed amendment continues to identify distinctions between art and signs:

- The art or works of art cannot include logos in their traditional form;
- The art or works of art cannot include the name of the business; and
- The art or works of art cannot be an obvious portrayal of a product or service provided by the business.

With these limitations, the ability of businesses to incorporate art and works of art in their building and site design is increased while an appropriate distinction between signs and art remains.

The Planning and Zoning Commission voted 6 – 0 to recommend adoption of the ordinance amendment. The Planning and Development Department staff supports the ordinance amendment.

At the August 15, 2000, worksession, it was the consensus of City Council to delete the restriction that the art or works of art cannot be an obvious portrayal of a product or service provided by the business.

Mayor Sitnick closed the public hearing at 5:52 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2741, with the deletion of the restriction that the art or works of art cannot be an obvious portrayal of a product or service provided by the business. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 454

D. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH STANDARDS FOR A-FRAME SIGNS IN THE CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 2742 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH STANDARDS FOR A-FRAME SIGNS IN THE CENTRAL BUSINESS DISTRICT

Mayor Sitnick opened the public hearing at 5:55 p.m.

Chief Planner Gerald Green said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to establish standards for A-Frame signs in the Central Business District. This public hearing was advertised on September 1 and 8, 2000.

A-frame signs are currently prohibited in all zoning districts by the UDO. As a result of requests from downtown businesses, the Downtown Commission developed general standards for A-frame signs and requested the Planning and Development staff to consider preparation of an ordinance amendment that would permit the signs in the downtown area and establish standards for them. In developing the proposed ordinance amendment, the Planning and Development staff reviewed the general guidelines developed by the Downtown Commission and obtained standards from other cities. Staff also inspected downtown sidewalks to ensure that A-frame signs could be placed on the sidewalks without restricting accessibility. The draft ordinance recommended for adoption by the Planning and Zoning Commission defines A-frame signs, permits them in the Central Business District, and establishes standards for them. The proposed standards address the following:

- Minimum and maximum sizes for the signs;
- Number of A-frame signs each business may have;
- Location/placement requirements for the signs;
- Safety standards for A-frame signs;
- Insurance requirements for the business placing the sign(s); and
- Permit requirements for A-frame signs.

The intent of the proposed ordinance amendment is to permit the use of A-frame signs by downtown businesses as an additional means of advertising the business and/or the goods and services provided by the business. By identifying certain standards for the signs, pedestrian accessibility and general safety issues will be addressed. The Downtown Commission and the Merchants Action Coalition have endorsed the ordinance amendment.

The Planning and Zoning Commission voted 6 – 0 to recommend adoption of the ordinance amendment. The Planning and Development Department staff supports the ordinance amendment.

Mayor Sitnick closed the public hearing at 5:53 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2742. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 456

IV. UNFINISHED BUSINESS:

Councilman Worley moved to amend the agenda to allow a report with regard to VISION. This motion was seconded by Councilwoman Bellamy and carried unanimously.

A. REPORT ON VISION BOARD MEETING

Councilman Hay said that he and Councilwoman Bellamy are on the A-B VISION Board and each year the VISION Board adopts short term projects. He was proud to report that out of 20-30 projects recommended, one recommendation that the Board adopted was his proposal to establish bus service between the City of Asheville and the Town of Black Mountain.

Councilwoman Bellamy was also proud to report that another project adopted by the Board was her proposal to look at 18-34 year olds and find out what we can do to keep our talent in our community and what we can do to attract that age group to our community.

V. NEW BUSINESS:

A. RESOLUTION NO. 00-168 - RESOLUTION SUPPORTING THE REPORT AND RECOMMENDATIONS OF THE COMMUNITY COORDINATING COMMITTEE REGARDING THE I-26 CONNECTOR PROJECT

Mr. W. Louis Bissette Jr. Co-Chair of the Community Coordinating Committee ("Committee") , refreshed Council's memory on the charge of the Committee and how this report documents the goals identified by public input at the I-26 Connector Design Forum held on July 21-22, 2000. The goals described are generated from official records of discussion table comments at the forum and summaries of citizen-developed mission statements at the forum wrap-up session. They have been evaluated by the Community Coordinating Committee and recommended for consideration. These goals provide the foundation for a citizen-based design alternative to be given engineering and environmental study both preliminarily and through the EIS. They also provide recommended criteria for EIS evaluation of all alternatives.

Mr. Brownie Newman, Co-Chair of the Committee, briefly reviewed the report as follows:

Section 1 - Project Goals Identified by the Design Forum

Many facets of the project were discussed at the forum. The themes listed below summarize the most prominent concerns of area citizens. They provide a set of specific goals the community would like to see accomplished through the course of completing the I-26 Connector Project.

We, as a community, want a thorough, full and proper study of an alternative design which will accomplish these goals. At the same time, the community feels strongly that the ultimate completion date for the project should be maintained and expedited, if possible. We are hopeful that building community consensus around the design alternative that best accomplishes these goals will ultimately help expedite the project. Due to the inter-related nature of the issues raised, the immediate proximity of areas to be affected and the need to expedite completion of the work, the strong preference of the Community Coordinating Committee is for these to be addressed as a single project rather than multiple "phased projects."

Key Project Design Goals

1) Separation of local and interstate traffic
2) Matching scale of project to character of community
3) Reunification and connectivity of community
4) Minimization of neighborhood and local business impacts
5) Use of updated traffic modeling software and data
6) Maintenance of compatibility with community's design vision and plans; incorporation of community-selected design features
7) Creation of full interstate movements between I-26 and I-40
8) Minimization of air quality and other environmental impacts
9) Emphasis on safety - during construction and in the design of the final product

Section 2 - Evaluation Criteria

This section restates our community's design goals and establishes a set of criteria, or standards, by which their achievement should be measured.

Evaluation Criteria For:

1) Separation of Local and Interstate Traffic
    A. Eliminate Patton Avenue/Smoky Park Bridges as an Interstate Link
    B. Reclaim land for community use (including expansion of taxable base)
    C. Create Patton Avenue gateway possibilities (which complies with City of Asheville 2010 Plan)
    D. Generate redevelopment possibilities in Corridor in compliance with City's "smart growth" principles
    E. Simplify traffic movements
    F. Create a more convenient and safer driving environment

2) Matching Scale of Project to Character of Community
    A. Be sensitive to the prominence of the highway relative to Asheville's unique topography, landscape and built environment
    B. Recognize the highway's relationship to the river and downtown
    C. Retain the "feel" of a small city in the mountains
    D. Select the lowest design speed compatible with safe and proper functioning of the various components of the highway facility

E. Consider the impact of highway widening and alignment decisions on property takings and neighborhood division
F. Do not use a "Jersey barrier" approach to median design; the raised median in the I-240 cut is a much better example of sensitive median design in a constrained space

3) Reunification and Connectivity Of Community
A. Provide well-defined pedestrian/bicycle facilities throughout the project corridor
B. Improve opportunities for reconnecting neighborhoods and Downtown with the French Broad Riverfront
C. Expand accessibility for Hillcrest Community
D. Create a better local street network (including linkages between West Asheville and Downtown, within Downtown and within West Asheville) to relieve interstate traffic pressure

4) Minimization of Neighborhood and Local Business Impacts
A. Minimize residential property acquisitions
B. Limit impact on neighborhood connectivity
C. Minimize number of businesses needing to be closed or relocated
D. Prioritize safety and traffic-routing during construction
E. Maximize opportunities for hiring of local workers for construction of project

5) Use of Updated Traffic Modeling Software and Data
A. Determine that project scale achieves safe and adequate traffic flow with the minimal number of lanes
B. Create an opportunity to reinforce and/or redirect land use decisions that relate to transportation
C. Optimize transportation alternatives (balancing of thoroughfare plan with mass transit, bike/pedestrian, local street grid improvements and other alternatives)
D. Assess "induced traffic" phenomenon and interrelationship of highway capacity and development patterns

6) Maintenance of Compatibility with Community's Design Vision and Plans
A. Achieve compatibility with riverfront use and development plans (particularly limiting the loss of riverfront property for highway use)
B. Achieve compatibility with "smart growth" direction of city planning
C. Reclaim land for non-highway use
D. Create recognizable community character in design features
E. Develop unique and attractive bridge design(s)
F. Include gateway elements
G. Include local artists in creating design features
H. Use quality materials

7) Creation of Full Interstate Movements Between I-26 and I-40
A. Reduce through-traffic volume (especially trucks) in Asheville central district (I-240)
B. Enhance driving safety on I-240
C. Remove interstate traffic (especially trucks) from West Asheville street network

8) Minimization of Air Quality and Other Environmental Impacts
- A. Determine best highway design with least impact on air quality
- B. Protect water quality
- C. Preserve tree canopy and wildlife habitat

9) Emphasis on Safety - During Construction and in the Design of the Final Product
- A. Improve simplicity of design for weaving, merging, and diverging
- B. Segregate local and through truck traffic
- C. Provide for incident management
- D. Alleviate complexity and safety risks of current road and ramp configuration
- E. Provide effective maintenance of traffic flow during construction

KEY RECOMMENDATIONS

- Make a strong recommendation to the City Council and MPO that the alternative alignment developed at the Design Forum receive serious study for inclusion in the project Environmental Impact Statement.

- Make a strong recommendation to the City Council and MPO that the NCDOT, FHWA and local citizens work together as a "Committee on Visual Design" to develop ideas for bridge design, signage, overpass design, landscaping and other aesthetic issues that reflect our community's character.

- Make a strong recommendation to the City Council and MPO that the NCDOT and FHWA expedite the development of new and updated traffic models for use on the ultimate design of this project, including regional air quality modeling.

- Make a strong recommendation to the City Council and MPO that the NCDOT and FHWA explore engineering and signage options to improve the north-to-east connection of eastbound I-26 traffic with I-40 in an easterly direction as part of this project or a simultaneous project. The specific concerns involve limiting commercial truck through-traffic on I-240 and on lesser-classified roadways proximate to residential areas.

- Make a strong recommendation to the City Council and MPO reflecting the Committee's general consensus that the bicycle and pedestrian connectivity be restored to link neighborhoods and the river while simultaneously exploring traffic calming measures to reduce the vehicular impact on residential streets.

- Make a strong recommendation to the City Council and MPO that the NCDOT and FHWA ensure that all interchange design is community sensitive. To achieve this end, it would be helpful to provide artist's renditions of feasible design alternatives for public review.

- Make a strong recommendation to the City Council and MPO that the NCDOT and FHWA seriously examine safety issues in project construction and design including maintenance of traffic during construction and emergency access after construction.

- Make a strong recommendation to the City Council and MPO that the NCDOT and FHWA release any unneeded right-of-way at the completion of this project to the City of Asheville to be zoned and used in accordance with a land use plan to be developed by the City in cooperation with the NCDOT.

- Make a strong recommendation to the City Council and MPO that the NCDOT and FHWA keep the I-26 Connector project on its current or, preferably, an expedited schedule.

Section 3 - Potential Tradeoffs

We realize that the achievement of our design goals involves tradeoffs. While the accomplishment of some of them may reduce construction costs, the accomplishment of others may increase the overall cost of the project. Aesthetic improvements may carry their added costs. In order to produce a separation of Patton Avenue from I-240, there may need to be additional bridging of the French Broad River which carries with it some visual impact. New and improved traffic and air quality modeling, though providing a more accurate picture of transportation system needs, could slow key decisions about capacity and design speed.

In another areas, the selection of a lower design speed to minimize neighborhood impact may affect travel time. Fewer lanes may create challenges to planning for maintenance of traffic during construction. Shrinking the footprint of the highway could result in a more "engineered" highway in terms of landscaped medians and grade differentials between east and west travel lanes.

It is too early in the process to fully understand the costs and benefits of each alternative design for the project. We mention some possible costs we have considered in order to demonstrate our awareness of them, in order to enhance our capability for addressing them, but most of all, in order to express that, despite the potential tradeoffs, we as a community are united in support for achieving our set of project design goals.

Section 4 - Design Forum Background

In December 1999, the Asheville City Council, in response to active and continuing citizen involvement, requested City staff to formulate plans for a community design process related to the I-26 Connector Project that would allow extensive public input while keeping the project on schedule. A month later, the North Carolina Department of Transportation joined the City in this effort by agreeing to incorporate the idea of an I-26 Connector Design Forum into its public involvement program. It was seen as an opportunity to enhance community-wide input from Asheville area citizens to the design of the I-26 Connector. This, in turn, would expand on recent efforts to solicit neighborhood-based involvement.

In April 2000, the North Carolina Department of Transportation and the City of Asheville agreed to create a Community Coordinating Committee (CCC) to guide this public participation in the design process. In addition to planning the design process format, the composition of the CCC would help achieve community consensus in the identification and interpretation of key issues. Representatives from a broad base of community organizations as well as project stakeholders were chosen to comprise the CCC. The design process they selected took place in two stages.

During mid-June, an Education Forum was held to inform the public about project design issues. This was attended by over 300 people who listened to expert presentations and participated in project component breakout sessions.

In late July, an intensive two-day Design Forum was scheduled to draw from the public both general design concepts and specific design ideas. This Forum attracted between 500-600 community residents over the two-day period. It was staffed by representatives of the Federal Highway Administration, North Carolina Department of Transportation, City of Asheville, the

American Institute of Architects, and several independent consulting engineers and community mediators. Fred Craig, Vice President of Parsons Brinkerhoff's Ohio office, acted as overall Forum facilitator.

The overwhelming sense from participants was one of appreciation for the privilege of taking part in the process. Repeatedly stated was the fact that this highway project could either impose negative impacts or provide beneficial opportunities for the community. Continuing citizen input to defining design criteria was seen as central to maximizing project benefits while minimizing the costs. This report by the CCC contributes to its ongoing function - that of translating community concerns into specific goals which can be achieved through integration into ultimate project design.

Mayor Sitnick praised the Committee for their hard work in compiling this report.

Councilman Peterson said that this is a good example on how citizens can get involved with a project and make a difference.

Councilwoman Field agreed that this was an excellent process. She questioned the issue of who will pay for this, i.e. if Patton Avenue is turned back into a City street, the City takes over a lot of costs that the City doesn't have right now.

Mr. Bissette responded that there is no way to know what the costs are, or whether the project will be within budget. That is something that will need to be worked on as the process continues. He believes that the N.C. Dept. of Transportation wants this to be a success and they want to address as many of the goals as they can and they want to do it within their budget.

Mr. Mickie MaHaffey asked if there was an expected timetable from this point on. Mr. Bissette said that he hoped that the environmental impact statement would be released sometime next year.

In response to an additional question by Mr. MaHaffey, Mr. Newman said that they have asked the NC DOT to perform a new air quality model that will help us determine which of the different scenarios will minimize impacts to air quality.

Mr. Alan Basist spoke in support of bringing 12 acres into the business district in that it will enhance the tax base of Asheville and promote people to want to live in downtown Asheville

Councilwoman Field said that she had some wording issue concerns and felt that perhaps there were too many items on the list and it should be narrowed down to 3-4 top priorities.

Vice-Mayor Cloninger felt that since this report is what the collective community has come up with, that Council should support their recommendations.

Ms. Betty Lawrence spoke in support of the process to date. She felt the report shows the NC DOT that we are aware of the whole situation and that there will be things that the NC DOT will do and there will be things that the City wants to do in order to make the Plan reasonable. Just to look at what the NC DOT's responsibilities would be would leave them feeling as though we want them to fix everything for us.

Councilwoman Field said that she would not vote against this report because the process arriving at this was great. But, she wanted to note that she had concerns about some wording.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Mayor Sitnick moved for the adoption of Resolution No. 00-168. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 171

B. ORDINANCE AMENDING THE CURRENT TAXICAB ORDINANCE INCLUDING THE IMPLEMENTATION OF A NEW TAXICAB RATE SCHEDULE

Revenue Manager Deborah Crowder said that this is the consideration of a revision of the current taxicab ordinance including the implementation of a new rate table.

N.C. Gen. Stat. sec. 160A-304 allows a city to license and regulate all vehicles operated for hire in the city.

Staff has reviewed Sec. 18 of the City of Asheville Code which sets forth the provision for regulation of taxicab businesses and drivers and several minor changes have been made to bring the Code up-to-date. For example, the current language of the Code requires a vehicle to have seat belts and heaters. The revision changes the language to terms like standard safety devices, and also includes the provision for air conditioners. Other terminology changes are *medallion* to *insignia*, *Motor Transport* to *Fleet Management*, etc. The driver's renewal period has been changed from the December 31 and June 30 dates to allow expiration one year from the date of issue.

The taxicab rate schedule, formerly included in the City's Fees and Charges Manual, has been revised and moved to the Appendix of the City Code. The last rate change was approved in 1987. The schedule is removed from the Fees and Charges Manual because taxicab rates are not fees paid to the city. They are amounts paid, by the customer, to the business. The Fees and Charges Manual retains those amounts paid to the city, by the business or driver, that are associated with the regulation of taxicab businesses and drivers.

City staff recommends Council adopt the revised ordinance and rate schedule.

At the September 5, 2000, worksession, it was the consensus of City Council to raise the rates to $1.80/drop; $1.70 per mile; and $4.35/1.5 trip. In addition, the minimum total fare shall not be less than $3.00. In addition, it was the consensus of Council to raise the insurance requirement to $100,000/person; $300,000/accident; and $50,000/property.

City Attorney Oast passed out to Council some technical amendments to the taxicab ordinance which he would incorporate if Council concurred with the amendments. He said that state law does require that regulation of taxicabs be done by franchise. He said that in order to operate a taxicab business in the City, Council would be required to issue a franchise, which does require voting at two different meetings. Any amendments to that franchise, however, would just be a single vote.

Councilman Worley said that he received a call from Mr. Craig Justus, attorney for one of the taxicab companies, and he expressed the concern that the increase in insurance rates will cause an $1,100 per vehicle increase in the insurance rates and he was concerned as to whether or not the City staff took that into consideration in looking at the increase in rates.

Ms. Crowder said that Mr. Justus' concern was considered and the City's Risk Manager John Miall assisted them in arriving at the proposed insurance costs. Mr. Miall then responded as to why he agreed with the higher insurance rates.

Upon inquiry of Mayor Sitnick, Ms. Crowder reviewed with Council the insurance rates of cities they polled.

Discussion surrounded if the proposed rate increase would make up for the increased insurance coverage requirement.

Mr. David Crook said that he was struck by a taxicab over two years ago and is still disfigured and disabled. He noted that he still owes hospital bills and urged Council to go with the higher insurance requirements.

Mr. Craig Justus, representing one of the taxicab companies, said that he was told that at the public information meeting, the position of staff was to increase the rates, not to increase the insurance. He was told that the insurance increase was never presented to the taxicab owners. He said that the change in staff position came out of the comments from Mr. Crook made at the public information meeting and then staff started to research the issue. He said that it was then that staff came up with the insurance coverage increase and presented them to City Council at their 9-5-00 worksession. He said they strongly support the rate increase but feels that they have not had an opportunity to review the insurance increase.

After discussion, Vice-Mayor Cloninger moved to continue this matter until October 10, 2000, in order to give staff ample time to have another public input session to discuss the rate increase and insurance coverage increase requirement. This motion was seconded by Councilman Worley and carried unanimously.

C. RESOLUTION ESTABLISHING THE MINIMUM PRICE AND DIRECTING THE CITY CLERK TO ADVERTISE A REQUEST FOR PROPOSALS REGARDING THE DEVELOPMENT OF EAST END PLACE SUBDIVISION

This matter was pulled from the agenda to be re-scheduled on September 26, 2000.

At this time (7:15 p.m.) Councilwoman Bellamy left the meeting.

D. RESOLUTION NO. 00-169 - RESOLUTION APPROVING POLICIES AND PROCEDURES FOR THE CITY'S HOUSING TRUST

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of a resolution approving policies and procedures for the Housing Trust Fund, and the request for proposals for Fiscal Year 2000-2001 projects.

On June 13, 2000, City Council approved an allocation of $400,000 in the Fiscal Year 2000-2001 City Budget to create a Housing Trust Fund. This report proposes:

1) General policies and procedures for the management and use of the Fund;

2) A request for proposals (RFP) for FY 2000/01 from developers of new housing for rent or for homeownership.

These documents have been developed by staff after discussion with stakeholders, including housing non-profits, real estate professionals, and developers, and have been approved by the Housing and Community Development Committee.

The key features are mainly as proposed to Council before the creation of the Trust Fund, and include:

- Creating a permanent fund to assist in developing and preserving affordable housing;
- Allowing a wide range of eligible uses in principle, with more specific targeting in each year's RFP;
- Project selection to support the Consolidated Plan and Smart Growth policies;
- Assistance in the form of loans, not grants, with flexible repayment terms;
- No Trust Funds to be used for administration, at least for the first year;
- General oversight and project selection by the Housing and Community Development Committee .

City staff recommends City Council approve the resolution adopting policies and procedures for the Housing Trust Fund and the types of projects to be the subject of a request for proposals this year.

At the September 5, 2000, worksession, City staff added sole proprietorships to the types of entities that will be eligible to apply for assistance from the Fund.

Councilman Hay noted Councilwoman Bellamy's disappointment that the structure of this allows the City to be an applicant for Housing Trust Fund monies. It is his understanding from Ms. Caplan that the City does not have any plans proposed, at least this round. He said there really may be opportunities to leverage this money, which is one of the objectives, and it may be that the City is the appropriate one to best leverage what we have. He would hate to foreclose that as a possibility in the future by eliminating that from our structure. We can do that on an ad hoc basis and if it seems inappropriate, then City Council does not have to approve it.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 00-169. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 173

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of August 18-25, 2000: George McCracken (Water), Eleanor Hall (Water), Eugene Hadden (Water) and Renee Falls (Water).

The following claims were received by the City during the period of August 26-31, 2000: Ten Thousand Villages (Water), Thomas Reek (Water), Agnes Bergstrom (Water), Robin Hempel (Water), John Ludovico (Water), Clarence Benton (Sanitation) and Steve Hudzik (Police).

The following claims were received by the City during the period of September 1-7, 2000: Ruth Smith (Streets) and Ronald Hess (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. ENFORCEMENT OF SIGN ORDINANCE

At the request of Councilwoman Field, it was the consensus of City Council to ask the City Attorney to review the recent legislation regarding when people can begin voting to see if our ordinance with regard to enforcement of political signs needs to be clarified.

B. COMMENTS BY MS. SHIRLEY DOZIER

Ms. Shirley Dozier read a prepared statement alleging, among other things, (1) trespass and inverse condemnation for their property at 52 Short Street; (2) illegal down zoning and split zoning of their single lot on Montford Avenue; and (3) harassment by City inspectors.

Mayor Sitnick suggested Ms. Dozier meet with the City Attorney to discuss her complex issues regarding the City.

City Attorney Oast said that he would be happy to meet with Mr. and Mrs. Dozier and has even suggested to them that if they feel like they have a legal claim, that is remedial by the City, that they take it through the proper administrative or judicial channels. City Attorney Oast also said that if the Dozier's have engaged an attorney, he would be glad to meet with them and discuss the legal issues involved.

C. MILLION FAMILY MARCH

Mr. James Muhammad, local Co-Chairman of the local organizing committee of the Million Family March Inc, to be held on October 16, 2000. He presented to City Council the Million Family March program and asked if the Mayor would be willing to endorse the Million Family March.

Mayor Sitnick suggested Mr. Muhammad call her office to discuss the request.

D. COMMENTS BY MICKIE MAHAFFEY

Mr. Mickie MaHaffey, representing Peacemakers, commented about the repeated incidents of police misconduct.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:55 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - September 19, 2000 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Haw Creek Park Restroom/Picnic Facility and Gazebo Bid Award and Budget Amendment to Appropriate Funds from Haw Creek Neighborhood Association

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Carolina Cornerstone Construction to design and implement a restroom/picnic facility and gazebo for Haw Creek Park and a budget amendment to appropriate an additional $15,000 to this project from the Haw Creek Neighborhood Association.

The City of Asheville is continuing its development of a passive park in the Haw Creek community. Initially the parking lot and paved trails were constructed within this 6-acre park. Funds were then secured from the City of Asheville Capital Improvement Budget, the Parks and Recreation Trust Fund Grant, and the Haw Creek Neighborhood Association to implement the last phase of the project which will include a restroom/picnic shelter, gazebo, playground area, woodland trail, landscaping and interpretative signage. The restroom/picnic shelter and gazebo were designed by Mathews and Associates who also developed the construction documents. These documents were bid out and five general contractors submitted bids. The lowest responsible bidder was Carolina Cornerstone Construction, which is a minority-owned company, in the amount of $116,750. The entire budget for this park construction was originally $244,000. Currently, a balance remains in the budget of $158,474.89.

In addition to the above request, a budget amendment needs to be approved to appropriate an additional $15,000 to this project from the Haw Creek Neighborhood Association. Originally, the Haw Creek Neighborhood Association agreed to secure $40,000 in funds towards this project. An appropriation of $25,000 for this commitment was allocated earlier. An additional $15,000 allocation will fulfill this Association's total commitment.

The Parks and Recreation Department recommends that the City Manager be authorized to enter into a contract with Carolina Cornerstone Construction for the construction of the Haw Creek Park restroom/picnic facility and gazebo. City Council approval is also recommended for the approval of the budget amendment in the amount of $15,000 for this project.

Upon inquiry of Vice-Mayor Cloninger, Parks and Recreation Director Irby Brinson said that this project should be completed near the end of December, 2000.

For Information Only – Bid Award for Grouting of Burnette Tunnel

Summary: This is a review of the Regional Water Authority's award of a service contract to Conway Enterprises of Mims, Florida, in the amount of $36,600.00, for injecting pressure grout to plug and stop water seepage through cracks in the concrete tunnel within the Burnette (North Fork) Dam.

The Burnette (North Fork) Dam, as well as the Bee Tree Dam, are carefully inspected annually by an expert structural engineer to insure the safety of these dams. In recent years, this engineer has been Applied Geosciences and Engineering, who has recently merged with and become a part of the firm Schnabel Engineering Associates, Inc. ("SEA"). The structural engineer has reported during recent annual inspections that there are very small seepage cracks in the concrete access tunnel of the Burnette Dam leaching very small volumes of water, but through laboratory analysis, have been free of sediment from within the earthen dam. The engineer had concluded that the dam is very safe but also recommended the seepage cracks be repaired as part of the upcoming Bee Tree Spillway project now scheduled to begin construction in April 2001. The project budget and design also did incorporate this work in the scope for the project.

During the structural evaluation performed by SEA in the spring of 2000, small traces of sediment were found in the samples of the seepage for the first time. The traces are extremely small and provide no immediate danger to the safety of the dam, but the engineer did recommend as a conservative precaution that the grouting work in the Burnette Tunnel be advanced as a separate project and conducted in the fall of 2000. Bid specifications and bidding to perform this work has been conducted since this recommendation was accepted by the Director of Water Resources. Specifications have also been approved by the State of North Carolina Land Quality Section.

SEA received three bids on August 30, 2000, and has evaluated all bids for compliance with the specifications and qualifications to perform the work. A summary of the bids received are as follows:

Conway Enterprises, Mims, Florida	$36,600.00
Edwin Bradley Construction, Paris, Kentucky	39,500.00
Kcompany, Campbellsville, Kentucky	51,600.00

The Regional Water Authority will consider the award of a service contract to Conway Enterprises of Mims, Florida, in the amount of $36,600, for grouting in the Burnette Tunnel and authorize the Chairman to execute change orders to the contract if needed within the authorized budget for the project. Water Resources Director, Tom Frederick will give an update from the Water Authority Meeting.

Staff recommends that the City Council review this report for information purposes.

For Information Only – Contract with Schnabel Engineering for Grouting of Burnette Tunnel

Summary: This is a review of the Regional Water Authority's execution of Task Order No. 4, which serves as an amendment to their engineering services agreement with Schnabel Engineering Associates, in an amount not to exceed $15,000, for construction administration and inspection services in the grouting of seepage cracks in the Burnette Tunnel.

There is a need for the grouting of seepage cracks in the Burnette Dam Tunnel as part of a recommendation to award a service contract. This report addresses an amendment to the engineer's contract for the engineering services to administer the grouting Work and provide adequate quality control and inspection.

Construction administration for the grouting in the Burnette Dam Tunnel is not included in the present contract with Schnabel Engineering but is a very important part of insuring the work is done properly. Construction administration includes defining the exact locations where grouting will be performed, and monitoring the construction techniques and performance of the work. The engineer will provide independent written reports to the owner on the work for the record and will determine when the work is achieved satisfactory for payment.

Staff recommends that the City Council review this report for information purposes.

Budget Amendment (35 Fund) to Provide Funding for Burnette Tunnel Grouting and Pisgah Highway Phase II

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 82-25 (35 Fund - Water Major Capital Improvements Fund) to provide future funding for the NC 151 (Pisgah Highway) Phase II NCDOT Project and to provide funding for grouting of the Burnette Dam Intake Tunnel.

By Resolution 82-25 dated October 5, 1982, the Regional Water Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

The NC 151 Phase II NCDOT Non-Betterment Relocation Project in the amount of $633,600 is expected to be complete in Fiscal Year 2002/2003 and will be funded with future funds from a Fiscal Year 2002/2003 Revenue Bond Issue. This project will consist of relocating water lines in the right of way along NC 151 from SR 1110 (Warren Creek Road) at South Hominy to SR 1117 (Fowler Mountain Road). In addition to this NCDOT project, the Fiscal Year 2002 /2003 Revenue Bond Issue will fund several other NCDOT projects, Water Treatment Plant Improvements, Master Plan Improvements, and Annexation Projects.

At this time, it is necessary for the Authority to approve future funding for the NC 151 Phase II NCDOT Project so that a Utility Agreement between the City of Asheville and NCDOT can be signed. This agreement ensures that the utility work to be performed by NCDOT's contractor is fully reimbursed by the Authority.

Funding of $60,500 is also needed for grouting of the Burnette Dam Intake Tunnel. This work was scheduled for Fiscal Year 2001/2002 as part of the Dam Safety Improvements Projects and was to be funded with a Fiscal Year 2001//2002 Revenue Bond Issue. As a result of a recent annual dam safety inspection, this project has been changed to a more urgent status. A sample of the water in the intake tunnel showed that sediment was just beginning to seep through the cracks in the tunnel walls. Although there is no current danger, the structural engineer has recommended that the grouting of the tunnel be done this fall as an extra precaution. Funding is available from the Dam Renovations Project and from remaining balances in the North Conference Room Project and the Fiscal Year 1998/1999 Distribution System Improvements.

The following changes are recommended in the 35 Fund:

Revenues	Current	Recommended
Contributions From Other Funds - Future	$2,805,298	$3,438,898

Appropriations	Current	Recommended
North Conference Room	$22,106	$3,000
FY 98/99 Distribution System Impr.	$85,000	$83,863
Dam Renovations (Dam Safety)	$440,413	$460,656
Future NCDOT Water Projects	$2,805,298	$3,438,898

The Regional Water Authority will consider the approval of an amendment to Capital Project Ordinance 82-25 at the September 19, 2000, meeting. The Director of Water Resources Tom Frederick will give an update from the Water Authority Meeting.

The Regional Water Authority recommends approval of a budget amendment for Capital Project Ordinance 82-25 (35 Fund) to reflect an increase in the Future NCDOT Water Projects with the Department of Transportation to include the NC 151 Phase II Water Line Relocation Project and to provide funding for emergency grouting to the Burnette Dam Intake Tunnel by reprogramming funds from the North Conference Room and 1998/99 Distribution System Improvements.

Budget Amendment (29 Fund) to Appropriate $12 Million for 2001 Revenue Bond Sale

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 92-17 (29 Fund - Water Bond Capital Improvements Fund) to reflect the sale of revenue bonds in the amount of $12 million in approximately February 2001.

By Resolution 92-17 dated May 19, 1992, the Regional Water Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds. Staff recommends the following changes to the capital project ordinance:

Revenues:	
Sale of 2001 Revenue Bonds	$12,000,000
	$12,000,000
Appropriations:	
Bee Tree Spillway	$5,500,000
NCDOT Non-Betterment	2,874,000
NCDOT Betterment	291,000
Building Safety Improvements	1,000,000
Critical Needs Improvements	1,755,000
Master Plan Improvements	275,000
Bond Administration	200,000
Annexation	105,000
	$12,000,000

Another revenue bond issue totaling approximately $10,000,000 is scheduled in our five-year plan for the Fall of 2002 but does not need to be appropriated now.

The Regional Water Authority will consider the approval of an amendment to Capital Project Ordinance 92-17 at the September 19, 2000, meeting. The Director of Water Resources Tom Frederick will give an update from the Water Authority meeting.

The Regional Water Authority recommends approval of a budget amendment for Capital Project Ordinance 92-17 to establish funding for the $12 million revenue bond issue scheduled for February 2001.

Speed Limit Changes

Summary: The consideration of an ordinance to reduce speed limits on several city streets.

The streets listed below have been identified for speed concerns by residents, City boards and commissions, City Council, the Asheville Police Department, Traffic Engineering staff, or other City staff. The Traffic Engineering staff has conducted field reviews of street geometry and conditions and/or speed studies. Many of these streets which exhibit the worst speeding problems are also being evaluated and prioritized for the installation of traffic calming measures per the Neighborhood Traffic Calming Policy. Determination of the appropriate speed limits for streets is one of the steps outlined in the Policy. The Police Department concurs with these recommendations.

15 Miles Per Hour

The following street is a local residential street which has a combination of street geometry features which warrants speed limits significantly slower than the typical speed limit for local residential streets of 25 mph. These features may include narrow widths, frequent on-street parking, poor sight distance, lack of sidewalks, steep grades, or horizontal or vertical curves. The recommended safe operating speed on this street is 15 mph:

Orchard Road

20 Miles Per Hour

The following streets are local residential streets which have a combination of street geometry features which warrants speed limits slower than the typical speed limit for local residential streets of 25 mph. These features may include narrow widths, frequent on-street parking, poor sight distance, lack of sidewalks, steep grades, or horizontal or vertical curves. The recommended safe operating speed on these streets is 20 mph. These streets include streets in two subdivisions in which the City recently took over maintenance of streets; Hills of Beaverdam and Hawthorne Village:

Clairmont Avenue
Colonial Place
Crescent Lane
Dallas Street
Deaver Street
Dellwood Street
Dorchester Avenue, between Florida Avenue and Burton Street
Elderberry Lane
Foxglove Court
George Washington Carver Street
Hedgerose Court
Houston Street
Larkspur Court
Marne Road
Morning Glory Drive
Nebraska Avenue
Nevada Avenue
Skyview Circle
Skyview Drive
St Dunstans Circle
Sunset Walk
Tacoma Circle
Trillium Court
Vandalia Avenue
Wayside Drive

Windflower Court
Windflower Way

25 Miles Per Hour

Most of the following streets are typical local residential streets without street geometry problems. The appropriate speed limit for typical local residential speeds is 25 mph. A few of these streets are residential collector streets which have a combination of street geometry features which warrants speed limits slower than the typical speed limit for residential collector streets of 30 mph. The recommended safe operating speed on these streets is 25 mph:

Albemarle Road
Arlington Street
Baird Street
Bear Creek Road, between Patton Avenue and Sand Hill Road
Beechwood Road
Birchwood Place
Blake Drive
Blanton Street
Brooklyn Road, between Taft Street and Wyatt Street
Burnside Drive
Caribou Road, between Hendersonville Road and West Chapel Road
Charlotte Street, between Evelyn Place and Woodlink Road
Chicory Lane
Clayton Avenue
Clement Drive
Coleman Avenue
Columbine Road
Courtland Avenue, between Montford Avenue and Courtland Place
Culvern Street
Dailey Drive
Dorchester Avenue, between Haywood Road and Florida Avenue
Edgewood Road (East)
Fairfax Avenue
Fairview Avenue
Fairview Road, between US 74 and Broadview Drive,
Forest Hill Drive
Furman Avenue
Glencliff Road
Gracelyn Road
Grandview Road
Grove Street
Hansel Avenue
Heathbrook Circle
Hibernia Street
Hillside Street
Hudson Street
Jeffress Avenue
Lanvale Avenue
Linden Avenue
Looking Glass Lane, between Wagon Road and Pleasant Ridge Road
Looking Glass Lane, between Browndale Road and Wagon Road
Marlborough Drive
Mayfair Drive

Merchant Street
Morgan Avenue
Mount Clare Avenue
North Street
Oakland Avenue
Olney Street
Overbrook Road
Pearson Drive
Pleasant Ridge Road
Prichard Road
Raleigh Road
Riverview Drive
Robindale Avenue
School Road (Malvern Hills)
Selwyn Road
Shannon Drive
Shiloh Road
Skyview Terrace
Starnes Avenue
Stockwood Road
Stockwood Road Extension
Tacoma Street
Taft Street
Virginia Avenue
Wagon Road
Warwick Road
Wellington Street
Wendover Road
Westwood Place, between Millbrook Road and Hazel Mill Road
Woodvine Road

30 Miles Per Hour

The following streets are typical residential collector streets without significant street geometry problems. The recommended safe operating speed on typical residential collector streets is 30 mph:

Beverly Road (West)
Caribou Road, between West Chapel Road and I-40
Kenilworth Road
Pinchot Drive
Racquet Club Road

The Engineering Department requests that City Council approve the ordinance amending these speed limit changes.

Upon inquiry of Councilman Hay, Traffic Engineer Michael Moule explained how speed limits are set. He explained that the changes will not be in effect until the signs are posted. The most pressing streets will be posted within 2-3 weeks, with the remaining streets being posted as quickly as possible.

It was the consensus of City Council to have future staff reports note what the current speed limit is and what the proposed speed limit will be.

Councilwoman Bellamy asked Mr. Moule to check whether the proper street name is Taft Avenue or Taft Street.

Truck Traffic Prohibited on Residential Streets

Summary: The consideration of an ordinance to prohibit through truck traffic on additional residential streets.

The Traffic Engineering staff has conducted field reviews and collected data on the streets listed below. These streets are residential streets that are not appropriate for truck traffic. Alternative roadways exist that are more appropriate for truck traffic.

Avon Road
Balm Grove Avenue
Barnard Avenue
Columbine Road
Dailey Drive
Dorchester Avenue
Edgewood Road (North)
Florida Avenue
Morgan Avenue
Pinchoit Drive
Woodvine Road

The Engineering Department requests that City Council approve the ordinance prohibiting trucks on various residential streets.

Creation of School Zone Speed Limit on Clinton Avenue

Summary: The consideration of an ordinance to create an additional school zone on Clinton Avenue.

The Traffic Engineering staff has performed the necessary traffic analysis and field review to determine locations for this school zone. The following street has been identified as needing a school zone during the times when students typically go to and leave school:

Clinton Avenue – 20 mph between 7:00 a.m. and 9:00 a.m. and between 2:00 p.m. and 4:00 p.m. on school days, between Sulphur Springs Road and Dunn Street.

The Engineering Department requests that City Council approve the ordinance including Clinton Avenue as a school zone addition.

New Street Name of "Faculty Drive"

Summary: The consideration of a resolution accepting the new proposed street name "Faculty Drive."

Asheville School, Inc., owners of lots off of Asheville School Road, has petitioned the City of Asheville to accept the street name "Faculty Drive." The new street will begin at Asheville School Road and end at the dead end.

City staff recommends adoption of the resolution.

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New Street Name of "Science of Mind Way"

Summary: The consideration of a resolution accepting the new proposed street name "Science of Mind Way."

Center for Creative Living, owners of lots off of Sandhill Road, has petitioned the City of Asheville to accept the street name "Science of Mind Way." The new street will begin at Sand Hill Road and end at the dead end.

City staff recommends adoption of the resolution.

Maintenance of the Wall Street Parking Deck

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with R.C.I. Painting Contractors for maintenance of the Wall Street Parking Garage.

The Wall Street Parking Garage is seriously in need of periodic cleaning and repainting of the exterior and interior walls and removal of rust and repainting of all metal surfaces. During Fiscal Year 1999-2000, City staff sought estimates from contractors to perform the needed maintenance; however, the estimated cost was well beyond the funding available for the project. As a result, initiation of the project was delayed until the current Fiscal Year when additional funds were made available.

Bids for the project were sought and three responses were received (two bids and one "no bid"). The low bid of $35,500 was submitted by R.C.I. Painting Contractors. Their bid includes: pressure washing all exterior and interior walls; hand scraping to remove flaking paint; application of primer and two coats of paint to all walls; sanding, priming and painting all metal rails, window guards and doors. The work is warranted for twelve years. With contract award at this time, we anticipate that the painting work will be completed prior to onset of cold weather which would require postponement until next spring.

In addition to this painting project, as a separate but related initiative, staff has received proposals and will be awarding a contract for new awnings and any necessary repair of the awning supports at the Wall Street Parking Garage. This contract award will be made by the City Manager.

Council adopt the resolution which authorizes the City Manager to execute a contract with R.C.I. Painting Contractors.

Budget Amendment for Fair Housing Assistance Program

Summary: The consideration of a budget amendment to create a budget of $45,400 for the Fair Housing Assistance Program (FHAP) for Fiscal Year 1999/2000.

The City has been carrying out its fair housing program under contract with the Asheville-Buncombe Community Relations Council and Fair Housing Commission since January 1988, using HUD FHAP funds. The City's Community Development Division serves as Lead Entity and monitors the program.

On August 29, 2000, the City received notification of the grant awarded to the City for the current federal Fiscal Year 10/1/99-9/30/00. This notification required the City to draw down the funds no later than September 15, 2000. City staff has submitted the necessary paperwork to HUD to avoid losing these funds.

Community Development staff recommends adoption of the budget amendment to create a budget for the Fair Housing Assistance Program (FHAP) for Fiscal Year 1999/2000.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

RESOLUTION NO. 00-170 – RESOLUTION ACCEPTING THE N.C. DEPARTMENT OF TRANSPORTATION LETTER REGARDING A PASSENGER STATION LOCATION STUDY

Vice-Mayor Cloninger said that this is the consideration of a resolution authorizing City Council acceptance of a letter from the N. C. Department of Transportation, Rail Division (NCDOTRD), outlining the framework for the site selection study phase necessary for developing a passenger train station in Asheville.

Economic Development Director Mac Williams said that there are nine stops along the proposed Salisbury to Asheville passenger train route. Each stop will need a depot. All but one of the stops already has an existing depot or other suitable existing structure. (The one stop without a structure is in Valdese where an open site has been identified). All will need some level of improvements to accommodate passenger rail service. The General Assembly has mandated NCDOTRD to conduct a feasibility study examining all aspects for the proposed service including costs associated with developing/improving each of the depots. Currently, Asheville does not have a specific site determined for the depot location. Consequently, we have an extra step to take to identify the site before work can begin on the evaluation of the potential cost for the depot structure itself. NCDOTRD and Norfolk-Southern have proposed five sites for initial consideration—three existing structures and two open sites. NCDOTRD, and their consultant, with input from the Local Passenger Train Station Task Force recently approved by Council, will conduct the study to determine the ultimate site location.

Mr. Williams reviewed with Council the following five sites: (1) Historic Biltmore Station at 30 Lodge Street; (2) Biltmore Village site (Slosman property); (3) Historic Southern Railway Depot; (4) site located to the west of the Historic Southern Railway Depot; and (5) former site of the original passenger rail depot located on Depot Street.

Mr. David Bender, Transportation Planner with the NCDOTRD, said that since the deadline for the completion of the WNC Study is set for March 2, 2001, the NCDOTRD has opted to pursue an alternative to the standard Municipal Agreement procedure for the development of the much-anticipated Asheville Station Site Selection Study. Rather than having the City of Asheville go through the open bid procedure, the NCDOTRD has elected to utilize an internal open engineering contract via an existing Limited Service Agreement with the consulting firm, Gannett-Fleming of Charlotte to conduct the study. This open engineering contract agreement will allow the contractor (Gannett-Fleming) to immediately commence work on the site selection study for Asheville. This process is anticipated to accelerate the start of the study by two or more months ensuring a final product by the March 21, 2001, deadline. This agreement will also eliminate the 10% matching cost normally required of the municipality.

Mr. Bender said that although the NCDOTRD is taking a lead role in the management of the site selection study, it is imperative that the consultant work closely with the Asheville Site Selection Task Force, property owners of the study sites, surrounding property owners, Norfolk-Southern and all other stakeholders impacted by this study.

Mr. Bender answered various questions and comments from Council, some being, but are not limited to: if the site selected is on Depot Street, will there be a stop in Biltmore Village; what types of issues will be included in the feasibility study; will there be opportunities for public input; and what is the timeline for this study.

City staff recommends City Council accept the N. C. Department of Transportation, Rail Division, letter describing the framework for the site selection study phase necessary for developing a passenger train station in Asheville.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Cloninger moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Vice-Mayor Cloninger moved to adopt Resolution No. 00-170. This motion was seconded by Councilman Worley and carried unanimously.

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UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which is scheduled on September 26, 2000. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Method of Calculating Front Setback

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to change the method of calculating the front building setback line.

On September 6, 2000, the Planning and Zoning Commission voted unanimously to recommend approval of this wording amendment. Staff initiated this wording amendment to change an administrative procedure in the Unified Development Ordinance (UDO) to make it more consistent with the City's Smart Growth Policies.

Front setbacks are currently measured from the street right-of-way line. In some cases, this method of calculating the setback pushes buildings back from the street by as much as 50 to 75 feet. In turn, these setback rules essentially mandate that the parking is located in front of buildings in these cases. This result is in direct conflict with the principles of smart growth and walkable communities. These principles say that buildings should be located next to the street to hide parking, promote pedestrian activity, and create a more interesting streetscape. The following amendment to the ordinance will change the way we measure the front setback and the street side setback to allow buildings to be built closer to the street. This change will only be applied in cases where the street is at least four or five lanes wide, and where additional street widening is not anticipated. In these cases, we will measure the front setback from the edge of the travel lane rather than the right-of-way line.

Planning staff recommends inserting the following text (in bold) in Section 7-10-2(b) of the UDO:

(b) Method of calculation

1) Minimum setback. Minimum setback is the space defined by measuring perpendicularly from and along the entire boundary of the lot (property line) to the building line, ~~except~~ Front setbacks shall be measured from the street right-of-way line, **except, on streets**

greater than 45 feet in travel lane width, the setback shall be measured from the edge of the travel lane. The accompanying corner lot, street side setback shall also be measured from the edge of the travel lane. In no case shall the minimum setback be closer to the street than the right-of-way line. A setback may be the front, rear, or side setback. For illustrations of the location of front, rear, or side setbacks, see Figure 10-1. Except as set forth for through lots in subsection 7-10-2(d) below, there shall be one (1) front setback area which is determined at the time of site plan approval or zoning permit issuance.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearing on September 26, 2000.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

FESTIVALS AND SPECIAL EVENTS

Parks and Recreation Director Irby Brinson said that City Council requested that Parks and Recreation staff develop a report on Festivals and Special Events either sponsored or co-sponsored by the City of Asheville.

Mr. Brinson reviewed the report on Festivals and Special Events produced, co-sponsored or approved through the Parks and Recreation Department. The information provided gives an outline of the Festival Division, current staffing and revenue generated along with a description along with sponsored, co-sponsored and independent events that occur within the City. The information in the report includes direct costs associated with these events with detailed information provided on other departmental costs. The time frame used to determine this annual breakdown includes events that were scheduled from January 1, 2000, through August 15, 2000. Events shown after August 15 include events from 1999 records since these events have not occurred this year.

The City of Asheville, through its Parks & Recreation Department, provides various festivals and special events in the Asheville area. The purpose of providing festivals and special events is to highlight cultural diversity, enhance community pride, foster tourism and contribute to the long-term economic benefit of the Asheville area. It has been estimated that the combined economic impact of festivals and special events in the Asheville area is approximately $22 million.

Like most cities, Asheville constantly reviews its services to ensure that resources are allocated in the most efficient manner possible. During a worksession on the FY 2000-2001 budget, City Council asked staff to determine the City's cost for providing festivals and special events. This report describes the types of festivals and special events held in Asheville and identifies the cost to the City.

Festivals in Asheville attract over 530,000 attendees each year and have become a significant part of Asheville's quality of life. The economic impact of these events is estimated at approximately $22 million. The City incurs a net cost of approximately $375,000 per year to provide festivals and special events, $150,000 of which is attributable directly to the City's Festival and Special Events Division.

There are three types of festivals and special events held in the City of Asheville. They include City Festivals, Co-Sponsored Festivals, and Independent Festivals. The following is a brief description of each type of festival.

City Festivals and Special Events

City festivals are major special events that are planned, organized and produced by the City of Asheville. The City assumes sole financial and fund raising responsibility for these events. The City produces three major festivals per year. They include *Bele Chere, First Night, and the Fourth of July Celebration.* Bele Chere is the largest summer street festival in the Southeast. It attracts approximately 350,000 people per year and has an estimated economic impact to the Asheville area of $12 million. First Night is Asheville's premier, non-alcoholic New Year's Eve party, focusing on family entertainment and events. The Fourth of July Celebration is a small summer festival that celebrates Independence Day with music, games, food and fireworks.

The City's responsibility for City festivals requires a significant investment of staff time and resources. City festivals are produced by the City's Festival and Special Events Division, which is housed in the Asheville Parks & Recreation Department. The Festival and Special Events Division has a year-round staff of six full-time employees and one part-time employee. In addition, a full-time secretary in the Parks & Recreation Administrative Division provides direct clerical support to Festival and Special Events Division staff. (The secretary was originally assigned to the Festival and Special Events Division but was recently transferred to Parks Administration). A staffing profile of employees responsible for festival production is provided below:

Festival and Special Events Division Staffing

Positions	FTE
Festivals Coordinator	1.00
Sponsorship Coordinator	1.00
Events Specialists	4.00
Part-time Events Specialist	0.75
Total	6.75

The City incurs the following types of expenses to produce a city festival:

- Salaries for full-time and part-time Festival and Special Events Division employees;
- Salaries for full-time secretary in Parks Administration;
- Cost of providing entertainment (i.e., musicians, performers);
- Special event costs (i.e., games, contests, etc.);
- Set up and logistics costs;
- Decoration expenses;
- Purchase of goods for resale (i.e., souvenirs, beverages, etc.);
- Overtime pay for police and fire protection;
- Overtime expenses for sanitation and street maintenance clean-up.

The City attempts to recover festival production expenses from the following revenue sources: Corporate Sponsorships; Beverage Sales; Vendor licensing/rental fees; Souvenir sales; and Event fees/Other.

Co-Sponsored Festivals and Special Events

Co-Sponsored festivals are produced by private or non-profit organizations. These organizations, not the City, assume full financial and fund raising responsibility for producing the festival. The City, however, supports the event by providing in-kind City services (i.e. police protection, sanitation clean-up, etc.) in exchange for recognition as a sponsor in all festival publicity.

To receive in-kind services, a private event producer requests approval for co-sponsorship from the City by submitting a formal application to the Parks & Recreation Department. Parks and Recreation staff reviews each application and prepares a list of recommended co-sponsored festivals for City Council action. As required by City policy, Council must approve the list of recommended festivals on an annual basis before co-sponsorships are granted. Examples of co-sponsored festivals include the *Goombay Festival, Asheville Greek Festival, Downtown After Five, Asheville Merchants Christmas Parade, and Shindig on the Green.*

Because Parks & Recreation staff is not involved in direct production of co-sponsored festivals, minimal staff support is required from Festival and Special Events Division employees. Some level of support, however, is required. The part-time Events Specialist, for instance, is responsible for coordinating the co-sponsorship application process, as well as working with other City departments to ensure that all approved in-kind City services are provided.

The City incurs the following types of expenses for co-sponsored festivals or events. These expenses are not recovered with offsetting revenues: Staff time of Part-Time Events Specialist; Overtime pay for police and fire protection; Overtime pay for sanitation and street maintenance services; Use of City equipment including tents, tables, chairs, etc; and Use of Parks Maintenance staff: delivery, set-up and tear-down of equipment.

Independent Festivals and Special Events

Independent festivals are typically small, neighborhood functions that are produced by private groups or individuals for which the City provides no financial or in-kind support. Independent event producers are charged at a full cost recovery rate for any services requested from the City. For example, if Police support is requested, the City provides off-duty police officers, charging the appropriate hourly rate. The City may, however, incur a minimal cost for independent events, as it is sometimes necessary for the part-time Event Specialist to help independent festival producers obtain necessary city permits.

The purpose of this report is to give City Council an update of our current practices in regard to the way Festivals and Special Events are coordinated within the City. No formal action is required.

There was considerable discussion about in-direct costs associated with festivals.

Mayor Sitnick stated that she wanted to make sure that the City doesn't lose any festivals, but suggested possibly putting a cap on festival events. She also suggested that if the City is fully co-sponsoring an event, that possibly in the following year the City could reduce their co-sponsorship. However, if the event could not happen without the City's co-sponsorship, then that would be something that City Council would need to consider. She wondered if there could be more co-sponsorship from outside City government for some festivals.

Mr. Brinson noted that requests for co-sponsorship has doubled in the past year.

Councilman Hay felt it might be useful to the Parks and Recreation Department for City Council to set some perimeters or guidelines on co-sponsorship.

Councilwoman Bellamy stated that to put a cap on or limit co-sponsorship on some festivals, in particular Goombay or the Greek Festival, would cause a hardship on the festival event. These particular festivals celebrate diversity.

Councilman Worley was concerned about the City losing site of the big picture, which is brining in millions of dollars in economic impact.

Councilwoman Field favored spending money on festivals, which benefit a lot of people, than to fund some outside agencies, which serve only a limited group. She felt festivals are very beneficial to the quality of life.

Mr. Brinson stated that in January (as in past years), he would provide to City Council a list of proposed sponsorship and co-sponsorship festivals for their approval, along with criteria used to determine co-sponsorship.

LOCAL AREA SUPPLEMENT FOR THE DRAFT 2002-2008 STATE TRANSPORTATION IMPROVEMENT PROGRAM

Transportation Planner Ron Fuller said that this is the review and consideration of comments to the 2002-2008 Draft Transportation Improvement Program during the public comment period.

The Transportation Improvement Program (TIP) is the statewide document the North Carolina Department of Transportation uses to identify, schedule and fund improvements to, primarily, state facilities. It is currently out for a 30 day review period by the public. The Transportation Advisory Committee will then meet on September 28, 2000, for a public hearing to gather comments and concerns from the public. The Transportation Advisory Committee welcomes input from the City of Asheville concerning any projects listed. Comments are also welcome for projects that may not be currently identified on the TIP.

He presented the recommendations from staff concerning the major projects in the TIP and highlighted ten individual projects. All recommendations are as follows:

I-4400 – This is a funded project that was requested by Henderson County in Division 14. It involves the widening of I-26 from 4 lanes to 6 lanes. A very small portion of I-26 touches Buncombe County south of NC 280.

I-4401 – This project would add additional lanes on I-40 from the I-26/I-240/I-40 interchange to US 19/23 (Smoky Park Highway) at Exit 44. This is a segment of interstate that routinely experiences congestion. Staff is in agreement that additional lanes would be beneficial.

R-4406 – This project in part in Haywood County and part in Buncombe County. It is outside the official MPO jurisdiction. It is a well traveled segment of highway which serves as an alternate route to I-40. The road likely needs additional lanes, however it is questionable as to the need for five lanes, if that is the recommended alignment.

R-2813 – This project involves the widening of Long Shoals Road from I-26 to US 25. Staff recommends this as a "Gateway Corridor". This would include a landscaped median, sidewalks on both sides of the roadway and bike lanes. It was the consensus of City Council to have the

City Manager send a letter of support for the "Gateway Corridor" concept with sidewalks on both sides of the street and a landscaped median.

U-4005 – This project is part of the upgrade to US 19/23 (future I-26) from I-240 to the Buncombe/Madison County line. It addresses the immediate safety concerns of installation of guardrails in the median. Staff agrees that this is a warranted project.

U-619 – This project has been on the TIP for a number of years. It remains listed as an Unfunded Project. Although the TIP indicates a four-lane alignment, staff would recommend no more than three-lanes. It was the consensus of City Council that this project be 3-lanes and that the NC DOT fund this project with streetscaping.

U-2801 – This project is the widening of Sweeten Creek from I-40 south to Rock Hill Road. This portion is slated to be let for ROW on September 19. It is currently designed as a five-lane facility with a sidewalk on the east side. Due to very tight ROW restrictions, the railroad and a creek, we were unable to get the "Gateway Corridor" concept included as part of this project. The next section, from Rock Hill Road to US 25 is not slated for construction until after 2008. Staff would recommend a request to expedite this portion of the project if at all possible.

U-3403 – This project includes the widening of Brevard Road from Sardis Road to the Blue Ridge Parkway. With the exception of a few hundred feet at the southern end of the project, which will have a landscaped median, the remainder of the project will be a five-lane facility with no sidewalks. NCDOT rationale for the lack of a consistent landscaped median were: tight ROW, numerous businesses and intersections with local roads. The lack of sidewalks was attributed to the fact that the section of roadway lies completely outside the city limits and therefore, no one to participate in construction or maintenance of the sidewalk. Staff recommends a request to NCDOT to ensure that at least a 10 foot strip of land be reserved for future sidewalks.

U-3404 – This project involves the widening of Biltmore in the hospital area to make the existing lanes wider. It was recommended that this project be removed from the TIP. Staff continues to support its removal.

U-4013 – This project involves improvements to Merrimon Avenue from Beaverdam Road to I-240. The feasibility study that was recently done indicated a five-lane scenario, a three lane scenario and a "no build" scenario. The draft TIP appears to be listing the worst case scenario with a 36 million dollar cost estimate. This was the five-lane estimate. It is currently listed as an unfunded project. Staff strongly recommends that Council request NCDOT not consider a five-lane option, rather give strong consideration to the three-lane option. It was the consensus of City Council that this project be 3 lanes and that the NC DOT fund this project.

U-4014 – This project includes the upgrades to the McDowell Street tunnel as requested by Council a few years ago. It is currently listed as an unfunded project.

B-2515 – This project is to replace the bridge over the Swannanoa on Biltmore Avenue. The City has been working with NCDOT to have a "temporary" bridge constructed east of the current bridge (near Decatur Street) that could handle the construction traffic and then left in place to serve as an additional access across the Swannanoa. Staff continues to recommend in favor of this concept.

FS-0113A – This is a feasibility study to look at adding additional lanes to I-26 from Henderson County to I-240. As this is a feasibility study, staff would recommend its completion.

FS-0013B – This is a continuation of a feasibility study to look at adding a new interchange at Dogwood Road west of Asheville.

FS-0113B - This is a feasibility study to look at adding additional lanes to US 19/23 (future I-26) from the Buncombe/Madison County line to I-240. As this is a feasibility study, staff would recommend its completion.

FS-9913A – This is a feasibility study in progress to look at adding a new interchange on I-40 at Meadow Road. Currently, Biltmore Estate has expressed concern over this request and are not supportive of the idea. Staff would defer, awaiting the outcome of the feasibility study, before making a recommendation.

E-4017 – This the addition of the W.T.Weaver Greenway project.

E-4406 – This is scheduled for a feasibility study to look at providing a greenway connection near Recreation Park.

FS-0113C – This project is a request from UNC-A to ask NCDOT to assist in the construction of and improvements to the internal street network for the campus.

FS-9913D – This is a feasibility study in progress to look at improvements to Amboy Road from I-240 to the river (including a new bridge).

As Mr. Fuller highlighted the projects, City Council made various comments and suggestions throughout the report.

City staff would also recommend to NCDOT the addition of a Traffic Signal Feasibility Study. This is a joint effort by NCDOT and the City to address the signal needs throughout the City.

City staff requests City Council review the TIP along with staff's recommendations and formulate recommendations to be sent to the Technical Coordinating Committee and the Transportation Advisory Committee.

Councilwoman Field suggested asked that the Bicycle Task Force continue to consider the possibilities of outline lanes or bike lanes and to work with the Public Works Department to stripe and maintain the areas.

It was the consensus of City Council to instruct a letter be sent to the Technical Coordinating Committee and the Transportation Advisory Committee outlining the recommendations stipulated by City Council at this meeting.

RESOLUTION NO. 00-171 – RESOLUTION URGING SUPPORT OF THE SANTORUM-LIEBERMAN BILL TO INCREASE THE PER CAPITA LIMIT ON LOW INCOME HOUSING TAX CREDITS

Community Development Director Charlotte Caplan said that this is the consideration of a resolution urging Senators Helms and Edwards to support a bill that would increase the funds available for Low Income Housing Tax Credits (LIHTC).

During the next few days, the US Senate Finance Committee is expected to take action on the Santorum-Lieberman New Markets – Community Renewal Bill (S2779). This bill authorizes an immediate (Fiscal Year 2001) increase in the per capita limit for LIHTC from $1.25 to $1.75.

LIHTC is now the primary federal funding mechanism for affordable rental housing. It provides tax credits for investors in projects that provide quality rental housing to families below 60% of area median income. Developers, even non-profit developers, can access the equity generated by selling the tax credits for an approved project and can realize as much as 50% of the cost of development from this source. This translates into lower borrowing costs and lower rents.

Tax credits are distributed through state housing finance agencies and have been capped at their current level since 1986. In North Carolina, out of 110 applications in the latest round only 33 were funded. Developers in our area (Asheville/Buncombe County) have been successful in four out of the last five applications made, with River Glen Apartments in 1997, Wind Ridge in 1999, and Dunbar Place and Crowell Square in 2000.

The proposed 40% increase in the per capita limit would provide about 1050 additional affordable housing units statewide each year.

Ms. Caplan asked for City Council approval at this meeting in order to convey Council's views to Senators Helms and Edwards before Senate action on the Bill.

At Ms. Caplan's request, it was the consensus of City Council to have a resolution in support of increasing the level of HOME and CDBG funding at the next formal Council meeting.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Worley and carried unanimously.

Vice-Mayor Cloninger moved to adopt Resolution No. 00-171. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 175

EAST END PLACE SUBDIVISION

Councilman Peterson asked if it would be too late to bring a different plan before City Council with regard to development of the East End Place Subdivision. City Attorney Oast said that since City Council has continued this issue to the September 26, 2000, City Council meeting for action, Council should be careful on what kind of action they may take to dispose of this before it comes back at the scheduled meeting date.

Councilwoman Bellamy noted that she will be attending a meeting with the neighborhood with regard to this issue later in the evening and would report back to City Council at their September 26, 2000, meeting.

INTRODUCTION OF BOND ORDERS AND RESOLUTION ESTABLISHING PUBLIC HEARING ON TWO-THIRDS BONDS

Finance Director Bill Schaefer said that this is the introduction of Bond Orders Authorizing the Issuance of $1,300,000 Sanitary Sewer Bonds and $670,000 Equipment Bonds and the consideration of a resolution setting a public hearing upon said bond orders.

Bond Orders for both the $1,300,000 Sanitary Sewer Bonds and the $670,000 Equipment Bonds are being introduced to City Council at this time in order for text of the Bond Orders to be included in the associated Notices of Public Hearing.

The Bond Orders state: (1) The projects being financed are necessary; (2)The purpose of the projects; (3) The maximum amount of the bonds; (4)Sufficient taxes will be levied to pay principal and interest when due; (5) A sworn statement of the City's debt has been filed and available to the public (the statement will be sworn and available on September 27, 2000); (6) No bonded debt in excess of the Two-Thirds Bonds limitations for the current fiscal year has been incurred; and (7) The Bond Orders will take effect thirty days after adoption and subsequent publication unless petitioned to a vote of the people as provided in N.C.G.S. 159-60.

The proposed resolution sets the public hearing on the Bond Orders for October 10, 2000, at 5:00 p.m.; directs the City Clerk to publish notice of the public hearings; and directs the Finance Director to file the statement of debt and other financial information.

The Bond Orders will be considered for adoption by City Council following the completion of the public hearings on October 10, 2000.

City staff recommends City Council adopt the resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ESTABLISHMENT OF A 5TH POLICE DISTRICT WITHIN THE DOWNTOWN AND CENTRAL BUSINESS AREA

Police Chief Will Annarino said that the Asheville Police Department has completed the implementation of the District system with establishment of a 5th police district within the downtown area.

The Asheville Police Department is currently configured into 4 service districts. Effective November 1, 2000, a 5th district, encompassing the downtown area, will be implemented. District Officers will use marked patrol units for rapid call response along with Mounted, Bicycle and Walking patrol techniques. A fulltime Community Service Officer will be dedicated to downtown issues. The personnel and equipment for the 5th District will predominantly be pooled from the existing districts.

Advantages include the following: (1) Full time District Commander and staff dedicated to service delivery and problem solving Downtown; (2) Quicker response to calls for service in central area; (3) More officers in downtown area at any given time; and (4) Enhanced accountability and public service that takes into account the unique characteristics of each community.

This report is for information only and no action by City Council is necessary.

Councilman Hay noted that this is good news and asked that a press release be prepared stressing that this good long term vision and planning.

NC LEAGUE OF MUNICIPALITIES CONVENTION

Councilman Hay nominated Councilman Worley as the voting delegate and Councilwoman Field as the alternate voting delegate for the N.C. League of Municipalities

Annual Business Meeting in Fayetteville, N.C. on October 17, 2000. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ARMY RESERVE CENTER LEASE

City Attorney Oast said that the City has leased their property at 224 Louisiana Avenue (Army Reserve Center) to the United States of America for $1/year since 1950. That lease has expired and after negotiations, a new lease agreement is being drawn up for six years at a rate of $60,000/year.

It was the consensus of City Council to have a resolution placed on the next formal meeting authorizing the City Manager to sign a lease agreement with the United States of America for property at 224 Louisiana Avenue.

CLOSED SESSION

At 6:18 p.m. Councilman Hay moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Carolina Power & Light Company and City of Asheville. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Worley and carried unanimously.

At 6:35 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:35 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - September 26, 2000 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor M. Charles Cloninger, Presiding; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Leni Sitnick

INVOCATION

Councilman Worley gave the invocation.

RECOGNITION

Vice-Mayor Cloninger recognized Ms. Janet Sword and the 6th grade class from Carolina Day School.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 25-29, 2000, AS "KIDS VOTING USA WEEK" IN THE CITY OF ASHEVILLE

Vice-Mayor Cloninger read the proclamation proclaiming September 25-29, 2000, as "Kids Voting USA Week" in the City of Asheville. He presented the proclamation to Ms. Maria Pilos-Narron, Executive Director of Kids Voting USA, who briefed City Council on some activities taking place during the week.

B. PROCLAMATION PROCLAIMING OCTOBER 3, 2000, AS "THOMAS WOLFE DAY" IN THE CITY OF ASHEVILLE

Councilman Worley read the proclamation proclaiming October 3, 2000, as "Thomas Wolfe Day" in the City of Asheville. He presented the proclamation to Mr. Steve Hill, who briefed City Council on some activities taking place during the day.

C. PROCLAMATION PROCLAIMING OCTOBER 4, 2000, AS "WALK OUR CHILDREN TO SCHOOL DAY" IN THE CITY OF ASHEVILLE

Councilwoman Bellamy read the proclamation proclaiming October 4, 2000, as "Walk Our Children to School Day" in the City of Asheville. She presented the proclamation to Mr. Oliver Gajda, the City's Pedestrian and Bicycle Coordinator, who briefed City Council on some activities taking place during the day.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 12, 2000, AND THE WORKSESSION HELD ON SEPTEMBER 19, 2000

B. RESOLUTION NO. 00-172 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CAROLINA

CORNERSTONE CONSTRUCTION TO DESIGN AND IMPLEMENT A RESTROOM/PICNIC FACILITY AND GAZEBO FOR HAW CREEK PARK

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Carolina Cornerstone Construction to design and implement a restroom/picnic facility and gazebo for Haw Creek Park and a budget amendment to appropriate an additional $15,000 to this project from the Haw Creek Neighborhood Association.

The City of Asheville is continuing its development of a passive park in the Haw Creek community. Initially the parking lot and paved trails were constructed within this 6-acre park. Funds were then secured from the City of Asheville Capital Improvement Budget, the Parks and Recreation Trust Fund Grant, and the Haw Creek Neighborhood Association to implement the last phase of the project which will include a restroom/picnic shelter, gazebo, playground area, woodland trail, landscaping and interpretative signage. The restroom/picnic shelter and gazebo were designed by Mathews and Associates who also developed the construction documents. These documents were bid out and five general contractors submitted bids. The lowest responsible bidder was Carolina Cornerstone Construction, which is a minority-owned company, in the amount of $116,750. The entire budget for this park construction was originally $244,000. Currently, a balance remains in the budget of $158,474.89.

In addition to the above request, a budget amendment needs to be approved to appropriate an additional $15,000 to this project from the Haw Creek Neighborhood Association. Originally, the Haw Creek Neighborhood Association agreed to secure $40,000 in funds towards this project. An appropriation of $25,000 for this commitment was allocated earlier. An additional $15,000 allocation will fulfill this Association's total commitment.

The Parks and Recreation Department recommends that the City Manager be authorized to enter into a contract with Carolina Cornerstone Construction for the construction of the Haw Creek Park restroom/picnic facility and gazebo. City Council approval is also recommended for the approval of the budget amendment in the amount of $15,000 for this project.

RESOLUTION BOOK NO. 26 – PAGE 176

C. ORDINANCE NO. 2743 - BUDGET AMENDMENT FOR THE HAW CREEK PARK PROJECT FROM THE HAW CREEK NEIGHBORHOOD ASSOCIATION

Summary: See Consent Agenda item "B" above.

ORDINANCE BOOK NO. 18 – PAGE 459

D. RESOLUTION NO. 00-173 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY DISPOSAL PARCEL 76 LOCATED ON THE EAST SIDE OF MARTIN LUTHER KING JR. DRIVE IN THE EAST END/VALLEY STREET COMMUNITY IMPROVEMENT AREA TO DOROTHY DEAN IN THE AMOUNT OF $300

Summary: The consideration of a resolution to convey Disposal Parcel 76 in the East End/Valley Street Community Improvement Area to Dorothy Dean in the amount of $300.00.

On September 12, 2000, the City Council directed the City Clerk to advertise for upset bids on Disposal Parcel 76. The advertisement ran in the Asheville Citizen-Times on September 15, 2000, as provided in N. C. Gen. Stat. sec. 160A-

269. No response was received. Therefore, the offer to purchase from Dorothy Dean in the amount of $300.00 was not upset and the sale to Dorothy Dean should be approved.

Approval of the resolution will authorize the sale of the property to Dorothy Dean for the amount of $300.00.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 177

E. ORDINANCE NO. 2744 - BUDGET AMENDMENT TO AMEND THE WATER 35 FUND TO PROVIDE FUNDING FOR BURNETTE TUNNEL GROUTING AND PISGAH HIGHWAY PHASE II

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 82-25 (35 Fund - Water Major Capital Improvements Fund) to provide future funding for the NC 151 (Pisgah Highway) Phase II NCDOT Project and to provide funding for grouting of the Burnette Dam Intake Tunnel.

By Resolution 82-25 dated October 5, 1982, the Regional Water Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance.

The NC 151 Phase II NCDOT Non-Betterment Relocation Project in the amount of $633,600 is expected to be complete in Fiscal Year 2002/2003 and will be funded with future funds from a Fiscal Year 2002/2003 Revenue Bond Issue. This project will consist of relocating water lines in the right of way along NC 151 from SR 1110 (Warren Creek Road) at South Hominy to SR 1117 (Fowler Mountain Road). In addition to this NCDOT project, the Fiscal Year 2002 /2003 Revenue Bond Issue will fund several other NCDOT projects, Water Treatment Plant Improvements, Master Plan Improvements, and Annexation Projects.

At this time, it is necessary for the Authority to approve future funding for the NC 151 Phase II NCDOT Project so that a Utility Agreement between the City of Asheville and NCDOT can be signed. This agreement ensures that the utility work to be performed by NCDOT's contractor is fully reimbursed by the Authority.

Funding of $60,500 is also needed for grouting of the Burnette Dam Intake Tunnel. This work was scheduled for Fiscal Year 2001/2002 as part of the Dam Safety Improvements Projects and was to be funded with a Fiscal Year 2001//2002 Revenue Bond Issue. As a result of a recent annual dam safety inspection, this project has been changed to a more urgent status. A sample of the water in the intake tunnel showed that sediment was just beginning to seep through the cracks in the tunnel walls. Although there is no current danger, the structural engineer has recommended that the grouting of the tunnel be done this fall as an extra precaution. Funding is available from the Dam Renovations Project and from remaining balances in the North Conference Room Project and the Fiscal Year 1998/1999 Distribution System Improvements.

The following changes are recommended in the 35 Fund:

Revenues

	Current	Recommended
Contributions From Other Funds - Future	$2,805,298	$3,438,898

Appropriations

	Current	Recommended
North Conference Room	$22,106	$3,000
FY 98/99 Distribution System Impr.	$85,000	$83,863
Dam Renovations (Dam Safety)	$440,413	$460,656
Future NCDOT Water Projects	$2,805,298	$3,438,898

The Regional Water Authority will consider the approval of an amendment to Capital Project Ordinance 82-25 at the September 19, 2000, meeting. The Director of Water Resources Tom Frederick will give an update from the Water Authority Meeting.

The Regional Water Authority recommends approval of a budget amendment for Capital Project Ordinance 82-25 (35 Fund) to reflect an increase in the Future NCDOT Water Projects with the Department of Transportation to include the NC 151 Phase II Water Line Relocation Project and to provide funding for emergency grouting to the Burnette Dam Intake Tunnel by reprogramming funds from the North Conference Room and 1998/99 Distribution System Improvements.

ORDINANCE BOOK NO. 18 – PAGE 461

F. ORDINANCE NO. 2745 - BUDGET AMENDMENT TO AMEND THE WATER 29 FUND TO ESTABLISH FUNDING FOR THE $12 MILLION REVENUE BOND ISSUE SCHEDULED FOR FEBRUARY 2001

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 92-17 (29 Fund - Water Bond Capital Improvements Fund) to reflect the sale of revenue bonds in the amount of $12 million in approximately February 2001.

By Resolution 92-17 dated May 19, 1992, the Regional Water Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds. Staff recommends the following changes to the capital project ordinance:

Revenues:

Sale of 2001 Revenue Bonds	$12,000,000
	$12,000,000

Appropriations:

Bee Tree Spillway	$5,500,000
NCDOT Non-Betterment	2,874,000
NCDOT Betterment	291,000
Building Safety Improvements	1,000,000
Critical Needs Improvements	1,755,000
Master Plan Improvements	275,000
Bond Administration	200,000
Annexation	105,000
	$12,000,000

Another revenue bond issue totaling approximately $10,000,000 is scheduled in our five-year plan for the Fall of 2002 but does not need to be appropriated now.

The Regional Water Authority will consider the approval of an amendment to Capital Project Ordinance 92-17 at the September 19, 2000, meeting. The Director of Water Resources Tom Frederick will give an update from the Water Authority meeting.

The Regional Water Authority recommends approval of a budget amendment for Capital Project Ordinance 92-17 to establish funding for the $12 million revenue bond issue scheduled for February 2001.

ORDINANCE BOOK NO. 18 – PAGE 463

G. ORDINANCE NO. 2746 - ORDINANCE REDUCING SPEED LIMITS ON VARIOUS CITY STREETS

Summary: The consideration of an ordinance to reduce speed limits on several city streets.

The streets listed below have been identified for speed concerns by residents, City boards and commissions, City Council, the Asheville Police Department, Traffic Engineering staff, or other City staff. The Traffic Engineering staff has conducted field reviews of street geometry and conditions and/or speed studies. Many of these streets which exhibit the worst speeding problems are also being evaluated and prioritized for the installation of traffic calming measures per the Neighborhood Traffic Calming Policy. Determination of the appropriate speed limits for streets is one of the steps outlined in the Policy. The Police Department concurs with these recommendations.

15 Miles Per Hour

The following street is a local residential street which has a combination of street geometry features which warrants speed limits significantly slower than the typical speed limit for local residential streets of 25 mph. These features may include narrow widths, frequent on-street parking, poor sight distance, lack of sidewalks, steep grades, or horizontal or vertical curves. The recommended safe operating speed on this street is 15 mph:

Orchard Road

20 Miles Per Hour

The following streets are local residential streets which have a combination of street geometry features which warrants speed limits slower than the typical speed limit for local residential streets of 25 mph. These features may include narrow widths, frequent on-street parking, poor sight distance, lack of sidewalks, steep grades, or horizontal or vertical curves. The recommended safe operating speed on these streets is 20 mph. These streets include streets in two subdivisions in which the City recently took over maintenance of streets; Hills of Beaverdam and Hawthorne Village:

Clairmont Avenue
Colonial Place
Crescent Lane
Dallas Street
Deaver Street
Dellwood Street

406

Dorchester Avenue, between Florida Avenue and Burton Street
Elderberry Lane
Foxglove Court
George Washington Carver Street
Hedgerose Court
Houston Street
Larkspur Court
Marne Road
Morning Glory Drive
Nebraska Avenue
Nevada Avenue
Skyview Circle
Skyview Drive
St Dunstans Circle
Sunset Walk
Tacoma Circle
Trillium Court
Vandalia Avenue
Wayside Drive
Windflower Court
Windflower Way

25 Miles Per Hour

Most of the following streets are typical local residential streets without street geometry problems. The appropriate speed limit for typical local residential speeds is 25 mph. A few of these streets are residential collector streets which have a combination of street geometry features which warrants speed limits slower than the typical speed limit for residential collector streets of 30 mph. The recommended safe operating speed on these streets is 25 mph:

Albemarle Road
Arlington Street
Baird Street
Bear Creek Road, between Patton Avenue and Sand Hill Road
Beechwood Road
Birchwood Place
Blake Drive
Blanton Street
Brooklyn Road, between Taft Avenue and Wyatt Street
Burnside Drive
Caribou Road, between Hendersonville Road and West Chapel Road
Charlotte Street, between Evelyn Place and Woodlink Road
Chicory Lane
Clayton Avenue
Clement Drive
Coleman Avenue
Columbine Road
Courtland Avenue, between Montford Avenue and Courtland Place
Culvern Street
Dailey Drive
Dorchester Avenue, between Haywood Road and Florida Avenue
Edgewood Road (East)
Fairfax Avenue
Fairview Avenue

Fairview Road, between US 74 and Broadview Drive
Florida Avenue, between Burton Street and Dorchester Avenue
Forest Hill Drive
Furman Avenue
Glencliff Road
Gracelyn Road
Grandview Road
Grove Street
Hansel Avenue
Heathbrook Circle
Hibernia Street
Hillside Street
Hudson Street
Jeffress Avenue
Lanvale Avenue
Linden Avenue
Looking Glass Lane, between Wagon Road and Pleasant Ridge Drive
Looking Glass Lane, between Browndale Road and Wagon Road
Marlborough Drive
Mayfair Drive
Merchant Street
Morgan Avenue
Mount Clare Avenue
North Street
Oakland Road
Olney Street
Overbrook Road
Pearson Drive
Pleasant Ridge Drive
Prichard Road
Raleigh Road
Riverview Drive
Robindale Avenue
School Road (Malvern Hills)
Selwyn Road
Shannon Drive
Shiloh Road
Skyview Terrace
Starnes Avenue
Stockwood Road
Stockwood Road Extension
Tacoma Street
Taft Avenue
Virginia Avenue
Wagon Road
Warwick Road
Wellington Street
Wendover Road
Westwood Place, between Millbrook Road and Hazel Mill Road
Woodvine Road

30 Miles Per Hour

The following streets are typical residential collector streets without significant street geometry problems. The recommended safe operating speed on typical residential collector streets is 30 mph:

Beverly Road (West)
Caribou Road, between West Chapel Road and I-40
Kenilworth Road
Pinchot Drive
Racquet Club Road

The Engineering Department requests that City Council approve the ordinance amending these speed limit changes.

ORDINANCE BOOK NO. 18 – PAGE 465

H. ORDINANCE NO. 2747 - ORDINANCE TO PROHIBIT THROUGH TRUCK TRAFFIC ON AVON ROAD, BALM GROVE AVENUE, BARNARD AVENUE, COLUMBINE ROAD, DAILEY DRIVE, DORCHESTER AVENUE, EDGEWOOD ROAD (NORTH), FLORIDA AVENUE, MORGAN AVENUE, PINCHOIT DRIVE AND WOODVINE ROAD

Summary: The consideration of an ordinance to prohibit through truck traffic on additional residential streets.

The Traffic Engineering staff has conducted field reviews and collected data on the streets listed below. These streets are residential streets that are not appropriate for truck traffic. Alternative roadways exist that are more appropriate for truck traffic.

Avon Road
Balm Grove Avenue
Barnard Avenue
Columbine Road
Dailey Drive
Dorchester Avenue
Edgewood Road (North)
Florida Avenue
Morgan Avenue
Pinchoit Drive
Woodvine Road

The Engineering Department requests that City Council approve the ordinance prohibiting trucks on various residential streets.

ORDINANCE BOOK NO. 18 – PAGE 469

I. ORDINANCE NO. 2748 - ORDINANCE CREATING AN ADDITIONAL SCHOOL ZONE ON CLINTON AVENUE BETWEEN SULPHUR SPRINGS ROAD AND DUNN STREET

Summary: The consideration of an ordinance to create an additional school zone on Clinton Avenue.

The Traffic Engineering staff has performed the necessary traffic analysis and field review to determine locations for this school zone. The following street has been identified as needing a school zone during the times when students typically go to and leave school:

Clinton Avenue – 20 mph between 7:00 a.m. and 9:00 a.m. and between 2:00 p.m. and 4:00 p.m. on school days, between Sulphur Springs Road and Dunn Street.

The Engineering Department requests that City Council approve the ordinance including Clinton Avenue as a school zone addition.

ORDINANCE BOOK NO. 18 – PAGE 470

J. RESOLUTION NO. 00-174 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "FACULTY DRIVE" LOCATED OFF OF ASHEVILLE SCHOOL ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Faculty Drive."

Asheville School, Inc., owners of lots off of Asheville School Road, has petitioned the City of Asheville to accept the street name "Faculty Drive." The new street will begin at Asheville School Road and end at the dead end.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 178

K. RESOLUTION NO. 00-175 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "SCIENCE OF MIND WAY" LOCATED OFF OF SAND HILL ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Science of Mind Way."

Center for Creative Living, owners of lots off of Sandhill Road, has petitioned the City of Asheville to accept the street name "Science of Mind Way." The new street will begin at Sand Hill Road and end at the dead end.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 179

L. RESOLUTION NO. 00-176 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH R.C.I. PAINTING CONTRACTORS FOR MAINTENANCE ON THE WALL STREET PARKING GARAGE

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with R.C.I. Painting Contractors for maintenance of the Wall Street Parking Garage.

The Wall Street Parking Garage is seriously in need of periodic cleaning and repainting of the exterior and interior walls and removal of rust and repainting of all metal surfaces. During Fiscal Year 1999-2000, City staff sought estimates from contractors to perform the needed maintenance; however, the estimated cost was well beyond the funding available for the project.

As a result, initiation of the project was delayed until the current Fiscal Year when additional funds were made available.

Bids for the project were sought and three responses were received (two bids and one 'no bid"). The low bid of $35,500 was submitted by R.C.I. Painting Contractors. Their bid includes: pressure washing all exterior and interior walls; hand scraping to remove flaking paint; application of primer and two coats of paint to all walls; sanding, priming and painting all metal rails, window guards and doors. The work is warranted for twelve years. With contract award at this time, we anticipate that the painting work will be completed prior to onset of cold weather which would require postponement until next spring.

In addition to this painting project, as a separate but related initiative, staff has received proposals and will be awarding a contract for new awnings and any necessary repair of the awning supports at the Wall Street Parking Garage. This contract award will be made by the City Manager.

Council adopt the resolution which authorizes the City Manager to execute a contract with R.C.I. Painting Contractors.

RESOLUTION BOOK NO. 26 – PAGE 180

M. ORDINANCE NO. 2749 - BUDGET AMENDMENT FOR THE FAIR HOUSING ASSISTANCE PROGRAM

Summary: The consideration of a budget amendment to create a budget of $45,400 for the Fair Housing Assistance Program (FHAP) for Fiscal Year 1999/2000.

The City has been carrying out its fair housing program under contract with the Asheville-Buncombe Community Relations Council and Fair Housing Commission since January 1988, using HUD FHAP funds. The City's Community Development Division serves as Lead Entity and monitors the program.

On August 29, 2000, the City received notification of the grant awarded to the City for the current federal Fiscal Year 10/1/99-9/30/00. This notification required the City to draw down the funds no later than September 15, 2000. City staff has submitted the necessary paperwork to HUD to avoid losing these funds.

Community Development staff recommends adoption of the budget amendment to create a budget for the Fair Housing Assistance Program (FHAP) for Fiscal Year 1999/2000.

ORDINANCE BOOK NO. 18 – PAGE 471

N. INTRODUCTION OF BOND ORDER AUTHORIZING ISSUANCE OF $1,300,000 SANITARY SEWER BONDS

INTRODUCTION OF BOND ORDER AUTHORIZING ISSUANCE OF $670,000 EQUIPMENT BONDS

RESOLUTION NO. 00-177 - RESOLUTION CALLING FOR A PUBLIC HEARING ON BOND ORDERS ON OCTOBER 10, 2000, DIRECTING PUBLICATION OF NOTICE OF SAID PUBLIC HEARING AND FILING A DEBT STATEMENT

Summary: This is the introduction of Bond Orders Authorizing the Issuance of $1,300,000 Sanitary Sewer Bonds and $670,000 Equipment Bonds and the consideration of a resolution setting a public hearing upon said bond orders.

Bond Orders for both the $1,300,000 Sanitary Sewer Bonds and the $670,000 Equipment Bonds are being introduced to City Council at this time in order for text of the Bond Orders to be included in the associated Notices of Public Hearing. Below are the two bond orders being introduced, copies of which have been made available to the City Council:

BOND ORDER AUTHORIZING THE ISSUANCE OF $1,300,000 SANITARY SEWER BONDS OF THE CITY OF ASHEVILLE, NORTH CAROLINA

WHEREAS, the City Council of the City of Asheville, North Carolina deems it advisable to make the improvements hereinafter described; and

WHEREAS, an application has been filed with the Secretary of the Local Government Commission of North Carolina requesting Commission approval of the bonds hereinafter described as required by the Local Government Bond Act, and the Secretary of the Local Government Commission has notified the City Council that the application has been accepted for submission to the Local Government Commission.

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Asheville, North Carolina, as follows:

Section 1. The City Council of the City of Asheville, North Carolina has ascertained and hereby determines that it is necessary to extend sanitary sewer lines and acquire land and rights-of-way in land required therefor.

Section 2. In order to raise the money required to pay the costs of making the improvements described above, in addition to funds which may be available for such purpose from any other source, bonds of the City of Asheville, North Carolina are hereby authorized and shall be issued pursuant to the Local Government Bond Act of North Carolina. The maximum aggregate principal amount of such Sanitary Sewer Bonds authorized by this bond order shall be $1,300,000.

Section 3. A tax sufficient to pay the principal of and interest on said Sanitary Sewer Bonds when due shall be annually levied and collected.

Section 4. A sworn statement of the City's debt has been filed with the City Clerk and is open to public inspection.

Section 5. No debt shall be contracted during any fiscal year by the issuance of bonds pursuant to this bond order if the amount of such debt and if all other debt contracted during such fiscal year shall exceed two-thirds (2/3rds) of the amount by which the outstanding indebtedness of the City shall have been reduced during the next preceding fiscal year, unless the incurring of such debt shall be submitted to a vote of the people of the City and shall be approved by a majority of those who vote thereon.

Section 6. This bond order shall take effect thirty (30) days after its publication following its adoption, unless it is petitioned to a vote of the people within thirty (30) days after its publication as introduced, as provided in N. C. G. S. Section 159-60, and in that event, the bond order will take effect when approved by the voters of the City.

BOND ORDER AUTHORIZING THE ISSUANCE OF $670,000 EQUIPMENT BONDS OF THE CITY OF ASHEVILLE, NORTH CAROLINA

WHEREAS, the City Council of the City of Asheville, North Carolina deems it advisable to make the improvements hereinafter described; and

WHEREAS, an application has been filed with the Secretary of the Local Government Commission of North Carolina requesting Commission approval of the bonds hereinafter described as required by the Local Government Bond Act, and the Secretary of the Local Government Commission has notified the City Council that the application has been accepted for submission to the Local Government Commission.

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Asheville, North Carolina, as follows:

Section 1. The City Council of the City of Asheville, North Carolina has ascertained and hereby determines that it is necessary to purchase firefighting equipment.

Section 2. In order to raise the money required to pay the costs of purchasing certain firefighting equipment, in addition to funds which may be available for such purpose from any other source, bonds of the City of Asheville, North Carolina are hereby authorized and shall be issued pursuant to the Local Government Bond Act of North Carolina. The maximum aggregate principal amount of such Equipment Bonds authorized by this bond order shall be $670,000.

Section 3. A tax sufficient to pay the principal of and interest on said Equipment Bonds when due shall be annually levied and collected.

Section 4. A sworn statement of the City's debt has been filed with the City Clerk and is open to public inspection.

Section 5. No debt shall be contracted during any fiscal year by the issuance of bonds pursuant to this bond order if the amount of such debt and if all other debt contracted during such fiscal year shall exceed two-thirds (2/3rds) of the amount by which the outstanding indebtedness of the City shall have been reduced during the next preceding fiscal year, unless the incurring of such debt shall be submitted to a vote of the people of the City and shall be approved by a majority of those who vote thereon.

Section 6. This bond order shall take effect thirty (30) days after its publication following its adoption, unless it is petitioned to a vote of the people within thirty (30) days after its publication as introduced, as provided in N. C. G. S. Section 159-60, and in that event, the bond order will take effect when approved by the voters of the City.

Mr. Schaefer summarized that the Bond Orders state: (1) The projects being financed are necessary; (2)The purpose of the projects; (3) The maximum amount of the bonds; (4) Sufficient taxes will be levied to pay principal and interest when due; (5) A sworn statement of the City's debt has been filed and available to the public (the statement will be sworn and available on September 27, 2000); (6) No bonded debt in excess of the Two-Thirds Bonds limitations for the current fiscal year has been incurred; and (7) The Bond Orders will take effect thirty days after adoption and subsequent publication unless petitioned to a vote of the people as provided in N.C.G.S. 159-60.

The proposed resolution sets the public hearing on the Bond Orders for October 10, 2000, at 5:00 p.m.; directs the City Clerk to publish notice of the public hearings; and directs the Finance Director to file the statement of debt and other financial information.

The Bond Orders will be considered for adoption by City Council following the completion of the public hearings on October 10, 2000.

RESOLUTION BOOK NO. 26 – PAGE 181

O. RESOLUTION NO. 00-178 - RESOLUTION SETTING A PUBLIC HEARING FOR OCTOBER 10, 2000, TO VOLUNTARILY ANNEX BURNSIDE, PHASE 4 OF BILTMORE PARK

Summary: The consideration of a resolution fixing the date of a public hearing on October 10, 2000, on the question of annexation of property located west of Overlook Road and identified as Burnside, Phase 4, Biltmore Park.

Biltmore Farms, Inc. has submitted an annexation petition for Burnside, Phase 4, Biltmore Park. This area is adjacent to the existing City limits being immediately west of Burnside, Phase 3 which was annexed on 6/7/2000. Biltmore Park is generally located west of Overlook Road and north of Long Shoals Road. This annexation is pursuant to an agreement between Biltmore Farms, Inc. and the City of Asheville.

The area proposed for annexation consists of 11.4 acres and is platted for 12 single-family residential lots. Street access to this area is provided by White Ash Drive.

Utilities and streets are being developed by Biltmore Farms, Inc. City services will begin on the effective date of annexation. Biltmore Farms, Inc. has requested that the effective date of annexation be six months from the adoption of the ordinance.

City staff recommends City Council adopt a resolution fixing the date of a public hearing on October 10, 2000, on the question of annexation of property located west of Overlook Road and identified as Burnside, Phase 4, Biltmore Park.

RESOLUTION BOOK NO. 26 – PAGE 182

P. RESOLUTION NO. 00-179 - RESOLUTION SETTING A PUBLIC HEARING FOR OCTOBER 10, 2000, TO VOLUNTARILY ANNEX OAKBROOK, SECTION 2 OF BILTMORE PARK

Summary: The consideration of a resolution fixing the date of a public hearing on October 10, 2000, on the question of annexation of property located west of Overlook Road and identified as Oakbrook, Section 2, Biltmore Park.

Biltmore Farms, Inc. has submitted an annexation petition for Oakbrook, Section 2, Biltmore Park. This area is adjacent to the existing City limits being immediately east of Oakbrook, Section 1 which was annexed on 8/22/2000. Biltmore Park is generally located west of Overlook Road and north of Long Shoals Road. This annexation is pursuant to an agreement between Biltmore Farms, Inc. and the City of Asheville.

The area proposed for annexation consists of 24 acres and is platted for 40 single-family residential lots and a common area. The annexation also contains a small cemetery. Street access to this area is provided by White Ash Drive and Dianthus Drive.

Utilities and streets are being developed by Biltmore Farms, Inc. City services will begin on the effective date of annexation. Biltmore Farms, Inc. has requested that the effective date of annexation be six months from the adoption of the ordinance.

City staff recommends City Council adopt a resolution fixing the date of a public hearing on October 10, 2000, on the question of annexation of property located west of Overlook Road and identified as Oakbrook, Section 2, Biltmore Park.

RESOLUTION BOOK NO. 26 – PAGE 184

Q. MOTION SETTING A PUBLIC HEARING ON OCTOBER 10, 2000, TO CONSIDER REZONING PROPERTY LOCATED AT 38 SYCAMORE ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

R. MOTION SETTING A PUBLIC HEARING ON OCTOBER 10, 2000, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CHANGE THE METHOD OF CALCULATING THE FRONT SETBACK LINE

S. RESOLUTION NO. 00-180 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A LEASE AGREEMENT WITH THE UNITED STATES OF AMERICA FOR THE ARMY RESERVE CENTER AT 224 LOUISIANA AVENUE

Summary: The consideration of a resolution authorizing the City Manager to execute a lease with the United States of America for the Army Reserve Center at 224 Louisiana Avenue, Asheville, N.C.

In June, 1950, the City leased a tract of land at 224 Louisiana Avenue to the United States of America (Government) for construction and operation of an Army Reserve Center. The lease had a 50 year term and a one time payment of $1.00 rent for the entire term. A new lease has been negotiated subject to City Council approval.

The proposed lease to the Government has a term of 6 years at an annual rent of $60,000. The Government will also pay the cost of a completed land survey in the amount of $1,750.

According to the land survey by J. Glenn Haynes, the property comprises 8.857 acres of land. The Government retained ownership of the improvements under the previous lease so the rent is for land only. Richard Jacobs, MAI, was the source of the comparable information and advice to determine the market rent for the property.

Approval of the resolution will authorize the City Manager to execute the proposed lease with the Government for the property at 224 Louisiana Avenue.

City staff recommends City Council adopt the resolution authorizing the City Manager to execute a lease with the United States of America for the Army Reserve Center at 224 Louisiana Avenue, Asheville, N.C.

RESOLUTION BOOK NO. 26 – PAGE 186

T. RESOLUTION NO. 00-181 - RESOLUTION IN SUPPORT OF INCREASED COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME FUNDING

Summary: The consideration of a resolution urging our Congressional delegates to support an increase in the funds appropriated by Congress to HUD for the Community Development Block Grant (CDBG) and HOME Programs.

CDBG and HOME federal funds enable entitlement cities such as Asheville to provide local assistance for housing, urban revitalization, and economic development, benefiting low and moderate income people. Asheville's entitlement grants for FY 2000 are $1,565,000 in CDBG and $1,142,000 in HOME. The total of these grants is 5% less than we received in 1995. Adding the effects of inflation at 2% a year makes the effective amount 16% less than in 1995.

In essence, Congress has maintained roughly level funding for these programs over this period, but the number of entitlement communities and set-aside programs has increased, reducing the amount available to each entitlement community.

Within the next few weeks, Congress will complete its appropriations for Fiscal Year 2001. Current recommendations from the House and Senate Appropriations Committees would fund the CDBG and HOME programs at essentially the same levels as Fiscal Year 2000.

The U.S. Conference of Mayors, the national Community Development Association, and many other national organizations are pressing for "5 and 2": $5 billion for CDBG (a 1% increase over FY 2000) and $2 billion for HOME (a 25% increase). The combined increase would be 11%. Asheville would receive increases of approximately $72,000 in CDBG and $285,000 in HOME.

City staff recommends City Council approve the resolution.

RESOLUTION BOOK NO. 26 – PAGE 187

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO A CONDITIONAL USE PERMIT FOR A PARKING LOT ASSOCIATED WITH MILKO INC. TO BE LOCATED ON PROPERTY ZONED RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AT THE INTERSECTION OF DEAVERVIEW ROAD AND BEAR CREEK ROAD

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Vice-Mayor Cloninger opened the public hearing at 5:17 p.m.

Mr. Dan Baechtold, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), and City Exhibit 3 (Staff Report). This public hearing was advertised on September 15 and 22, 2000.

Mr. Baechtold said that this is the consideration of issuing a conditional use permit for a parking lot associated with Milko, Inc. to be located on property zoned RM-8 Residential Multi-Family Medium Density District at the intersection of Deaverview Road and Bear Creek Road.

The Technical Review Committee reviewed this project and took action to approve with conditions. This project is the first application for a conditional use permit under the new ordinance for ancillary non-residential uses in residential districts. Although this parcel of land (0.97 acres) is not located behind a "strip" commercial use, it does meet the location requirements set forth in the ordinance (Location Map attached to City Exhibit 3). This project involves the demolition of the existing residential structure, and use of the property as a parking area for employees of the Milko facility. The proposed site plan indicates that all of the mature trees on the property will be saved (Proposed Site Plan attached to City Exhibit 3). There will not be significant grading of the site.

The intersection of Deaverview Road and Bear Creek Road is a location that poses some challenges for determining the best land use. Although there are single-family uses present there, this corner lot is subject to a lot of traffic and is directly adjacent to the Milko industrial facility. Although a parking lot is not the ideal use for this corner, it is also difficult to expect this piece of property to continue as a single-family residential use. The current zoning of the property is Residential Multi-Family Medium Density. Under this proposal, the zoning would not change. Perhaps the ideal use for the property is some type of small-scale multi-family use. Until that time, staff felt it would be appropriate to allow this parking area as long as the existing trees are preserved, and the impacts on surrounding property owners are mitigated.

The approval of this ancillary use in this residential district holds the line on commercial intrusion into the residential zone. Under the ancillary uses ordinance, no further expansion is possible. The zoning of this parcel still reserves the parcel for multi-family use at some point in the future. Although surface parking is not the ultimate highest and best use of the property, allowing it in the interim is probably an appropriate use to provide transition between an intense industrial use and adjacent single-family uses. Planning staff is recommending conditions for the approval to ensure that the project mitigates impacts on surrounding property owners.

Planning and Development staff recommends approval of a conditional use permit for this location with the following conditions: (1) Protect the existing trees by expanding the planting islands, eliminating parking spaces as necessary to protect root zones, and using appropriate tree protection measures during construction; (2) Use pervious paving materials to allow stormwater to filtrate through to the ground; (3) Supplement the existing buffer of white pines by providing additional understory plantings and move the proposed buffer fence closer to the parking lot to provide additional room for plant growth; (4) Present a lighting plan for review and approval that provides the minimum light necessary to provide security and demonstrates that light will not spillover to adjacent properties; and (5) Sidewalks are required along Deaverview Road and Bear Creek Road and the design must be approved by the City Engineer.

Mr. Charles Gaither, President of Milko Inc., briefed City Council on what Milko Inc. is and their economic impact on our region. He explained that they are a good corporate neighbor and that they take their community responsibilities seriously. He said that this property is one of the few parcels that can help relieve their crowded condition. By properly landscaping, lighting, and fencing it, they can move their private vehicle parking. He noted that this will be for personal vehicle parking only. This would allow space for building expansion into what is now their parking area. He felt that by proper screening with trees and shrubs, their plan would cause no disruption to the neighborhood. He felt it may also be preferable to the present situation of having an often uninhabited house that might be used for illicit purposes (Applicant Exhibit 1).

Ms. Connie Chase, adjoining neighbor to the property, passed out pictures and a petition from local residents (Neighborhood Exhibits 1 and 2) supporting their opposition of the parking lot. She explained that the use for the property is residential and the applicant has found a way to get around the system, without having to even go through the Planning & Zoning Commission, to have a parking lot build on the property. She said that this lot has over 80 spaces and since they are open 24 hours a day, there will be people driving in and out of the lot all day and night long. She said that she talked with Mr. Gaither who explained to her that they needed more dry storage space on their property. She suggested since they currently have a parking lot in place, they should keep the exiting lot and look for a dry storage area somewhere else. She said they spent ten years remodeling their home and they counted on the house next to their property as a buffer for the Milko factory. She urged City Council not to allow this conditional use zoning.

Upon inquiry of Vice-Mayor Cloninger, Mr. Gaither acknowledged that they do run three shifts five days a week and two shifts on Saturday. He said that there is approximately 45-50 people on third shift.

After a question was raised by Councilman Peterson about the safety of pedestrians crossing Bear Creek Road, City Traffic Engineer Michael Moule agreed that City Council might want to impose a condition that staff look at further pedestrian issues and crossing improvements across Bear Creek Road and that any improvements made be at the expense of Milko.

Councilwoman Bellamy suggested the possible placement of a pedestrian crossing sign on Bear Creek Road, and after further discussion, that City Council impose an additional condition that Milko create another entrance on their existing property.

Councilman Hay suggested that a condition be worded that pedestrian amenities be included as recommended by the City's Traffic Engineer, which could include all the issues raised by Councilman Peterson and Councilwoman Bellamy. Mr. Moule agreed and noted that the condition could include adjustments to the entrance to the Milko site so that people who walk across Bear Creek Road would be encouraged to use the safer pedestrian crossing area.

Mr. Gaither said that he was open to suggestions on the positioning of a crosswalk across Bear Creek Road and that they do intend to have another entrance through their existing chain-link fence directly across the road from wherever that crosswalk is located.

City Attorney Oast said that a condition can be worded in such a way that any improvements that are required as a result of the City's Traffic Engineer's recommendation would have to be done at the expense of Milko and unless that condition is complied with, then the conditional use permit would have to be revoked.

Councilman Worley requested a condition be added that only parking of personal vehicles be allowed on this lot and no parking of commercial vehicles on this lot be allowed.

Mr. Baechtold noted that since the ordinance states that for uses like this that all activities shall be conducted between the hours of 7:00 a.m. – 9:00 p.m. unless City Council determines other operating hours are appropriate. If City Council intends to allow a third shift to park on that lot, that would need to be specified.

Upon inquiry of Vice-Mayor Cloninger, Mr. Baechtold briefly explained the steps that City staff will take to ensure the parking lot will at least have the minimum light necessary to provide security and that light will not spillover to adjacent properties.

There being no request from the applicant for rebuttal, Vice-Mayor Cloninger closed the public hearing at 5:53 p.m.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

City Attorney Oast said that the Technical Review Committee (TRC) has approved some information but City Council is not bound that that decision. The TRC review indicates that if the project is built, it can satisfy our technical requirements. In addition, he offered to review the conditions for conditional use permits.

Councilwoman Field moved to approve the conditional use permit for a parking lot associated with Milko Inc. at the intersection of Deaverview Road and Bear Creek Road, with the following conditions: (1) Protect the existing trees by expanding the planting islands, eliminating parking spaces as necessary to protect root zones, and using appropriate tree protection measures during construction; (2) Use pervious paving materials to allow stormwater to filtrate through to the ground; (3) Supplement the existing buffer of white pines by providing additional understory plantings and move the proposed buffer fence closer to the parking lot to provide additional room for plant growth; (4) Present a lighting plan for review and approval that provides the minimum light necessary to provide security and demonstrates that light will not spillover to adjacent properties; (5) Sidewalks are required along Deaverview Road and Bear Creek Road and the design must be approved by the City Engineer; (6) The City's Traffic Engineer look at further pedestrian issues and crossing improvements across Bear Creek Road., which issues could include adjustments to the entrance to the Milko site so that people who walk across Bear Creek Road would be encouraged to use the safer pedestrian crossing area and that any improvements that are required as a result of the City's Traffic Engineer's recommendation would have to be done at the expense of Milko; (7) That the parking lot be restricted to personal vehicles only and no commercial vehicles; and (8) With regard to operating hours on the lot, a third shift is allowed to park on the lot. This motion was seconded by Councilwoman Bellamy and carried unanimously.

City Attorney Oast noted that he will bring back an ordinance granting the conditional use permit with the conditions outlined above for City Council consideration at their next formal meeting on October 10, 2000.

B. PUBLIC HEARING RELATIVE REZONING SEVEN LOTS LOCATED ON ACTON CIRCLE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT, HIGHWAY BUSINESS DISTRICT AND NEIGHBORHOOD BUSINESS TO HIGHWAY BUSINESS AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

ORDINANCE NO. 2750 - ORDINANCE TO REZONE SEVEN LOTS LOCATED ON ACTON CIRCLE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT, HIGHWAY BUSINESS DISTRICT AND NEIGHBORHOOD BUSINESS TO HIGHWAY BUSINESS

ORDINANCE NO. 2751 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON ACTON CIRCLE

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to vote to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Vice-Mayor Cloninger opened the public hearing at 6:00 p.m.

Mr. Dan Baechtold , Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), and City Exhibit 3 (Staff Report). This public hearing was advertised on September 15 and 22, 2000.

Mr. Baechtold said that this is the consideration of an ordinance to rezone seven lots located on Acton Circle from RM-6 Residential Multi-Family Low Density District, Highway Business and Neighborhood Business to Highway Business, and issuance of a conditional use permit (conditional use zoning) for a grocery store and associated retail uses.

The Planning and Zoning Commission reviewed this project on September 6, 2000, and took action to recommend approval of the rezoning and conditional use permit with conditions. The majority of this property (3.66 acres) is already zoned Highway Business, and the proposed use is a permitted use in the Highway Business District. About 2.25 acres are zoned Neighborhood Business, and the remaining 1.06 acres are zoned RM-6. This rezoning would change the designation for the entire property to Highway Business – Conditional Use. The property is adjacent to Highway Business zoning on two sides. The applicant proposes to construct a Bi-Lo grocery store of approximately 42,000 square feet on the site, and construct an additional 12,000 square feet of supporting retail use. The conditional use zoning tool offers an opportunity for the City of Asheville to regulate the appearance, function, and impacts of development on this corner. Further, regulation of building placement and design can ensure that this development contributes to the character of this commercial corridor rather than detracts from it.

The primary impact of this development is traffic. Smoky Park Highway is a five-lane facility capable of handling a large volume of traffic (Location Map attached to City Exhibit 3). Acton Circle is a two-lane road that currently carries significant traffic during peak travel times. The developer submitted a Traffic Impact Analysis (TIA) for this development that considers the traffic generated by this site, existing background traffic, and proposed future traffic increases, including traffic generated by the new Home Depot. The City Traffic Engineer and the N. C. Department of Transportation (NCDOT) have reviewed the TIA and concur with the findings. Based on the review, the City Traffic Engineer is recommending conditions for the approval of this project to mitigate the traffic impacts. Those conditions are reflected in the recommendation of the Planning and Zoning Commission and the staff recommendation below.

The Highway Business District is appropriate for this property based on the zoning pattern in the area. Intense commercial uses would be allowed under the existing zoning on the portion that is already zoned Highway Business. Applying the conditional use zoning tool in this case benefits the City of Asheville because it provides the opportunity to regulate the intensity of use on the site, the design and function of the site, and the opportunity to mitigate traffic impacts.

The site plan and building elevation drawings include measures to define and enhance this commercial corner. (Site Plan attached to City Exhibit 3) Two retail buildings will be placed near the street to screen the parking from the street, so that visually, the site will be defined by architecturally pleasing buildings rather than a sea of asphalt. The site plan shows an internal walkway in the parking lot and sidewalks along both public streets. The Planning and Zoning Commission voted unanimously to recommend approval of this request. No one from the public spoke in opposition.

Planning and Development staff recommends approval of a motion to rezone property located at Acton Circle to Highway Business-CU and approval of a conditional use permit with the following conditions: (1) Eliminate left turn movements from the primary driveway on Smoky Park Highway; (2) Construct an additional approach lane from Acton Circle onto Smoky Park Highway (pending NCDOT approval); and (3) At the signalized intersection, add a protected left turn phase from Smoky Park Highway onto Acton Circle in cooperation with NCDOT.

Mr. Baechtold said that based on discussions with the NC DOT, the third condition is not necessary at this time.

Upon inquiry of Councilman Peterson, City Traffic Engineer Michael Moule explained why he didn't feel that there needed to be any additional improvements to the intersection of Acton Circle from Monte Vista.

There being no request from the applicant for rebuttal, Vice-Mayor Cloninger closed the public hearing at 6:18 p.m.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Worley moved to adopt Ordinance No. 2750 to rezone seven lots on Acton Circle from RM-6 Residential Multi-Family Low Density District, Highway Business and Neighborhood Business to Highway Business (conditional use zoning). This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 473

Councilman Worley moved to adopt Ordinance No. 2751 granting the conditional use permit for seven lots on Acton Circle with the following conditions: (1) Eliminate left turn movements from the primary driveway on Smoky Park Highway; and (2) Construct an additional approach lane from Acton Circle onto Smoky Park Highway (pending NCDOT approval). Said motion also instructs the City Attorney to prepare the Order for the Mayor's signature reflecting information presented by staff and subject to the conditions outlined by staff. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 475

C. PUBLIC HEARING RELATIVE REZONING PROPERTY LOCATED AT CLINGMAN AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

ORDINANCE NO. 2752 - ORDINANCE TO REZONE PROPERTY LOCATED AT CLINGMAN AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 2753 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT CLINGMAN AVENUE

Councilman Worley moved to excuse Councilwoman Bellamy from participating in this issue due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to vote to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Vice-Mayor Cloninger opened the public hearing at 6:24 p.m.

Ms. Stacy Merten, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), and City Exhibit 3 (Staff Report). This public hearing was advertised on September 15 and 22, 2000.

Ms. Merten said that this is the consideration of an ordinance to rezone property located at Clingman Avenue from RM-8 Residential Multi-Family Medium Density District to Central Business District, and issuance of a conditional use permit (conditional use zoning).

The Planning and Zoning Commission, at their September 6, 2000, meeting, reviewed and recommended approval to conditionally rezone a 0.59 acre parcel, consisting of three tracts (PIN Nos. 9648.05-18-1834, 1800, and 0765) located on Clingman Avenue just south of the City Maintenance Facility (Location Map attached to City Exhibit 3). The subject property is located in a RM-8 zoning district that is adjacent to a Community Business I District and in close proximity to the Central Business District. The site is currently vacant. The proposal is to construct a three story condominium complex with 16 units and a community room (Site Plan and Building Drawing attached to City Exhibit 3).

The proposed development is congruous with the City of Asheville's Smart Growth policies in that it is providing for higher density infill development in the downtown area. The proposed development is next to an existing bus stop and within walking distance of Aston Park. In the absence of any other high density zoning district, the Central Business District – CU zoning will permit the project to be developed at a density that will economically allow the construction of a more attractive and appropriate building for this visible urban site. The conditional use permit will ensure that the use and design of the project will be compatible with the existing neighborhood. It is the intent of Mountain Housing to create an appropriate transition from the commercial, urban streets and corners above to the historic, mostly single-family scale development. The project will provide a mix of affordable and market-rate housing.

The Planning and Zoning Commission voted unanimously to recommend approval of the conditional use rezoning with the following conditions: (1) Tree protection device details must be provided; (2) Sidewalk construction details must be provided; and (3) That the project be regulated by the site plans and the building plans as submitted primarily with regard to massing and fenestration and that any minor changes to the building materials be reviewed by the Planning & Development Director.

The Planning & Zoning Commission also highly recommended that a covered transit stop be provided.

The Planning and Development staff recommends approval of the Conditional Use Rezoning, with conditions as outlined above.

Mr. Chris Eller, project engineer with Land Design, noted that their goal is to serve as an anchor to the revitalization of the West End/Clingman Avenue Neighborhood (WECAN), they have maintained the fabric of the existing neighborhood, and after meeting with the neighborhood community, they have given the applicant its unanimous support for this proposed development.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities Inc., passed out to City Council a letter dated August 21, 2000, (Applicant Exhibit 1) and explained the concept of their development of condominiums at the corner of Clingman Avenue and Merritt Street, including the need for the conditional use zoning of Central Business District.

Mr. Robert S. Griffin, Architect, reviewed with Council the main floor plans (Applicant Exhibit 2). He responded to various questions from Council with regard to the project.

Upon inquiry of Councilwoman Field about who will maintain the courtyard area, Mr. Dedman responded that Mountain Housing Opportunities will be involved in the long-term maintenance but that the condominium association will be primarily responsible for the maintenance.

When Councilwoman Field asked why the Central Business District is the requested rezoning, Planning & Development Director Scott Shuford said that it was for the density.

Councilwoman Field felt that the project was great, however, questioned zoning that piece of property Central Business District with no actual connection to the already existing Central Business District zoning.

After a brief discussion about possibly rezoning the City's Parks and Recreation Maintenance Facility (across the street from the subject property) to Central Business District, Mr. Dedman said that he would personally support that, however, he would want to discuss any proposed changes with the WECAN neighborhood association. In addition, Mr. Shuford said that Planning staff is now in the process of working with a Mountain Housing Opportunities project involving the WECAN neighborhood. Once that plan is in place and we see what the designers come up with, City staff can then be in a better position to advise City Council on the ultimate zoning of this general area. He felt it would ultimately be some form of commercial and Central Business District would not be out of place at that location.

Ms. Gloria Howard-Free was concerned about traffic as it now exists on Clingman Avenue, what are the results from the traffic studies that have been performed in order to determine how traffic will flow with the increased density from this project, if the increased traffic will be a safety hazard for people who chose to walk, and also if there has been any environmental impact statement made on this project.

Ms. Merten stated that a traffic impact analysis was not required for this project nor was an environmental impact statement. However, she did note that there were several other design standards reviewed and approved.

With regard to traffic issues raised by Ms. Howard-Free, Traffic Engineer Michael Moule stated that the only unusual traffic situation at this location is that Merritt Street comes into Clingman Avenue at an almost signalized intersection. City staff is looking at doing some marking and signing changes to help facilitate that street to operate. He felt that 16 units in the development will generate approximately 96 trips per day which isn't that many trips compared to what is already on Clingman Avenue.

There being no request from the applicant for rebuttal, Vice-Mayor Cloninger closed the public hearing at 6:48 p.m.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Hay moved to adopt Ordinance No. 2752 to rezone property on Clingman Avenue from RM-8 Residential Multi-Family Medium Density District to Central Business District (conditional use zoning). This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 480

Councilman Hay moved to adopt Ordinance No. 2753 granting the conditional use permit for property located at Clingman Avenue with the following conditions: (1) Tree protection device details must be provided; (2) Sidewalk construction details must be provided; (3) That the project be regulated by the site plans and the building plans as submitted primarily with regard to massing and fenestration and that any minor changes to the building materials be reviewed by the Planning & Development Director; and (4) That a covered transit stop be provided. Said motion also instructs the City Attorney to prepare the Order for the Mayor's signature reflecting information presented by staff and subject to the conditions outlined by staff. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 482

It was the consensus of City Council to have City staff review the zoning of the entire area.

At 6:50 p.m., Vice-Mayor Cloninger announced a short break.

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 00-182 - RESOLUTION ESTABLISHING THE MINIMUM PRICE AND DIRECTING THE CITY CLERK TO ADVERTISE A REQUEST FOR PROPOSALS REGARDING THE DEVELOPMENT OF EAST END PLACE SUBDIVISION

Mr. Randall Barnett, Rehab Loan Specialist, reviewed with City Council the following information presented to City Council at their worksession on September 5, 2000.

The Community Development Division has prepared a plan for the sale and redevelopment of land located in the East End/Valley Street Community Improvement Area known as East End Place and seeks authorization to advertise a Request for Proposals for sealed bids.

East End Place is a proposed subdivision located on a two acre tract on Martin Luther King Jr. Drive. The subdivision plan comprises seven (7) lots and a short cul-de-sac. The plan has been approved by the Technical Review Committee.

The proposed lots have been appraised as indicated and the sum of the values, $77,000, is the amount proposed as the minimum price for the land.

The successful redeveloper will be required to pay not less than the minimum price established for the lots; to construct the infrastructure, i.e. street, sidewalk, water lines, sewer and storm drainage; and to build an affordable home on each lot with a projected sale price not to exceed $90,000. The homes proposed must contain at a minimum 960 square feet, 3 bedrooms and 1 1/2 baths. The project must be started within three (3) months and completed within twenty-four (24) months after conveyance of the property. The City through allocated Community Development Block Grant (CDBG) funds will provide $78,000 toward the cost of the infrastructure.

The homes must be sold to households with incomes not exceeding 80% of the area median income. The City through allocated Community Development Program Income will provide secondary financing to the buyers in an amount not to exceed $11,000 per lot.

The advertisement for sealed bids, if approved by Council, will include the provision that proposals will be evaluated on the Redeveloper's qualifications and the quality of the proposed homes as well as the amount bid.

Approval of the resolution will establish the minimum price for East End Place at $77,000.00 and initiate the sale of the property through the sealed bid process as provided in N. C. Gen. Stat. sec. 160A-268.

Community Development staff recommends adoption of the resolution.

At the worksession on September 5, 2000, City staff was instructed to meet with the area residents again to discuss the proposed subdivision plan, address any concerns they may have especially with regard to building on the embankment and the proximity of the proposed subdivision with their homes.

As a result of said meeting, which occurred on September 19, 2000, Mr. Barnett reviewed with City Council the following chronology and efforts taken in developing the two acres of land on Martin Luther King Jr. into the East End Place Subdivision. In the early 1980's, when the Redevelopment Commission cleared the neighborhood of its slums and blight, it took out several small grocery stores. The neighborhood residents wanted some land to be set aside for a new store. This two acres was zoned neighborhood commercial. The lot sat vacant for over a decade with no interest from developers. In the mid 1990's, some physicians pursued the idea of locating their office on the commercially zoned property. By then, new residents opposed the original plan for a commercial area in their neighborhood. They convinced the City to rezone the property to residential, however, there was still no development interest from the private sector.

In 1997, Community Development staff proposed developing the lot as a City project using CDBG funds. Meetings were held with the neighborhood association to establish a design for affordable housing. A total of 29 people took part in two meetings in May of 1997. Many possible site designs were discussed, and eventually a layout of seven single family homes around a cul-de-sac was adopted, with resident support. By October 1998, the design had been completed by the City's Engineering Department, costed, and approved. Additional CDBG funds were allocated in May 1999. In July 1999, the infrastructure work was bid, but the lowest bid was disappointingly high, at $116,000. This exceeded the funds available. City staff looked into alternative ways to develop the site and decided to try again to attract a private developer to develop the site, using the CDBG funds as a subsidy. This was the proposal submitted to City Council at their September 5 worksession. A further neighborhood meeting was held on September 19, 2000, at the request of City Council. At this meeting, residents' concerns about undermining the slope above the site were satisfied, but new concerns about density were raised. Several residents called for a new design with no more than six units.

Mr. Barnett reviewed with Council the costs to date for this project: Survey, appraisal, application fees -$1,665; Engineering in-house survey and design (250 hours)- $15,000; and Community Development staff time has not been estimated but probably 60-100 hours to date.

Mr. Barnett said that it is staff's proposal to put out an RFP to the community of developers, both profit and non-profit, to take on this project using our CDBG funds to do the infrastructure and have a seven lot affordable housing project on this site.

When Councilwoman Bellamy asked if any of the comments from the neighborhood meeting on September 19, 2000, were incorporated into the plan, Mr. Barnett explained that staff did answer all their concerns, however, they wanted a new design with no more than six units and that was not incorporated into the plan. Other issues raised at the meeting by residents were things like dust from the project, and inconvenience of the neighbors as pavement and sidewalks are being poured. He said that those issues will be worked out with the contractor.

Councilwoman Bellamy explained the residents' concern about having six units instead of seven. She said these homes are not starter homes and most African Americans usually don't move. As a result, they were concerned about the size of the homes with no opportunity to build on.

Mr. Barnett said that that particular concern was addressed in that while the house is being built, the family could work with the builder for future design of what could be added on.

Vice-Mayor Cloninger said that their concern may have been that with seven lots, that the lots wouldn't be large enough to allow for expansion and meet various setback requirements.

Community Development Director Charlotte Caplan said that under this design you can see the culvert that runs at the foot of the slope and very clearly no part of any house can cross that culvert, thereby there is no possibility of the slope being undermined. And although the location of the houses on each lot is only schematic, they will look for the developer to come with a proposal for actually designing the homes. As to the expandability of housing, that is not something they have tried to build in. That was not an issue that was brought up at all in the development of the Consolidated Strategic Plan. They looked at issues like handicapped accessibility; location of housing in relation to transportation, employment and jobs; and the efficient use of land. Having housing units that are capable of being expanded is not a design feature that was considered as something that needed to be built into the plan. She felt that some of the lots would be appropriate for design that had the possibility of building on later, and some of them wouldn't.

Upon inquiry of Vice-Mayor Cloninger, Ms. Caplan said that the exact design of the house and the square footage will be up to the developer. However, staff is proposing to require in the RFP that the homes be not less than 960 square feet and that each of them should have three bedrooms and at least 1-1/2 bathrooms. Obviously in considering the proposals that are received, there is a balancing between the size of the house, the affordability of the house, and also the quality of design and construction. City staff will be reviewing the proposals and evaluating the proposals to maximize both the size and quality and affordability of the homes. She added that if we take out one unit and therefore all of the development costs, not to mention the re-design costs, have to be shared between six houses, rather than seven houses. She would expect the costs of each house to raise by approximately $3-4,000, simply because a smaller number of houses have to share the fixed costs of development.

Councilwoman Bellamy noted that the residents do want this subdivision, however, the site is deceiving and on the ground you can see how seven houses are ineffective. She said the best example of this is the units on George Washington Carver, in that the houses are in close proximity in a small space. She noted several good examples of successful projects in Rankin Heights, in Oakley and in Shiloh.

Councilman Worley said that perhaps the social patterns in this neighborhood in terms of home ownership may not have been taken into account. He said there may not be enough room in the design to allow expansion to reasonably happen. He wanted to be comfortable in striking the right balance realizing that the bigger the house, the less affordable it will be.

Ms. Dorothy McDay, resident on Martin Luther King Drive, was concerned about the increased traffic and where the two cars per each house would park. As close and tight as the seven houses will be will only cause a lot of problems because there is one driveway going in. She was totally against seven houses being built, and even felt that six houses were too many.

Ms. D. Hines voiced concerns about where the vehicles will park that belong to the residents in the new subdivision. She explained that when the houses are so close, that there will be a lot of tension. She was in favor of building housing in the subdivision, but urged Council to reduce the units to six.

Upon inquiry of Vice-Mayor Cloninger, Planning & Development Director Scott Shuford said that the RFPs will not come back to City Council unless Council wants to see the final plan. He explained that subdivisions are approved by the Technical Review Committee and they can be appealed to the Planning & Zoning Commission. Again, this is a concept that shows a couple of shared driveways. The ultimate design may not match this concept. He said that they have had some adjustments in how they would approach a cul-de-sac and they may be able to have a few dollars saved with a smaller cul-de-sac on East End Place.

When Councilwoman Field asked if this site would be better served as multi-family, Mr. Shuford said that the community desires single-family homes.

Mr. Eric Goslin, area resident and real estate agent, said that in the subdivision's current design, he doesn't see how it is marketable. He felt that low income people are not willing to spend nor are they willing to buy into this subdivision because of the shared drive issue and also the fact that there is no availability of land to further add onto the house. Also, access onto Martin Luther King Jr. Drive from two of the houses will be hard due to a blind spot. He suggested having six units built and have one drive going out on East End Place.

Ms. Glenda McDowell, President of the East End/Valley Street Association, urged City Council to do this project. She said that as the years go by, neighborhoods change and so do their opinions. They have been waiting since 1969 for single family homes in this community. In defense of the City, she explained that five homes were originally proposed for this site and it was the residents at the meeting in May of 1997 that wanted seven homes built.

Upon inquiry of Vice-Mayor Cloninger, Ms. Caplan said that if a developer felt he could not market seven units on that property, in all likelihood they would not respond to the RFP.

As an architect, Councilwoman Field said that she sees many ways to expand on the lots. Staff has worked long and hard on this project and she felt it was time to move forward.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Bellamy moved the East End Place Subdivision plan be comprised of six lots. This motion was seconded by Councilman Peterson.

Councilwoman Field made a substitute motion that the East End Place subdivision be comprised of seven lots. This motion was seconded by Councilman Hay. Said motion was defeated on a 3-3 vote, with Vice-Mayor Cloninger, Councilwoman Field and Councilman Hay voting "yes" and Councilwoman Bellamy, Councilman Peterson and Councilman Worley voting "no".

Therefore, a vote was taken on the original motion made by Councilwoman Bellamy and seconded by Councilman Peterson that the East End Place Subdivision plan be comprised of six lots. Said motion carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 188

V. NEW BUSINESS:

A. RESOLUTION NO. 00-183 - RESOLUTION APPOINTING MEMBERS TO THE ADA COMPLIANCE COMMITTEE

Vice-Mayor Cloninger said that this is the consideration of a resolution appointing members to the Americans with Disabilities Act Compliance Committee.

The terms of Carole Williams and Glenda McDowell, as members on the ADA Compliance Committee, expired on August 22, 2000.

At City Council's worksession on September 5, 2000, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Ms. Williams (representing the business or non-profit sector) and Ms. McDowell (representing the education and health/medical profession) to each serve an additional three year term, terms to expire August 22, 2003, or until their successors have been appointed.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 00-183. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 189

B. RESOLUTION NO. 00-184 - RESOLUTION ENDORSING AN APPOINTMENT TO THE OPPORTUNITY CORPORATION OF MADISON AND BUNCOMBE COUNTIES

Vice-Mayor Cloninger said that this is the consideration of a resolution endorsing the reappointment of Ms. Cathy Pollock as one of the City's representatives to the Opportunity Corporation of Madison-Buncombe Counties.

The term of Ms. Cathy Pollock, as a City representative to the Opportunity Corporation of Madison-Buncombe Counties, expired April 22, 2000.

The Opportunity Corporation has asked that the Mayor reappoint Ms. Pollock to serve on their Board for an additional three year term, term to expire in April of 2003.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Bellamy moved for the adoption of Resolution No. 00-184. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 190

C. RESOLUTION NO. 00-185 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING AND ZONING COMMISSION

Vice-Mayor Cloninger said that this is the consideration of a resolution appointing members to the Planning & Zoning Commission.

The terms of Jan Davis and Billie Buie, as members on the Planning & Zoning Commission, expired on August 14, 2000.

At City Council's worksession on September 5, 2000, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Davis and Ms. Buie to each serve an additional three year term, terms to expire August 14, 2003, or until their successors have been appointed.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 00-185. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 191

D. RESOLUTION NO. 00-186 - RESOLUTION APPOINTING MEMBERS TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Vice-Mayor Cloninger said that this is the consideration of a resolution appointing a member to the River District Design Review Committee.

Kimberly Hodges has resigned as a member of the River District Design Review Committee leaving an unexpired term until September 1, 2001.

At City Council's worksession on September 5, 2000, City Council instructed the City Clerk to prepare the proper paperwork to appoint Mr. Ken Fulford (design professional) to serve the unexpired term of Ms. Hodges, term to expire September 1, 2001, or until his successor has been appointed.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 00-186. This motion was seconded by Councilman Peterson and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 192

E. RESOLUTION NO. 00-187 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Cloninger said that this is the consideration of a resolution appointing a member to the Asheville-Buncombe County Tourism Development Authority to serve a three year term.

The term of Don Tomlinson (representing an owner or operator of a hotel with over 100 rooms) expired on August 30, 2000.

At City Council's worksession on September 5, 2000, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Tomlinson to serve an additional three year term, term to expire August 30, 2003, or until his successor has been appointed.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 00-187. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 193

F. RESOLUTION NO. 00-188 - RESOLUTION APPOINTING MEMBERS TO THE VICTORIA OF ASHEVILLE BOARD OF DIRECTORS

Vice-Mayor Cloninger said that this is the consideration of appointing members to the Board of Directors of Victoria of Asheville Inc.

The terms of Doug Spell, Bill Schaefer and Ben Durant, as members of the Board of Directors of Victoria of Asheville Inc., expire on November 29, 2000.

At City Council's worksession on September 5, 2000, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Spell, Mr. Schaefer and Mr. Durant to each serve an additional three year term, terms to expire November 29, 2003, or until their successors have been appointed.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 00-188. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 194

G. RESOLUTION NO. 00-189 - RESOLUTION APPOINTING A MEMBER TO THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON COUNTY

Vice-Mayor Cloninger said that this is the consideration of a resolution appointing a member to the Regional Water Authority of Asheville, Buncombe and Henderson County to serve a three year term.

The term of J. Lewis Daniels expires on September 30, 2000.

At City Council's worksession on September 5, 2000, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Daniels to serve an additional three year term, term to expire September 30, 2003, or until his successor has been appointed.

Vice-Mayor Cloninger said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 00-189. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 195

VI. OTHER BUSINESS:

A. RESOLUTION NO. 00-190 – RESOLUTION CONFERRING MAYOR'S POWERS AND DUTIES UPON VICE-MAYOR

City Attorney Oast read the following resolution: G.S. 160A-70 provides for the election of a Mayor pro tempore, and further provides for the powers and duties of the Mayor to be conferred by Council upon the Mayor pro tempore, in the absence of the Mayor, and Sec. 10 of the Asheville City Code, and Rule 10 of City Council's Rules of Procedure provide to similar effect with respect to the office of Vice-Mayor; and, Mayor Sitnick is absent from the City and is not anticipated to return until October 1, 2000. Now, therefore, be it resolved by the City Council of the City of Asheville that the powers and duties of Mayor are hereby conferred upon the Vice-Mayor, effective immediately and continuing until 8:00 a.m. on October 1, 2000, or until such sooner time as the City Manager is advised that the Mayor is no longer absent.

Councilman Hay moved for the adoption of Resolution No. 00-196. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 196

B. LAWSUIT

The City was served with a Petition for Review of Annexation Ordinance on August 11, 2000, which is generally described as follows: Ridgefield Properties, et al. v. City of Asheville. The nature of proceeding is to declare the annexation ordinance for Annexation Area 2001-D to be null and void and to declare Annexation Area 2001-D not eligible for annexation by the City of Asheville. This matter will be handled by William F. Slawter.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Vice-Mayor Cloninger adjourned the meeting at 7:48 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - October 3, 2000 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Senior Opportunity Center Roof Replacement Contract

Summary: The consideration of a resolution authorizing the City Manager to enter into a roof replacement contract for the Senior Opportunity Center.

In an effort to maintain City facilities, City staff, through the capital improvement process, has determined the Senior Opportunity Center requires a new roof. City staff solicited sealed bids from eleven roofing contractors, three of which were minority contractors, to supply and install a new roofing system. City staff received bids from four qualified bidders as follows:

Construction Advantage, Inc.	$43,715.00
Service One, Inc.	$42,483.00
Stroup Sheet Metal Works, Inc.	$42,459.00
Carolina Mountain Roofing and Const., Inc.	$42,187.00

City staff has reviewed all bids and determined that Carolina Mountain Roofing and Construction, Inc. is the lowest bidder. City staff recommends acceptance of the total bid amount of $42,187.00.

Approved funding is available in the capital improvement project account to pay for this roof replacement for Senior Opportunity Center.

The Parks and Recreation Department requests City Council approve the City Manager to enter into a contract for $ 42,187.00 with Carolina Roofing and Construction, Inc., for the roof replacement contract at the Senior Opportunity Center.

Budget Amendment for 2000 Senior Center Appropriation

Summary: The consideration of a budget amendment, in the amount of $12,194, for the annual appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging, to establish a budget for the next phase of improvements at the Senior Opportunity Center and Harvest House.

The City of Asheville applied for funds in September 2000 for the 2000 Senior Center Allocation from the State of North Carolina, Department of Health and Human Services, Division on Aging. The allocation was recently awarded in the amount of $12,194 and designated for facility improvements and purchasing equipment at Senior Opportunity Center and Harvest House.

The Parks and Recreation Department is responsible for the management and operation of two senior centers. The annual allocation from the State of North Carolina will assist the department in implementing facility improvements or purchasing equipment and supplies.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $12,194, to establish a budget for the next phase of improvements at Senior Opportunity Center and Harvest House.

Motorola Renewal Maintenance Agreement on City's Radio System

Summary: The consideration of a resolution authorizing the City Manager to execute a service agreement renewal with Motorola Communications and Electronics Inc. to provide maintenance of the City's radio communication system for another year at the cost of $12,611.30 per month.

Motorola Communications and Electronics, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. Effective with the service agreement covering the period of September 1994 through August 1995, the maintenance cost per unit of equipment has been fixed. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of September 1, 2000, through August 31, 2001, remains fixed at the original cost per unit.

This renewal agreement reflects a monthly increase of $156.85, which covers additional equipment purchased by the City that has come out of warranty during the past year. The monthly cost of this service is $12,611.30.

Funds have been appropriated in the Finance Department, Information Services Division, in Account No. 110-1005-415-3001 C44108 to cover the monthly cost of this agreement.

The Finance Department requests City Council authorize the City Manager to execute a renewal of the service agreement with Motorola Communications and Electronics, Inc. to provide maintenance of the City's radio communication system for another year at the cost of $12,611.30 per month.

Support for the Pack Square Renaissance Project

Summary: The consideration of a resolution expressing endorsement of and support for the Pack Square Renaissance Project.

The Pack Square Task Force, a public/private partnership created to direct the project, is requesting the approval and adoption of this resolution. Along with numerous other letters of support, the resolution would be used to garner additional public support for the project as well as to aid fundraising efforts. The conceptual plan, which resulted from a three-day public design workshop involving the participation of hundreds of citizens, has previously been presented to Council.

City staff recommends City Council adopt the resolution expressing endorsement for the Pack Square Renaissance Project.

Upon inquiry of Mayor Sitnick, City Manager Westbrook said that adoption of this resolution dos not commit the City to the expenditure of any additional funds.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

RESOLUTION NO. 00-191 – RESOLUTION SUPPORTING ESTABLISHMENT OF NON-STOP COMMERCIAL AIRLINE SERVICE BETWEEN ASHEVILLE AND NEW YORK CITY

Ms. Kathryn Solee, Director of Marketing and Public Relations for the Asheville Regional Airport, explained their efforts to establish regular non-stop commercial airline service between the Asheville area and the New York City area. She said that their purpose is to energize regional economic development through the improvement in air services offered at the Asheville Regional Airport, for the mutual benefit of the region and the airport. With the use of overheads, she explained what the New York City connection would mean to Western North Carolina. She then explained why Continental Airlines would fit that need for Asheville and how Delta Air Lines, US Airways and American do not. She pointed out that the Airport is limited by the FAA on what it can use it funding for, however, they are committed to providing funds for advertising support and cost reductions. She explained how the community could support the service including in-kind support. She then reviewed the action plan and assignments of various groups. She said that she and the Airport Director have an appointment in Houston, Texas, on October 5, 2000, to meet with Continental Airlines to discuss the possibility of them serving Asheville and asked for City Council's support.

Ms. Solee answered questions from Mayor Sitnick about Mid-West Airline and their travel opportunities.

Councilman Worley moved to waive the rules and take formal action. This motion was seconded by Councilwoman Bellamy and carried unanimously.

City Attorney Oast read the following resolution: The Asheville Regional Airport desires to establish regular non-stop commercial airline service between the Asheville area and the New York City area. New York City is the number one travel destination for users of the Asheville Regional Airport. Surveys conducted by the Airport Authority indicate sufficient interest in travel between Asheville and New York, for business and for pleasure, that establishment of regular non-stop commercial airline service will have a ready market, and is likely to be economically feasible. The Airport Authority is currently negotiating with Continental Airlines to provide regular non-stop commercial airline service between Asheville and New York, and Continental Airlines has the opportunity and ground facilities to provide said service. Now, therefore, be it resolved by the City Council of the City of Asheville that the efforts of the Asheville Regional Airport and the Airport Authority to work with Continental Airlines to provide non-stop regular commercial airline service between Asheville and New York City are hereby endorsed and supported. Be it further resolved that if regular non-stop commercial airline service is established between Asheville and New York, the City of Asheville will make every reasonable effort to encourage the use of said service.

Councilman Worley moved to adopt Resolution No. 00-191. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 197

REPORT ON SHELTERED WAITING AREA AT TRANSIT CENTER

Transit Services Director Bruce Black said that City Council requested staff look at possible alternatives to the issue of passengers being exposed to weather while they wait at the Transit Center.

As such, an attempt was made to lower the existing heating units. This was not successful. The possibility of finding some sort of heating unit that would work in the present configuration was addressed and there appears to be no such unit. Therefore, an architect was hired and asked to address the issue. The conceptual plans include a recommendation that a waiting room be constructed by adding to the existing ticket building. The conceptual plans are for an addition of a 540 square foot heated room with seating for 41 people.

If Council wishes to pursue this alternative, staff requests authorization for the City Manager to enter into a professional services contract with the architect to design and bid this project. Following receipt of bids, the consideration of award will be presented to Council for action. To move forward with final design, staff estimates a cost of $10,000 - $15,000.

City staff recommends City Council evaluate the proposed alternative and if desirous of moving forward with this alternative, authorize the City Manager to enter into a professional services contract to prepare final plans and bid the project.

Councilwoman Field asked why the City went to a different architect to address the heating issue other than the one who designed the building. Mr. Black said that the architect who designed the building said that the heating system wouldn't work and he advised the Transit Authority not to proceed. However, the Transit Authority elected to proceed anyway and the architect wanted nothing more to do with the project.

Councilwoman Field pointed out that since the fee for the final design is approximately $10-15,000, then the structure will cost between $100-150,000. As an architect, she felt that $100-150,000 was too much to build a 540 square foot building.

There was discussion about other possible ways to try to shelter people from the elements at the Transit Center.

Mr. Black said that the architect was advised that the City wanted to maintain the look of the current transit center. However, he would contact them to see if they would meet with City Council to explore other options and still achieve Council's desire to have a warm, safe and dry place for transit customers at a lower cost.

REPORTS ON BOARDS AND COMMISSIONS

Vice-Mayor Cloninger, Chair of the City Council Boards and Commissions Committee, briefly reviewed with Council the next quarterly appointment process and vacancies.

ADMINISTRATIVE MATTERS

It was the consensus of City Council to cancel the worksession for the week of October 16, 2000, due to the N.C. League of Municipalities Annual Convention in Fayetteville, N.C.

It was the consensus of City Council to appoint Councilwoman Bellamy (delegate) and Councilman Hay (alternate) as the voting delegation at the National League of Cities Conference in Boston, Massachusetts, in December, 2000.

CLOSED SESSION

At 4:14 p.m., Councilman Hay moved to go into closed session to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5). This motion was seconded by Councilman Worley and carried unanimously.

At 4:35 p.m., Councilwoman Field moved to come out of closed session. This motion was seconded by Councilwoman Bellamy and carried unanimously.

MISCELLANEOUS MATTERS

Brief discussions were held about (1) the proposed television system in the Council Chamber; (2) an article that appeared in the newspaper regarding the Sayles Bleacheries site Board of Adjustment decision and Dennis Hodgson's service on said Board.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 4:37 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - October 10, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Brian L. Peterson

INVOCATION

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION OF KEY TO THE CITY TO ROSE QUALLEY

Mayor Sitnick presented the Key to the City to Rose Qualley (Andie MacDowell) .

B. PROCLAMATION PROCLAIMING OCTOBER, 2000, AS "ASHEVILLE SISTER CITIES MONTH"

Councilman Hay read the proclamation proclaiming October, 2000, as "Asheville Sister Cities Month" in the City of Asheville. He presented the proclamation to Ms. Mary Lasher and Mr. Tom Sanders who briefed City Council on some activities taking place during the month.

II. CONSENT:

Councilwoman Bellamy recognized Ms. Corrine Hines, 5th grader at Glory Tabernacle, who has a strong interest in politics.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 26, 2000, AND THE WORKSESSION HELD ON OCTOBER 3, 2000

B. RESOLUTION NO. 00-192 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CAROLINA ROOFING AND CONSTRUCTION INC. FOR THE SENIOR OPPORTUNITY CENTER ROOF REPLACEMENT PROJECT

Summary: The consideration of a resolution authorizing the City Manager to enter into a roof replacement contract for the Senior Opportunity Center.

In an effort to maintain City facilities, City staff, through the capital improvement process, has determined the Senior Opportunity Center requires a new roof. City staff solicited sealed bids from eleven roofing contractors, three of which were minority contractors, to supply and install a new roofing system. City staff received bids from four qualified bidders as follows:

Construction Advantage , Inc.	$43,715.00
Service One, Inc.	$42,483.00
Stroup Sheet Metal Works, Inc.	$42,459.00
Carolina Mountain Roofing and Const., Inc.	$42,187.00

City staff has reviewed all bids and determined that Carolina Mountain Roofing and Construction, Inc. is the lowest bidder. City staff recommends acceptance of the total bid amount of $42,187.00.

Approved funding is available in the capital improvement project account to pay for this roof replacement for Senior Opportunity Center.

The Parks and Recreation Department requests City Council approve the City Manager to enter into a contract for $ 42,187.00 with Carolina Roofing and Construction, Inc., for the roof replacement contract at the Senior Opportunity Center.

RESOLUTION BOOK NO. 26 – PAGE 198

C. ORDINANCE NO. 2754 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR THE NEXT PHASE OF IMPROVEMENTS AT THE SENIOR OPPORTUNITY CENTER AND HARVEST HOUSE

Summary: The consideration of a budget amendment, in the amount of $12,194, for the annual appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging, to establish a budget for the next phase of improvements at the Senior Opportunity Center and Harvest House.

The City of Asheville applied for funds in September 2000 for the 2000 Senior Center Allocation from the State of North Carolina, Department of Health and Human Services, Division on Aging. The allocation was recently awarded in the amount of $12,194 and designated for facility improvements and purchasing equipment at Senior Opportunity Center and Harvest House.

The Parks and Recreation Department is responsible for the management and operation of two senior centers. The annual allocation from the State of North Carolina will assist the department in implementing facility improvements or purchasing equipment and supplies.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $12,194, to establish a budget for the next phase of improvements at Senior Opportunity Center and Harvest House.

ORDINANCE BOOK NO. 18 – PAGE 486

D. RESOLUTION NO. 00-193 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SERVICE RENEWAL AGREEMENT WITH MOTOROLA COMMUNICATIONS AND ELECTRONICS INC. TO PROVIDE MAINTENANCE OF THE CITY'S RADIO COMMUNICATION SYSTEM

Summary: The consideration of a resolution authorizing the City Manager to execute a service agreement renewal with Motorola Communications and Electronics Inc. to provide maintenance of the City's radio communication system for another year at the cost of $12,611.30 per month.

Motorola Communications and Electronics, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. Effective with the service agreement covering the period of September 1994 through August 1995, the maintenance cost per unit of equipment has been fixed. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of September 1, 2000, through August 31, 2001, remains fixed at the original cost per unit.

This renewal agreement reflects a monthly increase of $156.85, which covers additional equipment purchased by the City that has come out of warranty during the past year. The monthly cost of this service is $12,611.30.

Funds have been appropriated in the Finance Department, Information Services Division, in Account No. 110-1005-415-3001 C44108 to cover the monthly cost of this agreement.

The Finance Department requests City Council authorize the City Manager to execute a renewal of the service agreement with Motorola Communications and Electronics, Inc. to provide maintenance of the City's radio communication system for another year at the cost of $12,611.30 per month.

RESOLUTION BOOK NO. 26 – PAGE 199

E. RESOLUTION NO. 00-194 - RESOLUTION OF SUPPORT FOR THE PACK SQUARE RENAISSANCE PROJECT

Summary: The consideration of a resolution expressing endorsement of and support for the Pack Square Renaissance Project.

The Pack Square Task Force, a public/private partnership created to direct the project, is requesting the approval and adoption of this resolution. Along with numerous other letters of support, the resolution would be used to garner additional public support for the project as well as to aid fundraising efforts. The conceptual plan, which resulted from a three-day public design workshop involving the participation of hundreds of citizens, has previously been presented to Council.

City staff recommends City Council adopt the resolution expressing endorsement for the Pack Square Renaissance Project.

RESOLUTION BOOK NO. 26 – PAGE 200

F. RESOLUTION NO. 00-105 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CHARRON SPORTS SERVICES INC. FOR THE CIVIC CENTER BLEACHER RENOVATION PROJECT

Summary: The consideration of authorizing the City Manager to enter into a contract with Charron Sports Services, Inc., for the Civic Center Bleacher Renovation Project.

The Civic Center has considered the bleachers a major Capital Improvement Project for some time. To purchase new ones, however, could cost as much as one million dollars. Earlier in the year, Council directed the staff to create a plan that would aid the City in maintaining services at the venue until the Task Force made it's recommendations regarding the future direction of the facility. Funding was an important issue.

The staff has found a solution regarding the bleacher project. A firm has been located that will completely renovate the bleachers to an "as new" condition. Those located on the north and west sides of the building will be motorized for ease of installation and removal at events. Original parts will be used where possible. The company also has the ability to reproduce parts comparable to new ones. New handrails will be installed that will greatly reduce the need for labor. The overall labor savings per installation is estimated to be approximately $2,000.00.

In addition, the firm will include in the price a one-year warranty to include both parts and labor. The total cost of the project is $85,895.00. This work only covers the structural work to the bleachers themselves.

Only one company could be found with the capabilities to complete such an extensive project. Some of their employees were involved with the original installation. They can retrofit the bleachers back to a like new condition. They are also giving the City a one-year warranty on both parts and labor. In addition, the City can see immediate financial return from the motorization of two of the three sections. Furthermore, the project is far less expensive than an outright purchase of new equipment.

Funding for this project was approved with the adoption of the Fiscal Year 2000-01 Capital Improvement Program.

The staff recommends that City Council authorize the City Manager to enter into a contract with Charron Sports Services Inc., for the Civic Center Renovation Project.

RESOLUTION BOOK NO. 26 – PAGE 201

G. MOTION SETTING A PUBLIC HEARING ON OCTOBER 24, 2000, TO CONSIDER THE REZONING OF PROPERTY LOCATED OFF OF SWEETEN CREEK ROAD AND ROSSCRAGGON ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO CB II COMMUNITY BUSINESS II DISTRICT, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

H. MOTION SETTING A PUBLIC HEARING ON OCTOBER 24, 2000, TO INITIALLY ZONE 65 AND 67 LONG SHOALS ROAD TO OFFICE BUSINESS DISTRICT

I. RESOLUTION NO. 00-196 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE IN ORDER TO CANCEL THE WORKSESSION ON OCTOBER 17, 2000, AND THE COMMUNITY MEETING ON OCTOBER 31, 2000

RESOLUTION BOOK NO. 26 – PAGE 202

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED AT 38 SYCAMORE ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT (CONDITIONAL USE ZONING) AND ISSUANCE OF A CONDITIONAL USE PERMIT

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to vote to issue the conditional use permit on the same night.

City Attorney Oast said that a valid protest petition has been filed in connection with the rezoning request which will require an affirmative vote of all six members of Council present in order to allow the rezoning. If the rezoning passes, City Council will then consider the particulars of the conditional use permit requested. With regard to the conditional use rezoning, City Council should remember that they voting on the general legislative question of whether it is appropriate to rezone this property to allow for some particular use with conditions. City Council is not voting at that time to issue the conditional use permit. If, and when, it comes time to vote on the conditional use permit, City Council may then consider what conditions are appropriate for that particular use.

The following Council members disclosed that they visited the site: Mayor Sitnick, Vice-Mayor Cloninger, Councilwoman Bellamy and Councilmen Hay and Worley.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:37 p.m.

Chief Planner Gerald Green said that this is a request to rezone property allow a larger non-residential use than permitted under the current zoning. Throughout our City in all our residential districts, a variety of non-residential uses are permitted. In various zoning districts the scale of these non-residential uses is limited due to the impact on neighborhoods. As part of our on-going strategy to implement the smart growth policies, the Planning & Development staff is reviewing standards for all non-residential uses in residential districts to identify reasonable sizes, the scale of the structures, parking, landscaping, and other items that could adversely impact the residential uses, if not addressed properly. This use before Council tonight is within the scale limits and meets all the criteria that have been identified thus far for day cares within any residential district within the. These standards have not been recommended for adoption by the Planning & Zoning Commission yet because staff is looking at so many non-residential uses, all of which are currently located in residential districts. The use before Council has been characterized as a commercial intrusion, however, staff does not see it as such. In looking at our smart growth policies, City staff has identified a number of issues which are addressed by the proposed use and the proposed zoning change. These include the wise use of natural and manmade resources, development policies which reduce the dependency on automobile travel by placing a variety of uses in close proximity, by encouraging a mixture of uses within an area, by promoting compatible land uses that serve the residents of a community, and by encouraging the traditional neighborhood development pattern in which residences, schools, churches and small scale commercial and office uses are all located in the same neighborhood.

Mr. Dan Baechtold, Urban Planner, submitted into the record the Affidavit of Publication (City Exhibit 1), the Certification of Mailing of Notice to Property Owners (City Exhibit 2), and the Staff Report (City Exhibit 3). This public hearing was advertised on September 29 and October 6, 2000.

Mr. Baechtold said that this is the consideration of an ordinance to rezone property located at 38 Sycamore Road from Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District (conditional use zoning), and issuance of a conditional use permit for a Montessori pre-school (child day care center) and single-family residence.

The Planning and Zoning Commission reviewed this project on September 6, 2000, and took action to recommend approval (5-1) of the rezoning and conditional use permit with conditions. The request is to rezone one lot of just under an acre in size. The lot is currently occupied by one single-family residence, and the owner operates a Montessori pre-school for eight children. The pre-school is a permitted use in the RS-8 District as a child day care home. The applicant wishes to place a building of 1,100 square feet next to the existing residence, and construct a new circular driveway. The proposed site plan shows minimal site disturbance and minimal removal of existing vegetation. The owner would like to expand the pre-school to a maximum enrollment of 25 children.

The lot is located just off of Beaverdam Road, on a private access road that serves four homes (City Exhibit 4). Two of those homes face Beaverdam Road, and have driveway access onto Beaverdam Road. Thus, the access road provides primary access for just two property owners. Beaverdam Road carries approximately 6,000 cars per day in this location. There is a 30-foot public right of way associated with a portion of the road (City Exhibit 5). This short section of Sycamore Road does not connect to the other portion of Sycamore Road. Therefore, the traffic at drop-off and pick-up times will have minimal conflict with existing residential traffic. The property owner proposes to construct an off street circular driveway to facilitate drop-off and pick-up (City Exhibit 6). The owner also proposes to construct a multi-sided building which will house the day care. He showed a drawing (City Exhibit 7) which shows a prospective on the existing trees along the property boundary which are all to remain, except for a couple of smaller apple trees where they are proposing to construct the building. In addition to the proposed circular driveway, the property owner has offered (and it was a condition of the Planning & Zoning Commission) to widen the paved portion of the access road between 18-20 feet. The property owner has offered to assume maintenance responsibilities of the road if they can work out the agreements with the other people who share that private road. He then showed Council a rendering of what the new building would look like (City Exhibit 8) (City Exhibit 9).

Planning staff recommends approval of the rezoning, and the issuance of a conditional use permit. The zoning change is from one residential category to another residential category. The existing zoning of the property already permits uses such as child day care homes, schools, and churches. Through the conditional use process, the residential density will not increase. The only uses that will be allowed on the site are a single-family residence and a child day care center for 25 children. The only increase in intensity on the site will be an additional 17 children in the Montessori pre-school. With the widening of the access road and the circular drive for drop-off and pick-up, the traffic concerns can be mitigated and also with the appropriate buffering, any other impacts such as noise, can also be addressed.

The conditional use zoning tool provides an opportunity to ensure that the community has appropriately located essential services. Further, the tool ensures that these uses are in harmony with the surrounding area, and that any negative impacts are mitigated. Day care is an essential service to neighborhoods and to the community as a whole. Smart growth principles suggest that strong residential neighborhoods should include essential services such as schools and day care centers.

At the Planning and Zoning Commission public hearing on this matter, several persons spoke in favor of the rezoning request, and several neighboring residents spoke in opposition to the request. Several of those opposed were represented by an attorney. The staff recommendation below includes the recommended conditions of the Planning and Zoning Commission.

Planning and Development staff recommends approval of an ordinance to rezone property located at 38 Sycamore Road to Residential Multi-Family 16 (conditional use zoning) and issuance of a conditional use permit with the following conditions: (1) Uses will be limited to a single-family residence, and a child day care center with a maximum enrollment of 25 children; (2) Site development and building design shall be regulated by the proposed site plan and building elevation drawings that are approved as part of the conditional use permit; (3) Maintain a 25-foot "Type C" buffer between the new building and neighboring property lines and eliminate any parking spaces from this buffer; (4) Widen the access road from Beaverdam Road to the new driveway entrance to a travel width of 18 feet, as determined by the City Traffic Engineer. Property owner will also agree to assume maintenance of this roadway section; (5) Complete the Level I site plan review process; and (6) Buffer area should not be used as credit toward required outside play area.

Councilman Worley asked why the zoning change is requested from RS-8 to RM-16. Mr. Baechtold said that under the RS-8, child day care homes are permitted for eight children in a day care setting, however the RM-16 district allows child day care centers that would not limit the number of children – it is the conditional use permit and the applicant's proposal that would limit the number to 25.

Upon inquiry of Councilman Worley, Mr. Baechtold did state that this proposal would meet the scale for non-residential uses in residential neighborhoods that is in process of working its way through the Planning & Zoning Commission. Mr. Green also noted that if the proposed amendment is adopted by City Council, then there would be no need for a rezoning or a conditional use permit for this type of usage and this number of children, if the applicant met all the standards that are eventually adopted.

Ms. Patsy Meldrum, attorney for the applicant Blue Ridge Montessori School, said that they had no objection to the Mayor and City Council visiting the site. They also have not objection to the evidence presented by the City staff being made a part of the record. She said she will show how this application complies with the standards required for a conditional use permit. It has been recommended and approved by the Technical Review Committee, by the Planning & Zoning Commission and by City staff – all saying that this application complies with the standards required for conditional use zoning and a conditional use permit to be issued. Ms. Meldrum supplied City Council with a document entitled "Blue Ridge Montessori School Conditional Use Permit" which contained the Applicant's Exhibits. She also provided Mr. Lyman Gregory, attorney representing some of the surrounding property owners, with a copy as well. She entered into the record the following: Technical Review Committee minutes of August 21, 2000, showing that this application fully complies with the technical requirements (Applicant Exhibit 1); August 23, 2000, letter from Mr. Dan Baechtold to Ms. Gayle Rayfield regarding the approval by the Technical Review Committee and the conditions recommended (Applicant Exhibit 2); Rezoning petition fact sheet prepared by City staff for the Planning & Zoning

Commission on September 6, 2000 (Applicant Exhibit 3); excerpt from the September 6, 2000, Planning & Zoning Commission meeting minutes showing that the Planning & Zoning Commission recommended approval subject to conditions (Applicant Exhibit 4); and the Staff Report submitted to City Council prepared by Mr. Baechtold with attachments – including proposed staff findings showing that the application complies with all seven of the standards required to be met for a conditional use permit to be issued (Applicant Exhibit 5 and City Exhibit 3).

Ms. Gayle Rayfield, property owner of 38 Sycamore Road and Director of the Blue Ridge Montessori School, gave a brief history of the School which was started in October of 1999 with four children – they now have a waiting list of over 30 parents. She said she has a Masters Degree in Montessori Education. She explained the proposed daily schedule (Applicant Exhibit 6) showing the amount of time the children will be at the school, noting that they do encourage carpooling. She stressed that they are not just a day care, but are actually a Montessori pre-school. The maximum number of children in the center at any one time would be 25 and that would be the same 25 children throughout the day as opposed to a different 25 coming in at different times. She showed a site plan of the existing building to indicate where the parents currently drop off the children and where the play area is for the children (Applicant Exhibit 10). With the use of a tax map (Applicant Exhibit 7) and certified copy of Plat Book 31 at page 65 (Applicant Exhibit 9) Ms. Rayfield oriented Council on the site location. She presented a certified copy of her deed for the subject property (Applicant Exhibit 8). She said that the School currently has two teachers and if the conditional use permit is granted, they would hire at least one other aid in the classroom. She showed the proposed buildings on the site (Applicant Exhibit 11) and where parking is proposed. She said that anyplace that will not be used for the proposed gravel driveway would remain lawn. She presented a drawing of the proposed circle lot (Applicant Exhibit 12 and City Exhibit 6) showing the dimensions of the proposed driveway. She described what the existing building is like compared to the proposed building (Applicant Exhibit 13 and City Exhibit 8). She said that the property is secluded (Applicant Exhibit 14 and City Exhibit 7) and all the trees would remain, except a couple of little crabapple trees. She said they were careful to place the building were no trees would have to be cut. She also outlined where the children's play area would be. She explained why they chose the particular structure for the proposed building (Applicant Exhibit 15 and Applicant Exhibit 16). She said that she was familiar with the Smart-Start Program in Buncombe County and has seen the Executive Summary of "The Early Childhood System in Buncombe County" (Applicant Exhibit 33) which shows the need for child care services in Buncombe County.

Councilwoman Bellamy asked if two cars could pass at the same time on the private road. Ms. Rayfield said that right now she didn't think they could, unless one pulled off the road onto the grass. She said there is a 30 foot right-of-way but most of it is very overgrown. That is why she is proposing to have this repaved and widened. She said she does not have to get an easement from the existing property owner to widen the road (Applicant Exhibit 9).

Councilwoman Bellamy noted that that there is a sharp curve on Beaverdam Road before you get to Sycamore Road. She asked if there are any plans for additional signage after the road is widened because there is a blind spot coming off Sycamore Road. Ms. Rayfield responded that that issue has never been brought up before. She then explained that the speed limit right at the entrance of Sycamore Road was recently lowered to 25 mph (Applicant Exhibit 34).

Upon inquiry of Councilwoman Bellamy, Ms. Rayfield said that the current road width is approximately 12 feet wide and they are proposing to widen it to 18 feet. They will only be paving the portion from Beaverdam Road to the end of where the current paving ends and her driveway begins.

Ms. Rayfield responded to Councilwoman Bellamy's questions regarding parking on the property.

Ms. Meldrum entered into the record a certified copy of Plat Book 29 at Page 154 (Applicant Exhibit 31) showing that the front lots on Sycamore Road, showing that the width of Sycamore Road is 30 feet.

Upon inquiry of Councilwoman Field, Ms. Rayfield explained that Montessori is basically a method of education, a philosophy of teaching using respect for the child and learning through the senses.

Discussion surrounded Councilman Hay's question about access on Sycamore Road. Ms. Meldrum said that there is a recorded plat (Applicant Exhibit 31) showing a 30 foot right-of-way. Another plat (Applicant Exhibit 9) shows the subdivision of Lot 5 into two, and there is still a recorded 30 foot right-of-way which all of the original five lots have the benefit of off of Beaverdam Road (Applicant Exhibit 32). Councilman Hay said that the deed (Applicant Exhibit 8) is to only Lot 5-A, not 5-A plus the remainder of Lot 5. Ms. Meldrum explained that the plat was recorded prior to the deed being recorded, but when that deed was recorded, it was taken subject to that plat, thereby getting the benefit of the recorded right-of-way.

Councilwoman Bellamy asked if the 30-foot right-of-way is being used by any other residents. Ms. Rayfield said that both properties that front on Beaverdam do have access onto Sycamore Road (Applicant Exhibit 17).

Councilman Hay asked Ms. Rayfield if she moved to that property to establish a Montessori school. Ms. Rayfield responded that she did not, however, it did turn out to be a perfect location due to it being a dead-end street with very little traffic and all the trees that surround the property make it private.

City Attorney Oast agreed with Councilman Worley in that if Council did rezone the property and grant the conditional use permit with one of the conditions being to enlarge the pavement and there is not sufficient right-of-way to do that, then the condition could not be met and the use could not be put into place.

Councilwoman Bellamy asked if this new development would require a sidewalk under our current ordinance. Mr. Green responded that sidewalks are required for all new non-residential development and his interpretation at this point would be that a sidewalk would be required along the street frontage. If Council feels that a sidewalk would be appropriate, then they could place that as one of the conditions in the conditional use permit. If Council feels that a sidewalk would not be appropriate, the property owner could go through the a fee in lieu of process.

Ms. Jane Douglas, part-time employer for Blue Ridge Montessori School, spoke to Council about her research on child care homes and child care centers in the north Asheville area (Applicant Exhibit 29). She said her research data is from the N.C. Dept. of Health and Human Services and also from the N.C. Division of Child Development Services. After calling all the centers and finding only one vacancy, her research indicated that there is very little to none child care facilities in north Asheville. Ms. Douglas then explained the utilities on the existing site, including the location of a fire hydrant on Beaverdam Road which is approximately 220 feet from the existing building (Applicant Exhibit 18). She then reviewed with Council a rendering showing the existing buffering and plantings in addition to any proposed plantings and buffering (Applicant Exhibit 19). She then outlined the play area behind the school, noting that there is enough play area, excluding the buffering area, as required by the state licensing board. She also reviewed photographs of the Sycamore Road area showing Ms. Rayfield's property, the school location, Beaverdam Road, and the access to the various homes in the area (Applicant Exhibit 30).

Upon inquiry of Mayor Sitnick, Ms. Meldrum explained what, if any, difference there is between the words Montessori school, child day care center and pre-school.

At 7:17 p.m., Mayor Sitnick announced a short break.

Mr. J. T. Black, licensed real estate agent and subcontractor, said that he has listed and sold property in the Beaverdam area. He explained what a market analysis is and said that he has performed a market analysis for property in the Beaverdam area. He said that he was familiar with Ms. Rayfield's property and other properties immediately adjacent to it. In addition, he is familiar with the plans for expansion of the School. It was his opinion that there would be very little impact to the actual values of the adjoining properties if the conditional use permit were granted.

Ms. Meldrum asked to enter into the record a letter from Mike Miller, real estate agent, who was unable to attend the meeting (Applicant Exhibit 27). Mr. Lyman Gregory, attorney for some adjoining property owners, objected to Mr. Miller's letter being entered into the record under the grounds that Mr. Miller is not present at this public hearing in order to be cross-examined.

City Attorney Oast said that Mr. Gregory is correct. In a court of law the letter from Mr. Miller would be hearsay. He cautioned City Council that they need to base their decision on competent evidence, although he did not know if it was necessary to exclude Mr. Miller's letter -- just that the author is not available for cross-examination and accord this particular piece of evidence the appropriate weight.

Mayor Sitnick said that if City Council is not allowed to enter into the record letters from the public, unless the authors are present, then she would assume that City Council should not enter Mr. Miller's letter into the record. City Attorney Oast said that typically such items are received into the record for whatever they are worth.

Ms. Meldrum explained that she believes this request meet the standards for both the rezoning and also for the conditional use permit. For the rezoning, a question might be raised if this would constitute an illegal spot zoning. Using the opinion of the N. C. Supreme Court in Chrismon v. Guilford County where spot zoning is defined, Ms. Meldrum explained how this property does not constitute spot zoning because of the conditional use process and the conditions imposed. She then went through the seven standards required to be met in order to issue a conditional use permit, and explained why the day care center meets all those standards.

Ms. Felicia Berry, family support specialist, said that she has compiled data from 65,000 surveys and preliminary indications show that there is a lack of quality child care in our area.

Mr. George Oerke, resident at 6 Spooks Branch Road, spoke in support of allow the Montessori School expand.

Ms. Marsha Hudsick, certified teacher in North Carolina, stated that it was extremely difficult to find good quality child care. She felt a multi-use neighborhood is a good solution.

Mr. Lyman Gregory, attorney representing some residents in the Sycamore Road area who are opposed to this request, presented City Council with a packet of Exhibits (Neighborhood Exhibit 1). He stated that he also furnished Ms. Meldrum with the information as well. He said that City Council is being asked to allow what would be an absolutely prohibited use with objectionable impacts into the middle of a residential neighborhood. He explained that child day care homes are a use allowed in RS-8, but they are a use by right subject to special conditions. He felt this would be a commercial child day care center on a one acre tract surrounded in a sea of residential zoning and residential use. Using his exhibits, he showed a picture of the entry into Sycamore Road to the proposed day care center and an aerial view of the neighborhood. In addition, he reviewed the existing zoning and page 96 out of the Asheville City Plan 2010, both showing entirely residential uses around the subject property.

Ms. Patricia Wald, resident at 29 Sycamore, said her only issue with this request is changing the status of her neighborhood in a way that she sees will have a devastating effect on her home and her life as she has known it for the last 20 years. She opposes rezoning of her neighborhood for the following reasons: (1) too much traffic on a small narrow street designed for people coming and going to their homes and it is unsuited for commercial use of any nature; and (2) noise and pollution that accompany that traffic. Her view goes from a residential front lawn to a large commercial driveway. People coming in and out of her neighborhood to use the applicant's business are people who don't live there and probably would not have the same concerns and level of care toward the neighborhood as those who do live there. What is perfect for the customers and the business owner is not perfect for the neighbors. She felt that property values will be negatively affected and homes that go up for sale in the area may take longer to sell. The applicant chose to move to a residential zoning area with the intention of operating a business. She said they have no objection to the need of day care, but it must be established in communities that residents benefit and where it does not disrupt and destroy the quality of life for existing residents. There is no one on Sycamore that has a child attending the day care center. She explained that both sides of Sycamore is one neighborhood. She said that there are 18 homes on the street, including the applicant's home, and 16 are opposed to this request. They believe that their rights as the unquestionable majority of the people directly affected by this request supercede those people living in other areas. She urged City Council to deny the rezoning request and to also deny the issuance of a conditional use permit.

Ms. Brenda Lewis, resident at 21 Sycamore Road, asked to present into the record a petition signed by 37 residents and property owners who are opposed to the rezoning in order to allow a conditional permit to be issued (Neighborhood Exhibit 2). Ms. Meldrum objected to the petition being entered into the record unless off of those who signed the petition are present. Mr. Gregory responded that since a component of this vote is on the legislative rezoning request, this petition would be in order for that portion of the vote. City Attorney Oast suggested that City Council accept the petition into the record for whatever it may be worth, bearing in mind that many of the signatories to that petition are not here and not subject to cross-examination.

Ms. Lewis said that the Sycamore Road residents feel that they have a right to be heard because it is their neighborhood. Ms. Rayfield's clients who do not live in the neighborhood should not be given the same voice as the people who live there. The great majority of people in the neighborhood oppose this use of a residential neighborhood for a business of this size. She said Ms. Rayfield has offered the carpooling of students, buffering, and widening the road at her expense, even though this would encroach upon properties of people who oppose the rezoning. A business of this size and potential noise, traffic and devaluation of property values is totally inappropriate for this small neighborhood. The residents are not against pre-schools and noted that there are several private pre-schools in north Asheville. They hope to maintain the status of their residential neighborhood and they ask that City Council vote against the conditional use rezoning.

Mr. Milo Garren, professional real estate agent and owner of property on Beaverdam Road, felt that there would not be a safe ingress or egress from Sycamore Road onto Beaverdam Road even if the bushes and trees were cut. As a real estate agent, one thing they evaluate is the ingress and egress aspect, along with safety and convenience as factors that affect value. That is the only ingress and egress for some area residents. He said that he has been in the real estate business for 25 years in Asheville and it is awfully hard for him to see how this would not impact negatively the property values of adjoining or abutting properties. It is his opinion that there is substantial injury to the property values, especially those people who are immediately adjacent and especially those people who use this property for their only form of ingress and egress.

Mr. Gregory pointed out that this is not a referendum on day care, it's about the impacts of a specific proposal to this area. He urged Council to focus on the standards that have to be applied for the issuance of a conditional use permit. On the rezoning issue in general, which is a legislative policy decision, you generally look if there is a reasonable basis for that or some kind of change of conditions in the area, which this request is not. He explained why he felt this property does constitute illegal spot zoning, relying on the same Chrismon v. Guilford County case. He then explained how several of the conditional use standards cannot be met for the conditional use permit to be issued. He said that if City Council approves this request, they will be making a significant precedent setting policy change for the City based on just one individual application. He noted that City staff is currently looking at this issue and developing standards, however, they have not been adopted. He felt City Council should wait until those standards are adopted before these kinds of decisions are made.

Mayor Sitnick asked if this conditional use zoning request is granted and becomes RM-16 and Council issues a conditional use permit for the day care center with a maximum of 25 students, is there a point in the future that this applicant, or someone who takes over this property to continue the school, could a request for a change in that condition or does the condition hold for the life of the use. Mr. Green said that the City cannot prevent any property owner from petitioning any change that is permitted through the legislative process in the City. The owner of the property could come in next year and request a different zoning. It is through the review process with City staff, the Planning & Zoning Commission and City Council that inappropriate uses are denied.

Ms. Tina Wolfe, representing her grandmother who lives at the corner of Sycamore and Spooks Branch, said that the day care center does not benefit the community and urged City Council to deny the rezoning request and not issue the conditional use permit.

Mr. Harold Garland, owner of three lots on Sycamore and two lots on Spooks Branch Road, talked to Council about the dangerous curve on Beaverdam Road. In addition, he wondered how the 12 foot right-of-way got expanded to 30 feet because he was involved in that development and it was 12 feet then. He urged City Council to not rezone this property and to not issue the conditional use permit.

Ms. Jacquelyn Schauer, architect in Asheville, said that day care is an important issue but it is a separate issue. She lives within 1/2 mile from this neighborhood and is very familiar with it. She feels that the shift from eight children in a home day care to 25 children day care center is a significant change, given this neighborhood of small lots. She wondered who would monitor the school to verify that they don't exceed the 25 children. She feels it's misleading to say that the parents just drop their children off and drive away because many times parents come in and observe the children, watch performances, attend award ceremonies, etc., and parking could become a problem. She felt this use is inappropriate for this neighborhood.

Ms. Gail Moody, homeowner in east Asheville, said that if Council grants this request, it could impact every residential neighborhood in Asheville. No one would argue that pre-school provides an essential service to the community. What must be determined is whether this is the appropriate place and does it warrant conditional use. The basic community function of the neighborhood is a safe, quite place for people to live. Not only with the operation of a 25 student pre-school not enhance the successful operation of Sycamore road in its basic community function, but the proposed building and circular drive is clearly not in harmony with the character of the small single-family neighborhood.

Ms. Meldrum pointed out that the comment about this being precedent setting and policy changing is not accurate because this is not setting a precedent for allowing this type of day care center in all residential neighborhoods. This is a specific request for a specific lot so it's not setting a precedent because you have to consider these on a case by case basis. Secondly, the City has throughout it's jurisdiction allowed day care homes and day care centers in residential areas and also non-residential uses in residential districts. So again, this is not a change -- it's just merely an affirmation of the policy that has already been in place to allow these types of non-residential uses, because they are compatible with residential uses - as are schools allowed in residential districts. She said she has provided plats showing that these are very different neighborhoods, platted at different times and different size lots. Also photographs of the two areas were shown showing the access to the two areas -- they are clearly two separate neighborhoods. Mr. Garren admitted himself that he is not a traffic engineer and we have clear and convincing evidence that this will not create a traffic hazard from the City's Traffic Engineer. With regard to Mr. Garren's testimony about property values, he said there may be some impact and that the market would decide. There is a case in North Carolina where the Court of Appeals held that where you try to meet the test about substantial injury in order to show that there is substantial injury, you have to have certified appraisals or market studies supporting the naked opinions. In this case there has been absolutely no evidence of certified appraisals or market studies, merely opinion testimony. There has been a lot of discussion about the right-of-way question and concessions made that the Council does not have to determine the right-of-way rights of the various property owners. Clearly it has been conceded that Ms. Rayfield does have access to this lot. She disagreed that there has to be a change for a rezoning to be made. She said that you have to show that the requested change complies with the Comprehensive Land Use Plan and that is exactly what they have done. With regard to standards for issuance of a conditional use permit, she said the case law in North Carolina is that if an applicant for a conditional use permit establishes a prima facie case, they have complied with all the standards required, which is exactly what they have done, then there is a large burden to deny the permit. She said that burden has not been met. There must be competent, material and substantial evidence in the record to show that the prima facie case has been overcome. That has not been made. They have agreed that they will comply with the conditions recommended by the Technical Review Committee and the Planning & Zoning Commission and they respectfully request City Council vote both to approve the conditional use zoning and the granting of the conditional use permit.

Ms. Carolyn Wright, resident at the corner of Sycamore Road and Beaverdam Road, stated that her intersection is not safe as she has had to replace her mailbox, damage to her maple trees and signs being knocked down.

Mr. Gregory said that the burden of proof for obtaining a conditional use permit is that the applicant must make showing on all seven standards. If there is an argument made on the more general standards, the burden does shift to the opponents. We have made our arguments more on the objective standards and the burden of proof remains on the applicant to show that those standards have been met. Secondly, he does not dispute the statement that if the showing is made that the permit should be granted, but he did draw Council's attention that before you get to the permit decision, there is a legislative policy decision, which is not constrained by the proof of the quasi-judicial conditional use permit.

Mr. Garren stated that he was very clear about his opinion on the properties. He said that he did do research on this issue and has been in the business for 25 years. He is not a certified appraiser but has been in a court of law certified as an expert more than one time.

Upon inquiry of Councilman Worley, City Traffic Engineer Michael Moule said that he has not done a full site distance analysis on the traffic curve on Beaverdam Road coming out of Sycamore Road, however, he did review the situation in the field in the early afternoon on a weekday and didn't notice anything exceptionally bad about the site distance problem, although there is certainly a curve there that does limit the site distance.

Mr. Green responded to Councilwoman Field on why City staff felt this particular use was positive in terms of our smart growth policies.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 8:50 p.m.

Vice-Mayor Cloninger said that he would reluctantly vote against this proposal because he hated to vote against any proposal that would expand much needed day care facilities in our community. In addition, he was not opposed to day care facilities in neighborhoods. He felt that when we look at this from a smart growth standpoint, we should consider whether the day care is serving the neighborhood in which it is located. He didn't think that this is the situation here. He was also concerned about the safety issue of ingress and egress onto Beaverdam Road from Sycamore Road because Sycamore Road is located close to that sharp curve. He also felt that the opinions of the neighbors should be considered and respected.

Councilwoman Bellamy agreed with Vice-Mayor Cloninger. In addition, she didn't feel that this project complies with the intent of the RM-16 District. She felt this was a good project but not in the right location.

Councilman Worley said that he was convinced by our smart growth policies and felt this is consistent with those policies. He recognized that the implementation of those policies will be perceived to be painful in many situations because people just don't like change. However, he feels strongly that we need to support those policies and this is a small step towards the implementation of those policies. He drives Beaverdam Road every day and is concerned about the traffic, however, he personally felt that the proposed use would not cause undue traffic. He said he would vote to approve this issue primarily because of the City's commitment to smart growth policies.

Councilman Hay addressed staff in that he does have a concern that Ms. Rayfield doesn't have the absolute right to build what we would expect her to build on that right-of-way. It seems to him that she may be co-owner of that strip of land and it really concerned him when he found out that the person on the other side of the right-of-way was opposed to this. He realized that it is not City Council's concern now, but maybe some of these things need to be worked out before they get this far. Also, he felt this decision does not reflect Council's opinion about day care centers in residential areas. He personally hoped that City staff moves forward with the policy changes they are working on because that is part of smart growth. He said that he would have to vote against this, however, because he does not find that the project would not substantially injure the value of the adjoining properties, which would be one of the things they would ultimately have to vote on the conditional use permit.

Mayor Sitnick echoed comments about not being opposed to child care, especially safe, good child care which this sounds to be. However, it is hard to vote for a conditional use rezoning request if you don" think you can uphold it by the conditions. She explained that there is a vast difference between property value and the value of property and because the value is very subjective to the people who live on it and around it. She would therefore, vote against the conditional use rezoning request.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Worley moved to rezone 38 Sycamore Road from RS-8 Residential Single Family High Density District to RM-16 Residential Multi-Family High Density District (conditional use zoning). This motion was seconded by Councilwoman Field and failed on a 2-5 vote with Councilwoman Field and Councilman Worley voting "yes" and Mayor Sitnick, Vice-Mayor Cloninger, Councilwoman Bellamy and Councilman Hay voting "no".

At 9:05 p.m., Mayor Sitnick announced a ten minute break.

NEW BUSINESS ITEMS – CHANGE IN AGENDA

Councilman Worley moved to amend the agenda to consider waiving the requirement for a sidewalk along Reed Street for the Biltmore Heights Development at this time. This motion was seconded by Councilwoman Bellamy and carried unanimously.

CONSIDERATION OF WAIVING THE UNIFIED DEVELOPMENT ORDINANCE AND THE ASHEVILLE STANDARD SPECIFICATIONS AND DETAILS MANUAL REQUIREMENT FOR A SIDEWALK ALONG REED STREET FOR THE BILTMORE HEIGHTS DEVELOPMENT

Councilman Worley moved to excuse Councilwoman Field and Vice-Mayor Cloninger from this issue due to conflicts of interest. This motion was seconded by Councilwoman Bellamy and carried unanimously.

City Engineer Cathy Ball said that this is the consideration of a request from Biltmore Heights to waive Section 7-11-6 of the Unified Development Ordinance that requires a sidewalk be constructed, or a fee in lieu of construction be paid, along Reed Street.

Section 7-11-6 of the Unified Development Ordinance requires that new construction place sidewalks as specified in the Asheville Standard Specifications and Details Manual along street rights-of-way or pay a fee in lieu of constructing a sidewalk. Biltmore Heights has constructed a new office complex located at 11 Yorkshire Street. The project is a corner lot with street frontage on Yorkshire, Margaret, and Reed Streets. The developer plans to put sidewalks on Yorkshire Street to their driveway entrance, and a fee in lieu of construction has already been approved for the remainder of the project that fronts Yorkshire and Margaret Streets.

The developer is requesting that Section 7-11-6 of the UDO for the portion of the project fronting Reed Street be waived and that a sidewalk not be constructed nor a fee in lieu of construction be paid. Reed Street is a City maintained street located in South Asheville.

Staff recommends that a sidewalk be constructed along Reed Street for the following reasons:

- Staff estimates that the Biltmore Heights development is expected to generate approximately 500 trips per weekday.
- This development is adjacent to a residential neighborhood with several pedestrian generators in close proximity.
- Staff approves the developer to vary the five (5) foot setback requirement for a sidewalk set forth within the Asheville Standard Specifications and Details Manual and

acknowledges that "in the event that a sidewalk must be built adjacent to the curb, the sidewalk must be 6 feet wide." A curb would be incorporated into this monolithic sidewalk.

City staff recommends that City Council not waive the requirement that a sidewalk be placed along Reed Street as required by the Section 7-11-6 of the Unified Development Ordinance for the Biltmore Heights development.

Upon inquiry of Councilwoman Bellamy, Ms. Ball explained what is on the surrounding properties.

Mr. G. Carroll Hughes, architect representing the owners Dr. Bill Chambers and Dr. Keith Black, said the they are requesting City Council waive the sidewalk requirement along Reed Street due to extenuating circumstances. He handed out a letter dated October 3, 2000, to Ms. Cathy Ball, along with several photographs. He said the extenuating circumstances include (1) Reed Street is only 18 feet wide; (2) there are gas and water lines along the project side of the street; (3) there is a steep bank from 5-12 feet away from the edge of the street, along the project side of the street; (4) there is a large tree stump between the edge of the street and the to of the slope, which cannot be removed without damaging the existing utility lines and also undermining the existing pavement; (5) there is insufficient room for a 5-foot wide grass strip and a 5-foot wide sidewalk; (6) the City Engineer has suggested a 6-feet wide sidewalk and constructing a turn-down curb edge; (7) CP&L cut the existing trees along Reed Street and has put in a power pole where the sidewalk is proposed; (8) the existing sidewalks along the west side of Hendersonville Road are not 6-feet wide, but are 5-feet wide with no grass strip; (9) the recently installed sidewalks along Hendersonville Road on the other side are only 5-feet wide; (10) the rest of the neighborhood along and around Reed Street have no sidewalks; (11) none of the existing sidewalks are being properly maintained by the City; (12) the standard for the neighborhood in the most improved areas is a straight concrete curb section only with grass and no sidewalks; (13) residential setbacks along Reed Street, adjacent to and beyond Dr. Chambers' development, are too close to the street to comfortably accommodate future sidewalks; (14) there does not appear to be any pedestrian traffic generated along Reed, Yorkshire or Margaret Streets; (15) Dr. Chambers and Dr. Black have already been penalized by City and State regulations on this particular piece of property. They have already incurred substantial costs and noted additional projections if they have to buy a sidewalk at the fee in lieu of rate of $20 linear foot all along the property; (16) six rental units were constructed at the opposite direction and they were not required to construct sidewalks; and (17) they are required to buffer between this property and the adjoining property and they cannot do both. He said that it is the owners' request that no sidewalk, nor fee in lieu of construction, be imposed along this portion of Reed Street. If Council determines that it waives the sidewalk requirement, but finds that it can legally impose a fee, then the owners' respectfully request that the fee be allowed to be used for additional on-site landscaping to benefit the neighborhood, rather than a fee in lieu of buy a sidewalk out of the neighborhood.

Upon inquiry of Councilman Hay, Mr. Hughes said that there is 1,065 linear feet of sidewalk required if we were to put a sidewalk all the way around the tree sides.

Dr. Keith Black said that this complex is unique due to its extremely large amount of bordering sidewalks in relation to the small amount of property. They have always striven to blend into the neighborhood and be an asset as seen with the existing complex and what they are trying to do with this proposed complex. There is not a high pedestrian volume in this area and their patients drive to the complex, not walk. He felt that sidewalks will not enhance the character of this neighborhood. He felt that putting a sidewalk in will create an unnecessary commercial look. He stressed that they do plan to put sidewalks on Yorkshire Street to their driveway entrance, and a fee in lieu of construction has already been approved for the remainder of the project that fronts Yorkshire and Margaret Streets. He then handed City Council a petition containing 71 signatures which read "Let Common Sense Prevail! We, the below citizens oppose a sidewalk along Reed Street. We prefer a green-way with grass and trees to enhance the character of our neighborhood. NOT sprawling concrete with detracts from it. We want character NOT concrete!"

Ms. Ball said that the requirement in the Asheville Standard Specifications and Details Manual is if you are adjacent to the street you are required to put in a 6-foot sidewalk. She did fail to mention, however, that we do have the ability to vary that down to a 5-1/2, with 5 foot sidewalk and a 6-inch curb section. Also, with the changes that were passed in March of this year to the Asheville Standard Specifications and Details Manual, it does require developments to put in curb and gutter or stand-up curb as a part of their sidewalk.

Ms. Ball stated that they don't feel like the topographic constraints are enough that would not warrant the installation of the sidewalk in this area. Given the fact that it is one block off of Hendersonville Road, she felt that even though there may not be a lot of pedestrian use now, there is a potential, with this development, to create a lot of use of that sidewalk. With regard to the telephone pole, she said they have worked to meander sidewalks around utility poles or around hydrants that are impractical to move – so we have allowed some type of variance to fit those in. Sometimes they have had to go down to the minimum allowed by the ADA requirements, but they have allowed some variances either in the field or at a staff level.

Mayor Sitnick explained essentially the long-term vision thinking of City Council on the sidewalk policy.

Councilman Worley moved to waive the requirement that a sidewalk be placed along Reed Street as required by the Section 7-11-6 of the Unified Development Ordinance for the Biltmore Heights development. This motion failed due to lack of a second.

Upon inquiry of Councilman Hay, Ms. Ball said that if, in the construction of the sidewalk, she finds new challenges that makes her re-think the issue of a fee in lieu of construction, she would be open to that.

Councilwoman Bellamy moved to amend the agenda to consider making appointments to the Greenway Commission at this time. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

RESOLUTION NO. 00-197 - RESOLUTION APPOINTING MEMBERS TO THE GREENWAY COMMISSION

Vice-Mayor Cloninger said that this is the consideration of appointing members to the Asheville Greenway Commission.

John Tate (term to expire December 31, 2002), Philip Cusick (term to expire December 31, 2000), and Casey Carmichael (term to expire December 31, 2001), have resigned as members of the Greenway Commission. In addition, Crystal Pace's term expires on December 31, 2000.

On September 12, 2000, City Council interviewed Linda Giltz. On September 19, 2000, City Council interviewed Tom Gallaher, Elizabeth Budd and Matthew Kern. On September 26, 2000, City Council interviewed Paula Robbins. Greg Gregory and Phyllis Stiles are additional candidates but were not brought in for interviews.

Councilman Worley moved to reappoint Crystal Pace to the Greenway Commission to serve a three year term, term to expire December 31, 2003, or until her successor has been appointed. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Ms. Budd received 4 votes, Mr. Kern received 4 votes, Ms. Giltz received 3 votes, Ms. Stiles received 3 votes, Ms. Robbins received 2 votes and Mr. Gregory received 2 votes.

Mr. Gerry Hardesty, Chairman of the Greenway Commission, spoke in favor of appointing Ms. Paula Robbins to the Greenway Commission.

Therefore, it was the consensus of City Council to re-vote. Ms. Budd received 5 votes, Mr. Kern received 4 votes, Ms. Robbins received 4 votes, Ms. Giltz received 3 votes and Ms. Stiles received 2 votes.

Councilwoman Bellamy moved to appoint Ms. Elizabeth Budd to serve the unexpired term of Mr. Cusick, term to expire December 31, 2000, and then to serve a full three year term, term to expire December 31, 2003; Mr. Matthew Kern was appointed to serve the unexpired term of Mr. Tate, term to expire December 31, 2002; and Ms. Paula Robbins was appointed to serve the unexpired term of Mr. Carmichael, term to expire December 31, 2001. All terms are until their successors have been appointed. This motion was seconded by Councilwoman Field and carried unanimously.

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CONTINUATION OF PUBLIC HEARINGS

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CHANGE THE METHOD OF CALCULATING THE FRONT SETBACK LINE

ORDINANCE NO. 2755 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CHANGE THE METHOD OF CALCULATING THE FRONT SETBACK LINE

Mayor Sitnick opened the public hearing at 10:09 p.m.

Urban Planner Dan Baechtold said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to change the method of calculating the front building setback line. This public hearing was advertised on September 29 and October 6, 2000.

On September 6, 2000, the Planning and Zoning Commission voted unanimously to recommend approval of this wording amendment. Staff initiated this wording amendment to change an administrative procedure in the Unified Development Ordinance (UDO) to make it more consistent with the City's Smart Growth Policies.

Front setbacks are currently measured from the street right-of-way line. In some cases, this method of calculating the setback pushes buildings back from the street by as much as 50 to 75 feet. In turn, these setback rules essentially mandate that the parking is located in front of buildings in these cases. This result is in direct conflict with the principles of smart growth and walkable communities. These principles say that buildings should be located next to the street to hide parking, promote pedestrian activity, and create a more interesting streetscape. The following amendment to the ordinance will change the way we measure the front setback and the street side setback to allow buildings to be built closer to the street. This change will only be applied in cases where the street is at least four or five lanes wide, and where additional street widening is not anticipated. In these cases, we will measure the front setback from the edge of the travel lane rather than the right-of-way line.

Planning staff recommends inserting the following text (in bold) in Section 7-10-2(b) of the UDO:

(b) Method of calculation

1) Minimum setback. Minimum setback is the space defined by measuring perpendicularly from and along the entire boundary of the lot (property line) to the building line, ~~except~~ Front setbacks shall be measured from the street right-of-way line, **except, on streets greater than 45 feet in travel lane width, the setback shall be measured from the edge of the travel lane. The accompanying corner lot, street side setback shall also be measured from the edge of the travel lane. In no case shall the minimum setback be closer to the street than the right-of-way line.** A setback may be the front, rear, or side setback. For illustrations of the location of front, rear, or side setbacks, see Figure 10-1. Except as set forth for through lots in subsection 7-10-2(d) below, there shall be one (1) front setback area which is determined at the time of site plan approval or zoning permit issuance.

Mayor Sitnick closed the public hearing at 10:11 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2755. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 411

C. PUBLIC HEARING ON BOND ORDERS

ORDINANCE NO. 2756 - ORDINANCE ADOPTING THE BOND ORDER ENTITLED "BOND ORDER AUTHORIZING THE ISSUANCE OF $1,300,000 SANITARY SEWER BONDS OF THE CITY OF ASHEVILLE, N.C.

City Clerk Burleson reported to City Council that the bond order entitled "Bond Order Authorizing the Issuance of $1,300,000 Sanitary Sewer Bonds of the City of Asheville, North Carolina," which was introduced at the regular meeting of the City Council on September 26, 2000, and was published on September 29, 2000, with notice that the City Council would hold a public hearing thereon on October 10, 2000, at 5:00 p.m.

At 10:12 p.m., Mayor Sitnick announced that the City Council would hear anyone who wished to be heard on the questions of validity of the sanitary sewer bond order and the advisability of issuing the Sanitary Sewer Bonds. At the direction of the Mayor, the City Clerk distributed the bond order and the published notice of hearing to all requesting them.

Finance Director Bill Schaefer explained the Bond Order and said the City Council of the City of Asheville, North Carolina has ascertained and hereby determines that it is necessary to extend sanitary sewer lines and acquire land and rights-of-way in land required therefor. In order to raise the money required to pay the costs of making the improvements described above, in addition to funds which may be available for such purpose from any other source, bonds of the City of Asheville, North Carolina, are hereby authorized and shall be issued pursuant to the Local Government Bond Act of North Carolina. The maximum aggregate principal amount of such Sanitary Sewer Bonds authorized by this bond order shall be $1,300,000. A tax sufficient to pay the principal of and interest on said Sanitary Sewer Bonds when due shall be annually levied and collected. A sworn statement of the City's debt has been filed with the City Clerk and is open to public inspection. No debt shall be contracted during any fiscal year by the issuance of bonds pursuant to this bond order if the amount of such debt and if all other debt contracted during such fiscal year shall exceed two-thirds (2/3rds) of the amount by which the outstanding indebtedness of the City shall have been reduced during the next preceding fiscal year, unless the incurring of such debt shall be submitted to a vote of the people of the City and shall be approved by a majority of those who vote thereon. This bond order shall take effect thirty (30) days after its publication following its adoption, unless it is petitioned to a vote of the people within thirty (30) days after its publication as introduced, as provided in N. C. G. S. Section 159-60, and in that event, the bond order will take effect when approved by the voters of the City.

At 10:13 p.m. Mayor Sitnick closed the public hearing after having heard all persons who requested to be heard in connection with the foregoing questions.

Councilman Worley moved that the City Council adopt, without change or amendment, and direct the City Clerk to publish a notice of adoption as prescribed by The Local Government Bond Act, the bond order entitled "Bond Order Authorizing the Issuance of $1,300,000 Sanitary Sewer Bonds of the City of Asheville, North Carolina" which was introduced at the meeting of the City Council held on September 26, 2000. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 490

ORDINANCE NO. 2757 - ORDINANCE ADOPTING THE BOND ORDER ENTITLED "BOND ORDER AUTHORIZING THE ISSUANCE OF $670,000 EQUIPMENT BONDS OF THE CITY OF ASHEVILLE, N.C.

City Clerk Burleson reported to City Council that the bond order entitled "Bond Order Authorizing the Issuance of $670,000 Equipment Bonds of the City of Asheville, North Carolina," which was introduced at the regular meeting of the City Council on September 26, 2000, and was published on September 30, 2000, with notice that the City Council would hold a public hearing thereon on October 10, 2000, at 5:00 p.m.

At 10:13 p.m., Mayor Sitnick announced that the City Council would hear anyone who wished to be heard on the questions of validity of the equipment bond order and the advisability of issuing the Equipment Bonds. At the direction of the Mayor, the City Clerk distributed the bond order and the published notice of hearing to all requesting them.

Finance Director Bill Schaefer explained the Bond Order and explained the City Council of the City of Asheville, North Carolina, has ascertained and hereby determines that it is necessary to purchase firefighting equipment. In order to raise the money required to pay the costs of purchasing certain firefighting equipment, in addition to funds which may be available for such purpose from any other source, bonds of the City of Asheville, North Carolina are hereby authorized and shall be issued pursuant to the Local Government Bond Act of North Carolina. The maximum aggregate principal amount of such Equipment Bonds authorized by this bond order shall be $670,000. A tax sufficient to pay the principal of and interest on said Equipment Bonds when due shall be annually levied and collected. A sworn statement of the City's debt has been filed with the City Clerk and is open to public inspection. No debt shall be contracted during any fiscal year by the issuance of bonds pursuant to this bond order if the amount of such debt and if all other debt contracted during such fiscal year shall exceed two-thirds (2/3rds) of the amount by which the outstanding indebtedness of the City shall have been reduced during the next preceding fiscal year, unless the incurring of such debt shall be submitted to a vote of the people of the City and shall be approved by a majority of those who vote thereon. This bond order shall take effect thirty (30) days after its publication following its adoption, unless it is petitioned to a vote of the people within thirty (30) days after its publication as introduced, as provided in N. C. G. S. Section 159-60, and in that event, the bond order will take effect when approved by the voters of the City.

At 10:14 p.m. Mayor Sitnick closed the public hearing after having heard all persons who requested to be heard in connection with the foregoing questions.

Councilman Worley moved that the City Council adopt, without change or amendment, and direct the City Clerk to publish a notice of adoption as prescribed by The Local Government Bond Act, the bond order entitled "Bond Order Authorizing the Issuance of $670,000 Equipment Bonds of the City of Asheville, North Carolina" which was introduced at the meeting of the City Council held on September 26, 2000. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 492

D. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF BURNSIDE, PHASE 4 AT BILTMORE PARK

ORDINANCE NO. 2758 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED WEST OF OVERLOOK ROAD AND IDENTIFIED AS BURNSIDE, PHASE 4 OF BILTMORE PARK

Mayor Sitnick opened the public hearing at 10:14 p.m.

Mr. Paul Benson, Urban Planner, said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville to include property located west of Overlook Road and identified as Burnside, Phase 4, Biltmore Park. This public hearing was advertised on September 29, 2000.

Biltmore Farms, Inc. has submitted an annexation petition for Burnside, Phase 4, Biltmore Park. This area is adjacent to the existing City limits being immediately west of Burnside, Phase 3 which was annexed on 6/7/2000. Biltmore Park is generally located west of Overlook Road and north of Long Shoals Road. This annexation is pursuant to an agreement between Biltmore Farms, Inc. and the City of Asheville.

The area proposed for annexation consists of 11.4 acres and is platted for 12 single-family residential lots. Street access to this area is provided by White Ash Drive.

Utilities and streets are being developed by Biltmore Farms, Inc. City services will begin on the effective date of annexation. Biltmore Farms, Inc. has requested that the effective date of annexation be six months from the adoption of the ordinance.

City staff recommends City Council adopt an ordinance extending the corporate limits of the City of Asheville to include property located west of Overlook Road and identified as Burnside, Phase 4, Biltmore Park.

Mayor Sitnick closed the public hearing at 10:15 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hay moved for the adoption of Ordinance No. 2758. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 494

E. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF OAKBROOK, SECTION 2 AT BILTMORE PARK

ORDINANCE NO. 2759 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED WEST OF OVERLOOK ROAD AND IDENTIFIED AS OAKBROOK, SECTION 2 OF BILTMORE PARK

Mayor Sitnick opened the public hearing at 10:17 p.m.

Mr. Paul Benson, Urban Planner, said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville to include property located west of Overlook Road and identified as Oakbrook, Section 2, Biltmore Park. This public hearing was advertised on September 29, 2000.

Biltmore Farms, Inc. has submitted an annexation petition for Oakbrook, Section 2, Biltmore Park. This area is adjacent to the existing City limits being immediately east of Oakbrook, Section 1 which was annexed on 8/22/2000. Biltmore Park is generally located west of Overlook Road and north of Long Shoals Road. This annexation is pursuant to an agreement between Biltmore Farms, Inc. and the City of Asheville.

The area proposed for annexation consists of 24 acres and is platted for 40 single-family residential lots and a common area. The annexation also contains a small cemetery. Street access to this area is provided by White Ash Drive and Dianthus Drive.

Utilities and streets are being developed by Biltmore Farms, Inc. City services will begin on the effective date of annexation. Biltmore Farms, Inc. has requested that the effective date of annexation be six months from the adoption of the ordinance.

City staff recommends City Council adopt an ordinance extending the corporate limits of the City of Asheville to include property located west of Overlook Road and identified as Oakbrook, Section 2, Biltmore Park.

Mayor Sitnick closed the public hearing at 10:18 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2759. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 496

IV. UNFINISHED BUSINESS:

A. ORDINANCE AMENDING THE CURRENT TAXICAB ORDINANCE INCLUDING THE IMPLEMENTATION OF A NEW TAXICAB RATE SCHEDULE

Finance Director Bill Schaefer said that this is the consideration of a request to continue to October 24, 2000, a revision of the current taxicab ordinance, including the implementation of a new rate table.

At the formal meeting on September 12, 2000, City Council directed staff to conduct further discussion with taxicab owners and other interested parties, to determine an appropriate rate structure to compensate taxicab owners and operators for the expense of possible increases in minimum insurance coverage requirements.

Staff has been working with taxicab owners and their counsel to assess the impact of increasing required insurance coverages. During a September 27, 2000, public forum on this issue, all of the attendees requested that additional time be allowed in order to gather the data needed to make valid decisions regarding adjustments to insurance requirements and the rate structures. Both staff and attendees agreed that the data could be gathered and analyzed in time to be considered by City Council at their formal meeting on October 24, 2000.

City staff recommends Council continue this agenda item to its formal meeting on October 24, 2000.

Vice-Mayor Cloninger moved to continue this matter until October 24, 2000. This motion was seconded by Councilman Worley and carried unanimously.

B. ORDINANCE NO. 2760 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A PARKING LOT ASSOCIATED WITH MILKO INC. TO BE LOCATED ON PROPERTY ZONED RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AT THE INTERSECTION OF DEAVERVIEW ROAD AND BEAR CREEK ROAD

Vice-Mayor Hay moved to excuse Mayor Sitnick from this issue since she was not at the public hearing on September 26, 2000. This motion was seconded by Councilman Worley and carried unanimously.

City Attorney Oast said that this public hearing was held on September 26, 2000, and City Council directed him to prepare an order granting a conditional use permit. He said that this is the consideration of an ordinance adopting findings and conclusions, and issuing a conditional use permit for Milko, Inc.

Following a public hearing on September 26, 2000, City Council voted to issue a conditional use permit to Milko, Inc. The order contains findings and conclusions developed from the public hearing and Council's discussion. The order may be changed as Council wishes prior to adoption.

Adoption of the ordinance, with changes as appropriate, is recommended.

Vice-Mayor Cloninger said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 2760. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 18 - PAGE 498

V. NEW BUSINESS:

A. RESOLUTION NO. 00-198 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN OFFER TO PURCHASE AND CONTRACT FOR A PARCEL OF LAND AT 111 EASTVIEW CIRCLE FOR A FIRE/POLICE STATION

Interim Fire Chief Robert Griffin said that this is the consideration of a resolution authorizing the City Manager to sign an Offer to Purchase and Contract for a parcel of land at 111 Eastview Circle for a Fire/Police station.

A response criterion is a portion of the rating for fire departments that are established by the Insurance Service Office. Presently the City does not meet the response criteria in the far west area of the City creating a need to relocate a fire station that currently provides overlapping service. Therefore, no additional personnel or equipment will be required. Property has been identified that will meet that response criteria and enhance the response and coverage for emergencies. The property is located at 111 Eastview Circle. The property is 2.18 acres with good access to Smoky Park Highway and I-40. The property is zoned residential and abuts commercial property. A fire station is a permitted use in any zoning classification. The property is at the intersection of Eastview Circle and Old Haywood Road. Approximately 70-75% of the property is cleared, with the remainder, which is mostly perimeter areas, being wooded. Soil type is believed to be clay composition and suitable for most types of construction. The owners of the property have agreed to a purchase price and other terms and conditions as specified in the Offer. The property is listed in the Buncombe County Tax Office as the Maude R. H. Revis Estate, which are Mr. Berlon D. Hensley, Darlene Hensley McKinney and husband John A. McKinney. This site will also meet the needs of the Asheville Police Department for a joint facility in the west area of the City.

The Interim Fire Chief recommends City Council authorize the City Manager to sign the Offer to Purchase and Contract for the property at 111 Eastview Circle.

Councilwoman Bellamy said that there were some concerns voiced by residents in West Asheville who are currently located near the station on Old Haywood Road about response time. Interim Fire Chief Griffin said that there will be two companies located at the station on Oregon at Louisiana that will provide the immediate coverage with a four minute response time in that area and just relocate that engine company from Haywood Road.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Resolution No. 00-197. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 204

VI. OTHER BUSINESS:

A. CITY COUNCIL MEETING DATE CHANGE

Vice-Mayor Cloninger moved to re-schedule the Tuesday, November 7, 2000, City Council worksession until Thursday, November 9, 2000. The worksession will begin at 3:00 p.m. in the First Floor North Conference in the City Hall Building. This motion was seconded by Councilman Worley and carried unanimously.

B. CITY COUNCIL RETREAT COMMITTEE

Mayor Sitnick appointed Councilwoman Bellamy, Councilman Worley and herself to the 2001 City Council Retreat Committee.

C. CLAIMS

The following claims were received by the City of Asheville during the period of September 8-28, 2000: Jacqueline Meadows (Transit Services), Stephanie Hughey (Water), Fran Pignanelli (Streets), Scott Jenkins (Streets), Patsy Schmidt (Parks & Recreation), Diana C. Teaster (Police), Joyce Kilgore (Water), Biltmore Estate (Sanitation), Oteen Baptist Church (Police) and Sue Hunter (Sanitation).

The following claims were received by the City during the period of September 29 – October 5, 2000: Casandra Plummer (Transit Services), Tom Barker (Streets), BellSouth (Water), The Timbers (Sanitation), John Morgan (Water), Joanne Baker (Transit Services), Sharon Hines (Sanitation), Shelia Gilliland (Water), Ronald Thurman (Police) and Jay Fine (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:27 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - October 24, 2000 - 5:00 p.m.

Regular Meeting

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

INVOCATION

Councilman Hay gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING OCTOBER, 2000, AS "AMERICORPS APPRECIATION MONTH"

Mayor Sitnick read the proclamation proclaiming October, 2000, as "Americorps Appreciation Month" in the City of Asheville. She said that she had presented the proclamation last week to Ms. Eula Shaw and Mr. George Gibson. Ms. Shaw and Mr. Gibson both spoke about the outstanding work Americorps did when they cleared the South Asheville Cemetery.

B. RECOGNITION OF ASHEVILLE'S PARKS AND RECREATION DEPARTMENT'S GOLD MEDAL FINALIST AWARD

Mayor Sitnick recognized Recreation Board Chair Frank Fishburne and Parks and Recreation Director Irby Brinson. She said that the Asheville Parks and Recreation Department continues to make Asheville proud, and has just been named one of the top municipal park and recreation department in the entire nation. Asheville received the Gold Medal Finalist Award from the National Sporting Goods Association and the National Recreation and Parks Association at the NRPA National Congress in Phoenix, Arizona, last week. Up to 10,000 park and recreation professionals attended the largest annual park and recreation conference for educational and networking opportunities in the field. Top-notch departments from around the country vied for the award in four different categories based on population size. Asheville is one of three departments to win the Finalist Award, and went up against several dozen departments in Category III for cities with populations of 50,000 to 100,000.

Mr. Fishburne said that the Gold Medal is the most prestigious award given through a partnership with NRPA and NSGA's Sports Foundation to honor the nation's outstanding community park and recreation agencies for excellence in the field of park and recreation management.

Mr. Brinson recognized the following the key staff who put together the materials for the City receiving this Award: Debbie Ivester, Bill Hamilton, Jeff Mueller and Bob Applegate.

C. RECOGNITION OF CITY STAFF AND SPONSORS FOR SUCCESSFUL LEAD-BASED PAINT WORKSHOP

Mayor Sitnick recognized City staff Jeff Baker, Housing Code Coordinator, and Isaac Coleman, Housing Rehabilitation Specialist. In addition, she recognized the following sponsors: UNC-A Lead Poisoning Prevention Unit, the Board of Realtors, Carolina Real Estate Investors

Association, and the Asheville Regional Housing Consortium for their success in the "Clean, Screen, and Stabilize" Workshop held on September 20-22, 2000.

II. CONSENT:

Councilman Peterson asked that Consent Agenda Item G be removed from the Consent Agenda to discuss the location of the public hearing.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 10, 2000

B. ORDINANCE NO. 2761 - BUDGET AMENDMENT FOR LITTLE BEAR CARE CHILD CARE PROGRAM

Summary: The consideration of a budget amendment, in the amount of $2,326, from Smart Start-Buncombe County Partnership for Children through the Special Needs Assistance Program for assistance for inclusive child care at Little Bear Care Program.

The City of Asheville applied to Smart Start for assistance in September 2000 for costs associated with providing extra staff for a child with special needs in Little Bear Care. The allocation was recently awarded in the amount of $2,326, and designated for costs associated with providing extra part-time staff for a child with special needs in Little Bear Care.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $2,326, to establish a budget for the extra part-time staff at Little Bear Care.

ORDINANCE BOOK NO. 18 – PAGE 503

C. ORDINANCE NO. 2762 - BUDGET AMENDMENT FOR JUNIOR GOLF PROGRAM

Summary: The consideration of a budget amendment, in the amount of $16,530, for a grant appropriation from the Dogwood Fund through the Western North Carolina Community Foundation for the new Junior Golf Program.

The City of Asheville presented the Junior Golf Program to the Community Foundation in the Fall 1999. The allocation was recently awarded in the amount of $16,530, and designated for the operational costs of the program.

The Parks and Recreation Department is responsible for the management and operation of the new Junior Golf Program, which is a partnership with the Northwoods Golf Club and Nevada Bob's Golf Shop. The allocation from the Community Foundation will assist the department in implementing the program.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $16,530, to establish a budget for the Junior Golf Program.

ORDINANCE BOOK NO. 18 – PAGE 505

D. **RESOLUTION NO. 00-199 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE N.C. DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION OF W.T. WEAVER BOULEVARD PHASE 2**

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N. C. Department of Transportation (NC DOT) for the construction of W.T. Weaver Greenway Phase 2, and associated budget amendment.

The W.T. Weaver Greenway Phase 2 project consists of the installation of approximately 2,100 linear feet of 10 foot wide asphalt facility. The facility will extend the existing greenway along W.T. Weaver to Broadway Avenue.

The City will be responsible for designing, bidding and constructing the greenway in accordance with NC DOT and Federal guidelines. The NC DOT will reimburse the City of Asheville up to $300,000 for the cost of the installation of the greenway. The cost of installing the greenway is estimated under $300,000. All costs over $300,000 will be the responsibility of the City of Asheville.

In addition to the municipal agreement request, a budget amendment needs to be approved to appropriate an additional $300,000 to this project from the North Carolina Department of Transportation. These funds will be used for the greenway whereas the municipal funds allocated to the project will be spent on roadway improvements along Weaver Boulevard.

Staff recommends the consideration of a resolution authorizing the City Manager to sign a municipal agreement with the NC DOT for the installation of W.T. Weaver Greenway Phase 2 and a budget amendment, in the amount of $300,000, for the construction. City Council approval is also recommended for the approval of the budget amendment in the amount of $300,000 for this project.

RESOLUTION BOOK NO. 26 – PAGE 205

E. **ORDINANCE NO. 2763 - BUDGET AMENDMENT TO APPROPRIATE FUNDS INTO A CAPITAL FUND FOR THE CONSTRUCTION OF A GREENWAY ALONG W.T. WEAVER BOULEVARD**

Summary: See Consent Agenda Item “D” above.

ORDINANCE BOOK NO. 18 – PAGE 507

F. **RESOLUTION NO. 00-200 - RESOLUTION APPROVING AN AMENDED STATE DEVELOPMENT ZONE**

Summary: The consideration of a resolution approving an amended State Development Zone.

The current State Development Zone for the City Of Asheville will expire on January 1, 2001. In August 2000, following Council approval, the City submitted an application to the State for a new, revised zone based on new criteria. That application was returned citing an error in a statistic for one of the areas in the zone. Actually, the problem is not the result of an oversight or a mistake; rather, it is the result of a quirk in the methodology used to calculate that statistic that leaves open the possibility of arriving at more than one answer. Our number is different from the State's number. The problem has been corrected in accordance with the State's finding, and a new application for an amended zone is ready. Because the zone boundary has been amended (slightly reduced), it nevertheless is a new zone requiring formal Council approval. The area being removed from the zone is Census Tract 4, Block Group 1 which corresponds to the mainly residential area between UNC-Asheville and Merrimon Avenue.

Staff recommends City Council approve the amended Zone as proposed.

RESOLUTION BOOK NO. 26 – PAGE 206

G. **MOTION SETTING A PUBLIC HEARING ON NOVEMBER 14, 2000, IN THE CITY COUNCIL CHAMBER, TO CONSIDER A CONDITIONAL USE PERMIT TO CONSTRUCT A WAL-MART SUPERCENTER AT THE INTERSECTION OF GERBER ROAD AND HENDERSONVILLE ROAD**

This item was removed from the Consent Agenda for further discussion.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

MOTION SETTING A PUBLIC HEARING ON NOVEMBER 14, 2000, IN THE CITY COUNCIL CHAMBER, TO CONSIDER A CONDITIONAL USE PERMIT TO CONSTRUCT A WAL-MART SUPERCENTER AT THE INTERSECTION OF GERBER ROAD AND HENDERSONVILLE ROAD

Councilman Peterson requested the public hearing on the conditional use permit to construct a Wal-Mart Supercenter on Gerber Road be located in South Asheville. It was his understanding that the Auditorium at T.C. Roberson High School is available. He said that given the distance and inconvenience, particularly of having it in the Council Chamber, he felt a location in South Asheville would be more suitable. Also, considering that South Asheville has a number of retirement communities where it makes it especially difficult for retirees to get out, and considering the size and uniqueness of this project, he felt that those concerns would justify the hearing be held in a location in South Asheville. He realized that City Council would not want to have their public hearings outside the Council Chamber for every project, but he felt this proposed move would benefit the area residents.

Discussion was held about moving the hearing. Some concerns expressed were: other items scheduled on the November 14 agenda, moving of equipment, City staff moving their presentation materials, hiring of a crew to tape the meeting, additional cost for taping the meeting (the November 14 City Council meeting was to be the first live meeting broadcast), the precedence of moving public hearings to different spaces, parking concerns, and equipment and materials not available.

Councilman Peterson moved to set the public hearing on the conditional use permit to consider the construction of a Wal-Mart Supercenter on Gerber Road on November 14, 2000, at T.C. Roberson High School. This motion died for a lack of a second.

Vice-Mayor Cloninger moved to hold the conditional use public hearing in the Council Chamber. This motion was seconded by Councilwoman Field and carried on a 6-1 vote, with Councilman Peterson voting "no".

Mayor Sitnick asked the City Manager to prepare a brief report to City Council on what is involved with moving a Council meeting, including expenses, etc.

CHANGE IN AGENDA

Mayor Sitnick said that she has had a request to move the two Grove Arcade construction financing items higher on the agenda. Therefore, Councilman Worley moved to amend the agenda and consider the two Grove Arcade construction financing items at this time. This motion was seconded by Councilwoman Field and carried unanimously.

Vice-Mayor Cloninger asked to be excused from participating in these matters because he is a partner in the law firm that represents the Grove Arcade Public Market Foundation. Therefore, Councilman Worley moved to excuse Vice-Mayor Cloninger from participating in these matters due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION NO. 00-201 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONSENT TO ENCUMBER, ESTOPPEL CERTIFICATE, AND NON-DISTURBANCE AGREEMENT FOR THE GROVE ARCADE CONSTRUCTION FINANCING

RESOLUTION NO. 00-202 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A NON-DISTURBANCE AND ATTORNMENT AGREEMENT FOR THE GROVE ARCADE CONSTRUCTION FINANCING

City Attorney Oast said that this is the consideration of resolutions authorizing the Mayor to execute (1) a consent to encumber and estoppel certificate; and (2) a non-disturbance and attornment agreement. Both documents will facilitate construction financing for the renovations to the Grove Arcade.

In August of 1997 the City acquired the Grove Arcade building and leased it to the Grove Arcade Public Market Foundation (GAPMF). The GAPMF subleased part of it to a developer. Through a complex transaction, the subleased development interests in the building are now held by an entity (HGA Development, LLC) that can obtain and market historic tax credits; the new primary developer interest of HGA is CP&L, through its subsidiary, CaroHome. Substantial work has obviously begun on the building since CaroHome has been involved.

HGA is seeking financing from Wachovia Bank, N.A. for the improvements to the building. Under the City's agreement with GAPMF (Article XXII) the City agreed that GAPMF could use its leasehold interest as security for a construction loan. By extension, this same provision applies to GAPMF's assignees (per Article VI). The first resolution is the City's assurance to Wachovia that HGA can pledge its leasehold interest in the Grove Arcade as security for construction financing.

The lease to GAPMF also contains a non-disturbance and attornment provision (Article XXXVII), that essentially provides that if GAPMF's lease from the City is terminated, the City will honor valid subleases and assignments. The second resolution is essentially the City's specific recognition that that provision applies to HGA's development interest.

It is recommended that City Council adopt the resolutions.

City Attorney Oast responded to questions from Councilwoman Field relative to the financing.

Councilwoman Field wanted to make sure that there is no exposure to the City of Asheville. City Attorney Oast said that this does not increase the exposure that the City of Asheville already has.

Mayor Sitnick said that members of Council have been previously furnished with a copies of the resolutions and they would not be read.

Councilman Worley moved for the adoption of Resolution No. 00-201. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 207

Councilman Hay moved for the adoption of Resolution No. 202. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 208

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING PROPERTY LOCATED AT THE CORNER OF SWEETEN CREEK ROAD AND ROSSCRAGGON ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO CB II COMMUNITY BUSINESS II DISTRICT AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

ORDINANCE NO. 2764 - ORDINANCE REZONING PROPERTY LOCATED AT THE CORNER OF SWEETEN CREEK ROAD AND ROSSCRAGGON ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT (CONDITIONAL USE ZONING)

ORDINANCE NO. 2765 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT THE CORNER OF SWEETEN CREEK ROAD AND ROSSCRAGGON ROAD

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to vote to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:54 p.m.

Mr. Gerald Green, Chief Planner, submitted into the record the Affidavit of Publication (City Exhibit 1), the Certification of Mailing of Notice to Property Owners (City Exhibit 2) and the Staff Report (City Exhibit 3). This public hearing was advertised on October 13 and 20, 2000.

Mr. Green said that this is the consideration of rezoning property located at the corner of Sweeten Creek Road and Rosscraggon Road from RM-16 Residential Multi-Family High Density District to CB II Community Business II District, and issuance of a conditional use permit (conditional use zoning).

The potential owners of the property, Ned Gibson and Barney Bryant, are requesting conditional use rezoning for the seven acres of land off Sweeten Creek Road and Rosscraggon Road (PIN Nos. 9654.05-29-3670 and 9654.06-29-6306, 6536) (City Exhibit 3 – Location Map). The 2010 Plan indicates this area as low density residential which exists south (RS-4) and east (outside the City's jurisdiction) of these properties. The areas to the north and west are developed as high density residential up to the railroad tracks. Given the high impact uses permitted in the CB II District, staff recommends restricting the uses to low impact commercial and mixed use development which would be more compatible for this neighborhood. Also, given the residential character of the surrounding community and the residential component of the project, sidewalks would be required along all three street frontages. The conceptual plan (City Exhibit 3 – Conceptual Plan) shows how this mixed use development will be integrated into the surrounding community by providing passive pedestrian amenities and shops with access to the adjacent residential uses.

The Planning and Development staff recommends rezoning this property located at the corner of Sweeten Creek Road and Rosscraggon Road and approval of a conditional use permit with conditions. In addition, the Planning and Zoning Commission reviewed this project on October 4, 2000, and unanimously recommended approval of the conditional use rezoning and the conditional use permit with the condition that the permitted land uses for the site be limited to the following:

- garden center (which shall make up more than 50% of the gross floor area of the property);
- plant sales and greenhouses;
- hardware and garden supply stores;
- offices;
- studios, galleries, and workshops for artists, designers, and craftspeople;
- cafes and delicatessens;
- multi-family residential development including accessory apartments; and
- complimentary / associated retail sales.
- The petitioner must submit complete site plans and elevation drawings for approval by TRC,
- the widening of Sweeten Creek Road must be to taken into account in the site plan design, and
- sidewalks shall be placed on all three street frontages.

In addition, City staff and the applicant have agreed on one additional condition. That condition is that City staff and the applicant and their design professionals continue to work on the site plan to ensure that the pedestrian access, and incorporation of this development into the surrounding residential neighborhood, be at the utmost.

Councilwoman Field liked the mixed use in this project and felt this was a positive step towards our smart growth policies.

Mr. Green responded to a question from Mayor Sitnick relative to the fence in addition to the buffer along a portion of the property.

Mr. Ned Gibson, one owner at B.B. Barnes, was excited about this project in terms of creating an outdoor living center that benefits not only south Asheville, but the entire City.

When Councilman Worley asked about how much residential development might occur on the property, Mr. Gibson said that this is still a very conceptual plan and they would want to leave that open. He did note that residential units may be on the second levels in some of the buildings.

Mr. Steve Ergel, in the commercial insurance business, spoke in support of this project.

Discussion surrounded Councilman Hay's concern about the condition regarding the garden center having to make up more than 50% of the gross floor area of the property. Mr. Green said that it is the applicant's intent is that the garden center be the dominant use. He was not sure if that safeguard is needed, given the intent of the applicant.

Mayor Sitnick noted that four of the uses seemed to be similar: the garden center, plant sales and greenhouses, hardware and garden supply stores, and complimentary and associated retail sales.

Vice-Mayor Cloninger and Councilwoman Field felt the condition which requires the garden center to be made up of more than 50% of the gross floor area of the property should be eliminated.

Councilman Hay said that if it is Council's intent that the garden center, etc., be the dominant use, then he suggested the condition be amended to read "garden center, plant sales and greenhouses, hardware and garden supply stores, which shall be the dominant use." Councilman Peterson and Councilman Worley agreed.

Upon inquiry of Vice-Mayor Cloninger on the definition of "dominant," Mr. Green said that typically if staff tries to identify that, they do it based on square footage.

Mr. Gibson said that it was his understanding, from the Planning & Zoning Commission, that the 50% area was the property area, not floor square footage and that would include the outdoor sales space – which is the predominant use. He said that he is comfortable with the garden center as the predominant use.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 6:25 p.m.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved to adopt Ordinance No. 2764 to rezone the property located at Sweeten Creek Road and Rosscraggon Road from RM-16 Residential Multi-Family High Density District to CB II Community Business II District (conditional use zoning). This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 509

Councilman Hay moved to adopt Ordinance No. 2765 granting the conditional use permit for the property located at the corner of Sweeten Creek Road and Rosscraggon Road with the condition that the permitted land uses for the site be limited to the following: (1) garden center, plant sales and greenhouses, hardware and garden supply stores, which shall be the dominant use; offices; studios, galleries, and workshops for artists, designers, and craftspeople; cafes and delicatessens; multi-family residential development including accessory apartments; and complimentary/associated retail sales. In addition, the petitioner must submit complete site plans and elevation drawings for approval by TRC, the widening of Sweeten Creek Road must be to taken into account in the site plan design, and sidewalks shall be placed on all three street frontages. Also, City staff, the applicant and their design professionals shall continue to work on the site plan to ensure that the pedestrian access, and incorporation of this development into the surrounding residential neighborhood, be at the utmost. Said motion also instructs the City Attorney to prepare the Order for the Mayor's signature reflecting information presented by staff and subject to the conditions outlined by staff. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

Councilwoman Bellamy felt this is an excellent idea of mixed use for our smart growth policies.

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B. PUBLIC HEARING TO INITIALLY ZONE 65 AND 67 LONG SHOALS ROAD TO OFFICE BUSINESS DISTRICT

ORDINANCE NO. 2766 - ORDINANCE TO INITIALLY ZONE 65 AND 67 LONG SHOALS ROAD TO OFFICE BUSINESS DISTRICT

Mayor Sitnick opened the public hearing at 6:29 p.m.

Ms. Stacy Merten, Urban Planner, said that this is the consideration of an ordinance to initially zone 65 and 67 Long Shoals Road to Office Business District. This public hearing was advertised on October 13 and 20, 2000.

The Planning and Zoning Commission, at their October 4, 2000, meeting, reviewed and recommended approval to zone the recently annexed parcels known as 65 & 67 Long Shoals Road (PIN Nos. 9644.08-79-7334 & 5345) as Office Business. The property is located on Long Shoals Road in the vicinity of Lake Julian, just east of the Overlook Road intersection. This is a 2.13 acre tract, consisting of two parcels, which are currently in residential use. The adjacent property on the north side of Long Shoals Road is zoned institutional. These properties were voluntarily annexed on February 22, 2000.

The purpose of the Office Business is to reserve areas for medium scale office and a limited range of business uses and to serve as a transition area between commercial and residential uses. These parcels are adjacent to the proposed annexation area 'C'. With the widening of Long Shoals Road, this corridor will eventually become a major gateway to the City. Staff has done a preliminary land use plan for the Long Shoals corridor and the proposed zoning is in compliance with this land use plan, which calls for a mixture of uses, avoiding strip commercial development along the corridor.

The Office Business zoning will allow for commercial development but will limit the uses to prevent strip-type highway commercial development. The Planning and Development staff and the Planning and Zoning Commission recommend approval of the initial zoning of this property as Office Business.

Mayor Sitnick closed the public hearing at 6:33 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2766. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. [illegible] 19 - PAGE 1

IV. UNFINISHED BUSINESS:

A. ORDINANCE AMENDING THE CURRENT TAXICAB ORDINANCE INCLUDING THE IMPLEMENTATION OF A NEW TAXICAB RATE SCHEDULE

Finance Director Bill Schaefer said that this is the consideration of a request to continue to November 28, 2000, a revision of the current taxicab ordinance, including the implementation of a new rate table.

At the formal meeting on September 12, 2000, City Council directed staff to conduct further discussion with taxicab owners and other interested parties, to determine an appropriate rate structure to compensate taxicab owners and operators for the expense of possible increases in minimum insurance coverage requirements.

Staff has been working with taxicab owners and their counsel to assess the impact of increasing required insurance coverage. During a September 27, 2000, public forum on this issue, all of the attendees requested that additional time be allowed in order to gather the data needed to make valid decisions regarding adjustments to insurance requirements and the rate structures. On October 10, 2000, City Council agreed to hear the proposal on October 24, 2000. Taxicab owners and their counsel have petitioned staff to extend the preparation time for this matter.

City staff recommends Council continue this agenda item to its formal meeting on November 28, 2000.

Councilwoman Field moved to continue this matter until November 28, 2000. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

V. NEW BUSINESS:

A. ORDINANCE NO. 2767 - BUDGET AMENDMENT TO REFLECT ADDITIONAL REVENUE AND OFFSETTING EXPENSES IN THE TRANSIT SERVICES DEPARTMENT

Transit Director Bruce Black said that this is the consideration of a budget amendment, in the amount of $410,892, to reflect additional revenue and offsetting expenses in the Transit Services Department.

The City of Asheville received $258,193 in additional state grant funds during the current fiscal year to support transit operations in Fiscal Year 2000-2001. In addition, the Transit Fund has a fund balance available for appropriation that accumulated from additional state grant funds received during the prior fiscal year.

Staff is requesting that these funds be appropriated in the current fiscal year to further enhance transit service. Transit Service Enhancements consist of:

- the addition of more bus service;
- an increase in advertising capability;
- an increased ability to implement the capital portions of the Transit Improvement Plan, including;
    - the purchase and installation of shelters;
    - schedule and route map refinement;
    - the purchase & placement of benches;
    - the purchase of shop equipment; and
    - an increase in the vehicle replacement fund contribution in anticipation of replacement of the fleet with alternative fuel vehicles.

City staff recommends City Council adopt a budget amendment, in the amount of $410,892, to reflect additional revenue and offsetting expenses in the Transit Services Department.

Mayor Sitnick spoke in favor of the many improvements and creative ideas that have been accomplished and initiated regarding transit services.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2767. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. [illegible] - PAGE 3
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VI. OTHER BUSINESS:

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Adam Balus

Mr. Adam Balus urged City Council to move the public hearing location on the proposed Wal-Mart Supercenter on Gerber Road from the Council Chamber to a place that is large enough to accommodate the number of people anticipated to attend. He noted that the City has not been bombarded with calls and letters because he has been advising residents to wait until the public hearing to make their comments and present their information in order that it be entered into the record.

After further discussion about the anticipated numbers of citizens who are planning to attend, it was the consensus of City Council to move the public hearing to a location, to be determined by City staff, large enough to accommodate the large crowds anticipated, taking into account the parking needed.

It was also the consensus of City Council to have Planning staff arrange a tour for City Council of the property proposed for the Wal-Mart Supercenter on Gerber Road.

Mr. Balus questioned why the order from the Board of Adjustment regarding the proposed Wal-Mart at the old Sayles Bleacheries site went out seven weeks after the Board made it's ruling. City Attorney Oast could not explain why the Order took so long to be sent out, however, a 30-day delay is not at all unusual since once the Order is written, the Board approves the Order at their next formal meeting.

Comments by Bill Evans

Mr. Bill Evans also urged City Council to move the public hearing location on the proposed Wal-Mart Supercenter on Gerber Road from the Council Chamber to a place that is large enough to accommodate the number of people anticipated to attend.

Need for Increased Trash Pick-Up

Councilwoman Field asked that when there are large events at the Civic Center, that trash cans be emptied at least two or three times over the weekend.

Claims

The following claims were received by the City of Asheville during the period of October 6-12, 2000: Melissa Quinlan (Civic Center), Sharon Allen (Streets) and BellSouth (Water).

The following claims were received by the City during the period of October 13-19, 2000: Michael Lurey (Water), Jennifer Labita (Water), BellSouth (Water), Jesse Samuels (Police) and John Ludavico (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

Closed Session

At 6:58 p.m., Councilman Hay moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Carolina Power & Light Company and the City of Asheville. The statutory authorization is contained in G. S. 143-318. 11 (a) (3). This motion was seconded by Councilman Worley and carried unanimously.

At 7:45 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilwoman Bellamy and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:45 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Thursday - November 9, 2000 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Donation of Land on Broadway for Greenway System

Summary: The consideration of a resolution authorizing the Mayor to accept a donation of real property on Broadway from Mark Carlson for the City of Asheville greenway system.

The City of Asheville is interested in establishing greenways or greenway systems throughout the corporate limits of the City of Asheville. Real property has been acquired along Broadway and Reed Creek for the purpose of constructing a greenway. Mark Carlson has offered to donate property he owns (approximately 0.84 acre) on Broadway at and near the corner with Ocala Street (PIN Nos. 9649.13-13-7959, 8905, 8808, 8973 and 9837) for the greenway system. The Parks and Recreation staff have reviewed the proposed donation and found that the property is appropriate for the greenway system.

All of the donors to the Broadway Greenway Project will be recognized at the groundbreaking ceremony.

City staff recommends City Council adopt the resolution authorizing the Mayor to accept a donation of real property on Broadway from Mark Carlson.

Setting Public Hearing on November 28, 2000, to Vacate and Close 135 Merrimon Avenue

Summary: The consideration of a resolution setting a public hearing on November 28, 2000, for the adoption of an ordinance directing that the dwelling located at 135 Merrimon Avenue be vacated and closed.

135 Merrimon Avenue is an apartment house for approximately 38 families. The owners, Robert Janney and wife, Sara B. Krueger, have not substantially responded to the Order of the Chief Code Enforcement Officer to repair, alter, or improve the apartment house so as to render it fit for human habitation. Housing Code Coordinator Jeff Baker, found the following conditions which have been documented by still photos:

- multiple Housing Code violations;
- structural problems including stress cracks in brick piers and decayed support girders;
- non-conformance with requirements for sanitary facilities; and
- stairwells and exits in violation of Vol. 9, Chapter 4 of the State Building Code (not fire rated).

Housing staff has spent a number of hours with the property owner to correct the deficiencies. The property owner, however, to date has failed to take corrective action so as to render the dwelling fit for human habitation. A formal housing hearing was held and a "Findings of Fact and Order" entered and served on the property owners. To date no action has been taken by the owner and the dwelling continues to be occupied by the tenants while in an unfit condition and in direct violation of the provisions of the Housing Code.

Section 4-217(c)(3) of the City's Housing Code, as authorized by N. C. Gen. Stat. sec. 160A-443(5) authorizes City Council to direct by ordinance that the dwelling be vacated and closed.

The following is an overview of some general information regarding this property:

- Fair market value of dwelling is $456,900
- Estimated cost to repair and bring into Code compliance is $179,000
- The Affordable Housing Agencies were notified.

The Building Safety Director recommends adoption of the resolution setting a public hearing on November 28, 2000, ordering that the property located at 135 Merrimon Avenue be vacated and closed.

Riverside Cemetery Metropolitan Sewerage District Easement

Summary: The consideration of a resolution authorizing the Mayor to execute an easement in favor of Metropolitan Sewerage District to make improvements on a sanitary sewer line and associated manholes within Riverside Cemetery.

During the past year the Metropolitan Sewerage District (MSD) has been working with the City of Asheville regarding a sanitary sewer project proposed within Riverside Cemetery. The current line is located along the southern portion of the cemetery adjacent to a creek which flows westward toward US 19/23. MSD would like to improve this line which is in disrepair with minimum impact to the property. MSD staff has met with City of Asheville staff representing the Parks and Recreation Department, Asheville-Buncombe Historic Resources Commission and the Tree Commission. The various divisions have worked with MSD to reach consensus regarding an appropriate design and implementation strategy that will enable the project improvements with minimal disturbance to the cemetery site.

The Parks and Recreation staff recommend the approval of the improvements as proposed by the Metropolitan Sewerage District in Riverside Cemetery along with the associated permanent easement for the new line of pipe.

Skateboard Park Contract

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Perry Bartsch Jr. Construction Company for the construction of retaining walls for the Skateboard Park.

In March of 1999, City Council approved the construction of a Skateboard Park to be located at the corner of Flint and Cherry Streets in downtown Asheville. This park will be constructed on property owned by North Carolina Department of Transportation. The development of the Skateboard Park has been on-going since 1997 when the Department began working with a number of individuals and groups interested in addressing the use of skateboards in the downtown area. This initiative led to the development of a temporary park located on top of the Civic Center parking deck which has proven to be successful with between 30 – 50 participants each day. The overall goal of the Task Force was the development of a permanent park. Construction on this park began in August, 2000, with the Department of Public Works installing storm drainage at the site. The next phase of development includes the construction of retaining walls throughout the park area. After completion of the retaining walls, the park will be ready for installation of the park surface which will allow for use by the skateboarders by late summer or early fall. Competitive bids were solicited for the development of the retaining walls with the low bid going to Perry Bartsch Jr. Construction Company at a cost of $252,775.

The Parks and Recreation Department has committed to raising funds for the park through a variety of means without the use of tax dollars. This fundraising effort continues and the Department is close to announcing a major corporate sponsor for the park. City Council approved the budget amendment for this park in 1999 with the understanding that funds would be reimbursed to the account by the above means.

The Parks and Recreation Department recommends City Council approve the contract with Perry Bartsch Jr. Construction Company, in the amount of $252,775, and that the City Manager be authorized to sign all contract documents.

Vice-Mayor Cloninger noted that he has a conflict of interest on this matter and asked that staff be aware of it when placing it on the agenda for final adoption.

Issuance of $1,970,000 Two-Thirds General Obligation Bonds

Summary: The consideration of a resolution providing for the issuance of $1,970,000 General Obligation Bonds, Series 2000 of the City of Asheville.

On October 10, 2000, City Council adopted Bond Orders authorizing the issuance of $1,300,000 Sanitary Sewer Bonds and $670,000 Equipment Bonds. Those Bond Orders became effective on November 13, 2000, 30 days after their publication during which period no valid petition to a vote of the people was filed with the City Clerk.

The resolution provides the particulars for issuance of the bonds, to include:

- $1,970,000 aggregate principal amount; in $5,000 denominations;
- Semiannual interest payment dates of December 1 and June 1, beginning June 1, 2001 and continuing through December 1, 2020;
- Annual principal payment dates of December 1, 2001 through 2020;
- Provides for early redemption after December 1, 2010 at a premium;
- Requires continuing disclosure of financial information;
- Provides the form of the bonds;
- Designates the bonds as "qualified tax-exempt obligations";
- Directs the Finance Director to establish special funds for the proceeds of the bonds;
- Requests the Local Government Commission sell the bonds through competitive bid;
- Authorizes preparation, execution and delivery of the bonds;
- Authorizes and approves the form and content of the Official Statement and Supplement to the Official Statement with changes, modifications, additions and deletions as deemed necessary by the Mayor, City Manager, or Finance Director;
- Authorizes the Mayor, City Manager, Finance Director and City Clerk to execute and deliver all certificates, documents, opinions or other papers and perform all other acts required in order to implement and carry out the purposes of the resolution.

City staff recommends City Council adopt the resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

ASHEVILLE HONORS PROGRAM

Former Mayor Eugene Ochsenreiter, Ms.. Sara Bissette and Ms. Harriette Winner explained how they would like to see the City recognize individuals and institutions in the City who over the years have played a prominent role in the City's growth and development.

There have been many individuals and institutions over the years who have assisted in the development and growth of Asheville. Individuals and institutions who have provided leadership in development, the arts, culture, the business world and in other ways have helped establish Asheville as a unique city in which to live, work and recreate. The purpose of the awards would be on an annual basis to select an individual(s) or institution(s) to be honored by the City for their contributions and to hold an appropriate awards ceremony to confer the awards. City staff has met with Mayor Sitnick, Mayor Ochsenreiter, Ms. Sara Bissette and Ms. Harriette Winner to discuss how such a program might work at the conceptual level. The group would recommend that the awards be selected by an independent committee and presented on behalf of the City of Asheville by the Mayor and City Council at the appropriate time.

Staff feels this is a worthwhile endeavor and would provide an additional avenue to recognize individuals and organizations who are so important to the community. If Council would like to pursue an Asheville Honors type of program, the following steps should be taken: (1) Approve a mission statement for the committee; (2) Approve operating principles to guide the committee; (3) Appoint a chair and ask the chair to appoint members to the committee subject to Council approval; and (4) Approve a modest budget for the committee to begin their work and initially promote the program.

Staff recommends that if Council would like to proceed with a recognition program such as described above, Council should approve the mission statement, the operating principles, appointments and an initial budget of $4,000 for the committee.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REPORT FROM THE BUNCOMBE COUNTY SUSTAINABILITY TASK FORCE

Councilman Hay explained that the Buncombe County Sustainability Task Force is an attempt to model a proactive approach to developing land use and growth policy at the local level and avoid having such decisions imposed upon us from Raleigh.

Mr. Bradley Hix, representative from the Chamber of Commerce, explained the decision-making process and what the make-up is of the Buncombe County Sustainability Task Force. He explained why the task force was formed and what they see their role is. He outlined what specific issues and concerns the task force has been working on.

He explained the following four consensus principles on Smart Growth: (1) The Task Force believes that planning is best done on a local and regional level; (2) Every North Carolina county should work toward a comprehensive growth plan which would not necessarily require zoning; (3) Expand the availability of certain tools to help local governments to achieve desired outcomes of smart growth; and (4) Encourage greater infill development and community redevelopment.

On behalf of City Council, Mayor Sitnick thanked Councilman Hay and Mr. Hix for their efforts to shape statewide policy on smart growth rather than be shaped by it.

REPORT ON SHELTERED WAITING AREA AT TRANSIT CENTER

Transit Services Director Bruce Black said that this is a presentation of alternatives and conceptual plans for the expansion of the Transit Center Ticket Office for the addition of a sheltered waiting room for transit customers.

At the worksession on October 3, 2000, City Council asked that staff review various alternatives for providing shelter at the Transit Center, and asked that the architect who drew the conceptual plans presented at that time be present at the next available Council worksession.

Staff has worked with the architect to address alternatives to the retrofit of the existing building, and also to refining details of the conceptual plans.

Ms. Patty Glazer, Glazer Architecture PA, explained the possible alternatives for the provision of shelter at the Transit Center. Some alternatives are to do nothing, place pre-fab or plastic panels part way down from the ceiling to ground to retain heat, place glass curtains along the shelters edge, place removable panels for wintertime shelter, and build an addition to the existing ticket office.

Ms. Glazer explained the different issues associated with each alternative and stated that to build an addition to the existing ticket office is the best alternative. She also explained that after refining details of the conceptual plans, an approximate cost is $91,930.

City staff recommends City Council evaluate the proposed alternatives and if desirous of moving forward with an alternative, authorize the City Manager to enter into a professional services contract to prepare final plans and bid the project.

Upon inquiry of Mayor Sitnick, City Manager Westbrook explained that since this is a high priority of City Council that they will get funds from the Transit Services existing budget, without endangering existing services.

Councilwoman Field said that since this project will take approximately 6-7 months to complete, she wanted to make sure that we would not slowing down providing bus shelters in other parts of the City.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UDO AMENDMENT REVIEWS

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which are scheduled on November 28, 2000. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Level III Project Review

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to revise the procedure for the review of Level III site plan review projects.

Several months ago, City Council directed staff to pursue several concepts for streamlining the public hearing process for cases coming before Council. This proposed ordinance amendment was developed pursuant to that direction. The proposed ordinance amendment would revise the process for the review of Level III site plan review projects. These projects are residential projects of more than 50 units, commercial, office, and institutional projects of more than 100,000 square feet gross floor area, and industrial projects with a site area of more than 15 acres. The UDO identifies Level III site plan review projects as conditional uses, requiring the issuance of a Conditional Use Permit by City Council. The current review process has two steps, the review of the site plan for technical compliance with City standards by the TRC and a public hearing, with final decision, by City Council. With this process, the first opportunity for public discussion and review of the proposed Level III projects is at the City Council meeting. Issues are often identified at the public hearing that take some time to resolve, resulting in lengthy public hearings. The technical approval of detailed site plans by TRC prior to the City Council public hearing results in the impression that the plans have already achieved a significant level of approval.

In revising the Level III site plan review process, the Planning and Development staff sought to achieve the following goals:

- Provide an additional opportunity for public input;
- Provide an opportunity for identification and resolution of issues and concerns prior to review of the site plans by City Council; and
- The revisions should result in no increased cost (time/money) for the applicants.

These goals were met by the revised the Level III site plan review process, which calls for:

- Review of the conceptual site plan by the TRC. The conceptual site plan will provide details on those issues of concern to decision-making bodies and the public but will not require detailed engineering or design, thus reducing the cost of plan preparation;
- Review of the conceptual site plan, with public hearing, by the Planning and Zoning Commission;
- Opportunity for resolution of issues/concerns identified at the public hearing before the Planning and Zoning Commission;
- Review of, and final decision on, the conceptual site by the City Council at a public hearing. If the conceptual site plan is approved, a Conditional Use Permit would be issued by the City Council; and
- Review of detailed site plan by the TRC.

The revised Level III site plan review process identified in the ordinance amendment meets the goals established by the staff, resulting in an improved process that will better meet the needs of the community.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the wording amendment revising the review process for Level III site plan projects. The Planning and Development staff recommends approval of the wording amendment.

Mr. Green answered various questions and comments from Council regarding this proposed amendment.

Setbacks for Multi-Family Structures

Chief Planner Gerald Green said that this is the consideration of an amend to the Unified Development Ordinance (UDO) to revise the setbacks for multi-family structures.

The proposed ordinance amendment would revise the setback requirement for multi-family structures. Currently, all multi-family structures must comply with increased setback requirements regardless of the adjacent land use. The setback is based upon the number of units in the multi-family structure or development. While this requirement for additional setback has buffered single family uses from large-scale multi-family developments, it also has resulted in the inefficient use of land, the physical separation of multi-family neighborhoods from each other, and the undesirable scattering of open spaces across development sites. The draft ordinance amendment eliminates the requirement for additional setbacks for multi-family structures when they are located adjacent to other multi-family structures or non-residential uses. When multi-family structures are located adjacent to single-family uses, additional side and rear setbacks of 2 feet for each unit more than one in the structure is required. Duplexes, triplexes, and quadraplexes are exempted from the requirement for additional setback when located adjacent to single family uses. This exemption is due to the small scale and minimal impact of these small multi-family structures. In addition, these small scale multi-family structures are conditional uses in single family districts, permitting a case-by-case review of design standards. The proposed ordinance amendment should result in the more efficient use of land, the more even distribution of open spaces, and elimination of physical barriers between multi-family neighborhoods.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the wording amendment revising the setback requirements for multi-family structures. The Planning and Development staff recommends approval of the wording amendment.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearings on November 28, 2000.

ALTERNATIVE FUELED VEHICLES PLAN

Vice-Mayor Cloninger said that this is the consideration of a resolution endorsing the concept of an Alternative Fueled Vehicles (AFV) Plan for Asheville's vehicle fleet and local partners.

He said that City staff has worked to develop a draft AFV Plan for Asheville's vehicle fleet and local partners. Alternative Fuel Vehicles for fleets have the potential to decrease air pollution in the community. Staff researched various alternative fuels, available equipment and potential funding. The State is providing grants for municipal fleets to convert to fuels or vehicles which reduce air pollutants. Also, Mission-St. Joseph and Buncombe County have expressed interest in participating with the City in such a program. Other potential partners are being solicited.

Public Works Director Mark Combs explained the 1990 Clean Air Act and why alternative fuel vehicles are needed. He explained that compressed natural gas (CNG) has (1) a 80-98% emissions reduction; (2) is produced domestically; (3) is 33% lower cost vs. gasoline/diesel; (4) OEM vehicles are readily available; and (5) it is conducive to local fleet operations. He then explained the challenges for CNG, the CNG operation costs, and vehicle incremental costs in the City's Capital Improvement Plan.

The strategy for the program is (1) develop partnerships; (2) commitment by partners to purchase and use CNG vehicles; (3) construct "rapid fill" CNG station; (4) promote AFV use, pollution reduction strategies; and (4) implement new AFV technologies, as available. AFV Partners include Mission-St. Joseph's, Buncombe County, private AFV owners, and future partners.

He outlined the AFV Program Plan and Asheville's commitment.

He recommended a commitment to develop and fund a City AFV Program, apply for mobile Source Emissions Reduction Grant, apply for reimbursement for "incremental" costs, develop partnership(s) in the community, and continuous implementation of new AFV technology, as available.

Mayor Sitnick said that she would like to send a letter on Council's behalf to Congressman Taylor and Senator Edwards to advise them what the City is doing and if they can offer any other grant assistance for this Plan. In addition she would like to send a letter to the Governor-Elect to let him know what the City of Asheville is doing about air pollution and our strong commitment to air quality.

Transit Services Director Bruce Black explained what potential uses he sees for changing out his bus fleet to CNG.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

SELECTED TRAFFIC CALMING PROJECTS

City Traffic Engineer Michael Moule said that the following the procedures described in Asheville's Neighborhood Traffic Calming Policy adopted by City Council earlier this year, Engineering Department staff have preliminarily selected street segments for traffic calming projects for this fiscal year.

This report summarizes the street segment ranking and project selection process, describes the selected project areas, and describes the time frame for implementing these projects during this fiscal year.

The Neighborhood Traffic Calming Policy clearly outlines the rating criteria for prioritizing street segments for traffic calming. The streets segments are rated on speed and volume of existing traffic as determined by electronic tube counters, crash history, nearby pedestrian generators, roadway geometry, residential density, and the presence of existing sidewalks. Traffic Engineering staff has collected speed and volume data on approximately 100 street segments. All of the rating criteria except crash history have been evaluated for all 100 segments.

At this time, City staff does not have access to any crash report databases that can provide the necessary information with a reasonable amount of staff time and effort. An appropriate database may be forthcoming, but to complete the rankings used to select this year's projects, staff used the following process. First, the street segments were ranked based on the point total for all criteria except crash history. Then, the top 15 were selected at a threshold where it could reasonably be assumed that projects below that threshold could not move up to the top (based on the fact that only 10 points out of a total possible 100 points are available for crash history). A staff person went through the tedious process of reviewing each crash report on or near those 15 street segments. Finally, these 15 street segments were ranked based on the total points for all seven rating criteria.

The Traffic Calming Policy states that once the prioritized list is complete, projects will be selected based on the rankings and several other factors. One of these factors is regional equity; the selected projects are dispersed throughout the City. In addition, the Policy is intended to provide traffic calming on both residential local service streets and residential collector streets, but the rating criteria will generally rank collector streets higher. Therefore, some flexibility in the project selection is necessary to realize the goal of regional equity and to be sure to include projects on residential local service streets. This flexibility is the reason why some street segments with higher rankings were not selected for projects this fiscal year.

The selected street segments are listed below in order of the ratings they received in the prioritization process discussed above. Additional street segments that may be included in each project are described as well.

- **Wyoming Road**: This street is located in the Kenilworth neighborhood in east central Asheville. Although it is built like a typical residential local service street, it carries fairly high traffic volumes and it is part of a popular short cut through the Kenilworth neighborhood. Due to possible diverted traffic, two other streets that will need to be evaluated and possibly treated at the same time are Warwick Road and Forest Hill Drive from Wyoming Road to Kenilworth Road.

- **Wood Avenue**: This street is located in the Oakley Community in east Asheville. This street serves as a major collector street that carries very high traffic volumes for a residential street. Cedar Street is the continuation of Wood Avenue and should have traffic calming measures installed at the same time. In addition, Fairview Avenue will be evaluated for inclusion in this project.

- **South French Broad Avenue from Phifer Street to Hilliard Avenue**: This street is a collector street in central Asheville. Other parts of South French Broad will be addressed with this project; in all, South French Broad will be included from Choctaw to Hilliard Avenue. In addition, due to possible diverted traffic, Dailey Drive, Grove Street, Morgan Avenue, and Blanton Street will also be evaluated and possibly treated at the same time.

- **Gracelyn Road**: This is a north Asheville street in the Grace neighborhood that carries collector street volumes but has the features of a typical residential local service street. Ottari Road runs parallel to Gracelyn Road and will be evaluated for inclusion with this project.

- **Florida Avenue from Burton Street to Dorchester Avenue**: This west Asheville street is built like a typical residential local service street but carries collector street volumes. Dorchester Avenue and Balm Grove Avenue will need to be evaluated for possible inclusion in this project as they run between Florida Avenue and Haywood Road providing the connections for this common neighborhood cut-through.

- **Caribou Road from Hendersonville Road to the I-40 over-crossing**: This street serves as a minor collector for the Shiloh neighborhood, but it does not have roadway features like a residential collector street. Two segments of Caribou Road had high rankings, and both will be included in the project. A third segment of Caribou Road, from I-40 to Sweeten Creek Road, will be evaluated for inclusion in the project. A short segment of Booker Avenue from Caribou Road to West Chapel Road will be included in the project.

It is very critical that the next steps in the project development process happen in a timely manner. Immediately after presenting the selected projects to City Council, Engineering

Department staff will contact residents who live in the vicinity of the selected projects and who have previously contacted the Engineering Department about traffic concerns. An educational meeting will be scheduled for mid-November where residents from all project areas will attend and be informed about the process for project development. Before or soon after this meeting, a citizen committee for each project will be formed to assist City staff in contacting other residents and garnering support. City staff will meet with these committees to finalize the petition area and the committees will be sent out to gather signatures toward the 40% of households needed to hold public meetings. It is the goal of the Engineering Department to have signatures in hand and initial project development public meetings scheduled before the holiday season in December. This will allow conceptual plans to be drafted and final public meetings to be held in January and February. The final petition process and detailed design for a few projects could take place as early as February in time for construction to occur during good weather in the spring.

City Council spoke in support of the selected traffic calming projects identified by City staff.

UPDATE TO TRAVEL DEMAND MODEL FOR THE ASHEVILLE URBAN AREA METROPOLITAN PLANNING ORGANIZATION

Transportation Planner Ron Fuller said that this is the consideration of a resolution authorizing the City Manager to execute a contract with DSAtlantic Corporation in the amount of $145,300 to update the travel demand model for the Asheville Urban Area Metropolitan Planning Organization (MPO), and an associated budget amendment.

As the Lead Planning Agency, the City of Asheville plays an integral part in the function of the MPO. The old Thoroughfare Planning Process that the N. C. Dept. of Transportation (NCDOT) has used is being revamped to reflect a more comprehensive approach to transportation planning. Our current Plan is in the process of becoming a Comprehensive Transportation Plan. One of the most valuable tools in evaluating how traffic is addressed, both in the present and in the future, is a valid travel demand model. Such models are quite complex and data intensive. They require staff that are dedicated and experienced to modeling. With the level of concern we have locally regarding the validity of our Plan and model, the NCDOT and the MPO agree that it would be very beneficial to utilize the professional expertise of consultants who specialize in modeling. City staff issued a Request for Proposals and have selected DSAtlantic. The NCDOT, the City and the MPO staff, all agree that DSAtlantic can complete this update in a timely manner.

The Federal Highway Administration and the NCDOT will reimburse the City of Asheville 80% of the cost of the contract. The total cost of the model update is $145,300. The maximum City's share would be $29,060, which is budgeted in the Engineering Department.

City staff requests that City Council authorize the City Manager to execute a contract with DSAtlantic Corporation, in the amount of $145,300, to update the travel demand model for the MPO and to adopt an associated budget amendment.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

CITY COUNCIL HOLIDAY MEETING SCHEDULE

Due to the upcoming holidays, it was the consensus of City Council to (1) cancel the December 5, 2000, worksession; (2) schedule the December 12, 2000, meeting as a worksession; (3) schedule the December 19, 2000, meeting as a formal meeting; (4) cancel the December 21, 2000, meeting; and (5) cancel the January 2, 2001, meeting.

BOARDS AND COMMISSIONS

City Council instructed the City Clerk to arrange interviews or reappointment papers for vacancies on the following boards/commissions: Board of Adjustment, Downtown Commission, Fair Housing Commission, Firemen's Relief Fund, Metropolitan Sewerage District Board and Transit Commission. It was the consensus of Council to place the Film Board and the Public Art Board vacancies on Council's November 21, 2000, worksession agenda for further discussion. It was also Council's consensus to move the Public Access Channel Commission appointment to the next quarterly appointment process.

CLOSED SESSION

At 6:00 p.m., Councilman Hay moved to go into closed session for the following reasons: (1) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations - statutory authority is G.S. 143-318.11 (a) (4); and (2) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Leanne F. Young, Janet Rebecca Crisp, Paul Evington, Scott Alan Gaddy, Rock S. Edwards, William R. Annarino, Leroy Lunsford and City of Asheville – statutory authority is G.S. 143-318.11 (a) (3). This motion was seconded by Councilwoman Field and carried unanimously.

At 6:45 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:45 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

C. Auth

DEPARTMENT OF CULTURAL RESOURCES

DIVISION OF ARCHIVES AND HISTORY

ARCHIVES AND RECORDS SECTION

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PAGE: 484

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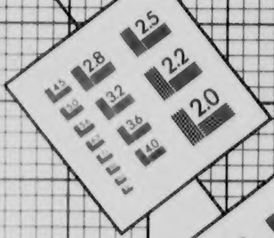
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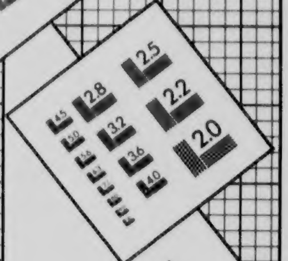
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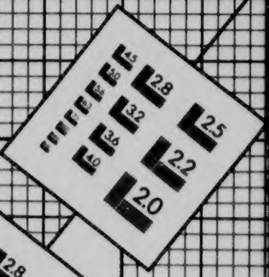
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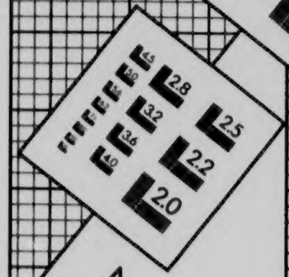
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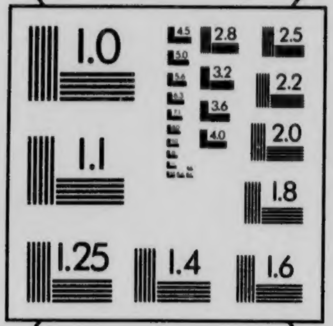
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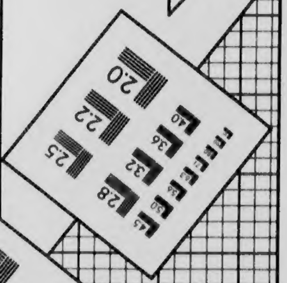
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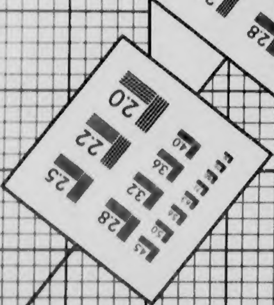
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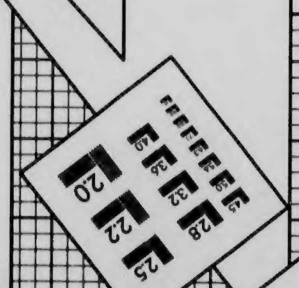
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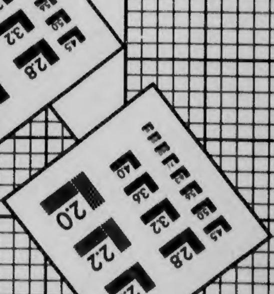
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